Approved May 1, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley
Chairperson a

9:06 a.m./p.m. on March 30 1992 in room 526-S of the Capitol

All members were present except:

Committee staff present:

Jim Wilson, Revisor
Jerry Donaldson, Principal Analyst
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

John Ostrowski, representing the Kansas AFL-CIO
Terry Leatherman, Exec. Dir., Kansas Industrial Council, KCCI

The meeting was called to order at 9:06 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley stated that the purpose of the meeting was to have a public hearing on House Bill No. 2523, an act creating a "competitive" non-profit state worker's compensation insurance fund. He introduced John Ostrowski, representing the Kansas AFL-CIO, as a proponent of the bill.

Mr. Ostrowski presented for the committee's viewing a videotape on state insurance funds. He also provided written materials supporting the concept of a state "competitive" fund. He then answered questions from several members of the committee.

Rep. Don Smith then distributed and commented on information related to a state workers' compensation fund created in the state of New Mexico (attachment #1).

The chairman introduced Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry, who distributed and read written testimony in opposition to House Bill No. 2523 (attachment #2).

Written testimony in opposition to House Bill No. 2523 was also presented by Larry Magill, Jr., Executive Director, Independent Insurance Agents of Kansas (attachment #3), and Brad Smoot, Legislative Counsel, American Insurance Association (attachment #4).

Chairman Hensley closed the public hearing on House Bill No. 2523, and announced that committee members would receive the proposed draft of Substitute for House Bill No. 3039 that afternoon. He urged the members to review the draft prior to the committee meeting tomorrow. He said the committee would convene at 8:00 a.m., to begin discussion and final action on the bill.

The meeting was adjourned at 10:00 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry

DATE: March 30, 1992

NAME	ADDRESS	COMPANY/ORGANIZATION
Terry Leatherman	Topeka	KCCI
Bill Layes	"	KS Dept Human Res.
Paul Bicknell	"	" " " "
Bill Clawson	"	" " "
Don Brunk	"	" " "
Richard Mason	"	KTLA
Jim McHaff	"	KS AFL-CIO
[illegible] Brown	KC	KS Auto Dealers Assn.
Alan Cobb	Wichita	KS Assoc For Sm. Business
Jackie Summerson	Topeka	Manpower
Bill Morrissey	Topeka	DHR/Work Comp
John Ostrowski	TOPEKA	KS AFL-CIO
Kent (~~SUPERMAN~~) Bruce	DHR	topeka
Gary Anderson	Topeka	AIA Kansas
DICK THOMAS	TOPEKA	DHR/WORK COMP
George Welch	Topeka	St. Self Ins. Fund
Larry Magill	"	I.I.A.K.
Bill Curtis	Topeka	Ks. Assoc. of School Bds
Brad Smoot	"	AIA
Janet Stubbs	"	HBA of Ks
D. WAYNE ZIMMERMAN	OLATHE	P.R.M. INC.
Kay Farley	Topeka	OJA
Paul Shelby	Topeka	OJA
Joe Furgason	Topeka	KCA
Elsie Flory	Ottawa	KFLPN

Refugio Moore - Topeka - AS132E

ARTICLE 9
Employers Mutual Company

52-9-1. Short title.

Sections 121 through 144 of this act may be cited as the "Employers Mutual Company Act".

History: Laws 1990 (2nd S.S.), ch. 2, § 121.

Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Meaning of "this act". — The phrase "this act", referred to in this section, means Laws 1990 (2nd S.S.), ch. 2, sections 121 to 144 of which appear as 52-9-1 to 52-9-24 NMSA 1978.

52-9-2. Findings and purpose.

A. The legislature finds that the cost, service and benefits of workers' compensation and occupational disease disablement insurance are of utmost importance to the health, welfare and economic well-being of all the citizens of New Mexico. To help provide competitive workers' compensation insurance coverage, the legislature enacts the Employers Mutual Company Act.

B. The legislature finds that, based on the relative amounts of premiums paid, small and medium-sized employers who are good risks for workers' compensation and occupational disease disablement insurance nevertheless can face serious obstacles in securing insurance at reasonable rates in the private voluntary market. A primary purpose of the Employers Mutual Company Act is to create an insurance entity that will provide, consistent with sound underwriting practices, assistance and competitively priced workers' compensation and occupational disease disablement insurance to those small and medium-sized employers.

C. The legislature finds that employers of all sizes should benefit from the availability of competitively priced insurance from the employers mutual company. A purpose of the Employers Mutual Company Act is to create an insurance entity that will provide assistance and competitively priced workers' compensation and occupational disease disablement insurance to all employers; provided, however, that priority attention is reserved for small and medium-sized employers.

D. The legislature finds that workers' compensation and occupational disease disablement insurance premiums and costs are at a critically high level that threatens the health of New Mexico's economy. A purpose of the Employers Mutual Company Act is to improve and stimulate the state's economy, including critical industries relating to oil and gas production in the state. The legislature further finds that improving the workers'

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compensation and occupational disease disablement system in New Mexico by creating the employers mutual company will enhance the performance of industries relating to oil and gas production and increase severance tax revenues. For these reasons, the legislature finds investment of the severance tax permanent fund in revenue bonds issued by the employers mutual company is a prudent investment and provides adequate legal consideration for the state.

E. The legislature finds a serious lack of relevant data based on New Mexico experience alone that can be used to assess the impact of workers' compensation and occupational disease disablement laws in the state. A purpose of the Employers Mutual Company Act is to generate data on New Mexico experience alone to assess more accurately the performance of New Mexico's workers' compensation and occupational disease disablement system and the impact of New Mexico's laws.

History: Laws 1990 (2nd S.S.), ch. 2, § 122.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

52-9-3. Definitions.

As used in the Employers Mutual Company Act:

A. "benefits" means any benefits to which a worker may be entitled under the provisions of the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978], the Subsequent Injury Act and the New Mexico Occupational Disease Disablement Law;

B. "board" means the board of directors of the employers mutual company created under the Employers Mutual Company Act;

C. "claim" means the assertion by or on behalf of a worker of a right to benefits;

D. "company" means the employers mutual company created and authorized under the Employers Mutual Company Act;

E. "director" or "member" means a member of the board;

F. "president" means the president of the employers mutual company; and

G. "worker" means an individual who is included in the definition of "worker" under Section 52-1-16 NMSA 1978 or "employee" under Section 52-3-3 NMSA 1978.

History: Laws 1990 (2nd S.S.), ch. 2, § 123.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

Subsequent Injury Act. — See 52-2-1 NMSA 1978 and notes thereto.

New Mexico Occupational Disease Disablement Law. — See 52-3-1 NMSA 1978 and notes thereto.

52-9-4. Employers mutual company created; organized as a domestic mutual insurance company.

The "employers mutual company" is created as a nonprofit, independent, public corporation for the purpose of insuring employers against the risk of liability for payment of benefits claims to workers. The company shall be organized as a domestic mutual insurance company and shall be domiciled in a class A county.

History: Laws 1990 (2nd S.S.), ch. 2, § 124.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-5. Company's board of directors; appointment; powers.

A. The company's board of directors shall consist of the president and six members appointed or elected as provided in this section.

B. Each director shall hold office until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the initial six directors of the board, and they shall then appoint the president, who shall be the seventh member of the board.

D. After the governor appoints the initial six directors of the board, those directors shall determine by lot their initial terms, which shall be two directors for two years, two directors for four years and two directors for six years. Thereafter, each director shall be appointed or elected to a six-year term. At the expiration of the terms of the two initial directors whose terms are two years, the governor shall appoint one director and the policyholders shall elect one director for full six-year terms. At the expiration of the terms of the two initial directors whose terms are four years, the governor shall appoint one director and the policyholders shall elect one director for full six-year terms. At the expiration of the terms of the two initial directors whose terms are six years, the policyholders shall elect two directors for full six-year terms. Thereafter, as vacancies arise, directors shall be appointed or elected so that at all times two directors shall be appointed by the governor and four directors shall be elected by the company's policyholders in accordance with provisions determined by the board.

E. The governor shall not remove a director he appoints unless the removal is approved by a two-thirds vote of the members of the senate.

F. When the state no longer holds the revenue bonds initially issued pursuant to the authorization set forth in the Employers Mutual Company Act, the governor's power to appoint directors shall be terminated. Thereafter, each director shall be elected to a six-year term by the company's policyholders in accordance with provisions determined by the board.

G. At all times, three directors shall be managers or represent the management of policyholders of the company, and three directors shall be nonmanagement employees or represent the nonmanagement employees of policyholders of the company, subject to the following restrictions:

(1) at least two of the three directors who are managers or represent the management of policyholders of the company shall be from or represent private, for-profit enterprises;

(2) at least four members of the board, including the president, shall be knowledgeable in investments and economics;

(3) no member of the board shall represent or be an employee or member of the board of directors of an insurance company;

(4) no two members of the board shall be employed by or represent the same company or institution;

(5) no more than one member of the board shall be employed by or represent a governmental entity; and

(6) any director who has served a full six-year term shall not be eligible for another term until one year after the end of his term.

The provisions of this subsection that apply to managers or representatives of management and nonmanagement employees or representatives of nonmanagement employees of policyholders shall, in the case of the governor's initial six director appointments, apply instead to the management and nonmanagement employees of any employer in the state.

H. The board shall annually elect a chairman from among its members and shall elect those other officers it determines necessary for the performance of its duties.

I. The power to set the policies and procedures for the company is vested in the board. The board may perform all acts necessary or appropriate to exercise that power. The board shall have the same power, authority and jurisdiction as that authorized by law for the governing body of a private insurance carrier.

J. Directors' compensation shall be set by the board but shall be limited so that total compensation and reimbursement for expenses incurred as a director, except for the president, do not exceed two thousand five hundred dollars ($2,500) for each director annually.

History: Laws 1990 (2nd S.S.), ch. 2, § 125.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

52-9-6. Board; directors as appointed public officials of state; excluded from personal liability.

Directors are appointed public officials of the state while carrying out their duties and activities under the Employers Mutual Company Act. The directors and the employees of the company are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the company or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the company or affairs relating to it.

History: Laws 1990 (2nd S.S.), ch. 2, § 126.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

52-9-7. President.

The company is under the administrative control of the president. He shall be in charge of the day-to-day operation and management of the company. The board shall appoint the president, and he shall serve at the pleasure of the board. He shall receive compensation as set by the board. The president shall have proven successful experience as an executive at the general management level in the insurance, or self-insurance, business.

History: Laws 1990 (2nd S.S.), ch. 2, § 127.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.
Temporary provisions. — Laws 1990 (2nd S.S.), ch. 2, § 145, effective January 1, 1991, provides that the president of the employers mutual company shall report to the legislature and the governor no later than October 1, 1991, and October 1, 1992 the operations of the employers mutual company up to those dates. The report should include: planning for and start-up of operations; volume of premiums insured and the company's share of the workers' benefits market; percentage division of premiums among various benefit payments and administrative costs; average rate of return; and recommendations for desired changes and continued operation.

52-9-8. Exclusion of state's liability.

The state shall not be liable for any obligations incurred by the company.

History: Laws 1990 (2nd S.S.), ch. 2, § 128.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-9. Use of company assets.

The assets of the company shall be applicable to the payment of losses sustained on account of insurance issued by it and to the payment of salaries, dividends as provided in Sections 131 and 132 [52-9-11 and 52-9-12 NMSA 1978] of this act and other expenses.

History: Laws 1990 (2nd S.S.), ch. 2, § 129.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-10. Company to be competitive; safety incentives and penalties; loss control, case management and utilization review.

A. The company shall be competitive with other insurers of workers' compensation and occupational disease disablement insurance. It is the expressed intent of the legislature that the company shall ultimately become self-supporting. For that purpose, loss experience and expense shall be ascertained, and dividends, credits or rate deviations may

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be made, as provided in the Employers Mutual Company Act. In order to control costs, the company shall provide as many of its services in-house as practicable.

B. The company shall be liable to the same extent as any private insurance company for the payments that are required to be made under Chapter 59A, Article 43 NMSA 1978 to protect against the insolvency of any other insurer of workers' compensation or occupational disease disablement. Likewise, the company shall receive the same benefits under those provisions as any other insurer of workers' compensation or occupational disease disablement.

C. The company shall provide necessary assistance to its policyholders regarding workplace safety. The company may reward or penalize policyholders depending upon their participation in workplace safety programs, actual loss reduction and safety performance. The company shall notify its policyholders of all safety services provided at the time of issuance or renewal of a policy.

D. The company shall provide its policyholders with loss-control services to prevent accidents from occurring, case management review to monitor the status, progress and appropriateness of each claim filed and to help workers return to work, and utilization review to determine the appropriateness of medical services charged.

History: Laws 1990 (2nd S.S.), ch. 2, § 130.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

52-9-11. Annual accountings; possible dividends and credits.

The incurred loss experience and expense of the company shall be ascertained each year. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared to or a credit allowed to an employer who has been insured with the company in accordance with criteria approved by the board, which may account for the employer's safety record and performance.

History: Laws 1990 (2nd S.S.), ch. 2, § 131.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-12. Amount of dividends or credits.

The cash dividend or credit to an employer shall be an amount that the board in its discretion considers appropriate.

History: Laws 1990 (2nd S.S.), ch. 2, § 132.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-13. Ability of company to transact workers' benefits insurance.

Effective no later than January 1, 1992, the company shall transact insurance business to provide coverage for workers' benefits and employers' liability.

History: Laws 1990 (2nd S.S.), ch. 2, § 133.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-14. Investment counsel.

The company may retain an independent investment counsel. The board shall periodically review and appraise the investment strategy being followed and the effectiveness of such services. Any investment counsel retained or hired shall report at least once a month to the board on investment results and related matters.

History: Laws 1990 (2nd S.S.), ch. 2, § 134. **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-15. Powers of company.

The company may:

A. insure any New Mexico employer for workers' compensation and employer's liability coverage to the same extent as any other insurer;

B. indemnify a New Mexico employer against his liability for workers' compensation and employer's liability coverage under the laws of any other state for New Mexico employees temporarily working outside this state if the company insures the employer's workers who work within this state;

C. sue and be sued in all actions arising out of any act or omission in connection with its business or affairs;

D. enter into any contracts or obligations relating to the company that are authorized or permitted by law;

E. issue revenue bonds as authorized pursuant to the Employers Mutual Company Act [52-9-1 to 52-9-24 NMSA 1978];

F. invest and reinvest money belonging to the company as provided in the Employers Mutual Company Act; and

G. conduct all business and affairs and perform all acts in carrying out its function whether or not specifically designated in the Employers Mutual Company Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 135. **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-16. Powers of president.

In conducting the business and affairs of the company, the president may, subject to restrictions imposed by the board, carry out the policies and procedures established by the board and may:

A. enter into contracts of workers' compensation and employer's liability insurance;

B. sell annuities covering workers' compensation and employer's liability insurance;

C. decline to insure any risk that does not meet the minimum underwriting standards established by the board;

D. reinsure any risk or a part of a risk;

E. cause the payrolls or other operations of employers applying for insurance to the company to be inspected and audited;

F. make rules for the settlement of claims against the company;

G. contract, on the same basis as insurers, with health care providers, as defined in Section 52-4-1 NMSA 1978, for the treatment and care of workers entitled to benefits from the company;

H. make safety inspections of risks and furnish advisory services to employers on safety and health measures;

I. act for the company in collecting and disbursing money necessary to administer the company and conduct its business;

J. sign contracts and incur obligations, including revenue bonds, on behalf of the company;

K. perform all acts necessary to exercise power, authority or jurisdiction over the company to discharge its functions and fulfill its responsibilities, including the establishment of premium rates; and

L. conduct all business and affairs and perform all acts in carrying out his duties whether or not specifically designated in the Employers Mutual Company Act.

History: Laws 1990 (2nd S.S.), ch. 2, § 136. **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

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Employers Mutual Company Act. — See 52-9-1 NMSA 1978 and notes thereto.

52-9-17. Company audit.

The board shall cause an annual audit of the books of accounts, funds and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be a charge against the company. A copy of the audit report shall be filed with the superintendent of insurance and the president. The audit shall be open to the public for inspection.

History: Laws 1990 (2nd S.S.), ch. 2, § 137. § 153 makes this section of the act effective on **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, January 1, 1991.

52-9-18. Company assets.

In addition to other provisions of law governing regulation of insurance companies, if the superintendent of insurance finds that the company does not own assets at least equal to all liabilities and required reserves together with the minimum basic surplus and free surplus required of a mutual casualty insurer by the Insurance Code [Chapter 59A NMSA 1978], or that its condition is such as to render the continuance of its business hazardous to the public or to the holders of its policies or certificates of insurance, the superintendent shall:

A. notify the president and chairman of the board of that determination;

B. furnish the company with a written list of the superintendent's recommendations to abate the determination; and

C. notify the governor, the president pro tempore of the senate, the speaker of the house of representatives and the legislative finance committee of the recommendations of the superintendent and any actions taken in response by the company.

History: Laws 1990 (2nd S.S.), ch. 2, § 138. § 153 makes this section of the act effective on **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, January 1, 1991.

52-9-19. Money and property of the company.

All premiums and other money paid to the company, all property and securities acquired through the use of money belonging to the company and all interest and dividends earned upon money belonging to the company and deposited or invested by the company are the sole property of the company and shall be used exclusively for the operation and obligations of the company. The money of the company is not state money. The property of the company is not state property.

History: Laws 1990 (2nd S.S.), ch. 2, § 139. § 153 makes this section of the act effective on **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, January 1, 1991.

52-9-20. No state appropriation.

The company shall not receive any state appropriation.

History: Laws 1990 (2nd S.S.), ch. 2, § 140. § 153 makes this section of the act effective on **Effective dates.** — Laws 1990 (2nd S.S.), ch. 2, January 1, 1991.

52-9-21. Exemption from and applicability of certain laws.

The company shall not be considered a state agency for any purpose. This includes exempting the company from all state personnel, salary and procurement statutes, rules and regulations. The insurance operations of the company are subject to all of the applicable provisions of the Insurance Code [Chapter 59A NMSA 1978] in the same

manner as those provisions apply to a private insurance company. The company is subject to the same tax liabilities and assessments as a private insurance company.

History: Laws 1990 (2nd S.S.), ch. 2, § 141.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-22. Marketing.

A. Pursuant to rules adopted by the board, the company, private independent insurance agents licensed to sell workers' compensation insurance in New Mexico and any insurance association acting as a general agent, provided the association has at least one hundred members, may sell insurance coverage for the company. The board shall establish a standard agency contract for any insurance association acting as a general agent with which the board contracts. The board shall adopt a schedule of commissions that the company will pay to any qualified independent insurance agent or association.

B. The marketing representatives employed directly by the company shall obtain a license from the superintendent of insurance. The marketing representatives employed directly by the company shall not be licensed to sell any type of insurance other than workers' compensation or occupational disease disablement insurance.

History: Laws 1990 (2nd S.S.), ch. 2, § 142.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-23. Annual report.

The president shall submit an annual, independently audited report, in accordance with procedures governing annual reports adopted by the national association of insurance commissioners, by October 1 of each year to the governor, the legislative finance committee and any other appropriate legislative committee indicating the business done by the company during the previously completed fiscal year and containing a statement of the resources and liabilities of the company. The report shall include:

A. the volume of premiums insured through the company and its share of the workers' benefits market in the state;

B. the percent division of the premium dollars among various types of benefit payments and administrative costs for policies and claims under the company;

C. the average rate of return enjoyed by the company on invested assets;

D. recommendations concerning desired changes in the company to promote its prompt and efficient administration of policies and claims;

E. recommendations to the legislature and the governor regarding the continued operation of the company; and

F. any other information the president deems appropriate.

History: Laws 1990 (2nd S.S.), ch. 2, § 143.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.

52-9-24. Loan fund created.

There is hereby created in the state treasury a fund to be known as the "employers mutual company loan fund".

History: Laws 1990 (2nd S.S.), ch. 2, § 144.
Effective dates. — Laws 1990 (2nd S.S.), ch. 2, § 153 makes this section of the act effective on January 1, 1991.
Appropriations. — Laws 1990 (2nd S.S.), ch. 3, § 9, effective January 1, 1991, appropriates $1,000,000 from the appropriations contingency fund to the employers mutual company loan fund for expenditure in the seventy-ninth and eightieth fiscal years, provides the conditions under which the state treasurer shall make a loan to the employers mutual company from the employers mutual company loan fund, and provides that any amounts remaining in the fund in any fiscal year representing interest payments shall revert to the general fund, any principal payments shall be transferred to the general fund, but any balance representing principal amounts of the original appropriation shall not revert.

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52-9-25. Authorization to issue revenue bonds.

A. In order to provide funds for the continued development and operation of the employers mutual company, the board is authorized to issue revenue bonds from time to time, in a principal amount outstanding not to exceed ten million dollars ($10,000,000) at any given time, payable solely from premiums received from insurance policies and other revenues generated by the company.

B. The board may issue bonds to refund other bonds issued pursuant to this section.

C. The bonds shall have a maturity of no more than ten years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty, and the company shall not make any prepayments until it has established adequate reserves for the risks it has insured and has received approval from the superintendent of insurance for the proposed prepayment.

D. The bonds shall be executed with the manual or facsimile signature of the president or chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the company.

E. Proceeds from the sale of the bonds shall be used first to pay back the one million dollar ($1,000,000) loan provided to the company from the appropriations contingency fund under Section 9 of this act. The proceeds of the bonds and the earnings on those proceeds are appropriated to the board for the repayment of that loan, for the development and operation of the employers mutual company, to pay expenses incurred in the preparation, issuance and sale of the bonds and to pay any obligations relating to the bonds and the proceeds of the bonds under the federal Internal Revenue Code of 1986, as amended.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale, the notice of sale and other procedures for the sale shall be as determined by the president or the board.

G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.

I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

J. The bonds shall be payable by the company, which shall keep a complete record relating to the payment of the bonds.

History: Laws 1990 (2nd S.S.), ch. 3, § 7.

Effective dates. — Laws 1990 (2nd S.S.), ch. 3, § 10 makes the act effective on January 1, 1991.

Severability clauses. — Laws 1990 (2nd S.S.), ch. 2, § 152 provides for the severability of the act if any part or application thereof is held invalid.

"Section 9 of this act". — "Section 9 of this act", referred to in Subsection E, means Laws 1990 (2nd S.S.), ch. 3, § 9, an appropriation which is noted under 52-9-24 NMSA 1978.

Alternative: Provide for bonds to be issued by the Kansas Development Finance Agency (KDFA)

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

HB 2523

March 30, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber opposes HB 2523.

Problems exist in today's workers' compensation insurance market place in Kansas. First of all, workers' compensation insurance is very expensive. In seven short years, business cost for private insurance has doubled. Nearly a quarter of the businesses in Kansas cannot find an insurance company to write workers' compensation insurance for them. As a result, they have no choice but to turn to the insurer of last resort, the Kansas Assigned Risk Plan.

Supporters of HB 2523 say the creation of a state competitive insurance program addresses these problems. There are several reasons why KCCI disagrees:

1) A competitive state insurance program will face the same frustrations which now plague private insurance providers and the business community.

Passage of HB 2523 will not create a workers' compensation medical fee schedule, eliminate work disability to employees returned to work at

Labor & Industry
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Attachment #2

comparable wages, discourage the filing of fraudulent claims, eliminate compensation for pre-existing conditions, halt the use of "unauthorized medical" for disability impairment ratings, promote greater workplace safety, or any of the myriad of workers' compensation reforms which are before this Committee for consideration.

Having a state-run insurance company writing the checks will not make the checks any smaller.

2) The concept behind HB 2523 is that competitive insurance programs reform the insurance market place. Due to its non-profit status the state insurance program offers more affordable insurance. In turn this stimulates the private insurers to become more competitive in rates.

The chart below lists workers' compensation insurance levels in the 13 states with competitive workers' compensation insurance programs and in Kansas. The information was taken from the 11th Annual Grant Thornton Manufacturing Climates Study, which was released in August 1990. The first column shows the factor value of average workers' compensation insurance rates when the national average is centered at 1.000%. The second column shows how a state ranks nationally.

Since the figures in this table represent 1989 insurance levels, it is only fair to point out that Kansas may rank lower today, since this study does not take into account the 24% workers' compensation insurance increase of 1991. However, the chart does reflect a basic point. Employers in competitive insurance funds states do not necessarily enjoy lower workers' compensation insurance rates.

	W.C. Insurance Level	National Rank
Utah	0.474	7th
Kansas	**0.711**	**15th**
Maryland	0.721	16th
Pennsylvania	0.905	22nd
Idaho	0.913	23rd
Arizona	1.084	29th
Oklahoma	1.109	30th
New York	1.214	32nd
Michigan	1.221	33rd
Montana	1.310	36th
Oregon	1.423	43rd
Colorado	1.499	45th
Minnesota	1.504	46th
California	1.731	48th

3) If competitive state insurance programs achieve workers' compensation reform, why did the following competitive fund states consider these workers' compensation reforms in 1991?

CALIFORNIA - Legislation passed which makes workers' compensation fraud a felony offense, and makes specific prohibitions against false and misleading advertising of workers' compensation-related services.

COLORADO - Legislation passed establishing a strict definition of permanent total disability, to halt payment of permanent total disability benefits when a claimant reaches 65 years old, to eliminate a requirement to re-employ workers who suffer scheduled injuries, to require the use of A.M.A. guidelines to determine permanent total disabilities, to freeze the state's existing medical fee schedule for an 18-month period, and to limit visits to chiropractors who do not have Level I Accreditation.

MARYLAND - Legislation passed permitting insurers to issue policies with deductibles.

MONTANA - Legislation passed to terminate medical benefits if not used after 60 months, to terminate temporary total disability benefits if an employee can return to work and to revamp vocational rehabilitation benefits.

OREGON - Legislation passed to permit employers to contract with managed care providers for workers' compensation medical services.

The bottom line is this: Are insurance companies the root of the workers' compensation problem in Kansas? KCCI contends the answer to that question is "no." Problems in the Kansas workers' compensation insurance market place are a reflection of problems within the system itself.

At best, a $4 million state competitive insurance program in a $364 million workers' compensation insurance market place would be years from being a viable part of the process. At worst, a state program could compound the problems the workers' compensation process in Kansas faces today.

Either way, HB 2523 does not address today's concerns. KCCI urges this committee to set this bill aside and to move on to reforming the Kansas Workers' Compensation Act.

Testimony on HB 2523
Before the House Labor & Industry Committee
March 30, 1992
By: Larry W. Magill, Jr. on behalf of the
Independent Insurance Agents of Kansas and the
Professional Insurance Agents of Kansas

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear today in opposition to HB 2523. Although we appreciate the sponsors taking a moderate approach to what we would generally categorize as a competitive state fund and specifically to their including independent agents in the delivery of services for the fund, we must still oppose the concept.

For brevity today, I will refer to this proposal as establishing a competitive state fund, but we understand that it is a public corporation and not a state agency, which is certainly a plus in our view.

Philosophically Opposed

Our two associations represent approximately 723 independent small businessmen. We are philosophically opposed to the state entering the insurance business. No matter how you color it, that is what this proposal entails. We are not aware of one example where the state has entered a previously private enterprise business and solved any problems or benefited any consumers.

Solvency Concerns

The public corporation formed under HB 2523 would have no net worth or policyholder surplus. It would simply play a cash flow game that would be totally dependent for survival on instant profits. Its only capitalization comes in the form of a $4 million loan from the state general fund.

According to the Alliance of American Insurers report, "Workers

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Compensation State Funds: An Update" many competitive state funds are in serious danger of becoming insolvent or are technically insolvent today. Four monopolistic state funds are technically insolvent: Ohio, West Virginia, North Dakota and Wyoming.

Unless a competitive state fund is highly selective and insures only the absolute best risks, they are almost guaranteed to become insolvent. Most state funds have to insure all applicants. Colorado and Montana are examples where sharp increases in the state fund's market share have left them technically insolvent. By technically insolvent, we mean that if they were an insurance company judged by normal insurance company standards, they would be placed in receivership by the Insurance Department. Oregon avoided technical insolvency by cancelling 6,000 employers in 1989 that were experiencing bad loss experience. Colorado, Montana and Oregon are examples of competitive state funds that are currently technically insolvent.

Numerous other funds have bolstered their results artificially by discounting loss reserves for future investment earnings. We question whether this will not force them to drag out claims settlements to realize those earnings and seriously question whether they anticipated the current extremely low interest earnings when they discounted those reserves. If they adjust the discounting for current interest earnings, they will have to take a charge against surplus.

Arizona, Idaho and Oklahoma funds lost policyholder surplus from 1987 to 1989.

State Fund Not A Solution

We feel strongly that a state fund will not solve the underlying problems in the workers compensation system today. Those problems are

created by dramatically increasing claims payouts and inadequate rates.

The assumption underlying HB 2523 is that simply providing one more competitor in the marketplace will somehow solve the workers compensation problem. There is no lack of competitors in workers compensation today. There are nearly 300 licensed insurance companies approved to write workers compensation in the state.

There is, however, a lack of competition due to the inadequate rates and the assigned risk assessments. The assigned risk plan assessments are also a reflection of inadequate rates as well as generally poor experience of businesses that are in the plan.

Using the insurance industry's rule of thumb, a $4 million surplus (which this is not) could safely write to a 3 to 1 premiums to surplus ratio. That means that out of a total workers compensation market of $300 million, this fund could write $12 million or 4% of the current market.

The workers compensation "pie" is huge today and that both is part of the problem and demonstrates the problem. That large a "pie" attracts a lot of attorney attention and invites claims. It also demonstrates how huge the system has become and what a burden it is on businesses who must pay for it.

HCSF Provides Good Example

The Health Care Stabilization Fund provides a good example of why we do not believe state funds will work and how hard they are to terminate. The HCSF ran up huge deficits and was technically insolvent before the state realized what was happening and put it on an actuarially sound footing. In doing that, they forced today's doctors to pay for yesteryear's doctors' losses. In other words, by under reserving losses in the early years, the HCSF had to go back and surcharge doctors

beginning in the late 1980's to make up the necessary reserves. Some of those reserves are for claims on doctors that have retired or simply moved out of state.

The legislature would have terminated the HCSF years ago, but could not agree on how to fund the "tail" of liabilities that stretches into the future. Now that claims have temporarily stabilized and the HCSF surcharges have been reduced both through a reduction in limits of coverage and a reduction in claims frequency, there is less pressure to terminate the fund. Kansas is one of only a handful of states that chose this solution to the medical malpractice crisis. The others found ways to encourage the private market to respond.

Unlevel Playing Field

Almost universally when the state enters into a business it creates an unlevel playing field for itself. In the case of HB 2523 there is no Insurance Department oversight and presumably not the same financial standards apply to this public corporation as apply to other insurers. There is no guaranty fund coverage. Instead, this public corporation would be backed, presumably, by the full faith and credit of the state. Something that insurers do not enjoy.

This insurer would pay no premium tax.

This insurer would pay no costs of regulation that insurance companies pay such as the cost for Insurance Department examinations, the cost of the Kansas guaranty fund, licensing fees and other costs.

In fact, this proposal provides no supervision by the Kansas Insurance Department over the operations or financial solvency of this public corporation.

Other Concerns

* A number of competitive state funds have been raided by their legislatures for funds:

Oregon was raided for $81 million in 1983.

New York was raided for $1 billion over a number of years and gave in return a $1 billion non interest bearing contingent receivable.

Pennsylvania was raided for $200 million until it was sued and had to pay part of that back.

*Employers can be saddled with paying for previous employers' losses. While those employers who have gone out of business or left the state escaped paying their fair share. Montana is assessing all employers in that state regardless of whether the employer was ever insured by the plan to pay for their deficit.

*Political interference has accounted for some state funds' solvency problems. A mandatory rate decrease led to the West Virginia fund insolvency. A statutory limit on rate increases led to the Wyoming fund's insolvency problems.

Conclusion

We urge the committee to pass meaningful workers compensation reform and not put the state of Kansas, no matter how indirectly, in the insurance business. We urge you not to act favorably on HB 2523. We would be happy to answer questions or provide additional information.

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**Statement of Brad Smoot, Legislative Counsel,
American Insurance Association
to the House Labor and Industry Committee
regarding 1991 House Bill 2523**

March 30, 1992

Mr. Chairman and Members:

I am Brad Smoot representing the American Insurance Association, a trade association of more than 200 insurance companies providing worker's compensation insurance to Kansas and across the country. We appear today in opposition to 1991 House Bill 2523.

The American Insurance Association has a general policy of opposition to such state funds, whether monopolistic or competitive. Many states, however, have experimented with such funds with varying results. While some such state funds appear to compete and maintain market share and adequate reserves, others achieve only limited market success and some are failing badly. Attached is a news article from the Denver Post detailing the problems of the Colorado plan. The article reports that in 1991 the Colorado Workers Compensation Insurance Authority was $200 million dollars in the red with severe cash flow problems.

Members of this committee may wish to research the current status of that state plan and its prospects for the future including what rate increases have been necessary to make the plan solvent. Information is available on the subject from the various states and this committee may wish to have a complete feasibility study done to ensure that we both need and want a state fund in Kansas.

Before any such study could be undertaken, a number of issues would need to be resolved by amendment of HB 2523. For example, the bill does not clearly state that the state fund would be subject premium taxes as are other property and casualty carriers. We would think that you would want the state fund to pay premium taxes so as not to lose state tax revenues now being paid by commercial carriers. Likewise, we would assume that the fund would be subject to all state and local sales and property taxes, although the bill does not so specify.

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In addition, we would assume that the state fund would pay premiums and surcharges into the assigned risk workers compensation plan, as do all commercial carriers. Likewise, I assume the state fund would contribute to the workers compensation fund to cover second injury awards. However, neither of these issues is clearly addressed in the bill. If it is not the intent of this bill to pay all such taxes and assessments as do other carriers, the fund is not truly a "competitor," but rather a drain on taxpayers, employers and other insurers.

Finally, state funds have generally been established to guarantee access to workers compensation benefits where such insurance was unavailable. It is unknown whether such funds always produce lower premiums or reduce employer costs over comparable private insurance mechanisms. Any further consideration of this proposal ought to provide for a thorough study and determination that such cost reductions would be likely to occur. Otherwise, the bill adds little to the current situation and may distract our attention from many of the other reforms which have been proposed and considered by this Legislature.

Thank you for your time and consideration.

Cool, Showers
High 42-44

THE DENVER POST

March 14, 1991

Voice of the Rocky Mountain Empire

INSIDE THE POST

PROSECUTION OF M.D.C. RULED OUT

The Denver city attorney won't prosecute M.D.C. Holdings Inc. for alleged campaign-code violations. DENVER & THE WEST, 1B

WEARIN' O' THE GREEN

...t time of year when everyone ...sh, if only for a day. Our special ... Patrick's Day section has tips

Worker's comp carrier $200 million in red

By Eric Anderson
Denver Post Capitol Bureau

The state-affiliated worker's compensation insurance carrier is almost $200 million in the red, leaving it far short of the money needed to pay ongoing on-the-job injury claims indefinitely, according to state reports.

The Colorado Compensation Insurance Authority collects 40 percent of the worker's compensation insurance premiums paid by the state's employers to cover claims for injuries. Private insurers and self-insured employers cover the rest.

"What this means is if they stopped doing business now and paid all their claims, they'd be short $200 million," said William Hager, president of the National Council on Compensation Insurance, which serves as the rate-making organization for the authority and other carriers. "The state fund has under-priced its product by at least $200 million," Hager said.

• **FED UP:** Rising rates for worker's compensation insurance are jacking up businesses' costs./1C

• **FIRST TARGET:** As costs escalate, the Colorado Compensation Insurance Authority barely can hold ground./19A

The Colorado Department of Regulatory Agencies said in a statement that a cash-flow analysis shows all claims will continue to be paid "at least for the remainder of this decade."

The $200 million shortfall was calculated by an actuarial firm, Milliman & Robertson, which concluded that the fund had no discount reserves.

Workers' compensation claims can last a lifetime for permanently injured employees. The authority's deficit reflects substantial increases in amounts set aside to pay for claims filed earlier.

State officials yesterday cautioned against overreacting, saying there are no plans for a general premium increase or a taxpayer bailout.

"I think what we want to emphasize is

Please see WORKER'S on 20A

BYERS HOLDS PARTY FOR ITS 'TOP GUN'

Work-comp carrier in red

WORKER'S from Page 1A

that this is the time for evaluation and strongly state that this is not a time for panic," said Colorado Insurance Commissioner Joanne Hill.

She said the authority has "no problem paying bills, no problem with cash flow."

The authority said in a document it "has no intention of advocating further rate increases to hasten rebuilding of surplus, though it does maintain the position that rates must be at levels adequate to defray claims costs."

Worker's compensation premiums were raised an average of 14 percent statewide last year, despite complaints from employers that the cost of insuring their workers was driving them out of business or out of the state. As a result, legislation has been introduced this year to cap worker's compensation costs.

Instead of an increase in insurance premiums, worker's compensation authority officials have developed a plan to bring their fund's surplus back into the black by 1995. It includes proposals for better management of claims and incentives for employers to maintain safe workplaces.

Experts say the authority, a quasi-governmental agency responsible to a board named by the governor, is well-managed. They blame most problems on general failings of the state worker's compensation insurance system.

In its role as the insurer of last resort for Colorado businesses, the authority must cover "bad risk" businesses that can't get policies from private carriers. Nevertheless, Hager said, the authority's problems demonstrate difficulties in the entire worker's compensation insurance industry.

"If you have ever had any doubt in terms of the deteriorating condition of this market as it relates to worker's compensation, look at the government's worker's compensation company," Hager said in a briefing yesterday to legislators.

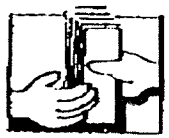
The latest figures, for 1990, show a sharp decline in the financial health of the authority. From a surplus of $1 million in 1989, it dipped to the $200 million deficit at the end of last year.

Even the $1 million surplus was considered far from sufficient. Private insurers generally like to have $1 in surplus for every $2 or $3 in premiums sold, in part to guard against unexpectedly high future payouts. The authority had premiums of $236 million in 1989.

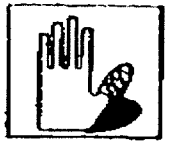
The small surplus prompted the hiring of Milliman & Robertson to determine whether the system had an adequate cash flow to pay ongoing claims.

HOW WORKER'S COMPENSATION WORKS

In Colorado, it is mandatory for any employer with at least one employee to carry worker's compensation on that employee.



1. The employer purchases a policy from a private insurance carrier or the Colorado Compensation Insurance Authority, a quasi-governmental fund.



2. Injured worker files a claim with his or her employer within two days of an injury. Some employers require employees to go to designated doctors.

3. Within 10 days, the employer must fill out a report on the injury and send it to the insurance carrier.

4. The insurance carrier has 25 days to admit or deny liability on the claim.

5. At any time, the injured worker or insurance carrier can contest the claim and request a hearing before an administrative law judge, whose decision is generally final.

The Denver Post