

Approved March 7, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Senator Alicia Salisbury at
Chairperson

1:30 ~~xxx~~/p.m. on February 27, 1991 in room 527-S of the Capitol.

All members were present except:

Senator Strick, Jr.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Senator Bill Brady
Robert Anderson, Director, Division of Workers Compensation, Department of Human Resources
Wayne Maichel, Kansas AFL-CIO
Larry W. Magill, Jr., Executive Vice President, Independent Insurance Agents of Kansas
Lori M. Callahan, American Insurance Association
James R. Oliver, Professional Insurance Agents of Kansas
Jim Yonally, National Federation of Independent Business

The Chairman announced the Committee would receive testimony on SB 220.

Hearing on: SB 220 - Deductible on employers' workers compensation insurance

Senator Bill Brady testified SB 220 is designed to provide some flexibility in worker's compensation premiums for employers. The bill allows insurance companies to offer a per incident deductible for such policies. A deductible option could be beneficial especially to a small employer who continues to see escalating premiums and may have never had a worker's compensation claim turned in by an employee. He stressed that the per incident deductible is optional for employers. He also said employees would not see any difference in the delivery of benefits, see Attachment I. Senator Brady stated he was aware of amendments to SB 220 that would be proposed and he approved of the amendments.

Robert Anderson, Director, Division of Workers Compensation, Department of Human Resources, informed the Committee the provisions covered under this bill would be appropriate and he would highly recommend the bill with the recommendations and amendments that are to be proposed. Under the current work disability statute, this bill would be an encouragement to employers to lower their overall cost by bringing employees back to work with accommodations. He said the concept of deductibles in workers compensation is not a new concept. Other states have deductible plans. In practice the insurance company pays the first dollar and the entire amount of any compensation awarded the injured worker and is reimbursed for the amount of the deductible by the employer. If the exposure gets beyond a certain dollar limit then the employer owes an additional premium to the insurance company. The workers compensation fund would not be liable if the company cannot pay since this is a separate contract between the employer and the insurance company.

Mr. Anderson stated this bill would have the effect of reducing premiums. The states that allow this deductible have reduced rates significantly.

Wayne Maichel, Kansas AFL-CIO, stated he would support legislation that would reduce workers compensation rates so long as the deductible is not charged to the worker. He informed the Committee he supports the amendments that are proposed.

Jim Yonally, National Federation of Independent Business, testified in support of SB 220, see Attachment II. He stated the House Committee on Insurance, at his request, introduced a bill on this topic, HB 2457, see Attachment III. He requested some of the provisions in HB 2457 be included in SB 220. He suggested the language in HB 2457, lines 25-33, "The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 527-S, Statehouse, at 1:30 ~~am~~ p.m. on February 27, 19 91

nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums". In addition he recommended adding "The Commissioner of Insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the worker". He said HB 2057 sets a \$2,500 maximum per compensable claim, whereas SB 220 sets a \$5,000 maximum.

Larry W. Magill, Jr., Executive Vice President Independent Insurance Agents of Kansas, appeared in support of SB 220. He stated fifteen states currently allow deductibles. The minimum and maximum deductibles vary with the highest permissible deductible being \$10,000. Most give a front end credit but include amounts paid under deductibles in calculating the experience modification. SB 220 would not include amounts paid under deductibles in calculating experience modifications.

Mr. Magill encouraged the Committee to leave the legislation as permissive as possible to allow both large and small employers the most flexibility to use deductibles to their advantage. He supported allowing up to a \$5,000 deductible.

Mr. Magill recommended that the deductibles should be approved by the Insurance Department and not the Director of the Division of Workers Compensation. He also recommended wording should be added clarifying that the workers compensation plan (assigned risk) cannot require deductibles on businesses insured through the plan, see Attachment IV. He also supported including the language in HB 2457, lines 25 through 33 in SB 220. He opposed the provision in lines 34 through 39 in HB 2457 as the language is a mandatory offering. The concept proposed by Independent Insurance Agents of Kansas is to allow the market place to determine the offer. He further supported the amendment that would not allow the deductible to be charged to or passed on to the worker.

In response to a request from a Committee member, Mr. Anderson said he, Mr. Yonally and Mr. Magill would furnish the Committee with an amendment that would stress that the Workers Compensation Fund would not be responsible for an employer's failure to pay a deductible back.

Prepared testimony was submitted by Lori M. Callahan, American Insurance Association, in support of allowing deductibles for workers compensation insurance. Her testimony proposed several items be considered for inclusion in SB 220. She said the American Insurance Association is aware of H.B. 2457 which also addresses this issue, see Attachment V.

Prepared testimony in support of SB 220 was submitted to the Committee by James R. Oliver, Professional Insurance Agents of Kansas, see Attachment VI.

Senator Oleen moved to approve the minutes of February 20, 1991. Senator Sallee seconded the motion. The motion passed.

The Committee meeting was adjourned at 2:25 p.m.

State of Kansas
Senate Chamber

JILL BRADY
SENATOR, FOURTEENTH DISTRICT
LABETTE COUNTY AND PARTS OF
CRAWFORD, MONTGOMERY AND
NEOSHO COUNTIES
1328 GRAND
PARSONS, KANSAS 67357
(316) 421-6281



COMMITTEES:
AGRICULTURE
ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON ECONOMIC
DEVELOPMENT
ELECTIONS
TRANSPORTATION AND UTILITIES
WAYS AND MEANS

STATE CAPITOL
TOPEKA, KANSAS 66612
913-296-7389

Thank you, Madam Chairwoman and members of the Committee. I am here to ask for your favorable consideration of SB 220. SB 220 is designed to provide some flexibility in worker's compensation premiums for employers. It would allow insurance companies to offer a per incident deductible for such policies. By selecting a policy with a deductible the employer would essentially be self insuring against the small claims. By choosing such an option a reduction in premium would be given and, more importantly, such dollar amounts paid by the employer would not be used in compiling the experience modification. A small company can receive a poor experience modification based on one or two slight injuries and that injury hurts the experience modifier for five years.

A deductible option could be beneficial especially to a small employer who continues to see escalating premiums and may have never had a worker's compensation claim turned in by an employee. I want to stress that this legislation would only make a deductible an option. Employers who do not care to purchase such a deductible will not. Employees will not see any difference in the delivery of benefits.

LJ & S B
2/27/91

1-1 Attachment I

NFIB Kansas

National Federation of
Independent Business

TESTIMONY

on Senate Bill 220

Senate Committee on Labor, Industry and Small Business

Madam Chairman, and members of the committee, my name is Jim Yonally, Director of the Kansas chapter of the National Federation of Independent Business. I am pleased to speak on behalf of over 7,500 small businesses in Kansas who are members of our organization, and express our support for Senate 220. Our legislative program is determined by a vote of our membership.

On the 1991 Ballot, we asked if legislation should be passed which would make workers compensation policies available with a deductible provision. The response was 57% in favor, and 30% opposed.

We applaud the interest of the sponsors of SB 220, but would suggest that the bill might include some other features which are included in laws in some of the 10 other states which have adopted such provisions as are in SB 220.

About a month ago, I requested a bill, on this topic, to be introduced by the House Committee on Insurance. I am distributing a copy of that bill and would like to ask that the provisions be considered by this committee. (Refer to bill)

In addition, I would like you to add another sentence, as follows - "The commissioner of insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the worker."

State Office
10039 Mastin Dr.
Shawnee Mission, KS 66212
(913) 888-2235



The Guardian of
Small Business

LG + LB
2/27/91

Attachment II
2-1

HOUSE BILL No. 2457

By Committee on Insurance

2-25

8 AN ACT relating to workers compensation insurance; requiring in-
9 surers to offer policies with deductible options.

10

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

12 Section 1. (a) Each insurer issuing a policy to assure the payment
13 of compensation under the workers compensation act shall offer, as
14 a part of the policy or as an optional endorsement to the policy,
15 deductibles optional to the policyholder for benefits payable under
16 the workers compensation act. Deductible amounts offered shall be
17 fully disclosed to the prospective policyholder in writing in the
18 amount of \$100, \$200, \$300, \$400, \$500, or increments of \$500 up
19 to a maximum of \$2,500 per compensable claim. The policyholder
20 exercising the deductible option shall choose only one deductible
21 amount.

22 (b) If the policyholder exercises the option and chooses a de-
23 ductible, the insured employer shall be liable for the amount of the
24 deductible for benefits paid for each compensable claim of work
25 injury suffered by an employee. The insurer shall pay all or part of
26 the deductible amount, whichever is applicable to a compensable
27 claim, to the person or medical provider entitled to the benefits
28 conferred by the workers compensation act and seek reimbursement
29 from the insured employer for the applicable deductible amount.
30 The payment or nonpayment of deductible amounts by the insured
31 employer to the insurer shall be treated under the policy insuring
32 the liability for workers compensation in the same manner as pay-
33 ment or nonpayment of premiums.

34 (c) Optional deductibles shall be offered in each policy insuring
35 liability for workers compensation which is issued, delivered, issued
36 for delivery or renewed on or after the effective date of this act,
37 unless an insured employer and insurer agree to renegotiate a work-
38 ers compensation policy in effect on June 30, 1991, so as to include
39 a provision allowing for a deductible.

40 (d) Premium reduction for deductibles shall be determined before
41 the application of any experience modification, premium surcharge
42 or premium discounts. To the extent that an employer's experience
43 rating or safety record is based on benefits paid, money paid by the

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Attachment III
2-1

1 insured employer under a deductible as provided in this section shall
2 not be included as benefits paid so as to harm the experience rating
3 of such employer.

4 (e) This section shall not apply to employers who self-insure
5 against liability for workers compensation or group-funded workers
6 compensation pool established pursuant to K.S.A. 44-581 *et seq.*,
7 and amendments thereto.

8 Sec. 2. This act shall take effect and be in force from and after
9 its publication in the statute book.

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3-2

Testimony on SB 220

Presented to the Senate Labor, Industry and Small Business Committee

By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

February 27, 1991

Thank you madam chairman and members of the committee for the opportunity to appear in support of SB 220 allowing use of employer paid deductibles on workers compensation coverage.

We feel that allowing the use of workers compensation deductibles makes good sense and good public policy for the following reasons:

- o Deductibles are in common use on most insurance policies today. It is only because workers compensation is a "creature of statute" that legislation is necessary to allow their use in workers compensation.
- o It is generally not cost effective to "trade dollars" with insurance companies on small losses. Insurance works best when it covers the more catastrophic or large losses. On small losses, it is generally less expensive for the customer to handle them themselves than transfer the risk to the insurance company and pay the resulting higher premiums.
- o Workers compensation costs are increasing rapidly all across the country and Kansas is no exception. There is currently pending at the Insurance Department a 30.7% rate increase requested by the National Council on Workers Compensation insurance. The Insurance Department's independent actuary supports a 23.5% increase. These types of rate increases are needed primarily for two reasons:
 1. Inadequate rate increases in the past.
 2. Substantially increasing medical and indemnity (lost time) claims in Kansas. We have attached graphs depicting recent claims trends.

LW Magill Jr
2/27/91

Attachment IV
4-1

The independent insurance agents of Kansas strongly support providing employers with all the cost control measures possible in the face of these rising rates.

- o Deductibles give employers of all sizes the opportunity to absorb small losses and receive a small upfront credit or reduction in their premium plus the employer will not have the small losses count in the calculation of their experience modification factor.
- o Deductibles are a proven risk management technique and will increase the employer's involvement in loss and claims control. The employers will be more aware of the small losses and more likely to take an interest in their prevention. For example, if an employer is paying a number of eye wash claims, they are more likely to purchase goggles and enforce their use. In addition, in the insurance business there is an old adage that where there is a frequency of small claims there is more of a likelihood of having a large loss or losses. By preventing cut fingers an employer may also prevent the loss of a hand.
- o Fifteen states currently allow deductibles. The minimum and maximum deductibles vary with the highest permissible deductible being \$10,000. Most give a front end credit but include amounts paid under deductibles in calculating the experience modification. This proposal would not include amounts paid under deductibles in calculating experience modifications. Attached to our testimony is a list of the 15 states that have approved deductibles. This is a relatively new concept. With one exception, all of these states have enacted deductible legislation since 1988.

We encourage the committee to leave this legislation as permissive as

2/27/91
Att IV
4-2

possible to allow both large and small employers the most flexibility to use deductibles to their advantage. Since large employers may use the deductible, we support allowing up to a \$5,000 deductible. We would anticipate that a large number of deductibles would be offered ranging from a minimum of \$100 up to the maximum.

We do feel that the bill needs to include a maximum deductible to avoid this legislation allowing firms to circumvent the individual self insurance requirements contained elsewhere in chapter 44.

We would suggest two changes to the bill:

1. Since the Insurance Commissioner has responsibility for workers compensation rates and rate approval and since this is primarily a rating issue, it should be under the Insurance Department's supervision and not the Director of the Division of Workers Compensation. (Line 37)
2. Wording should be added clarifying that the workers compensation plan (assigned risk) cannot require deductibles on businesses insured through the plan.

Thank you for the opportunity to appear today in support of SB 220. We urge the committee to act favorably on the legislation. We would be happy to answer questions or provide additional information.

2/27/91
Att IV
4-3



National
Council on
Compensation
Insurance

One Penn Plaza
New York, New York 10119
(212) 560-1000

Gerard A. Wendelken
Manager
National Affairs

September 18, 1990

Mr. Larry W. Magill, Jr.
Executive Vice President
Independent Insurance Agents of Kansas
815 Topeka Avenue
Topeka, Kansas 66612

Dear Mr. Magill:

In response to your letter of September 4, 1990 to NCCI National Affairs Director Maureen Ramert regarding workers' compensation deductible programs, please be advised that the following jurisdictions have such provisions:

Colorado
Delaware
Florida
Georgia
Hawaii

Illinois
Maine
Montana
Nebraska
New Hampshire

New Mexico
New York
Oregon
Rhode Island
South Dakota


The programs in Georgia and South Dakota are "optional deductibles" and are not medical deductibles per se.

These provisions are described in greater detail in a memorandum which was prepared by NCCI's Actuarial Statistics Department, a copy of which I have enclosed for your perusal. The programs in New York and Rhode Island are the result of recently enacted legislation and as a consequence, are not included in the NCCI memorandum dated June 25th.

With respect to your question concerning assessments attributable to workers' compensation assigned risk plan losses, Ms. Ramert has requested that NCCI's Director of Residual Market Liaison, Helen Westervelt respond to you on these matters. This information will be sent to you under separate cover.

If I may be of further assistance to you, please feel free to contact me at (212) 560-1919.

Very truly yours,


Gerard A. Wendelken
Manager
National Affairs

GAW:mr
Encls.

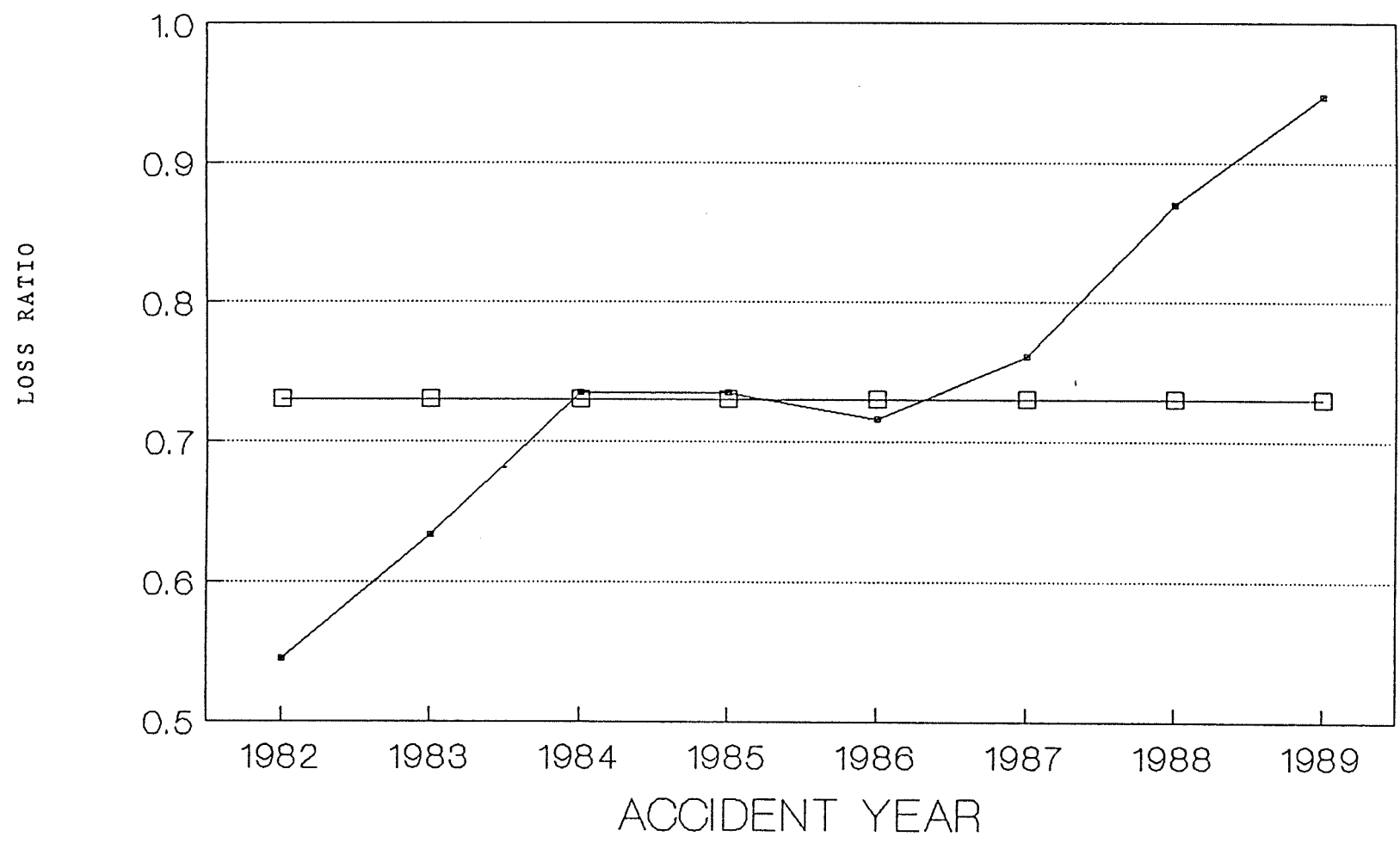
cc: Maureen Ramert
Helen Westervelt

2/27/91
Att IV
4-4

2/27/91
Att IV
4-5

KANSAS - HISTORICAL LOSS RATIOS

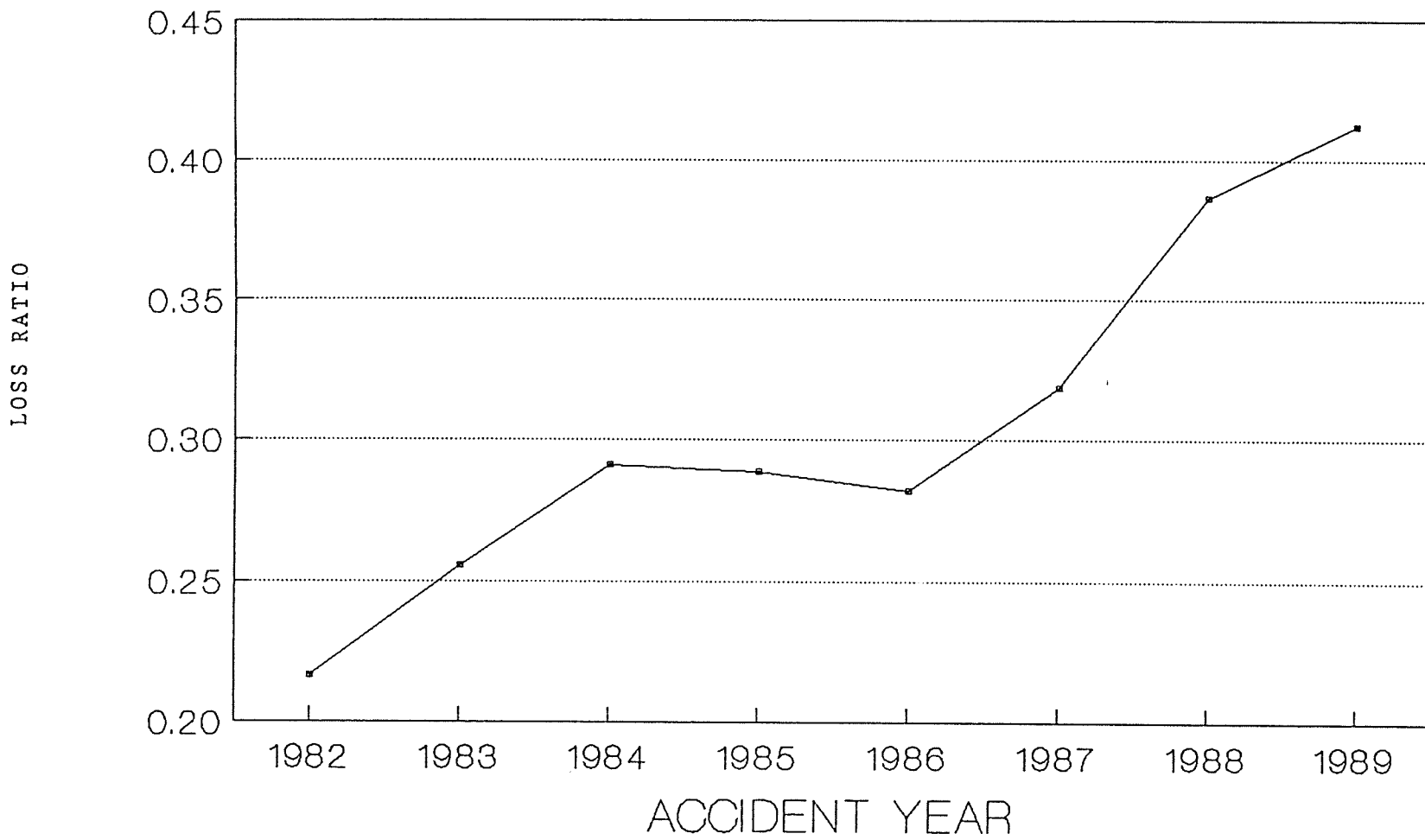
INDEMNITY + MEDICAL



- NOTES:
1. Source: filing.
 2. Premiums are on current rate level.
 3. Indicated losses are under current law.
 4. Target loss ratio is .730 .

2/27/91
Att II
4-6

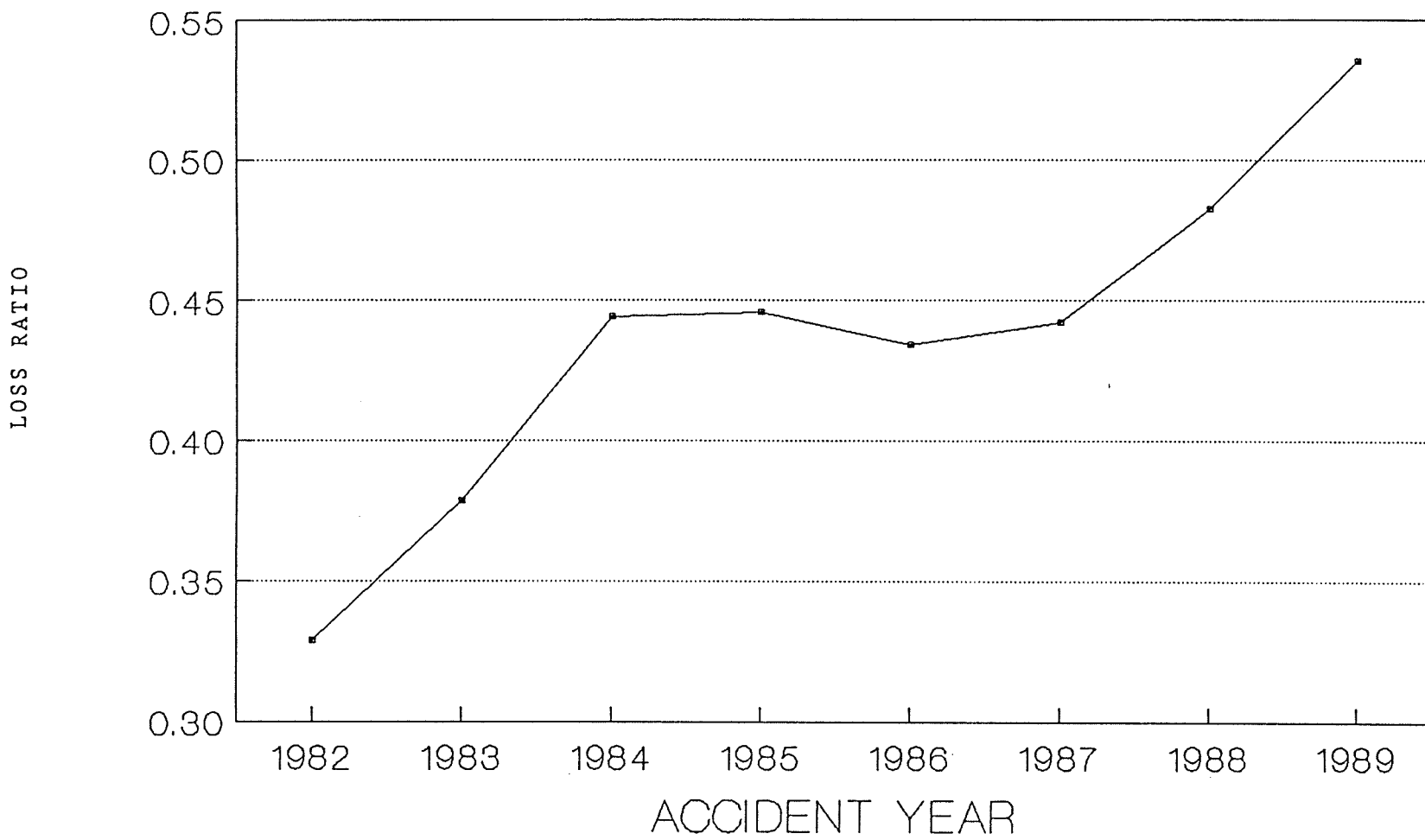
KANSAS - HISTORICAL LOSS RATIOS MEDICAL



- NOTES:
1. Source: filing.
 2. Premiums are on current rate level.
 3. Indicated losses are under current law.

2/27/91
Att IV
4-7

KANSAS - HISTORICAL LOSS RATIOS INDEMNITY



- NOTES:
1. Source: filing.
 2. Premiums are on current rate level.
 3. Indicated losses are under current law.

LAW OFFICES
BENNETT, DILLON & CALLAHAN
1605 S.W. 37TH STREET
TOPEKA, KANSAS 66611
(913) 267-5063

MARK L. BENNETT, JR.
WILBURN DILLON, JR.
LORI M. CALLAHAN

FAX (913) 267-2652

GLENDAL. CAFER

TO: Senate Labor, Industry and Small Business Committee
FROM: Lori M. Callahan, Kansas Legislative Counsel
American Insurance Association
SUBJECT: S.B. 220
DATE: February 27, 1991

The American Insurance Association is a national trade organization representing more than 280 companies who write property and casualty insurance. I appreciate the opportunity to testify today.

S.B. 220 would allow deductibles for workers' compensation insurance. The American Insurance Association supports programs which allow employers more affordable insurance coverage. Workers' compensation deductibles can be such a program. Nationwide, many states are now looking at the possibility of deductibles in workers' compensation insurance. Of the several states that have passed workers' compensation deductible programs, few are being utilized due to failure of the legislatures in those states to provide specific direction with regard to the use of such deductible programs. Accordingly, the American Insurance Association would suggest that if Kansas is to consider such an option for its employers, several items need to

21 AB
2/27/91

5-1 Attachment V

be considered for inclusion in the legislation. These are as follows:

1. How do insurance companies get reimbursed by the employer for the deductible paid by the insurance company if the employer does not voluntarily pay the insurance company?

2. How can the public protect against unscrupulous pressure placed on employees by employers due to the possibility of exceeding deductibles?

3. What assurance may insurance companies utilize to insure the financial capability of an employer to reimburse deductibles or to advance deductibles?

4. How can employers and insurance companies be assured that claims and administrative expenses are sufficiently reduced to allow deductibles to provide any positive premium impact?

5. How can employees be protected against employers passing the deductible on to the employee?

6. Should not large deductibles be allowed in order to give all employers in the state the opportunity to benefit from a deductible program?

The American Insurance Association is aware of H.B. 2457 which also addresses this issue. The American Insurance Association looks forward to working with the interested groups in order to craft legislation which is effective and meaningful.

2/27/11
Att. V
5-2



TESTIMONY
ON
SENATE BILL NO. 220

**PROFESSIONAL
INSURANCE
AGENTS**

DOROTHY M. TAYLOR
EXECUTIVE DIRECTOR

Presented to: Senate
Industry
Small Business Committee

214 W. 7th
Topeka, KS 66603
913/233-4286

by
James R. Oliver
Legislative Representative
Professional Insurance Agents of Kansas

February 28, 1991

L. J. L. B.
2/27/91

6-1 Attachment VI

Thank you Madame Chairman and members of the committee for the opportunity to submit this testimony in support of Senate Bill No 220 permitting the use of deductibles on Workers Compensation insurance coverage.

The Professional Insurance Agents of Kansas represents about 550 insurance agencies, employing some 3000 employees across the state who believe that allowing the use of Workers Compensation deductibles makes good public policy and good sense.

Deductibles are in common use in many insurance policies in both the personal and commercial markets. Insurance works best when it covers large catastrophic losses. It is generally less expensive for an employer to pay for small losses rather than to transfer the risk to an insurance company and pay the resulting higher premiums.

There is currently pending before the Insurance Department a 30.9% Workers Compensation rate increase which was requested by the National Council on Compensation Insurance, the industry's national rating organization for rating workers compensation. This rate increase has been substantially justified by an independent actuary hired by the Insurance Department. The rate increase is statistically justified and is needed because of inadequate rates over the past several years, because of continuing increases in Medical and timeloss claims, and because the benefits under Workers Compensation have been increased.

LJ/SB
2/27/91
Att VI

We support this bill which will provide employers with another cost control measure needed in the face of rising insurance costs.

Deductibles give employers of all sizes the opportunity to absorb small losses and receive up front discounts of their premiums plus the advantage of reducing their experience modification factor—a two pronged cost saving measure. Deductibles are a proven risk management technique which will increase the employer's involvement in loss and claims control.

The present bill would permit both large and small employers to use deductibles to their advantage as insurance companies will offer deductibles from \$100 to \$5000.

Two amendments were suggested to the committee and we believe they are appropriate.

Thank you for the opportunity to testify in support of our customers who buy Workers Compensation and we urge the committee to act favorably on this legislation.

LJAB
2/27/91
Att VI
6-3