

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 17, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairperson Brownlee announced to the Committee they would work **SB 461--Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation** and **SB 515--Workers compensation pool; group-funded; surplus funds; adequate surplus funds**.

Chairperson Brownlee stated **SB 515---Workers compensation pool; group-funded; surplus funds; adequate surplus funds**, would be the first bill to be worked and called on Scott Heidner representing Self-Insurers Association, to give his opinion on the amendments offered by Mr. McGill representing the Kansas Association of Insurance Agents. Mr. Heidner called the Committee's attention to the proposed amendment Aggregate Excess Insurance / Actuarial Review (Attachment 1) and stated they did not have a problem with this amendment but were strongly opposed to the second amendment, Level of Insurance Coverage (Attachment 2). There was discussion with the Committee on Mr. Heidner's concerns on the second Amendment offered by Mr. McGill. Chairperson Brownlee called on Larry Karns representing Kansas Insurers Association for his opinion on both amendments offered by Mr. McGill. The Committee discussed the language in the second amendment in detail.

**Senator Schodorf made a motion to approve the Aggregate Excess Insurance / Actuarial Review amendment. Senator Wagle seconded. Motion carried.**

**Senator Schordorf moved to pass the bill out favorably as amended. Senator Kelly seconded. Motion carried.**

Chairperson Brownlee called the attention of the Committee to **SB 461--Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation**. Chairperson Brownlee called on Senator Barone to explain the information he passed out to Committee members. (Attachment 3) Senator Barone gave a brief review of the information which was regarding agribusiness and workers comp.

Chairperson Brownlee introduced Helen Pedigo with the Revisor's office to explain the balloon (Attachment 4) offered on **SB 461** which contained language changes Senator Emler had worked on. Ms. Pedigo explained the language changes made with the balloon. The Committee discussed the changes presented in the balloon and the language. Chairperson Brownlee stated the goal was to make sure the worker was compensated for an injury that occurs on the job. All the Committee members joined into the discussion. Senator Wysong stated he would like to hear comments on the balloon from both sides. Chairperson Brownlee called on Mr. Karns representing the Kansas Self-Insurers Association, proponents of the bill, to give his views on the balloon. Mr. Karns stated he had not seen the balloon and was given a copy. He stated the balloon on pre-existing clarifies an issue but could not agree to the other balloon regarding the permanent partial general disability rating.

Chairperson Brownlee called on Beth Foerster representing the AFL-CIO, an opponent of the bill, to give her opinion on the balloons. Ms. Foerster stated they did not agree with the changes proposed with the balloons offered on the bill, stating the changes were not middle ground. She stated the existing law required AMA guides should be used. This language states the physician can prove without the AMA guides and the

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 17, 2006 in Room 123-S of the Capitol.

employees must be approved by the AMA guides. The discussion continued with the Committee on the language of the balloon and it's intent.

Chairperson Brownlee recognized Senator Jean Schodorf. Senator Schodorf made a motion to ask for this bill to be blessed.. Senator Wysong seconded..

A discussion took place after the motion with all members of the Committee. Senator Schodorf stated they should ask for the bill to be blessed to give time for all parties concerned to work out the differences and make a better bill. She stated she felt the amendment was not ready to go. There was more discussion. Mr. Karns stated they were ok with the balloon except for the time to use for a rating. He stated 15 years was to long to go back but would agree to 5 or 10 years instead of at the time of the injury as stated in the new amendment.

Senator Reitz joined the discussion stating he would like for both parties to get together and work out the differences in this bill. He stated he agrees with Senator Schodorf and would like for this bill to be blessed in order to give more time to work things out. Chairperson Brownlee joined the discussion and stated she would like to suggest giving the parties until Tuesday morning to come to an agreement. She stated there were problems with the parties involved not being forthright and there was no room in this debate for information that was not factual. She also stated her interest was not in hurting any workers. Chairperson Brownlee recognized Senator Wagle. Senator Wagle stated workers compensation was not intended to pay for aging but for injuries to the employees which occurred on the job. She stated she had received information that was not factual from parties involved with this bill. Chairperson Brownlee recognized Senator Kelly. Senator Kelly stated she has concerns with this bill and feels it needs more work. Senator Jordan joined the discussion and stated he is opposed to the motion to bless this bill. He feels that giving both parties until Tuesday to resolve some of the issues is more than adequate. Chairperson Brownlee stated that she also felt giving all parties concerned until Tuesday was adequate time to resolve the issues with this bill. Senator Schodorf withdrew her motion to bless the bill.

Chairperson Brownlee adjourned the meeting with the next schedule meeting being on Tuesday, February 21, 2006 at 8:30 a.m. in room 123S.

# Senate Commerce Committee

## Guest List

Date: Feb 17, 2006

Brenda Thimig	Kool-We
Pat Lehman	KS Fire Service Alliance
Mark Boranyak	Capitol Strategies
Jim Whitely	KS AFK-CTD
Mary Faulner	Bill # 518 SHRM
Patrick Salmans	Bill # 518 SHRM
David Namura	SB 518 SHRM
David Whitted	SB 518 SHRM
Phillip Hayes	SB 518 SHRM
Robert J. WASHATKA	SB 518 SHRM
Sarah Meinershagen	SB 518 SHRM
Ruby McDAVIS	SB 518 SHRM
Carol Manspecker	<del>Teamster</del> 696
Rick GREENO	LABORERS 1290
Jany Halm	Parish # 96
Beth Foerster	AP-CIO
Mike Brink	fronworkers 10
Ken Seebert	Ken Law Firm
Jeff Cooper	KTLA
Burt Huns	Thomas Outdoor
Boaz Alla	Worker
Ken Dwy	KSFFA
Scott Heidner	KSIA
Jany Kaur	P+C ASSN
Diane Siga	KGFA



**SENATE BILL No. 515**

By Committee on Commerce

2-7

PROPOSED AMENDMENT  
Kansas Association of Insurance Agents  
Aggregate Excess Insurance / Actuarial Review  
February 17, 2006

Senate Commerce Committee  
February 17, 2006  
Attachment 1-1

9 AN ACT concerning workers compensation; relating to group-funded  
10 workers compensation pool; surplus funds; adequate surplus funds;  
11 amending K.S.A. 44-582 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 44-582 is hereby amended to read as follows: 44-  
15 582. Application for a certificate of authority to operate a group-funded  
16 workers compensation pool shall be made to the commissioner of insur-  
17 ance not less than 60 days prior to the proposed inception date of the  
18 pool. The application shall include the following:

19 (a) A copy of the bylaws of the proposed pool, a copy of the articles  
20 of incorporation, if any, and a copy of all agreements and rules of the  
21 proposed pool. If any of the bylaws, articles of incorporation, agreements  
22 or rules are changed, the pool shall notify the commissioner within 30  
23 days after such change.

24 (b) A copy of the trust agreement securing the payment of workers  
25 compensation benefits. If the trust agreement is changed, the pool shall  
26 notify the commissioner within 30 days after such change.

27 (c) Designation of the initial board of trustees and administrator.  
28 When there is a change in the membership of the board of trustees or  
29 change of administrator, the pool shall notify the commissioner within 30  
30 days after such change.

31 (d) The address where the books and records of the pool will be  
32 maintained at all times. If this address is changed, the pool shall notify  
33 the commissioner within 30 days after such change.

34 (e) An individual application for each initial member of the pool.  
35 Each individual application shall include a current certified financial  
36 statement on a form approved by the commissioner.

37 (f) A current certified financial statement on a form approved by the  
38 commissioner showing that (1) the combined net worth of all members  
39 applying for coverage on the inception date of the pool is in an amount  
40 not less than \$1,000,000 in the case of a pool meeting the requirements  
41 of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) the  
42 combined net worth of all members applying for coverage on the incep-  
43 tion date of the pool is in an amount of \$1,250,000 in the case of a pool

(a)

(1)

Renumber remaining subsections as paragraphs.

1 meeting the requirements of subsection (b) of K.S.A. 44-581 and amend-  
2 ments thereto.

3 (g) A current certified financial statement on a form approved by the  
4 commissioner showing the financial ability of the pool to meet its obli-  
5 gations under the workers compensation act.

6 (h) Evidence that the annual Kansas gross premium of the pool will  
7 be (1) not less than \$250,000 in the case of a pool meeting the require-  
8 ments of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2)  
9 not less than \$500,000 in the case of a pool meeting the requirements of  
10 subsection (b) of K.S.A. 44-581 and amendments thereto. The annual  
11 Kansas gross premium shall be based upon the authorized rates as filed  
12 by the national council of compensation insurance.

13 (i) An indemnity agreement jointly and severally binding the group  
14 and each member thereof to comply with the provisions of the workmen's  
15 compensation act. The indemnity agreement shall be in a form acceptable  
16 to the commissioner.

17 (j) (1) Proof of payment by each member of a pool, which meets the  
18 requirements of subsection (a) of K.S.A. 44-581 and amendments thereto,  
19 of not less than 25% of the estimated annual premium into a designated  
20 depository; and

21 (2) proof of payment by each member of a pool, which meets the  
22 requirements of subsection (b) of K.S.A. 44-581 and amendments  
23 thereto, of not less than 35% of the estimated annual premium into a  
24 designated depository.

25 (k) A copy of the procedures adopted by the pool to provide services  
26 with respect to underwriting matters and safety engineering.

27 (l) A copy of the procedures adopted by the pool to provide claims  
28 adjusting and reporting of loss data.

29 (m) A confirmation of specific and aggregate excess insurance, or  
30 *adequate surplus funds as approved by the commissioner*, except that, in  
31 the case of a pool authorized under subsection (b) of K.S.A. 44-581 and  
32 amendments thereto, such pool shall maintain an aggregate excess policy  
33 with a limit of not less than \$2,000,000 which attaches at no more than  
34 125% of standard premium.

35 (n) Any other relevant factors the commissioner may deem necessary.

36 ~~(o) For purposes of this section:~~

37 ~~(1) "Surplus funds" means retained earnings of the pool after reserves~~  
38 ~~have been established for all known and incurred, but not reported, losses~~  
39 ~~of the pool after all other liabilities of the pool, including unearned pre-~~  
40 ~~mium reserves, have been deducted from total assets; and~~

41 ~~(2) "adequate surplus funds" means the amount necessary for the pool~~  
42 ~~to fund its self-insured obligations.~~

43 Sec. 2. K.S.A. 44-582 is hereby repealed.

in lieu of the aggregate excess insurance required herein,

(b) The commissioner may require an independent actuarial review of claims reserves as part of the commissioner's review of surplus funds.  
(c) For purposes of this section:  
(1) "Surplus funds" means retained earnings of the pool after reserves have been established for all known and incurred, but not reported, losses of the pool after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets.  
(2) "Adequate surplus funds" means the amount necessary for the pool to fund its self-insured obligations.

2-1

**SENATE BILL No. 515**

By Committee on Commerce

2-7

9 AN ACT concerning workers compensation; relating to group-funded  
10 workers compensation pool; surplus funds; adequate surplus funds;  
11 amending K.S.A. 44-582 and repealing the existing section.  
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17 ance not less than 60 days prior to the proposed inception date of the  
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19 (a) A copy of the bylaws of the proposed pool, a copy of the articles  
20 of incorporation, if any, and a copy of all agreements and rules of the  
21 proposed pool. If any of the bylaws, articles of incorporation, agreements  
22 or rules are changed, the pool shall notify the commissioner within 30  
23 days after such change.

(1)

24 (b) A copy of the trust agreement securing the payment of workers  
25 compensation benefits. If the trust agreement is changed, the pool shall  
26 notify the commissioner within 30 days after such change.

27 (c) Designation of the initial board of trustees and administrator.  
28 When there is a change in the membership of the board of trustees or  
29 change of administrator, the pool shall notify the commissioner within 30  
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37 (f) A current certified financial statement on a form approved by the  
38 commissioner showing that (1) the combined net worth of all members  
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40 not less than \$1,000,000 in the case of a pool meeting the requirements  
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42 combined net worth of all members applying for coverage on the incep-  
43 tion date of the pool is in an amount of \$1,250,000 in the case of a pool

Renumber remaining subsections as paragraphs.

PROPOSED AMENDMENT  
Kansas Association of Insurance Agents  
Level of Insurance Coverage  
February 17, 2006

Senate Commerce Committee

February 17, 2006

Attachment 2-1

2-2

1 meeting the requirements of subsection (b) of K.S.A. 44-581 and amend-  
2 ments thereto.

3 (g) A current certified financial statement on a form approved by the  
4 commissioner showing the financial ability of the pool to meet its obli-  
5 gations under the workers compensation act.

6 (h) Evidence that the annual Kansas gross premium of the pool will  
7 be (1) not less than \$250,000 in the case of a pool meeting the require-  
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10 subsection (b) of K.S.A. 44-581 and amendments thereto. The annual  
11 Kansas gross premium shall be based upon the authorized rates as filed  
12 by the national council of compensation insurance.

13 (i) An indemnity agreement jointly and severally binding the group  
14 and each member thereof to comply with the provisions of the workmen's  
15 compensation act. The indemnity agreement shall be in a form acceptable  
16 to the commissioner.

17 (j) (1) Proof of payment by each member of a pool, which meets the  
18 requirements of subsection (a) of K.S.A. 44-581 and amendments thereto,  
19 of not less than 25% of the estimated annual premium into a designated  
20 depository; and

21 (2) proof of payment by each member of a pool, which meets the  
22 requirements of subsection (b) of K.S.A. 44-581 and amendments  
23 thereto, of not less than 35% of the estimated annual premium into a  
24 designated depository.

25 (k) A copy of the procedures adopted by the pool to provide services  
26 with respect to underwriting matters and safety engineering.

27 (l) A copy of the procedures adopted by the pool to provide claims  
28 adjusting and reporting of loss data.

29 (m) A confirmation of specific and aggregate excess insurance, *or*  
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31 the case of a pool authorized under subsection (b) of K.S.A. 44-581 and  
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33 with a limit of not less than \$2,000,000 which attaches at no more than  
34 125% of standard premium.

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36 ~~(o) For purposes of this section:~~

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38 ~~have been established for all known and incurred, but not reported, losses~~  
39 ~~of the pool after all other liabilities of the pool, including unearned pre-~~  
40 ~~mium reserves, have been deducted from total assets; and~~

41 ~~(2) "adequate surplus funds" means the amount necessary for the pool~~  
42 ~~to fund its self-insured obligations.~~

43 Sec. 2. K.S.A. 44-582 is hereby repealed.

(b) The commissioner shall review the specific and aggregate excess insurance carried by the pool, the proposals for specific and aggregate excess insurance received by the pool from insurance companies willing to provide specific and aggregate excess and approve or disapprove the pool's specific and aggregate excess insurance.  
(c) For purposes of this section:  
(1) "Surplus funds" means retained earnings of the pool after reserves have been established for all known and incurred, but not reported, losses of the pool after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets.  
(2) "Adequate surplus funds" means the amount necessary for the pool to fund its self-insured obligations.

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State of Kansas  
Senate Chamber

JIM BARONE  
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COMMITTEE ASSIGNMENTS  
RANKING MINORITY: WAYS & MEANS  
MEMBER: COMMERCE  
ECONOMIC DEVELOPMENT  
FINANCIAL INSTITUTIONS AND  
INSURANCE  
BUDGET  
KANSAS SECURITY  
STATE BUILDING CONSTRUCTION  
MEMBER: NCSL EDUCATION, LABOR &  
WORKFORCE DEVELOPMENT

Democratic Caucus Chairman

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INFORMATION REQUESTED BY  
SENATE COMMERCE COMMITTEE

CURRENT STATISTICAL INFORMATION ON WORKERS  
COMPENSATION

- A significant number of workers compensation cases are not litigated as evidenced by Kansas Division of Workers Compensation statistics showing 64,761 accident reports were filed in fiscal year 05. Of those only 6,132 were assigned to ALJ's, which is 9.4% of that number. A smaller number of these cases, approximately 425-475, are litigated per year to an Award by the Administrative Law Judge. This means less than 1% are litigated to an Award by a judge. (Division of Workers Compensation statistics, Attachment A). Senate bill 461 will greatly increase the number of litigated cases over the issue of preexisting conditions.
- For Agribusiness, the NCCI rate sheets show that for the NCCI class code grain elevator 8304, the rate decreased 2.3 % from 2005 to 2006. This is one of the most dangerous industries, just look at the DeBruce Grain elevator explosion.
- In 2005, Agribusiness workers suffered a substantial number of lost time injuries as reported to the Division of Workers Compensation. (Attachment B)

Senate Commerce Committee

February 17, 2006

Attachment 3-1

- **Agribusiness can obtain workers compensation insurance from 6 insurance companies:**

**Nationwide Agribusiness  
Farmers Insurance  
Commerce and Industry (AIG)  
Farmland Mutual Insurance  
Western Agricultural Insurance Company  
Assigned Risk Pool**

- **Kansas ranked 6<sup>th</sup> in profitability among all the states in workers compensation insurance in 2003 and 3<sup>rd</sup> in 2002. (Attachment C)**
- **In the first six months of 2004, the property/casualty insurance industry made more money than in any other six month period in history (Attachment C, p.2)**
- **Workers compensation rates in Kansas are far lower than both the countrywide regional averages. Kansas workers compensation loss costs are 1.17 compared to a countrywide average of 1.6, and an average in the five state KS-OK-MO-NE-CO region of 1.70. (NCCI statistics, Attachment D)**
- **Medical costs represent approximately 60% of indemnity payments in Kansas according to NCCI information. (Attachment F) The NCCI study determined that workers compensation paid more for prescription drugs than under group health. (Attachment E)**

# ATTACHMENT A

The state of Kansas has a compelling interest in the safety, health and productivity of its workforce. An important aspect of that commitment is the division's daily monitoring of the workplace environment and periodic analysis of the incidence and severity of occupational injuries and illnesses within the state. Every year the division publishes its decision support data for the Legislature and interested parties in the form of the *Annual Statistical Report*. The first part of this section provides information on many aspects of occupational injuries and illnesses in the state of Kansas for FY 2005, including the causes, nature and source, and industries in which they occur and the body member implicated in the reported injuries and illnesses. Discussed next is the widely reported private industry injury incidence rates published by the federal Bureau of Labor Statistics (BLS) of the United States Department of Labor and Kansas Department of Labor (recently, responsibility for reporting this information was transferred to the Labor Market Information Systems division). Calculated incidence rates for "non-federal" employment in the state of Kansas for the last 11 fiscal years are compared and contrasted with those of BLS.

### Occupational Injuries and Illnesses in Kansas

Kansas classifies nonfatal occupational injuries, according to severity, as "no time lost," "time lost," and "fatal." "Time lost" injuries are those that "incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn." "No time lost" injuries are defined as those in which the employee did not miss work beyond the remainder of the day, shift or turn. Injuries resulting in death are codes as "fatal." In other words, the most severe types of occupational injury or illness are classified as fatal while the least severe are reported as "no time lost" cases. Table 2-1 contains the aggregate totals (by severity) of Kansas' occupational injuries and illnesses for the last 11 fiscal years.

- There were 64,761 occupational injuries and illnesses reported to the Division of Workers Compensation during FY 2005. The FY 2005 total reflect all accidents occurring during the year, including fatalities, and represents an increase of 387 reported injuries and illnesses, or a 0.6 percent increase, from the previous year's total.
- From another perspective, 177 employees per day were either injured or killed on the job in Kansas last fiscal year.
- Workplace fatalities, the most severe type of injury, increased 29.5 percent from the previous year (to 57, from 44 reported deaths), and were the same as the 11-year average of reported cases.
- The 36,335 "no time lost" injuries and illnesses reported constitute 56 percent of all reported injuries and illnesses. "No time lost" injuries decreased by almost 25 percent from the previous year's totals.
- "Time lost" injuries and illnesses totaled 28,369, a 77 percent increase from the previous year's totals. Part of this increase can be explained by the fact that the division has stop utilizing the "hospitalization" coding for statistical purposes. Instead, due to the lack of data, standards and use by other states, the division now collapses all reports that signal a hospitalization as a "lost time" case to be consistent with the U.S. Department of Labor's practices.

## LEGAL SECTION

## Judicial

Table 1-3 Continued  
 FY 2005 Administrative Law Judges' Case  
 Report

MONTH	Motion Hearing	Awards	Agreed Awards	Post-Stlmt Conf.Held	Inactive
JULY	14	43	28	8	272
AUGUST	12	35	27	11	339
SEPTEMBER	18	42	36	8	362
OCTOBER	24	40	26	4	309
NOVEMBER	16	32	33	10	327
DECEMBER	20	38	33	11	329
JANUARY	18	47	25	4	318
FEBRUARY	19	41	25	9	329
MARCH	17	43	40	3	342
APRIL	16	35	40	12	343
MAY	20	35	49	10	282
JUNE	21	26	44	8	361
TOTALS	215	457	406	98	3,913

Source: Kansas Division of Workers Compensation

## Mediation

The Mediation unit provides parties a means of resolving disputes in an informal and non-adversarial atmosphere. The objectives of the unit are threefold: educate the public on the benefits of using mediation as a means of resolving disputes, increase utilization of the mediation process and provide cost savings to the workers compensation system by reducing the number of issues being litigated. It assists, through a variety of mechanisms such as a mediation conference, both claimants and respondents in a timely manner – within seven days or as requested by the parties. In addition, the Mediation unit provides educational training to insurance carriers on the benefits of utilizing the mediation process as a means of resolving disputes associated with workers compensation claims.

## ATTACHMENT B

**Table 2-19 continued**  
**SIC Code Reported in Occupational Injuries & Illnesses by Severity**  
**FY2005**

SIC	No Time Lost	Time Lost	Fatal	Total Inj/Ill
Electrical Equipment for Internal Combustion Engin	13	13		26
Electrical Industrial Apparatus, NEC	4	12		16
Electrical Machinery, Equipment, and Supplies, NEC	1			1
Electrical Work	160	148		308
Electronic Coils, Transformers, and Other Inductor	1			1
Electronic Components, NEC	1	7		8
Electronic Parts and Equipment, NEC	24	13		37
Electroplating, Plating, Polishing, Anodizing, and	14	19		33
Elementary and Secondary Schools	77	301		378
Elevators and Moving Stairways	1			1
Employment Agencies	77	140		217
Engineering Services	24	13		37
Envelopes	16	14		30
Equipment Rental and Leasing, NEC	34	51		85
Excavation Work	30	40	1	71
General Medical and Surgical Hospitals	1,348	1,187		2,535
Executive Offices	1	1		2
Explosives		9		9
Fabricated Metal Products, NEC	44	5		49
Fabricated Pipe and Pipe Fittings	2	3		5
Fabricated Plate Work (Boiler Shops)	22	52		74
Fabricated Rubber Products, NEC		8		8
Fabricated Structural Metal	9	17		26
Fabricated Textile Products, NEC		1		1
Facilities Support Management Services	30	5		35
Family Clothing Stores	95	7		102
Farm and Garden Machinery and Equipment	146	180		326
Farm Labor Contractors and Crew Leaders	1	2		3
Farm Machinery and Equipment	235	117		352
Farm Product Warehousing and Storage	3	10		13
Farm Supplies	29	25		54
Farm-Product Raw Materials, NEC		2		2
Federal Reserve Banks	4			4
Fertilizers, Mixing Only	2	2		4
Field Crops, Except Cash Grains, NEC		2		2
Fire Protection	8	45		53
Fire, Marine, and Casualty Insurance	14	19		33
Fish and Seafoods	3		1	4

**Table 2-19 continued**  
**SIC Code Reported in Occupational Injuries & Illnesses by Severity**  
**FY2005**

SIC	No Time Lost	Time Lost	Fatal	Total Inj/Ill
Flat Glass	69	5		74
Floor Covering Stores	32	15		47
Floor Laying and Other Floor Work, NEC	11	15		26
Florists	8	6		14
Flour and Other Grain Mill Products	39	68		107
Flowers, Nursery Stock, and Florists' Supplies		5		5
Fluid Milk	1	9		10
Fluid Power Cylinders and Actuators		2		2
Fluid Power Pumps and Motors	48	2		50
Food Crops Grown Under Cover		5		5
Food Preparations, NEC	6	34		40
Food Products Machinery		18		18
Footwear	39	6		45
Forestry Services	3			3
Fresh Fruits and Vegetables		36		36
Frozen Specialties, NEC	60	2		62
Fuel Oil Dealers		1		1
Functions Related to Deposit Banking, NEC	6			6
Funeral Services and Crematories	8	2		10
Furniture	5	74		79
Furniture and Fixtures, NEC		6		6
Furniture Stores	37	67		104
Garment Pressing, and Agents for Laundries and Dry		4		4
Gas and Other Services Combined	3			3
Gaskets, Packing, and Sealing Devices	3	1		4
Gasoline Service Stations	46	40		86
General Automotive Repair Shops	44	48		92
General Contractors-Industrial Buildings and Wareh	33	40		73
General Contractors-Nonresidential Buildings, Othe	181	63		244
General Contractors-Residential Buildings, Other T	21	15		36
General Contractors-Single-Family Houses	265	391	3	659
General Farms, Primarily Crop	13	6		19
General Farms, Primarily Livestock and Animal Spec		17		17
General Government, NEC	4	2		6
General Industrial Machinery and Equipment, NEC	7	2		9
Eating and Drinking Places	1,272	815		2,087
General Warehousing and Storage	6	32		38



**ATTACHMENT C**

Report  
on the  
Profitability and Performance  
of the  
Kansas Workers Compensation Insurance System  
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Introduction

This report first describes the current state of the property/casualty insurance industry countrywide. Second, it explains the current state of the countrywide workers compensation industry. Third, it analyzes the Kansas workers compensation market in general. Fourth, it discusses the Kansas residual workers compensation market--the means by which Kansas employers who insurers refuse to voluntarily insure obtain coverage. Finally, it explains how the Kansas residual market might be reformed so as to reduce Kansas workers compensation insurance system costs across the board--thus enabling workers compensation benefits to be increased while maintaining today's low workers compensation rates.

#### I. The profitability of the property/casualty insurance industry nationally

During the first six months of 2004, the property/casualty insurance industry made more money than in any other six-month period in history: it had a record profit of \$23.5 billion, which is more than the industry has made in all but four 12-month periods. The industry also had an all-time-high surplus--surplus is the amount of money insurers hold in addition to the amount they have set aside to pay future claims--of \$370 billion. This record \$370 billion in surplus is the result of a record increase of \$85 billion, or 30%, in only 18 months.

The reinsurance industry--reinsurance is insurance that insurance companies buy to cover claims above a certain level--has also been enjoying record profits. In 2003 (data has not yet been released for 2004) the ratio of projected losses to premiums collected in the reinsurance industry was the lowest it has been since before 1991. In addition, reinsurance capacity has increased: for example, the capacity of Lloyds of London,

perhaps the best-known reinsurer in the world, has risen by 50% in only three years, from \$10 billion to \$15 billion pounds--almost \$30 billion at today's exchange rate.

The record profitability and record surplus of both the insurance industry and the reinsurance industry is obviously good news for the insurers and reinsurers who receive those profits and hold that surplus. But it is also good news for buyers of insurance throughout the United States: record profits in the insurance business means that insurance rates will soon be falling, and that new companies will be entering the industry seeking to obtain some of those record profits for themselves.

## II. The profitability of the workers compensation insurance industry nationally

Workers compensation insurance is a type of property/casualty insurance. Like the property/casualty industry as a whole, workers compensation was extremely profitable in 2003. The countrywide loss ratio for workers compensation for 2003 was the lowest it has been since 1997; and even the residual market--the market created by the industry as a whole for employers who insurers refuse to voluntarily insure, which almost always produces a loss--came close to breaking even, with its best performance since 1997.

The most significant reason workers compensation insurance profitability has been increasing appears to be that injured workers are filing fewer claims: claims filed have been declining substantially for all types of cases, against all types of employers, and in all regions of the country. For example, between 1997 and 2002, the following decreases in workers compensation claims occurred:

### I. Decreases in Workers Compensation Claims by Type of Injury

<u>Type of Claim</u>	<u>Decrease</u>
Fatality	21%

Permanent Total	14%
Permanent Partial	19%
Temporary Total	30%
Medical Only	25%

## II. Decrease in Workers Compensation Lost Time Claims by Size of Claim

<u>Size of Claim</u>	<u>Decrease</u>
> \$50,000	4%
\$10,000-\$50,000	11%
\$2,000-\$10,000	26%
< \$2,000	51%

## III. Decrease in Workers Compensation Claims by Size of Employer

<u>Size of Employer</u> <u>(by payroll)</u>	<u>Decrease</u>
< \$250,000	21%
\$250,000-\$1 million	30%
\$1 million-\$5 million	27%
\$5 million-\$20 million	34%
\$20 million-\$100 million	31%
> \$100 million	31%

As a result of all these decreases, workers compensation costs nationally now account for just 1.8% of payroll.

### III. The profitability of the workers compensation insurance industry in Kansas

As profitable as the workers compensation insurance industry has been nationally in recent years, in Kansas it has been even more profitable. For example, the loss ratio for Kansas workers compensation insurance has steadily declined since 1995, both for indemnity payments and medical payments. Specifically, the medical loss ratio--the ratio of projected claims payments to premiums collected--dropped from .71 to .54, or by 24%, while the indemnity loss ratio dropped from .63 to .42, or by 33%. A loss ratio of .54 means that 46 cents of every premium dollar is available for profit and expenses; a loss ratio of .42 means that 58 cents of each premium dollar is available for profit and expenses. With loss ratios that low, even the most inefficient companies-companies with higher-than-average expenses-enjoy substantial profits.

Not surprisingly in view of these extraordinarily low loss ratios, Kansas is one of the most profitable states in the nation for workers compensation insurance. In 2003, for example, Kansas ranked 6<sup>th</sup> in profitability among all the state, and in 2002 it ranked 3<sup>rd</sup>. Perhaps most impressive, Kansas is one of only 6 states in the nation in which in both 2002 and 2003 workers compensation insurers booked a profit even before adding in their investment income. Like most insurers, workers compensation insurers expect to pay out more in claims and expenses than they take in in premiums because they make such a substantial profit from the investment income that accrues on the premiums they collect. Kansas workers compensation insurers, in contrast, had a net gain due to their premiums exceeding their projected claims in addition to their investment income.

Happily for Kansas employers, however, high profits for workers compensation insurers have not translated into high workers compensation insurance rates for employers. To the contrary, Kansas workers compensation rates have remained essentially flat since 2000, except for a 17% increase in 2001 in the residual market. In line with its recommendations for recent years, the National Council on Compensation Insurance--the insurance industry organization that publishes "advisory" rates and projects future claims payments for the industry--has recommended negligible increases for 2005: a 1.7% increase in the voluntary market, and a .4% increase in the residual market.

Moreover, workers compensation rates in Kansas are far lower than both the countrywide and regional averages. Specifically, on the NCCI's index of state-by-state workers compensation rates, Kansas workers compensation loss costs are 1.17, compared to a countrywide average of 1.60 and an average in the five-state KS-OK-MO-NE-CO-region of 1.70.

The reason Kansas workers compensation insurers have enjoyed substantially above average profits while at the same time Kansas employers have paid substantially-below-average rates is that Kansas workers file relatively few compensation claims, and when they do file claims they receive relatively little compensation. For example, claim frequency dropped substantially in Kansas between 1995 and 2002--from 45 to 33 per \$1 million in premium. Similarly, between 1992 and 2002, lost time cases dropped from 4.3 per 100 workers to 3.0 per 100 workers, or by 30%. The decline in such claims in manufacturing and construction was particularly dramatic: in manufacturing they dropped by 42%--from 7.3 to 4.2--and in the construction industry by 39%--from 6.7 to 4.1.

Even more significant, the compensation Kansas workers receive on those infrequent occasions when they do file a claim is by far the lowest in the 5-state region that includes Kansas: according to the NCCL, injured workers in Kansas receive an average of approximately \$13,000 in Kansas, but an average of between \$16,000 and \$23,000 in Missouri, Colorado, Nebraska and Oklahoma.

Finally, 364 insurers are today writing workers compensation business in Kansas. This is not surprising in view of the high profits available in Kansas to workers compensation insurers, including those insurers with very high cost structures.

IV. Can the operation of the Kansas workers compensation insurance market be improved?

The Kansas workers compensation insurance market appears to be functioning to benefit both the insurers who write the insurance and the employers who buy it: insurance company profits are high, and insurance rates are low.

Both insurers and employers, therefore, can reasonably be expected to be extremely satisfied with the Kansas workers compensation system.

Kansas workers, on the other hand, are not as well-served by the Kansas workers compensation system: the reason the Kansas workers compensation system produces both high profits for insurers and low rates for employers is that workers compensation benefits in Kansas are extremely limited. For example, the maximum weekly benefit in Kansas is the seventh lowest in the nation. In particular, it is much lower than in any of the four states bordering on Kansas: Kansas' \$440 compares to \$528 in Oklahoma, \$542 in Nebraska, \$659 in Colorado, and \$663 in Missouri. Moreover, Kansas workers compensation benefits are far lower than workers compensation benefits countrywide for



every injury type, and for both medical and indemnity benefits. Specifically, for medical and indemnity benefits combined, Kansas benefits are just 72% of the national average.

It would be possible to raise benefit levels, while at the same time retaining workers compensation rates at their current low levels, by reforming the one element of the Kansas workers compensation insurance system that is not working well: a residual market structured to increase costs rather than to constrain them. The residual market is the means by which employers who workers compensation insurers refuse to voluntarily insure can-and must-obtain insurance, since the law requires employers to have workers compensation insurance, but does not require insurers to sell workers compensation insurance to any particular employer. In Kansas, the insurance industry and the government agree on the rates to be charged in the residual market, which are higher than voluntary market rates, and all workers compensation insurers share in the results of that market: whether the market has a profit or loss, each carrier is responsible for that profit or loss in proportion to its market share.

Because each insurer is responsible for the results of the residual market only in proportion to its market share, no single insurer has a substantial incentive to control residual market costs. On the other hand, one or more of the largest insurers typically receive a fee for functioning as so-called "servicing carriers"--collecting the premiums and paying out claims for the residual market -- and because this fee is calculated as a percentage of either the premium they collect or the claims they pay, the bigger the residual market the higher a servicing carrier's compensation. Thus, while no insurer has a significant interest in restraining costs in the residual market, servicing carriers have an interest in increasing those costs. This system not only drives up residual market rates,

but also drives up voluntary market rates, since the increased costs of the residual market are passed through to employers in the voluntary market

The manner in which the residual market is structured in Kansas has had the following adverse effects:

1. The Kansas residual market loses money.

On \$66 million in residual market premium written in 2003, the Kansas residual market had an underwriting loss of \$24 million. Notwithstanding Kansas's low workers compensation rates this underwriting loss has the effect of raising Kansas's voluntary market rates, since the voluntary market carriers pay for the loss in proportion to their market share, and they pass that loss through to their voluntary market policyholders. At the same time, a loss in the residual market doesn't mean a loss for the servicing carrier. To the contrary, it means higher fees to the servicing carrier.

2. Whether measured by premium volume or number of policies, more workers compensation business is in the residual market in Kansas than virtually any other state.

For example, of the 19 states in which the NCCI administers the residual market, Kansas had the 2<sup>nd</sup> highest premium volume in the residual market--19.4%--in 2003, and the highest percentage--20.3%--in 2002. Moreover, the percentage of policies in the residual market almost doubled between 2001 and 2003, increasing from 17.65% in 2001 to 33.4% in 2003. Whether measured by premium volume or number of policies, the amount of workers compensation business in the residual market in Kansas is now

approximately twice the national average. Notably, employers in the residual market are adversely affected not just because they pay the higher residual market rate, but also because they generally receive less and lower-quality services--including loss-control services--than do employers in the voluntary market.

3. The Kansas residual market contains a higher percentage of businesses who are there not because they are unsafe but because they are small.

It appears that in Kansas a disproportionate number of small businesses are placed in the residual market not because of any adverse claims experience but solely because they are small. For example, in Kansas 74.16% of the policies in the residual market are for \$2,500 or less; they account for 14.74% of residual market premium volume. Only three of the 23 states for which the NCCI collects data have a higher percentage of policies with \$2,500 or less in premium; and in only three other states do such policies account for a higher percentage of premium volume than they do in Kansas. To the extent small businesses are placed in the residual market despite good claims experience, they are unfairly required to pay higher rates, and to receive lower levels of service, than they would in the voluntary market.

4. The claims experience of the business in the residual market in Kansas is much more favorable than is the experience of the residual market nationwide.

While the number of policies in the residual market in Kansas increased in 2003, the average experience mod of all policies in the pool decreased, to approximately 1.06, which was substantially below the national average of 1.10. This means that substantially more business with good claims experience is placed in the Kansas residual market than is placed in the average state's residual market. Such businesses are unfairly required to pay higher rates, and to receive lower levels of service, than they would in the voluntary

market.

Replacing the existing residual market with a competitive bidding process which forces insurers to compete for the residual market business on a "winner-take-all" basis could ameliorate the problems outlined above. Under such a process, the insurer offering the lowest rates for residual market business would obtain all that business, and would be on the risk for the results of that business: unlike servicing carriers in the present system, it would earn a profit only if the residual market earned a profit. It would therefore have an incentive to contain costs in the residual market to the greatest extent possible.

Moreover, because other carriers will no longer pay for any losses in the residual market and will therefore not include the cost of any such losses in their voluntary market rates, a competitively-bid residual market should also reduce voluntary market rates. And finally, a competitively-bid residual market should maximize safety—since maximizing safety reduces workers compensation losses, and reducing losses will increase the residual market carrier's profits.

### Conclusion

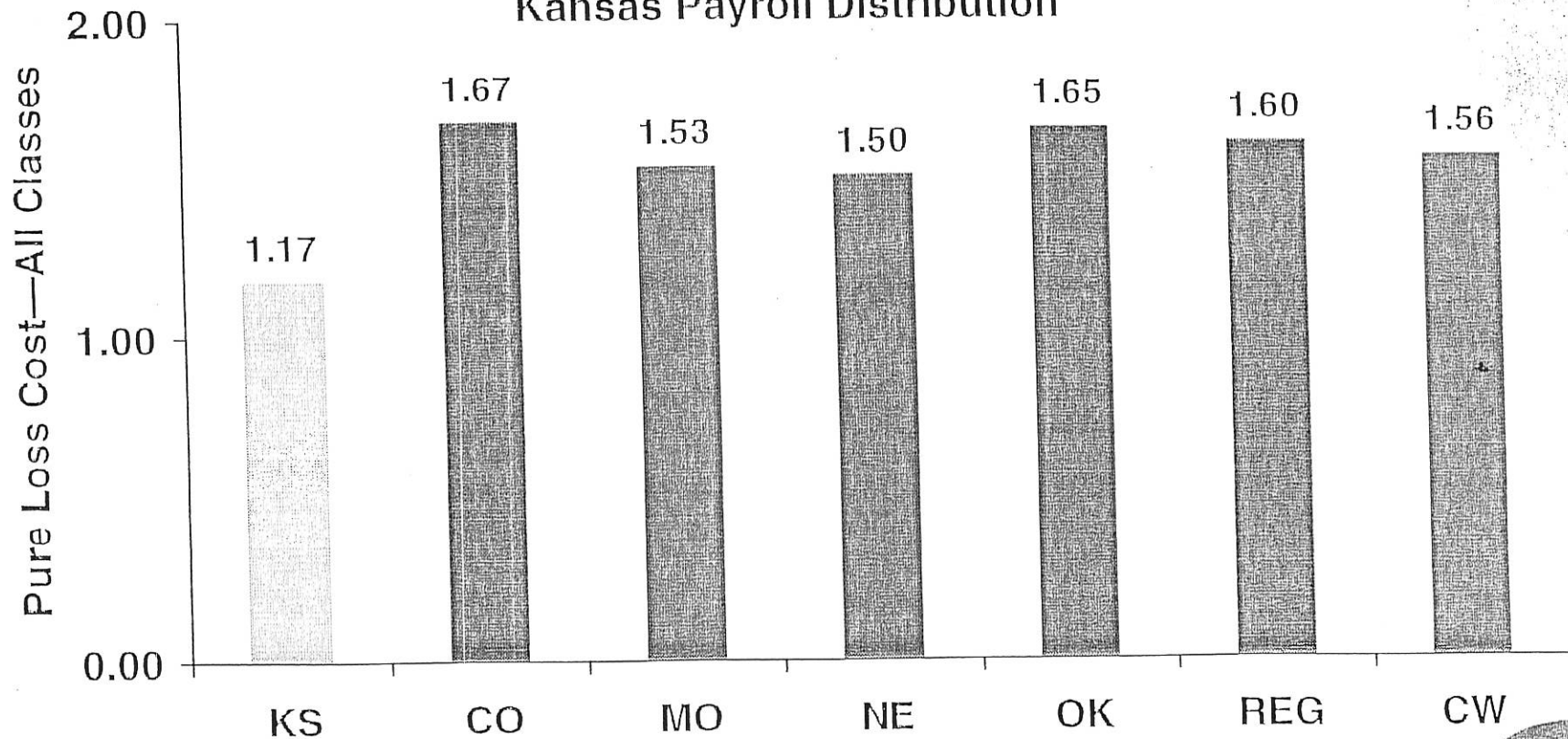
From a business or insurer perspective, any change in the Kansas workers compensation system may appear to be gilding the lily, since insurance profits are high and insurance rates are low. Nevertheless, the structure of the residual market in Kansas has caused both residual and voluntary market rates to be higher than they would be if the residual market were structured to create incentives to limit costs rather than increase them. If the residual market were structured to create such incentives, benefit levels could be increased while retaining today's low workers' compensation rates, or those already low workers' compensation rates could be further reduced while retaining current

**ATTACHMENT D**

# After Adjusting to Kansas Payroll Distribution, Kansas Average Loss Cost Is the Lowest in the Region

3-22

Current Average Voluntary Pure Loss Costs Using  
Kansas Payroll Distribution



Regional Average includes Colorado, Missouri, Nebraska, and Oklahoma.  
Based on the latest NCCI published rates and loss costs in each state.



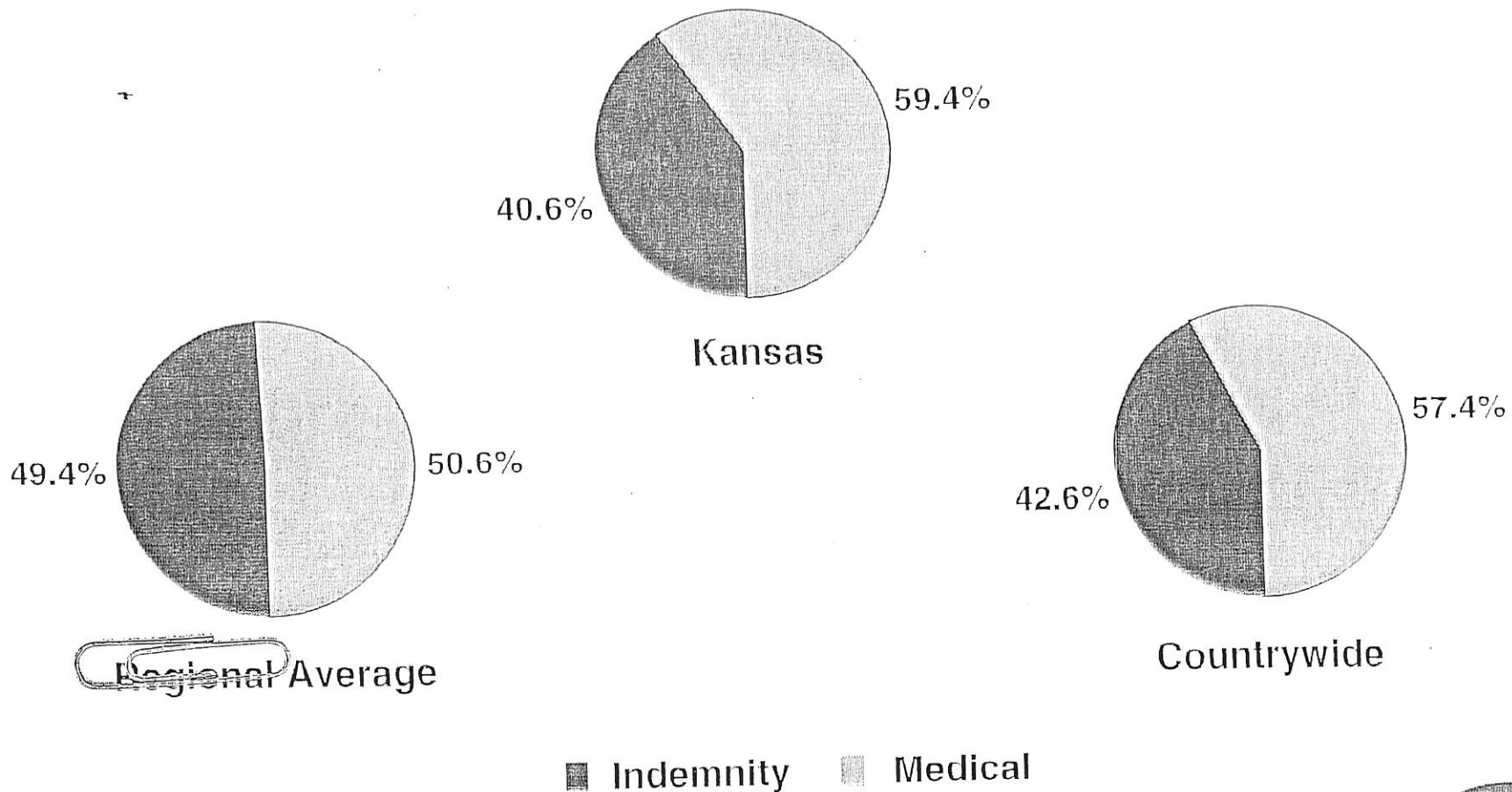
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**ATTACHMENT E**

3-24

# Medical Benefits Constitute the Majority of Total Benefit Costs in Kansas

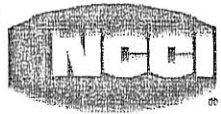


Regional Average includes Colorado, Missouri, Nebraska, and Oklahoma.

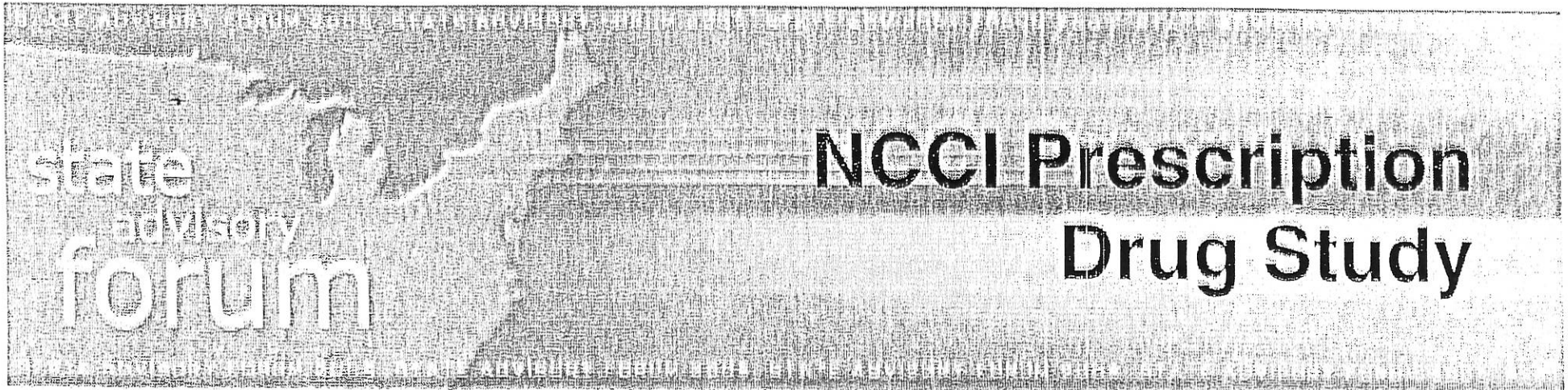




**ATTACHMENT G**



National  
Council on  
Compensation  
Insurance, Inc.



W-8

## NCCI Prescription Drug Study Key Findings

- In 2001, workers compensation insurers paid roughly 75% more than Group Health (GH) for the same drugs
- Prescription drug share of medical costs in workers compensation increased to approximately 12% in AY 2002
- After dominating for several years, utilization increases had a lesser impact than did price increases on workers compensation drug costs in 2002

# Workers Comp vs. Group Health Payments for Prescription Drugs

3-28

- We compared payments for a fixed group of drugs common to workers compensation (WC) with payments made for those same drugs under Group Health in 2001
- WC paid approximately 125% of Average Wholesale Prices (AWP)
- Group Health paid approximately 72% of AWP
- WC paid approximately 75% more than Group Health



REPORT ON THE

# Prescription Drugs' Share of Total Medical Costs

## Accident Year Drug Costs/Total Medical (estimated at ultimate)

Injury Year	% Rx
1997	10.1%
1998	10.6%
1999	11.1%
2000	11.5%
2001	11.8%
2002	12.1%

# SENATE BILL No. 461

By Committee on Commerce

1-26

PROPOSED AMENDMENT  
SENATOR EMLER  
February 16, 2006

Senate Commerce Committee  
February 17, 2006  
Attachment 4-1

9 AN ACT concerning workers compensation; relating to preexisting con-  
10 dition; permanent partial general disability; supplemental functional  
11 disability compensation; amending K.S.A. 44-510e and K.S.A. 2005  
12 Supp. 44-501 and repealing the existing sections.  
13

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

15 Section 1. K.S.A. 2005 Supp. 44-501 is hereby amended to read as  
16 follows: 44-501. (a) If in any employment to which the workers compen-  
17 sation act applies, personal injury by accident arising out of and in the  
18 course of employment is caused to an employee, the employer shall be  
19 liable to pay compensation to the employee in accordance with the pro-  
20 visions of the workers compensation act. In proceedings under the work-  
21 ers compensation act, the burden of proof shall be on the claimant to  
22 establish the claimant's right to an award of compensation and to prove  
23 the various conditions on which the claimant's right depends. In deter-  
24 mining whether the claimant has satisfied this burden of proof, the trier  
25 of fact shall consider the whole record.

26 (b) Except as provided in the workers compensation act, no em-  
27 ployer, or other employee of such employer, shall be liable for any injury  
28 for which compensation is recoverable under the workers compensation  
29 act nor shall an employer be liable to any third party for any injury or  
30 death of an employee which was caused under circumstances creating a  
31 legal liability against a third party and for which workers compensation is  
32 payable by such employer.

33 (c) The employee shall not be entitled to recover for the aggravation  
34 of a preexisting condition, except to the extent that the work-related injury  
35 causes increased disability. Any award of compensation shall be reduced  
36 by ~~the~~: (1) The amount of functional impairment determined to be pre-  
37 existing; or

38 (2) *by the percentage that the preexisting condition, whether or not*  
39 *a rateable impairment in the opinion of a physician, contributed to the*  
40 *disability, functional impairment or work disability resulting from the*  
41 *work injury.*

42 (d) (1) If the injury to the employee results from the employee's  
43 deliberate intention to cause such injury; or from the employee's willful

affecting the portion of the body injured in the accident

1 implemented at the time of testing.

2 (e) Compensation shall not be paid in case of coronary or coronary  
3 artery disease or cerebrovascular injury unless it is shown that the exertion  
4 of the work necessary to precipitate the disability was more than the  
5 employee's usual work in the course of the employee's regular employ-  
6 ment.

7 (f) Except as provided in the workers compensation act, no construc-  
8 tion design professional who is retained to perform professional services  
9 on a construction project or any employee of a construction design profes-  
10 sional who is assisting or representing the construction design profes-  
11 sional in the performance of professional services on the site of the con-  
12 struction project, shall be liable for any injury resulting from the  
13 employer's failure to comply with safety standards on the construction  
14 project for which compensation is recoverable under the workers com-  
15 pensation act, unless responsibility for safety practices is specifically as-  
16 sumed by contract. The immunity provided by this subsection to any  
17 construction design professional shall not apply to the negligent prepara-  
18 tion of design plans or specifications.

19 (g) It is the intent of the legislature that the workers compensation  
20 act shall be liberally construed for the purpose of bringing employers and  
21 employees within the provisions of the act to provide the protections of  
22 the workers compensation act to both. The provisions of the workers  
23 compensation act shall be applied impartially to both employers and em-  
24 ployees in cases arising thereunder.

25 (h) If the employee is receiving retirement benefits under the federal  
26 social security act or retirement benefits from any other retirement sys-  
27 tem, program or plan which is provided by the employer against which  
28 the claim is being made, any compensation benefit payments which the  
29 employee is eligible to receive under the workers compensation act for  
30 such claim shall be reduced by the weekly equivalent amount of the total  
31 amount of all such retirement benefits, less any portion of any such re-  
32 tirement benefit, other than retirement benefits under the federal social  
33 security act, that is attributable to payments or contributions made by the  
34 employee, but in no event shall the workers compensation benefit be less  
35 than the workers compensation benefit payable for the employee's per-  
36 centage of functional impairment.

37 Sec. 2. K.S.A. 44-510e is hereby amended to read as follows: 44-  
38 510e. (a) If the employer and the employee are unable to agree upon the  
39 amount of compensation to be paid in the case of injury not covered by  
40 the schedule in K.S.A. 44-510d and amendments thereto, the amount of  
41 compensation shall be settled according to the provisions of the workers  
42 compensation act as in other cases of disagreement, except that, in case  
43 of temporary disability or permanent partial general disability functional

1 ~~impairment~~ not covered by such schedule, the employee shall receive  
 2 weekly compensation as determined in this subsection during such period  
 3 of temporary ~~or permanent partial general~~ disability ~~for functional im-~~  
 4 ~~pairment~~ not exceeding a maximum of 415 weeks. Weekly compensation  
 5 for temporary partial ~~general~~ disability shall be 66~~2~~3% of the difference  
 6 between the ~~pre-injury~~ average gross weekly wage ~~that the employee was~~  
 7 ~~earning prior to such injury as provided in the workers compensation act~~  
 8 and the amount the employee is actually earning after such injury in any  
 9 type of employment, except that in no case shall such weekly compen-  
 10 sation exceed the maximum as provided for in K.S.A. 44-510c and amend-  
 11 ments thereto. Permanent partial general disability exists when the em-  
 12 ployee is disabled in a manner which is partial in character and permanent  
 13 in quality and which is not covered by the schedule in K.S.A. 44-510d  
 14 and amendments thereto. ~~The extent of permanent partial general disa-~~  
 15 ~~bility shall be the extent, expressed as a percentage, to which the em-~~  
 16 ~~ployee, in the opinion of the physician, has lost the ability to perform the~~  
 17 ~~work tasks that the employee performed in any substantial gainful em-~~  
 18 ~~ployment during the fifteen year period preceding the accident, averaged~~  
 19 ~~together with the difference between the average weekly wage the worker~~  
 20 ~~was earning at the time of the injury and the average weekly wage the~~  
 21 ~~worker is earning after the injury. In any event, the extent of permanent~~  
 22 ~~partial general disability shall not be less than the percentage of functional~~  
 23 ~~impairment. An employee shall not be entitled to receive permanent par-~~  
 24 ~~tial general disability compensation in excess of the percentage of func-~~  
 25 ~~tional impairment as long as the employee is engaging in any work or is~~  
 26 ~~capable of engaging in work for wages equal to 90% or more of the pre-~~  
 27 ~~injury average gross weekly wage. In the event of separation from em-~~  
 28 ~~ployment for economic reasons, for cause or voluntarily, the employee~~  
 29 ~~shall not be entitled to receive general disability compensation in excess~~  
 30 ~~of the percentage of functional impairment. If due solely to the work-~~  
 31 ~~related injury, the employee is not engaging in any work for wages equal~~  
 32 ~~to 90% or more of the pre-injury average gross weekly wage, the employee~~  
 33 ~~shall be entitled to supplemental functional disability compensation.~~  
 34 Functional impairment ~~means the extent, shall be expressed as a per-~~  
 35 ~~centage, of the loss of the use of a portion of the total physiological ca-~~  
 36 ~~pabilities of the human body as established by competent medical evi-~~  
 37 ~~dence and based on the fourth most recent edition of the American~~  
 38 ~~Medical Association Guides to the Evaluation of Permanent Impairment,~~  
 39 ~~if the impairment is contained therein. An employee shall not be entitled~~  
 40 ~~to receive permanent partial general disability compensation in excess of~~  
 41 ~~the percentage of functional impairment as long as the employee is en-~~  
 42 ~~gaging in any work for wages equal to 90% or more of the average gross~~  
 43 ~~weekly wage that the employee was earning at the time of the injury. If~~

or permanent partial general disability

or permanent partial general

general

that the employee was earning prior to such injury provided in the workers compensation act

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment immediately preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment.

An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.



1 the employer and the employee are unable to agree upon the employee's  
 2 functional impairment and if at least two medical opinions based on com-  
 3 petent medical evidence disagree as to the percentage of functional im-  
 4 pairment, such matter may be referred by the administrative law judge  
 5 to an independent health care provider who shall be selected by the ad-  
 6 ministrative law judge from a list of health care providers maintained by  
 7 the ~~director~~ administrative law judge. The health care provider selected  
 8 by the director pursuant to this section shall issue an opinion regarding  
 9 the employee's functional impairment which shall be considered by the  
 10 administrative law judge in making the final determination. The amount  
 11 of ~~weekly compensation for~~ permanent partial general disability *benefits*  
 12 *owed* shall be determined as follows:

13 (1) Find the payment rate which shall be the lesser of (A) the amount  
 14 determined by multiplying the average gross weekly wage of the worker  
 15 prior to such injury by 66 $\frac{2}{3}$ % or (B) the maximum provided in K.S.A. 44-  
 16 510c and amendments thereto;

17 (2) find the number of disability weeks payable by subtracting from  
 18 415 weeks the total number of weeks of temporary total disability com-  
 19 pensation ~~was previously~~ paid, excluding the first 15 weeks of temporary  
 20 total disability compensation that was paid, and multiplying the remainder  
 21 by the percentage of permanent partial general disability as determined  
 22 under this subsection (a); ~~and~~

and

23 (3) multiply the number of disability weeks determined in paragraph  
 24 (2) of this subsection (a) by the payment rate determined in paragraph  
 25 (1) of this subsection (a). The resulting award shall be paid for the number  
 26 of disability weeks at the full payment rate until fully paid or modified.  
 27 If there is an award of permanent disability as a result of the compensable  
 28 injury, there shall be a presumption that disability existed immediately  
 29 after such injury. In any case of permanent partial disability under this  
 30 section, the employee shall be paid compensation for a *period* not to  
 31 exceed 415 weeks following the date of such injury, subject to review and  
 32 modification as provided in K.S.A. 44-528 and amendments thereto; ~~and~~

33 (4) ~~if the employee is entitled to supplemental functional disability~~  
 34 ~~compensation, the amount of such compensation shall be calculated by~~  
 35 ~~determining the difference between the pre-injury and post-injury average~~  
 36 ~~weekly wages. The percentage difference shall represent the number of~~  
 37 ~~weeks of supplemental compensation for functional impairment to be paid~~  
 38 ~~in addition to the disability weeks determined in paragraph (3) of this~~  
 39 ~~subsection. If the worker is unemployed or is not earning a wage at the~~  
 40 ~~time of the decision, the evidence presented shall be used to impute a post-~~  
 41 ~~injury average weekly wage based upon the employee's ability to earn a~~  
 42 ~~commensurate wage.~~

43 (b) If an employee has received an injury for which compensation is