

MINUTES

SPECIAL COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

September 27, 2011
Room 548-S—Statehouse

Members Present

Senator Ruth Teichman, Chairperson
Representative Clark Schultz, Vice-chairperson
Senator Jeff Longbine
Senator Ty Masterson
Senator Allen Schmidt
Senator Vicki Schmidt
Representative TerriLois Gregory
Representative Ann Mah
Representative Melody McCray-Miller (via telephone)
Representative Susan Mosier

Member Absent

Representative Brenda Landwehr

Staff Present

Melissa Calderwood, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
David Wiese, Office of the Revisor of Statutes
Jan Lunn, Committee Secretary

Staff Absent

Amy Deckard, Kansas Legislative Research Department

Conferees

Bob Tomlinson, Assistant Commissioner, Kansas Insurance Department
Donna Shelite, Director, Division of Vehicles, Kansas Department of Revenue
Glen Yancey, Deputy Director of Information Services, Division of Vehicles, Kansas
Department of Revenue
Marcy Ralston, Chief of Driver Control, Division of Vehicles, Kansas Department of
Revenue
Tony Kimmi, Farm Bureau Financial Services
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and
Kansas Peace Officers Association
George Cooper, State Farm Insurance Companies

Loren McGlade, Chartis, U.S.
Lt. Scott Harrington, Kansas Highway Patrol
Jean Curry, Insurance Agent
Judi Stork, Deputy Commissioner, Division of Banking, Office of the State Bank
Commissioner
Pat Hubbell, American Express Corporation (written only)
Kris Kellim, Kansas Insurance Department
Kyle Smith, Deputy Director, Kansas Bureau of Investigation
Shawn Mitchell, President, Community Bankers Association of Kansas
Kathy Olsen, General Counsel, Kansas Bankers Association

Morning Session

Senator Teichman called the meeting to order and introduced Committee members and staff.

Topic 1: Comprehensive Study, Uninsured Motorists

Melissa Calderwood, Kansas Legislative Research Department (KLRD), provided an overview ([Attachment 1](#)) relating to the assigned study topics for the Special Committee, which include:

- Conducting a comprehensive study on the issue of uninsured motorists in Kansas;
- Studying the possible authorization of fingerprinting and criminal history record checks of certain financial services representatives in Kansas; reviewing any potential impact on financial regulatory agencies and their licenses, as well as the Kansas Bureau of Investigation; and
- Studying the federal Patient Protection and Affordable Care Act for any required corresponding state implementation legislation; reviewing options for a Kansas health insurance exchange that will comply with federal health care legislation.

Referring to the handout “Uninsured Motorists: Basic Questions and Answers” ([Attachment 2](#)), Ms. Calderwood reviewed past uninsured motorist legislation from the 2005-2006 sessions to the present time (pages 4-7, [Attachment 2](#)). 2006 SCR 1619 authorized a special task force to evaluate an electronic verification system (online insurance database system for verification of proof of insurance). Reports, including goals for such a system, from the Electronic Motor Vehicle Financial Security Verification System Task Force were distributed and reviewed ([Attachment 3](#), January 2007 Report; [Attachment 4](#), January 2008 Report; and [Attachment 5](#), June 2009 Report). Ms. Calderwood reported that two pieces of legislation were introduced during the 2011 Session:

- **HB 2291** was introduced and referred to the House Committee on Insurance, with no action taken, to date. This bill would amend current statute to extend underinsured motorist coverage to “any occupant of the insured vehicle or their heirs at law.” Additionally, these individuals would be permitted to recover from

the owner or operator of another vehicle the same limits of the policy as are available to the owner of the vehicle they are occupying.

- **SB 136** provided that anyone operating an uninsured vehicle who, at the time of auto accident, had not maintained personal injury protection (PIP) benefits coverage is prohibited from having a cause-of-action for non-economic loss. The House amended the bill to include that this prohibition would not apply if the court found the person did not knowingly drive a motor vehicle without PIP coverage. This bill was enacted (Chapter 59, 2011 Session Laws).

Jill Shelley, Kansas Legislative Research Department, next provided information on basic statistics and concepts referred to in Attachment 2, "Uninsured Motorists: Basic Questions and Answers." Her comments were supported by Attachment 6, "Rankings, 2009 Rates of Uninsured Motorists and Income," and by Attachment 7, "Estimated Rates of Uninsured Motorists, 2005-2009," which provided additional information concerning verification systems used in other states. She reported various methods are used in measuring "uninsured motorists" (UM) throughout the United States: (a) database methods comparing databases of registered vehicles to those of insured vehicles; (b) crash statistics; (c) law enforcement statistics; and (d) other types of measurements, such as a percentage determined by the insurance industry based on uninsured motorists and bodily injury claims. The term "uninsured motorist" can be defined differently from state to state, thereby making measurements more complex. In 2009, the estimated UM rate (as measured by the insurance industry and based on insurance claims) in Kansas was 9.8 percent. Rates for nearby states were 23.9 percent in Oklahoma, 16 percent in Arkansas, 15.2 percent in Colorado, 14.9 percent in Texas, 13.7 percent in Missouri, 11.5 percent in Iowa, and 7.8 percent in Nebraska.

Ms. Shelley noted that several states have implemented (or are in the process of implementing) electronic insurance verification systems. At the current time, whether UM rates can be reduced by the use of such systems is unknown, due to system implementation (or systems in various stages of implementation) and the short utilization period (most within the previous two to three years). With Kansas at 9.8 percent (ranked 39th lowest among the states) and Massachusetts at 4.5 percent (1st in the U.S.), Committee members inquired what percentage of improvement is reasonable to expect. Ms. Shelley responded that information is unknown based on current information.

Bob Tomlinson, Assistant Commissioner of the Kansas Insurance Department, reported on the 2009 Task Force findings (Attachment 8). In response to the question of an optimal UM level, Mr. Tomlinson suggested a 5 percent UM rate for the State of Kansas. However, rather than focusing on a target UM percentage, he encouraged the Committee take actions that add value, actions that are affordable, and actions that can be taken forward. Assistant Commissioner Tomlinson also discussed definitions of uninsured motorists, gaps in information access, insured motorists but whose companies are insolvent, verification systems in concentrated UM areas, and various UM insurance coverage models.

Senator Longbine inquired whether anything is currently in place to validate continuous motor vehicle insurance from the time of automobile purchase to the next insurance expiration period. Assistant Commissioner Tomlinson responded that currently there is no process in place. He encouraged Task Force recommendations, including a real-time verification system supported by monthly insurance data collection submitted to the Kansas Department of Motor Vehicles.

Donna Shelite, Director, Division of Vehicles, Kansas Department of Revenue, provided a history of the current insurance reporting and verification program ([Attachment 9](#)). She indicated that currently the state receives a voluntary “monthly book of business” from approximately 230 insurance companies, which is transmitted electronically into the computer system. A real-time insurance database from which direct queries can be submitted does not exist. Therefore, annual insurance verifications are handled manually. She discussed the process of matching insurance to a vehicle identification number (VIN), gaps created from the time the “book of business” is generated to when it is received and uploaded into the computer system, and other issues which would prevent an individual from successfully completing his or her annual vehicle registration and proof of insurance through internet connections.

Senator Allen Schmidt inquired into the steps Ms. Shelite has taken to gain compliance from insurance companies in submitting information, since the established process is voluntary. Ms. Shelite indicated that she will meet with various insurance companies to establish a dialogue that would result in compliance.

Chairperson Teichman asked those panelists speaking on the topics of uninsured motorists, insurance verification methods, incentives to lower rates of uninsured, penalties for non-compliance, and unregistered vehicles to introduce themselves.

Tony Kimmi, CPCU, Farm Bureau Financial Services and a member of the previous task forces, discussed electronic verification methods, steps to encourage Kansans to purchase vehicle insurance, effective penalties when vehicle insurance is not purchased, and alternatives that address uninsured vehicles ([Attachment 10](#)).

Ed Klumpp, representing the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association, distributed a flow chart and a written copy of his testimony ([Attachment 11](#)). The flow chart represented the motor vehicle liability insurance verification and enforcement process when an individual is involved in an accident or when an officer performs a traffic stop. Mr. Klumpp described the process as cumbersome, time consuming, and antiquated. In addition, forfeiture penalties and their impact were discussed. He encouraged the adoption of a real-time, electronic verification system.

George Cooper, State Farm Insurance and Vice Chair of the Insurance Industry Committee on Motor Vehicle Administration (IICMVA), discussed the estimated percentage of UMs by state, various sampling methodologies, variances in complexity and data matching, and the lack of a definition of the term “real-time.” He concluded that there is difficulty in determining a direct correlation between UM rates and the effectiveness of insurance verification programs ([Attachment 12](#)). He encouraged thoughtful study of potential impacts.

Marcy Ralston, Bureau Chief of Driver Control, Division of Motor Vehicles, Kansas Department of Revenue, encouraged the implementation of a real-time insurance verification system for the State of Kansas. She indicated the current process is paper driven and outdated, resulting in increased staff hours spent sorting and verifying information (no written testimony).

Loren McGlade, Chartis, U.S., discussed the impact of an insurance verification system on commercial customers. He provided examples of how commercial customers register assets (vehicles) and discussed the complexities of how automobile insurance is written for vehicles owned and insured by commercial entities. He encouraged consideration of the IICMVA web-service model, which provides real-time verification and is based on the concept of checking for coverage only when the state needs to confirm coverage such as at a traffic stop or during registration ([Attachment 13](#)).

Lt. Scott Harrington, Kansas Highway Patrol, spoke about issues law enforcement officers face. He indicated that during a traffic stop, an individual may not have his or her driver's license. The current system allows the officer to verify the identity of the individual and validate the existence of a driver's license. He indicated that, if a similar insurance verification process existed, law enforcement officers could improve their operational efficiencies in the field (no written testimony).

Jean Curry, an insurance agent and past task force member, spoke about the growing problem of UMs in the state. She indicated that, as the economy changes, multiple vehicles in one household may be uninsured. The increase in suspended and revoked drivers' licenses exacerbates the UM issue. She encouraged consideration of actions, including how to assist those who cannot afford insurance. In addition, she suggested alternatives, such as community service, be considered rather than levying fines for an uninsured motorist (no written testimony).

Glen Yancey, Deputy Director of Information Services, Kansas Department of Revenue, discussed technology issues and differences between the current system and the potential real-time verification system being proposed. He indicated the problem was not technology; the problem stems from the components within technology: who owns the data, the cost of the system, how to ensure small companies are not penalized, who builds the system, how to share a system across large enterprises, and how data can become more accessible (no written testimony). He said the current system works for registering a vehicle, but it does not work for law enforcement.

Chairperson Teichman referred to earlier testimony which indicated Kansas' UM rate at 9.8 percent, and she posed the question whether further legislation was required. Following discussion, Chairperson Teichman indicated that Kansas does need something in place to utilize technology, which facilitates agency queries for current information. Discussion followed with further answers and opinions expressed as listed:

- Mr. McGlade said that a consistent standard should be developed. Wyoming and Nevada use a web-service system; Oklahoma has implemented a successful hybrid system (real-time and "book system"). In addition, from an insurance industry perspective, enforcement of mandatory or compulsory insurance laws should be limited to event-based situations.
- Law enforcement supports a more efficient and accurate method to validate mandatory insurance. The current system takes the equivalent of two full-time equivalent positions to process the approximately 141,000 verifications each year.
- Following a bid process for an electronic verification system in Oklahoma, the state decided to build the system in-house using its own technology at an initial cost of \$160,000. Mr. McGlade will send contact information from the Oklahoma Department of Public Safety to Ms. Calderwood, for additional insight concerning that state's system implementation. In Oklahoma, the system is new and too few statistics exist to know whether UMs have been reduced since system implementation. Maintenance costs for the Oklahoma system are managed by one full-time equivalent employee using three servers, which require maintenance funding.

- Insurance companies do not require photographs of the insured on his or her insurance card (similar to an individual's photograph appearing on a driver's license).
- In states where verification systems have been implemented, there are mixed opinions from smaller insurance companies. Some companies do not feel the additional cost returns value; others have embraced the implemented technology. In Oklahoma, where a hybrid system exists, some smaller companies are utilizing the "book of business" method.
- To ensure information is consistent, accurate, and expeditiously accessed by law enforcement, a verification system is required. Requirements to ensure availability of accurate information 24 hours a day, 7 days a week (24/7) include a messaging broker, which has the ability to interface (real time) with every insurance company licensed in Kansas for the purpose of verifying whether the company's system contains data about a specific vehicle; a web-based service component, so that a data query can be received from a validated, authenticated, outside system (e.g., Department of Revenue, Kansas Highway Patrol, Kansas Bureau of Investigation) also is required. The purpose of an online verification system should be defined: is the system to support vehicle registration and insurance verification, or is the system designed for law enforcement utilization. With the Department of Vehicle's Modernization Project, additional capability can be added to the current system; however, the missing technology piece is the state's ability to query each insurance company's database, and a mechanism to require insurance companies to add the Department of Revenue as an entity able to query the insurance company's database.
- Insurance verification for commercial customers should be considered, so that harm is not imposed on those in compliance with Kansas statute.
- The positives to a real-time insurance verification system include:
 - Aids law enforcement in the field;
 - Reduces law enforcement manpower;
 - Protects consumers from false positives; and
 - May reduce the number and rate of UMs in the State of Kansas.
- The negatives to a real-time insurance verification system include:
 - Additional cost to state budgets (minimal cost of \$160,000);
 - Increases business cost to the insurance industry;
 - Impacts small insurance companies; and
 - May not reduce UMs in the State of Kansas enough to offset the cost.
- An online insurance verification system requires compliance; the cost to benefit ratio should be considered, as well as any value-added services.

Chairperson Teichman recessed the meeting for lunch.

Afternoon Session

Chairperson Teichman reconvened the meeting.

Topic 2: Criminal History Record Checks, Fingerprinting Requirements

Ms. Calderwood provided an overview of **SB 64**, which would permit the State Bank Commissioner to require fingerprinting and a criminal background check for certain individuals related to an application for a money transmitter license, an application for a bank holding company or a notice of a proposed bank acquisition. The Senate Committee on Financial Institutions and Insurance held a hearing on the bill; the bill was not enacted. Ms. Calderwood noted that, while she provided a copy of the bill and its fiscal note to Committee members, these documents can be accessed online. Ms. Calderwood noted the Senate Committee also considered **SB 71** (continuing education requirements for resident insurance agents) and during the bill's review, the Kansas Insurance Department submitted a conceptual amendment that, among other things, would require applicants for a resident insurance agent license and applicants for a public adjuster license be fingerprinted on and after July 1, 2013. The Insurance Commissioner would be authorized to submit the fingerprint to a state and national criminal history record check. The amendment, the Department indicated, was proposed to conform with the Uniform Resident Licensing Standards (National Association of Insurance Commissioners). After consideration of both bills, the Senate Committee on Financial Institutions and Insurance requested an Interim study to review current fingerprinting and licensure requirements for certain professionals in Kansas law, and further comment from the KBI and those agencies requesting fingerprinting authorization (Attachment 14).

Judi Stork, Deputy Bank Commissioner, Office of the State Bank Commissioner (OSBC), discussed implications of **SB 64** (Attachment 15). She provided background information specific to the fingerprinting component included in the bill. Currently, the agency has statutory authority to require fingerprint checks on owners and officers of mortgage companies, supervised lenders (such as finance companies and pay day lenders), and credit service organizations. Background checks are completed by the Kansas Bureau of Investigation, using the National Crime Information Center (NCIC), and reveal only criminal convictions occurring in Kansas. Therefore, these checks are ineffective in revealing federal crimes or crimes committed in other states. In order to provide a complete background check through the NCIC, an individual must be fingerprinted. Ms. Stork spoke in support of this legislation and provided the number of anticipated fingerprint/background checks for each type of category. She also clarified that in cases where fingerprint checks are completed by another banking regulatory agency, the OSBC would not duplicate that work as long as the information is communicated to the OSBC.

In response to Committee members' questions, Ms. Stork indicated:

- If legislation is enacted, it provides that the applicant or the parties to the application are responsible for the cost of the fingerprinting and background checks.

- In the process currently administered by the OSBC, the background check information obtained from NCIC is not shared with other entities outside the OSBC or with regulatory agencies in other states.
- When another agency such as the Federal Deposit Insurance Corporation (FDIC) conducts fingerprinting/background checks and an applicant is denied, a redacted report is provided to the OSBC with reasons for the denial omitted. The OSBC is required to act on the information received in the application submitted at the state level; therefore, the FDIC-redacted report would not provide sufficient evidence to deny an applicant in the State of Kansas.
- The National Mortgage Licensing System is a nationally based system for mortgage companies who share background check information when an applicant has applied in numerous states. Information from this system is shared with regulatory agencies across state boundaries. This is a new national system implemented within the past two years.
- Other states' processes for fingerprinting and background checks are included in Ms. Stork's written testimony.
- The lines of communication concerning information sharing from the national level to the state level are difficult. Generally, bank and trust companies are licensed and chartered in one state. At the money transmitter level, operations occur in multiple states. Currently, the OSBC is the only regulatory agency for money transmitters and trust companies.

Kris Kellim, Kansas Insurance Department (KID), spoke concerning **SB 71**, which provided for fingerprinting and criminal history record checks of resident insurance agent license applicants (Attachment 16). Mr. Kellim described the license examination process to Committee members. He indicated the current process includes only criminal history records from Kansas. An information gap is created when the KID cannot identify resident agent applicants with criminal histories from other states. The KID desires to replace the state-limited name search with a nationwide background check.

Mr. Kellim replied to Committee members' questions as follows:

- Existing insurance agents would be grandfathered; new agents would be required to undergo fingerprinting and background checks.
- The problem is growing with applicants from out-of-state applying for Kansas licensure.
- There is a fingerprinting cost and a cost for the background check from the KBI.

At the request of the Chairperson, Ms. Calderwood reviewed testimony submitted by Pat Hubbell, American Express Corporation. Mr. Hubbell was scheduled to speak, but was ill. Ms. Calderwood briefed Committee members on the amendment to **SB 64** suggested by Mr. Hubbell (Attachment 17). The amendment would exclude applicants from a publicly traded corporation or subsidiary of a publicly traded corporation from fingerprinting/background checks.

Ms. Calderwood explained that **SB 71** came to the Financial Institutions and Insurance Committee in February (after turnaround) and no action was taken on the bill or amendment. Ms. Stork clarified that Maryland and Idaho have exempted publicly traded corporations, and there may be more states that provide an exemption. Senator Vicki Schmidt requested Kansas Legislative Research Department staff provide information listing all states that exempt publicly traded corporations regulated by the U.S. Securities and Exchange Commission (SEC).

Chairperson Teichman asked whether any national organizations are evaluating this issue and recommended the OSBC further investigate the possibility of information sharing from the federal level to the state level.

Kyle Smith, Deputy Director, KBI, discussed the two types of record checks, the process involved in fingerprint card process, the current KBI workload, fees for types of record check services, the "RapBack" service (information on arrests), and other issues contained in the KBI fingerprint card process (Attachment 18). There was considerable discussion concerning policy decisions relating to how far down a corporate structure fingerprinting should be required and the potential impact on smaller banks in rural communities.

Representative Mah asked Deputy Director Smith if the KBI supported tightening of **SB 64**, page 1, line 20 to read: "*The commissioner ~~may~~ shall require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner*" Deputy Director Smith affirmed it would be the preference.

Chairperson Teichman recognized Shawn Mitchell, President, Community Bankers Association of Kansas, to share his opinions. Mr. Mitchell indicated the Association supports the fingerprinting process for money transmitters. However, for well-known bankers, existing and established banks already scrutinized by the FDIC or the Office of the Comptroller of Currency (OCC), he said the process would not add value and he encouraged exemption. In the current economy, bank mergers continue to increase (or charters into existing banks), which is another reason to exempt those whose applications were approved by the FDIC and OCC.

Kathy Olsen, Kansas Bankers Association, was recognized. She indicated the Association has not taken an official position on this issue, but she stated that duplicated processes waste time and resources. If the entity has been regulated by the FDIC or OCC, the entity should be exempt.

Chairperson Teichman requested Committee members communicate with constituents, bankers, and insurance agents to assess opinions concerning the issues discussed. In addition, she encouraged thoughtful consideration to the topic of uninsured motorists, which was discussed at the morning session. Recommendations for the Committee's report will be made at the November 14 meeting.

Senator Teichman adjourned the meeting.

Prepared by Jan Lunn
Edited by Jill Shelley and Melissa Calderwood

Approved by Committee on:

October 24, 2011

(Date)