

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 18, 2005 in Room 241-N of the Capitol.

All members were present except:

Broderick Henderson- excused
Kevin Yoder- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:

Terri Roberts, Kansas Coalition for Workplace Safety
Larry Magill, Kansas Association of Insurance Agents

Others attending:

See attached list.

The Chairman said the hearing on **HB 2447 - Workers compensation; reforming the residual insurance market structure and the benefit structure** would be continued.

Terri Roberts, Kansas Coalition for Workplace Safety, testified as a proponent to **HB 2447**. In this bill there are three changes to the system of workers compensation in Kansas that are proposed. (1) Replace the current residual market solicitation of vendors and administrators with a single carrier that assumes the risk for this segment of the market that the "voluntary carriers" will not cover. (2) Provide employers seeking workers compensation coverage competitive price (rate) information so they can make informed decisions about their coverage carrier, (hopefully a secondary outcome of this would be increased competition and lower rates.) (3) An internet site to be administered by the Kansas Insurance Commissioner's Office, similar to the one they now operate for the Seniors Medi-gap policies. Benefits to injured workers would be updated: the 75% factor now applied to the state wage formula for determining the maximum weekly payment for injured workers would be raised to 100%. The maximums for permanent total, (including temporary total, temporary partial; and permanent partial) would be raised from \$125,000 to \$250,000. The maximums for two other categories would be raised by \$25,000. The \$50,000 cap is removed from permanent partial disability (Attachment 1).

Larry Magill, Kansas Association of Insurance Agents (KAIA), testified as an opponent to **HB 2447**. The bill would replace an assigned risk plan that is functioning quite well and has delivered steadily reducing costs since it was first competitively bid in 1994, then again in 2000 and 2004 with a system that is hard to tell what it does.

KAIA was part of the unsuccessful bid this year to do a portion of the administration of the plan. We proposed using only one servicing carrier but the Kansas Workers Compensation Insurance Plan Board felt that having two carriers share the work was some protection if one of them could no longer perform. The point is that it can be done currently.

The Kansas Plan puts on free safety seminars annually for employers in the Plan. Those that attend are eligible for a 5% loss control discount that is unique to the Plan. The voluntary market does not offer a similar discount. NCCI closely monitors the service provided by the Plan. Kansas used to allow any carrier that was willing to be a servicing carrier but issues with the quality of service convinced the Insurance Department to change to the present limited servicing carrier setup. As a result the service has substantially improved. There does not appear to be a reinsurance mechanism to share the excess losses of the Plan with all the authorized workers compensation insurers. The NCCI currently administers that for the Kansas Plan.

New Section 4 that deals with buying insurance through the internet simply won't work. Worse, it would destroy the voluntary market.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 18, 2005 in Room 241-N of the Capitol.

Kansas employers have seen their workers compensation costs increase dramatically in the last 4 years. The assigned risk plan, always a good barometer of the market, has grown from a low of around \$16 million to over \$70 million over that time. The carriers have substantially raised their loss cost multipliers and restricted use of their lower cost ones. So while the base loss cost rates have not gone up significantly, the market has made up for it with huge increases in loss cost multipliers (Attachment 2).

Dick Cook, Kansas Insurance Department, was in the audience and stated the Commissioner had concerns about **HB 2447**. The department has a governing board that is appointed by the Commissioner which is working and would hate to see it disappear. The date of July 2005 for having the internet information bing in place by July is also concerning. The Department has just signed a 4 year contract with a 1 or 2 year possible extension. There would be legal action, that would be costly, to get out of that contract. Mr. Cook also stated their website displays the loss cost multipliers and the lowest cost can be found there. Possibly, the website could be made more user friendly. It is believed that it would be better to procure insurance through an agent.

The Chairman closed the hearing on **HB 2447**.

The following written testimony was submitted: Proponent, John M. Ostrowski (Attachment 3) and Opponent, Marlee Carpenter (Attachment 4)

The meeting adjourned at 9:50 and the next meeting will be February 21, 2005.

Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

Coalition Members:

- AARP Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance – KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

H.B. 2447 Residual Market for Workers Compensation; Internet Rate Quotes and Benefit Increases

February 17, 2004

Chairman Dahl and members of the House Commerce and Industry Committee, my name is Terri Roberts and I am the Chairperson of the Kansas Coalition for Workplace Safety. I want to thank the Committee for permitting the Coalition to introduce H.B. 2447 and to have a hearing on its merits.

This bill, as you know, will make three changes to the system of workers compensation in Kansas. Those three changes are:

1. Replace the current residual market solicitation of vendors and administrators with a single carrier that assumes the risk for this segment of the market that the "voluntary carriers" will not cover. The proposal offered is modeled after the Missouri statutes, which has had a very good performance record since its inception.
2. Provide employers seeking workers compensation coverage competitive price (rate) information so that they can make informed decisions about their coverage carrier, and we are hoping that a secondary outcome of this is to increase competition and lower rates. New Section 4 on page 5 addresses this internet site to be administered by the Kansas Insurance Commissioners Office, similar to the one they now operate for the Seniors Medi-gap policies.
3. Benefits to injured workers will be updated: The 75% factor now applied to the state wage formula for determining the maximum weekly payment for injured workers will be raised to 100%. The maximums for permanent total, (including temporary total, temporary partial; and permanent partial) will be raised from \$125,000 to \$250,000. The maximums for two other categories will be raised by \$25,000. The \$50,000 cap is removed from permanent partial disability.

The Coalition, in a sincere desire to bring something that would improve the Kansas system and be less contentious than the 2004 session debates, consulted an expert in the field of workers compensation, Mr. Jay Angoff from Missouri to provide alternatives for consideration. He has prepared a report about the residual market in Kansas, that we have asked him to share with the Committee. Mr. Angoff is a practicing attorney who has specialized in the field of insurance. He is a past Insurance Commissioner of the State of Missouri and consults throughout the country with colleagues in the field of insurance regulation and oversight.

Jay Angoff

Roger Brown & Associates 216 East McCarty Street Jefferson City, MO 65101

Terri Roberts J.D., R.N.

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Atch#1

Testimony
Before the House Commerce & Labor Committee
On House Bill 2447
By Larry Magill
Kansas Association of Insurance Agents
February 17, 2005

Thank you mister Chairman and members of the Committee for the opportunity to appear today in opposition to the changes in the workers compensation act contained in this law. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas including workers compensation. Our members are free to represent many different insurance companies.

Changes to Kansas' Assigned Risk Plan

I have to admit to some confusion over HB 2447, what it does and why. It replaces an assigned risk plan that is functioning quite well and has delivered steadily reducing costs since it was first competitively bid in 1994, then again in 2000 and 2004 with a system that is hard to tell what it does. It seems to be a single carrier based assigned risk plan similar to Nebraska or Missouri and it appears that once the carrier is selected, the plan is not opened to competitive bids again but is negotiated with the single carrier. We understand that Nebraska's loss cost multiplier is approximately 2.5 times the loss costs while ours is effectively a little more than 1.8 overall, and even lower for small employers with premium below \$2250. Why would we want to emulate that?

KAIA was actually a part of the unsuccessful bid this year to do a portion of the administration of the plan. We were going to provide the initial screening of new applicants, make sure the applications were properly filed out and that the risks were correctly classified and similar responsibilities. We actually proposed using only one servicing carrier but the Kansas Workers Compensation Insurance Plan Board felt that having two carriers share the work was some protection if one of them could no longer perform. But the point is that it can be done currently. Aon put our bid together and they went out to the market and looked for servicing insurers willing to do the work at the most competitive cost. NCCI did the same thing for their winning bid.

The Kansas Plan puts on free safety seminars annually for employers in the Plan. Those that attend are eligible for a 5% loss control discount that is unique to the Plan. The voluntary market does not offer a similar discount. NCCI closely monitors the service provided by the Plan. Kansas used to allow any carrier that was willing to be a servicing carrier but issues with the quality of service convinced the Insurance Department to change to the present limited servicing carrier setup. As a result, the service has substantially improved.

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Atch #2

There does not appear to be a reinsurance mechanism to share the excess losses of the Plan with all the authorized workers compensation insurers. The NCCI currently administers that for the Kansas Plan. Without it, the plan has to bear the volatility of its own experience and you would see rates fluctuate significantly. Today through the assigned risk assessment, the rates are relatively stable and no single servicing carrier is being asked to bear the underwriting exposure of the state's worst actors and highest hazard businesses.

Disintermediation

New section 4 is really a puzzle. Apparently the drafters thought that every licensed workers compensation insurer should be forced by the state to bid on every business that wished to submit information on the internet. This would immediately clear the state of any insurer willing to write workers compensation. They want the right to be able to set their own underwriting or risk selection guidelines, develop expertise in the specialties of their choosing based on their estimate of the profit potential and not be told all of this by the state. That's just the first problem.

It assumes that underwriting workers compensation is simply a matter of supplying some information on a form, and having a machine spit out (accurate mind you) quotes for every one of the hundreds of insurers authorized in Kansas and picking one presumably based on price alone. This doesn't allow for loss information, for copies of experience modification worksheets, for loss control inspections of the risk, for more detailed descriptions of the operations or a myriad of other bits of information that underwriters love to plague agents with.

This also doesn't encourage the insured to shop for the best service in loss control, in claims, or in creative underwriting and pricing options from the carriers. The agent that is left out of this equation provides all these shopping services. In a free market, the agent is the advocate for the business with the carriers presenting the right information, digging it out in some cases, and presenting it to the right carriers in the right way. A good agent checks experience modification worksheets for accuracy, negotiates loss control recommendations, assists with service issues, and searches the market for the best cost options.

The Internet buying process envisioned in Section 4 simply won't work. Worse, it would destroy Kansas' voluntary market.

Benefit Increases

Kansas employers have seen their workers compensation costs increase dramatically in the last 4 years. The assigned risk plan, always a good barometer of the market, has grown from a low of around \$16 million to over \$70 million over that time. The carriers have substantially raised their loss cost multipliers and restricted use of their lower cost ones. So while the base loss cost rates have not gone up significantly, the market has made up for it with huge increases in loss cost multipliers.

To pile on large benefit increases like those in HB 2447 at this time could stall out Kansas' economic recovery and cost Kansas jobs. If reasonable benefit increases were combined with meaningful reform in areas like work disability, pre-existing conditions, attorney involvement, the definition of date of accident for repetitive use syndrome and similar ideas, then anything is possible.

But absent meaningful reform, we couldn't support the benefit increases. Keep in mind that dollar amounts are easy to compare. What is much harder to compare are variables such as access to the system, but they can be very significant cost drivers.

We urge the committee to not report HB 2447 favorably. We would be happy to respond to questions.

TESTIMONY IN SUPPORT OF HB 2447

by
KANSAS AFL-CIO
JOHN M. OSTROWSKI
TOPEKA, KS
785-233-2323
February 17, 2005

Chairman Dahl and Members of this Committee:

The Kansas AFL-CIO supports HB 2447. The first portion of the bill will reduce premium costs for Kansas employers, particularly small employers. As the Committee is aware, small employers represent the backbone of the Kansas business.

This Committee is also aware of the substandard benefits paid to workers. For many years running, this Committee has taken no action to increase benefits. It is difficult to comprehend how the system can be considered "balanced" when benefits in many areas have been frozen for almost two decades. Obviously, any raise in benefits will have an impact on premiums. To ignore the existing unfairness of the system year after year after year simply because of a potential increase in premiums is to turn our backs on the workers and their families.

Each of the benefit increases proposed by HB 2447 has been repeatedly testified to, particularly the "Fletcher Bell amendment" which punishes the most severely injured. A new concept in 2447 is the idea of increasing the benefit caps on a floating basis, only tied to inflation. While this would still leave Kansas far behind other states in the region, it would at least prevent the inequities of frozen benefits for two decades as we are experiencing currently.

I will stand for questions.

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Atch #3

Legislative Testimony

HB 2447

February 17, 2005

Testimony before the Kansas "House Commerce Committee
By Marlee Carpenter, Vice President of Government Affairs

I am Marlee Carpenter, with the Kansas Chamber of Commerce. The Kansas Chamber and our over 10,000 small, medium and large business member oppose HB 2447.

Restructuring the residual market place would limit employer choice. Currently, there are two providers that service the residual market for workers compensation. Under the proposal in HB 2447, only one provider who wins the bid would be available to those in that market. In addition, this is not an issue that any of our members have brought to our attention at any time in recent memory. Those members we have talked to that use the residual market believe that it is working fine. If there are concerns with the residual market, we would encourage the legislature to look at ways to make the market in Kansas more competitive and ways to make the workers compensation system less expensive for Kansas employers.

Finally, the bill proposes a series of benefit increases within the workers compensation act. The Kansas Chamber's opposition is based on the following conclusions.

- HB 2447 would prompt a massive increase in the cost of workers compensation insurance, a cost paid exclusively by businesses in our state. I do not know how huge the impact would be, but it would be conservative to estimate the workers compensation insurance increase to be in the tens of millions of dollars.
- Kansas employers would be paying these higher costs in a workers compensation environment where:
 - Little legal relief exists when workers aggravate a medical condition due to a preexisting condition;
 - Kansas continues to utilize a contentious "work disability" compensation process; and,
 - No steps are being taken to reduce the litigiousness of our workers compensation law.

We encourage the committee to not pass this measure. Thank you for your time and I will be happy to answer any questions.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

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