

HOUSE BILL No. 2291

By Committee on Insurance

2-10

1 AN ACT concerning insurance; relating to automobile liability insurance;
2 amending K.S.A. 40-284 and repealing the existing section.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 40-284 is hereby amended to read as follows: 40-
6 284. (a) No automobile liability insurance policy covering liability arising
7 out of the ownership, maintenance, or use of any motor vehicle shall be
8 delivered or issued for delivery in this state with respect to any motor
9 vehicle registered or principally garaged in this state, unless the policy
10 contains or has endorsed thereon, a provision with coverage limits equal
11 to the limits of liability coverage for bodily injury or death in such
12 automobile liability insurance policy sold to the named insured for
13 payment of part or all sums which the insured, *and any person occupying*
14 *the insured motor vehicle* or ~~the insured's legal representative~~ *their heirs*
15 *at law* shall be legally entitled to recover as damages from the uninsured
16 owner or operator of a motor vehicle because of bodily injury, sickness or
17 disease, including death, resulting therefrom, sustained by the insured *or*
18 *any person occupying the insured motor vehicle*, caused by accident and
19 arising out of ownership, maintenance or use of such motor vehicle, or
20 providing for such payment irrespective of legal liability of the insured or
21 any other person or organization. No insurer shall be required to offer,
22 provide or make available coverage conforming to this section in
23 connection with any excess policy, umbrella policy or any other policy
24 which does not provide primary motor vehicle insurance for liabilities
25 arising out of the ownership, maintenance, operation or use of a
26 specifically insured motor vehicle. *Nothing in this subsection shall be*
27 *construed to preclude any person occupying the insured motor vehicle*
28 *from collecting uninsured motorist benefits on any other policy otherwise*
29 *providing such coverage.*

30 ~~(b) Any uninsured motorist coverage shall include an underinsured~~
31 ~~motorist provision which enables the insured or the insured's legal~~
32 ~~representative to recover from the insurer the amount of damages for~~
33 ~~bodily injury or death to which the insured is legally entitled from the~~
34 ~~owner or operator of another motor vehicle with coverage limits equal to~~
35 ~~the limits of liability provided by such uninsured motorist coverage to the~~
36 ~~extent such coverage exceeds the limits of the bodily injury coverage~~

1 ~~carried by the owner or operator of the other motor vehicle.~~

2 *Every such automobile liability insurance policy shall also provide*
3 *underinsured motorist coverage that enables the insured and any*
4 *occupant of the insured vehicle or their heirs at law to recover from the*
5 *insurer, in excess of collectible liability insurance, those damages for*
6 *bodily injury or death which they are legally entitled to recover from the*
7 *owner or operator of another motor vehicle, subject to the limits of such*
8 *underinsured motorist coverage, which shall be equal to the limits of*
9 *liability coverage for bodily injury or death. Nothing in this subsection*
10 *shall be construed to preclude any person occupying the insured motor*
11 *vehicle from collecting underinsured motorist benefits on any other*
12 *policy otherwise providing such coverage.*

13 (c) The insured named in the policy shall have the right to reject, in
14 writing, the uninsured motorist coverage required by subsections (a) and
15 (b) which is in excess of the limits for bodily injury or death set forth in
16 K.S.A. 40-3107, and amendments thereto. A rejection by an insured
17 named in the policy of the uninsured motorist coverage shall be a
18 rejection on behalf of all parties insured by the policy. Unless the insured
19 named in the policy requests such coverage in writing, such coverage
20 need not be provided in any subsequent policy issued by the same insurer
21 for motor vehicles owned by the named insured, including, but not
22 limited to, supplemental, renewal, reinstated, transferred or substitute
23 policies where the named insured had rejected the coverage in connection
24 with a policy previously issued to the insured by the same insurer.

25 (d) Coverage under the policy shall be limited to the extent that the
26 total *uninsured motorist coverage limits and underinsured motorist*
27 *coverage* limits available cannot exceed the highest limits of any single
28 applicable policy, regardless of the number of policies involved, persons
29 covered, claims made, vehicles or premiums shown on the policy or
30 premiums paid or vehicles involved in an accident.

31 (e) Any insurer may provide for the exclusion or limitation of
32 coverage:

33 (1) When the insured is occupying or struck by an uninsured
34 automobile or trailer owned or provided for the insured's regular use;

35 (2) when the uninsured automobile is owned by a self-insurer or any
36 governmental entity;

37 (3) when there is no evidence of physical contact with the uninsured
38 motor vehicle and when there is no reliable competent evidence to prove
39 the facts of the accident from a disinterested witness not making claim
40 under the policy;

41 (4) to the extent that workers' compensation benefits apply;

42 (5) when suit is filed against the uninsured motorist without notice
43 to the insurance carrier; and

1 (6) to the extent that personal injury protection benefits apply.

2 (f) An underinsured motorist coverage insurer shall have
3 subrogation rights under the provisions of K.S.A. 40-287, and
4 amendments thereto. If a tentative agreement to settle for liability limits
5 has been reached with an underinsured tortfeasor, written notice must be
6 given by certified mail to the underinsured motorist coverage insurer by
7 its insured. Such written notice shall include written documentation of
8 pecuniary losses incurred, including copies of all medical bills and
9 written authorization or a court order to obtain reports from all employers
10 and medical providers. Within 60 days of receipt of this written notice,
11 the underinsured motorist coverage insurer may substitute its payment to
12 the insured for the tentative settlement amount. The underinsured
13 motorist coverage insurer is then subrogated to the insured's right of
14 recovery to the extent of such payment and any settlement under the
15 underinsured motorist coverage. If the underinsured motorist coverage
16 insurer fails to pay the insured the amount of the tentative tort settlement
17 within 60 days, the underinsured motorist coverage insurer has no right of
18 subrogation for any amount paid under the underinsured motorist
19 coverage.

20 Sec. 2. K.S.A. 40-284 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.

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