

Approved: March 20, 2003

Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Patricia Barbieri-Lightner at 3:30 on February 20, 2003 in Room 527-S of the Capitol.

All members were present except: Excused: Bonnie Sharp, Nile Dillmore, Mary Kaufman

Committee staff present: Bill Wolff, Legislative Research
Ken Wilke, Revisor of Statutes
Renaë Hansen, Secretary

Conferees appearing before the committee: **Larry MaGill**, Kansas Association of Insurance Agents,
Terry Leatherman, the Kansas Chamber of Commerce and Industry
Bill Curtis, Kansas Association of School Boards
Brad Smoot, Legislative Counsel, The National Council on Compensation Insurance
Larrie Ann Lower, Legislative council, Alliance of American Insurers
Philip S. Harness, Acting Director of Workers Compensation, Kansas Department of Human Resources
Jarrod Forbes, Kansas Insurance Department
Don Brown, Special Projects Manager, Kansas Insurance Department

Others attending: 15 others, some who signed the register.

Representative Mario Goico moved to adopt the amendment to **HB2023**, seconded by Representative Cindy Neighbor.

An explanation for the amendment was given by Representative Mario Goico, and Ken Wilke made it clear that the bill is prospective and not retroactive.

Discussion was brought to the floor of the committee meeting by: Representatives Scott Schwab, RJ Wilson, and Bob Grant.

The question was called. Amendment passed.

Representative Cindy Neighbor moved to pass favorably out of committee the amended **HB2023**, seconded by Representative Scott Schwab, passed unanimously.

It was discussed that Representative Mario Goico would carry the bill to the floor.

Hearing on:

HB2232- Insurance informal deductible for certain medical claims under workers compensation.

Proponents:

Larry MaGill, Kansas Association of Insurance Agents, (Attachment #1), spoke as a proponent for **HB 2232** which deals with establishing the informal workers compensation deductible. Current practices by some companies to keep their costs down have caused them to be in violation of certain

Kansas statutes and this bill seeks to offer them a way to keep their medical insurance costs down in order to continue to keep offering their employees a cost affordable insurance plan.

Questions were posed by: Representatives Bob Grant, and Scott Schwab.

Terry Leatherman, the Kansas Chamber of Commerce and Industry, (Attachment #2), presented testimony in support of HB 2232.

Opponents:

Bill Curtis, Kansas Association of School Boards, (Attachment #3), since Kansas Law already permits deductibles and finds that process more preferable to the ones presented by HB 2232.

Brad Smoot, Legislative Counsel, The National Council on Compensation Insurance, (Attachment #4), presented testimony against HB 2232 because it distorts data in rating the individual risks that they look at for their clients.

Questions were posed by: Representatives Patricia Barbieri-Lightner, Scott Schwab, Mario Goico, and RJ Wilson.

Larrie Ann Lower, Legislative council, Alliance of American Insurers, (Attachment #5), highlighted some areas that were highly disagreeable to them in HB 2232.

Neutral Conferees:

Philip S. Harness, Acting Director of Workers Compensation, Kansas Department of Human Resources, (Attachment #6), pointed out some mechanical and problematic problems that would arise if this bill were to become law.

Questions were posed by: Representatives David Huff, Stephanie Sharp, Scott Schwab, and Bob Grant.

The fiscal note presented by the Division of the Budget was noted.

Jarrod Forbes, Kansas Insurance Department, (Attachment #7), presented testimony with the concerns that the Insurance Department has about this bill.

Questions were posed by: Representative RJ Wilson.

The hearing was closed.

Hearing on:

HCR 5010- Concurrent resolution asking insurance commissioner to disseminate certain information on long-term care insurance and to study policy provisions.

Neutral Conferees:

Don Brown, Special Projects Manager, Kansas Insurance Department, (Attachment #8), stressed the departments commitment to consumer assistance through printed publications, web site materials, and face-to face customer service. He noted the HCR 5010 accurately describes many of the important reasons why the Kansas Insurance Department publishes many of its annual research projects on health care in Kansas.

Questions were posed by: Representatives Mario Goico, David Huff, Bob Grant, and Ken Wilke (Revisor).

Comments were given by Dr. Ken Wilke, Revisor.

Hearing closed.

Meeting adjourned.

Next meeting February 25, 2003.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: February 20, 2003

NAME	REPRESENTING
Sandberg	KID
Don Brown	KID
Dick Cook	KID
Paula Greathouse	KID
Bill Curtis	Ks Assoc of School Bds
Brod Smoot	NCCI
Terry Leatherman	KCCI
Pat Lehman	KS Fire Service Alliance
Jamie Ann Power	Alliance of Am. Insurers
Kevin Davis	Am Family Ins
Robert Chermanski	KTLA
LARRY MAGILL	KAI/A

**Testimony on an Informal Workers Compensation Deductible
H.B. 2232
Before the House Insurance Committee
By Larry Magill
Kansas Association of Insurance Agents
February 20, 2003**

Thank you Madam Chairman and members of the committee for the opportunity to appear today in support of House Bill 2232. I am Larry Magill representing the Kansas Association of Insurance Agents. KAIA was formed in 1992 by the merger of the Independent Insurance Agents of Kansas and the Professional Insurance Agents of Kansas. We represent 425 independent agencies with 150 branch locations and approximately 2,500 employees, most of them licensed agents. Our members write approximately 70% of the business property and liability insurance in the state.

The "informal" workers compensation deductible has been used for many years by businesses intent on controlling their workers compensation costs by handling their minor medical incidents. Unfortunately, it generally risks violating Kansas statutes if a "first report of injury" is not filed with the Director's office. The fine for not filing a first report of injury is not to exceed \$250 for each violation under K.S.A. 44-557. And if a claim isn't filed with the insurer, the insurer could later deny coverage under the terms of the policy, if the minor injury turns serious. The Kansas Insurance Department has also taken the position that informal deductibles cannot be used.

Despite these risks, yesterday at our Legislative Day, when I asked the audience of approximately 85 members how many of them had clients who were using them, 2/3's of the hands went up---some pretty slowly! This is not unlike the situation years ago when the 55-mile per hour speed limit was required. The legislature passed a law that you could go up to 10 miles over and it wouldn't count as a speeding ticket and couldn't be used by insurance companies to increase rates. And the sky didn't fall.

A Tool To Manage Costs

How many times have you or someone you know, commented that you aren't turning in a small fender bender auto claim to protect your insurance rates—particularly if it was your teenage son's? This is even more advisable today on homeowners insurance where you definitely do not want to turn in small water claims because of insurance company's concern over mold.

Or how many times have you heard someone say that you can't afford to have health insurance that pays the first dollar of small claims? No one today would expect their health insurance to not have at least a \$250 deductible, and yet, workers compensation medical only claims are still handled on a first dollar basis.

The Current "Formal" Deductible

Kansas first authorized workers compensation deductibles in 1991 by a statutory change. For purposes of our discussion, we'll refer to this as a "formal" deductible. It provides a small rate credit, the deductible can be from \$100 to \$10,000, and **requires the insurer to pay the loss first and then collect from the insured.** Insurers are not required to offer the deductibles and the assigned risk plan cannot require them. Group funded workers compensation pools were authorized to use them in 1995. Kansas is one of only a handful of states that is a "net

reporting" state. In other words, the amounts paid by the insured under the deductible cannot be used in calculating the experience modification.

The Impact of Experience Modifications

This later point is the most important feature of any deductible approach in workers compensation. A firm's experience modification is calculated by the national workers compensation rating organization, the National Council on Compensation Insurance or NCCI, using a formula it files with the insurance department. The experience modification can range from as low as .70 to over 2.0. In other words, the firm could get a 30% credit on its workers compensation costs or it could pay double the standard rates or more for "bad" experience.

This formula is heavily weighted to penalize a company for a lot of small medical expense only claims. This is justified under the theory that a lot of small claims will result in some large losses. Our members don't totally buy that. They've seen certain types of businesses that are just prone to a lot of little claims, cut fingers, objects in eyes, etc, that never lead to big claims. That's not to say that a train couldn't hit a carload of employees but that hardly proves the theory.

Informal deductibles, despite not being authorized or approved in Kansas, continue to be used by employers today. It's just practical, common sense for them to want to manage their workers compensation costs and to do that they must manage their small medical only claims. Missouri has a law that specifically allows the informal deductible and KAIA requested introduction of HB 2232 patterned after Missouri's law. I've attached copies of their law, policy endorsement and a notice one agency uses.

Summary of the Act (see attached copy of HB 2232):

- Requires an insurer to allow up to a \$500 medical only claim to be paid by the employer who must report the claim to the insurer and Director.
- If the claim results in any lost time or the medical expenses go over \$500, the claim must be turned over to the insurer for handling
- If a claim must be turned over to the insurer for handling, the insurer must reimburse the insured for amounts the insured paid
- The employer must make annual reports of all amounts paid under the deductible and pay the assessment for running the Director's office.

KAIA supports the legislation for the following reasons:

- Often, even for minor medical only claims, insured's find that the insurance company sets up an arbitrary reserve of something like \$500 on each claim. Those reserves can remain "up" for several years and impact an experience modification. Once they are taken down, they can be hard to get removed, retroactively, from the experience modification.
- Even though in Kansas, 70% of medical only claims are not counted in the insured's experience modification, if the insurer sets up a \$500 reserve, that's \$150 each time a medical only claim is reported. The total medical expense could be under that for an eyewash or a cut finger. If there are lots of these minor incidents, they can dramatically impact an insured's experience modification.
- Underwriters rely heavily on loss experience in determining if they will renew an account. A pattern of small claims will scare most underwriters with the inevitable platitude that "a lot of small claims will eventually lead to a big claim". Businesses naturally want to protect their experience by handling the small medical only claims.

- Many businesses that use this approach feel that they can handle the claim better and close them quicker than the insurer. The employee is dealing with his or her own employer, not an anonymous, unknown insurer.
- The informal deductible saves the workers compensation system the administrative cost of setting up the claim, paying the loss and collecting the amount from the insured.
- Many insureds are skeptical that claims under their deductible that they pay will not find their way into their experience modification, especially if the insurer sets up large reserves.
- Although the insured does not get a premium credit with the informal deductible, that is more than offset by the ease of handling the loss this way, the customer's time savings, the occasional recovery of amounts paid when one does go over \$500 and the sizeable potential savings on the experience modification. It's a real time consuming task when the insurance company bills the insured 6 months later for the insured to verify that the amounts billed are correct. The premium credit for a \$500 deductible is anywhere from 3.4 to 6.7% depending on the hazard group the firm is in. Higher hazard employers receive the smaller credit and they are probably the ones most interested in this approach.

Opponents Arguments:

The American Insurance Association (national stocks) and the NCCI are likely to oppose the bill. Here are the arguments that they made at the last WC Advisory Council meeting:

- Not reporting amounts paid under the \$500 limit undermines the rate base. (A lot of these claims aren't being reported now. We're just recognizing what is going on in the marketplace.)
- The informal deductible is not needed since Kansas already doesn't count 70% of medical only claims. (But if a reserve is put up, even the 30% that's chargeable will seriously hurt their experience modification.)
- The insurer will lose control of the claim (insureds are smart enough to recognize serious injuries from minor medical claims and while a scratch can always get infected, its highly unlikely.)
- It might impact the employee's right to up to \$500 of unauthorized medical. (Employees have the right to that period. No one is talking about taking it away but the truth is that it's generally used to get another rating opinion and that's not an issue where it's a medical only loss.)

We're not asking for a lot here. We don't want to take any benefits away from injured workers and we even want to pay claims for insurance companies—that 's pretty novel! We simply want to give employers, mostly smaller ones that are the backbone of the Kansas economy, another tool to use to manage their workers compensation cost.

We urge the committee to pass HB 2232 out favorably. Thank you and if we can answer questions or provide additional information, we will be happy to.

THIS IS NOT A CLAIM FILING REPORT FOR RECORD ONLY!

As provided under RsMO 287.957 "The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed five hundred dollars and the employer pays all of the total medical costs and there is no lost time from the employment and no claim filed." Accordingly, this is to advise you as the Workers' Compensation insurance company that there has been an injury, but that we as employer have elected to pay the medical bill, and do not wish to make a claim at this time.

As required by our Workers' Compensation Insurance Policy under Part Four – Your Duties if Injury Occurs, we are telling you of an injury that may be covered by this policy, and are attaching a "Report of Injury" for the record only. We do not wish to make a claim unless and until the total medical costs exceeds \$500 or if there is lost time from employment.

At this time the injury has resulted in no lost time from our employment, and the medical bills are under \$500 in total. We have elected to pay those bills ourselves.

The above form is intended to be used by the employer of the injured employee to notify its workers compensation insurance company that there has been an incident, but that they are not submitting a claim at this time. Since it is a condition of the insurance policy that prompt notification be given the insurance company of any incident, but it is no longer required by Missouri workers' compensation law to file a report of injury for medical only claims under \$500, **WE ARE RECOMMENDING THAT THE EMPLOYER COMPLETE THE "FIRST REPORT OF INJURY" FORM, ATTACH THE TOP PART OF THIS FORM TO IT, AND FORWARD THE TWO TO THE INSURANCE COMPANY.** This will protect your future rights should the injury become more serious and develop into a full claim.

By law, the insurance company can not use the notification as a claim for purposes of the experience rating, so remember which claims you have reported for the record only and make sure that they do not show up on loss runs or experience rating worksheets.

Missouri Revised Statutes

Chapter 287 Workers' Compensation Law Section 287.957

August 28, 2002

Experience rating plan, contents.

287.957. The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed five hundred dollars and the employer pays all of the total medical costs and there is no lost time from the employment and no claim is filed.

(L. 1993 S.B. 251 § 28)

Effective 1-1-94

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Missouri General Assembly □

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 24 04 06 A

Effective June 1, 1998

MISSOURI EMPLOYER PAID MEDICAL ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Missouri is shown in Item 3.A. of the Information Page.

As a Missouri employer, you have the right, as provided by Section 287.957 of the Revised Statutes of Missouri, to have medical-only claims of less than \$500 excluded from your experience modification calculation. This will only be allowed when you pay all of the employee's medical costs, there is no lost time from the employment, and no claim is filed. You still must report all injuries, regardless of the dollar amount, to the Division of Workers' Compensation and to us.

However, it should be noted that if, at any time, the medical expenses that are paid "out-of-pocket" due to a particular injury should ever exceed \$500 in the aggregate, and/or the employee misses work due to the injury, then this injury must be reported to us as a claim. We will pay the full amount of the claim, which includes any reimbursements due to you for past medical expenses incurred by you for this particular claim. As a result, the total amount of losses incurred by us due to this claim will be included in your experience modification calculation.

If you elect to pay the medical costs, the Notice and Acknowledgment of Right to Workers Compensation Benefits (Form WC-1A) must be completed. The form must be signed by the injured employee. The employee must return a copy of the signed form, and you are required to send the original to us. You must also send a copy of the signed form to the Division of Workers Compensation. The form can be obtained from the Division of Workers Compensation (573-751-4231).

NOTE: This endorsement must be used to notify employers of their right to pay medical only claims of less than \$500 without these claims being included in their experience modification factor.

LEGISLATIVE TESTIMONY



The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

HB 2232

House Insurance
Date: 2/20/03
Attachment # 2

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Committee on Insurance
By Terry Leatherman, Vice President – Legislative Affairs.

Madam Chairperson and members of the Committee:

My name is Terry Leatherman. I am the Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to explain why the Kansas Chamber supports HB 2232, which proposes an informal deductible program for workers compensation.

The core reason for KCCI's support of this measure is it will promote further employer involvement in the workers compensation operation of their business, and thus greater employer emphasis in cases where a worker is hurt and efforts to keep accidents from happening at the workplace. By choosing the informal deductible option, the employer assumes financial responsibility for "minor" claims, workers compensation cases involving medical care costing less than \$500. With "first dollar" responsibility for claims, an employer would be encouraged to provide prompt and effective medical treatment and to search for ways to keep injuries from happening at all.

Permit me to make two more points in support of the measure. First, KCCI appreciates the legislation making clear an employer's experience modification will not be affected by a business' involvement in informal deductible cases. Experience modification factors are an insurance mechanism to raise or lower workers compensation premiums, based on an employer's workers compensation claim experience in recent years. By assuming financial responsibility in these minor medical cases, KCCI considers it appropriate HB 2232 makes this clear. An employer should not have to pay these direct medical costs and then pay again through higher premium costs, because their experience modification reflects these minor medical claims.

Second, the informal deductible idea brings an element of self-insurance to the small Kansas employer. For workers compensation purposes, most large employers self-insure the process. Self-insurance permits an employer to quickly and clearly see the financial benefits, along with personnel benefits, of maintaining an aggressive safe work

House Insurance
Date: 2/20/03
Attachment # 2

environment. Most small employers purchase workers compensation insurance coverage. This insurance is vital for the small business, protecting them from potential massive workers compensation claims that could bankrupt their business. However, the insurance layer also insulates the business from the positive aspects of self-insurance, as well as the negative. An informal deductible injects that employer involvement component into the process for the small employer.

Thank you for the opportunity to explain why KCCI supports HB 2232. I would be happy to attempt to answer any questions.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.



Testimony on HB 2232
before the
House Committee on Insurance

House Insurance
Date: 2/20/03
Attachment # 3

by

Bill Curtis, Associate Executive Director
Kansas Association of School Boards

February 20, 2003

Madam Chair and members of the Committee, I appreciate the opportunity to testify today in opposition to HB 2232. My name is Bill Curtis and one of my duties is to serve as administrator of a workers compensation pool sponsored by my employer, the Kansas Association of School Boards. That pool currently has 209 members, comprised of 182 unified school districts, twelve community colleges, fourteen intermediate service units (mostly special education cooperatives) and one vocational technical college. The pool has been in existence since 1987, covers about 52,500 employees, and has a payroll slightly in excess of \$1,225,000,000.

Opposition to HB 2232 is based upon three factors: (1) This bill is not necessary as Kansas law permits employers to buy deductible policies. Those deductible amounts do not count against the experience modifier of the employer; (2) This bill would take control of determining the compensability of a claim from the insurer and give it to the insured; (3) Language which obligates the insurer to reimburse the insured at some point in the future, if certain conditions arise, make this bill an accounting nightmare. I assure you my accountant will require our pool to list every claim in this "informal deductible" category as a liability.

As an aside, we have strongly advised members of our pool not to buy deductible policies. Generally, the premium savings do not justify the assumption of the risk of a low number of claims. The exception, of course, is for the insured that never has a claim. In both instances why would an insured want to take advantage of this proposed bill? It has all the markings of sparring with a tar baby, for both the insured and the insurer.

Thank you for your time and attention. HB 2232 does not reduce the cost of workers compensation for either party. I would hope the Committee would not pass HB 2232.

House Insurance
Date: 2/20/03
Attachment # 3

BRAD SMOOT

ATTORNEY AT LAW

800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206
(913) 649-6836

Statement of Brad Smoot
Legislative Counsel
The National Council on Compensation Insurance
House Commerce & Labor Committee
Regarding 2003 House Bill 2232
February 19, 2003

House Insurance
Date: 2/20/03
Attachment # 4

Mr. Chairman and members:

On behalf of the National Council on Compensation Insurance (NCCI), I am pleased to have an opportunity to visit with you regarding HB 2232, a bill excluding from premium calculations employer paid medical only claims up to \$500 per injury. NCCI opposes the passage of this legislation as both a distorting influence on workers compensation statistical data and unnecessary.

Workers compensation insurance and group-funded pool coverage rates employers within the "insured" pool according to their actual loss experience. The goal is that each employer pays premiums or assessments commensurate with his or her risk of loss. Referred to in the workers compensation business as "experience mods," this rating technique uses multipliers that adjust an employer's cost of coverage based on his or her actual claims history.

HB 2232 would exempt the first \$500 in medical claims from experience modification calculations when the medical claims were paid by the employer and not the insurer or group pool. In short, HB 2232 is a way for employers to hide a portion of their actual claims history and keep it out of the calculation of their premiums or assessments. NCCI opposes this proposal as it compromises the effectiveness of the experience rating plan currently in place in Kansas. Losses, even medical costs paid by an employer, represent useful statistical information about the employer's propensity for more and larger claims. Actuaries prefer to have all losses reported because frequency of past claims is the best predictor of future claims.

It appears that the proponents of this legislation believe that this "device" will lower premiums for some employers. Unfortunately, while this is a lofty goal, Kansas already uses a rating plan that minimizes the impact of medical only claims. Therefore, the impact of this legislation on premiums or assessments will be minimal. In our judgment, the benefits of this proposal, if any, do not outweigh the adverse impact on the workers compensation rating system.

This proposal was presented to the Workers Compensation Advisory Council, a statutorily created body composed of labor and management representatives, which makes recommendations to the legislature on changes to our workers compensation laws. The Advisory Council did not recommend this proposal for legislative action.

House Insurance
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Attachment # 4

**STATEMENT OF THE ALLIANCE OF AMERICAN INSURERS
LARRIE ANN LOWER, KANSAS LEGISLATIVE COUNSEL
REGARDING KANSAS HB 2232
BEFORE HOUSE INSURANCE COMMITTEE
FEBRUARY 20, 2003**

The Alliance is a national property/casualty insurance trade association with more than 325 members. In Kansas, our members write more than 28% of the workers compensation premium written in the state of Kansas. As such, we are very much concerned with the above bill.

This bill would provide that the law in this area allow an "informal" workers compensation deductible to an employer for medical only expenses only up to \$500 per claim. The employer is to pay the medical cost and then report the claim to the insurer and director of the Workers Compensation Division. While this change to existing law, provides for a requirement upon the employer to still report such claims for medical expenses to its insurer and the Division of Workers Compensation, there is no penalty put on the employer for failure to do so.

First, we feel that the existing law in Kansas is quite good and that this informal process is unnecessary. Under existing law, insurers are allowed to have deductible options made available to their insured. The injured worker's medical bills are assured payment by the fact that the insurer is required to pay the medical bills and can then seek reimbursement from the employer insured for any deductibles owed to the insurer. The injured employee never has to worry about being held liable for the medical bill because of the inability or unwillingness of the employer to pay the bill.

House Bill 2232 would in essence remove this current protection that the injured worker has because the employer, not the insurer becomes the primary obligor on medical only bills under \$500. In our opinion, this should be avoided and thus this bill should be opposed. Insurers will find it very difficult to intervene in cases where for whatever reason the employer did not pay the medical bills and later the insurer is brought into the claim. This could particularly happen if and when a liability for lost time or medical expenses in excess of the threshold occurs. This could result in a prolonging of disability and pain for the injured worker. Also, it is unclear under the current proposal whether an employer could pick and choose which claims he would pay or whether he would be required to pay all claims under \$500. It is also unclear whether the employer could simply present any such claim to its health insurer to pay. If this were done, the injured worker is now put in the difficult position of looking to someone to pay and the various insurers being required to determine which insurer is the responsible payor.

Insurers are generally better trained and equipped to manage the care and benefits associated with an injury. The injured worker is more likely to receive appropriate treatment under the direction of the insurer. Employers may be more likely to disregard

the notification requirements if they believe they are handling the injury internally. Additional legal cost and a delay/lack of benefits can result if an employee's injury subsequently requires additional medical care or becomes a lost time injury.

We are also concerned that this informal deductible will compromise the effectiveness of the current Experience Rating Plan managed by the National Council on Compensation Insurance (NCCI) and is not in the best interest of the injured worker. The Experience Rating Plan currently in place in Kansas, which was adjusted in 1998, appropriately addresses the impact of medical only claims

Under the proposed revision to existing law, any medical only claim less than \$500 likely would not be captured statistically for use in the Experience Rating Plan or the ratemaking process. This lack of reporting would distort NCCI's estimation of weights and balances in the experience rating formula and somewhat distort manual rates/loss costs.

Losses, even if paid by the employer, still represent statistical information about a risk's propensity to have larger claims, and that information is important in determining the modification and the factors inherent in the modification formula. The vague requirement of reporting these claims in this amendment in the above bill does not provide us the necessary assurance that this information will indeed be reported, let alone to NCCI for the purpose of this rating plan.

Thank you for this opportunity to present our comments on this well intended, but misguided proposal.

**Testimony Before the House Committee on Insurance
on House Bill 2232
by Philip S. Harness, Acting Director of Workers Compensation
Kansas Department of Human Resources
February 20, 2003 – 3:30 p.m. – Room 527-S**

This bill contains two provisions that could be problematic for the Division of Workers Compensation (Division).

In new subsection (g), amounts paid by an employer under the \$500 medical expense deductible are subject to assessment by the Division, meaning that the employer would have to pay to the Division a percentage (currently about 2.7%) of their total amount of paid medical expenses to defray the Division's costs, as set out in K.S.A. 74-713. Presently, only insurance companies, self-insured employers, and group-funded workers compensation pools pay this annual assessment – a total of 939 entities. There are about 52,000 employers in the state who purchase workers compensation insurance and each will be offered the deductible option in this bill. This could result in thousands, or tens of thousands, of more entities subject to assessment by the Division, a many-fold increase over the current level.

The assessment process is basically the same, whether an entity is an insurance company reporting millions in paid losses, or a small business reporting a few hundred. Each must report their paid losses, and then the Division determines the total amount of their assessment and notifies them. When the assessment is paid, the payment has to be credited and an acknowledgment sent, and all these steps have to be recorded in the Division's database. In addition, there are multiple calls to be made and questions to be answered throughout the process. The amount of work would probably rise in proportion to the number of entities involved.

The assessment process is presently carried out by one full-time employee who spends 25% of her time on that task. For approximately every 4,000 insured employers becoming holders of deductible policies, the Division would need to add a full-time person to handle the increase in assessment volume. There is the potential, if this deductible provision is very popular, for the Division to need 13 additional staff just to handle the assessments. The added expense to the Division for extra staff would be passed back down to the employers paying the assessments.

Furthermore, the assessments statute, K.S.A. 74-713, waives the obligation to pay any assessment of less than \$10. Only small claims will be paid under the deductible provision and participating employers will likely have small total paid losses. The result could be a significant amount of assessments waived. Based on the 2002 assessment percentage of 2.68%, any employer that reported less than \$375 in paid losses would have had an assessment of less than \$10.

If House Bill 2232 is amended to require that insurance companies report medical expenses paid by employers as part of the insurance companies' paid losses, and the insurance companies pay the assessments on those losses, these potential problems would be avoided. A large number of employers would not be required to report paid losses and would pay either no, or a relatively

small, assessment. Employers and insurers would not have to bear the Division's increased administrative costs of processing the assessments.

House Bill 2232 also requires the employer to report to the Director claims paid under the \$500 medical deductible. Presently, K.S.A. 44-557 does not require employers to file reports on claims that involve only medical expenses where there is no lost time from work for the worker because the worker was not wholly or partially incapacitated for the remainder of the turn, day or shift upon which the injury was received. House Bill 2232 places a reporting requirement on employers that does not now exist and would increase to some extent the number of accident reports that have to be processed by the Division.

This bill's deductible provision might create conflicts between employers, workers and insurance carriers over authorization of medical providers. Typically, it is the employer's right to choose the medical provider to treat the injury, but this choice is deferred to the insurance carrier that is paying the medical benefits. If the employer selected a medical provider that its insurance carrier would not have authorized, the insurance carrier might want to designate a new authorized medical provider when the medical bills exceed the \$500 threshold and, therefore, become the insurance carrier's liability. The worker is then in the position of having to change doctors in mid-treatment, or contest the change in authorized provider. In such a contest, the employer might have to testify, contrary to its insurance carrier's interests, to the fact that the previous provider is authorized to provide treatment for the injury. Alternatively, if the employer did not specifically authorize a medical provider, and paid the first \$500 of medical bills from the worker's chosen doctor, the insurance carrier could contend that the first \$500 were unauthorized medical expenses and the worker's \$500 unauthorized medical allowance under K.S.A. 44-510h is exhausted.



Kansas Insurance Department

House Insurance
Date: 2/20/03
Attachment # 7

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
HB 2232
HOUSE INSURANCE COMMITTEE
February 20, 2003

Madam Chair and members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department with respect to HB 2232. The department has no formal position on HB 2232, but we do have some concerns with respect to the day-to-day application.

As we understand the bill, it would place the burden of processing these small claims on the "everyday business owner" and not on the professionals at the insurance company. The employers who choose to utilize this deductible would then have a great burden to track and report claims to the Division of Workers' Compensation without the expertise and resources of the carrier. This is a drastic change in the process that currently exists.

As the system exists now, when we need to assess the companies, we do so on an annual basis. Last year the Department assessed 409 Self-Insured Employers including Pools and 544 Insurance Carriers. This bill would dramatically increase the number of assessments and they would not necessarily occur annually. It would also increase the difficulty in the timely collection of assessments from employers unused to the process.

In addition, there is already a formal \$500 deductible available to the employers and carriers. The addition of an informal \$500 deductible would not appear to give any additional advantage to the employer. As we see it, this bill would create a burden on our staff, the staff at the Kansas Department of Human Resources and the staff within every business in the state that deals with workers' compensation issues.

Thank you for your time today and I am happy to stand for any questions.

Jarrod Forbes
Legislative Liaison

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Sandy Praeger COMMISSIONER OF INSURANCE

Testimony of Don Brown, Kansas Insurance Department
Hearing on HCR 5010
House Insurance Committee, State Capitol, Room 527-S
February 20, 2003

Madame Chairperson, members of the committee:

My name is Don Brown, I am the Special Projects Manager for the Kansas Insurance Department. I appear before you today to stress the Department's commitment to consumer assistance through printed publications, web site materials and face-to-face customer service. Commissioner Sandy Praeger believes having a well-educated consumer is vital to having a healthy and competitive market. Our consumer publications help us with this goal of education.

HCR 5010 accurately describes many of the important reasons why the Kansas Insurance Department publishes annual updates to our Long-term Care Insurance booklet and our Shopper's Guide Rate Comparison. The Commissioner is committed to providing accurate, timely and understandable information related to long-term care insurance and numerous other consumer topics.

As the Commissioner's Special Projects Manager, it is my responsibility to work with KID staff to gather, assemble and publish the pertinent information related to our many consumer insurance guides. Let me assure you that the Commissioner plans to continue providing the public with all of our current consumer publications. Department staff will also monitor insurance policy and trends to determine what additional consumer information or products might be helpful in the future.

One recent example of policy monitoring and development comes to mind--the use of *Credit-Based Insurance Scoring*. This is a major issue for the Commissioner, and she is asking the legislature for the ability to regulate that practice through SB 144. The Commissioner believes education of Kansas consumers and agents is necessary for this developing issue, and she intends to initiate a widespread education process.

HR 5010 specifically addresses long-term care insurance information. The committee should know that this is currently a top publication priority. Staff members are in the process contacting and questioning providers of long-term care insurance products. Insurers provide us with rate and benefit information for a number of policy types/options and KID will then publish the rate comparison so that consumers can make an "apples to apples" comparison between companies and policies.

HCR 5010 fits perfectly with the consumer assistance goals and objectives of Commissioner Praeger and the staff of the Kansas Insurance Department. We welcome continued input from this committee and we will be happy to share copies of our new consumer guides as we work through the publication update process this year.

Thank you for the opportunity to testify this afternoon, and I'd be happy to entertain questions.