

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:33 p.m. on February 10, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Pete DeGraaf- excused

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the committee:

John Meetz, Kansas Insurance Department
David Hanson, Kansas Association of Property & Casualty Insurance Cos Inc.
John Meetz, Kansas Insurance Department
Bob Tomlinson, Kansas Insurance Department,
Larry Magill, Kansas Association of Insurance Agents
Callie Hartle, Kansas Association for Justice
Paula Greathouse, Kansas Department of Labor
Wil Leiker, Kansas AFL-CIO
Jerry Diddle, Axcel
Tim Tucker, National Association of Professional Employer Organizations (NAPEO)
Wendy Wolf, ADP Total Source
Andrea McHenry, Administaff
James Watson, United Health Group
Larrie Ann Lower, Aetna

Others attending:

See attached list.

Hearings on:

HB 2214 - Insurance, risk-based capital requirements.

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview for **HB 2214**.

The Chairman opened the hearing on **HB 2214**.

Proponent:

John Meetz, Kansas Insurance Department, (Attachment 1), appeared before the committee in support of **HB 2214**.

Neutral.

David Hanson, Kansas Association of Property & Casualty Insurance Cos Inc., (Attachment 2), appeared before the committee with neutral testimony on **HB 2214**.

Hearing closed on **HB 2214**.

HB 2018 - Workers Compensation Insurance Rates.

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview for **HB 2018**.

The Chairman opened the hearing on **HB 2018**.

CONTINUATION SHEET

Minutes of the House Insurance Committee at 3:30 p.m. on February 10, 2009, in Room 784 of the Docking State Office Building.

Proponent:

John Meetz, Kansas Insurance Department, (Attachment 3), gave testimony before the committee in support of **HB 2018**.

Hearing closed on **HB 2018**.

HB 2087 - Kansas professional employer organization licensing act.

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview for **HB 2087**.

The Chairman opened the hearing on **HB 2087**.

Proponents:

Bob Tomlinson, Kansas Insurance Department, (Attachment 4), presented testimony before the committee in support of **HB 2087**.

Larry Magill, Kansas Association of Insurance Agents, (Attachment 5), appeared before the committee in support of **HB 2087**.

Callie Hartle, Kansas Association for Justice, (Attachment 6), presented written testimony in support of **HB 22087**.

Paula Greathouse, Kansas Department of Labor, (Attachment 7), presented written testimony in support of **HB 2087**.

Wil Leiker, Kansas AFL-CIO, (Attachment 8), presented written testimony in support of **HB 2087**.

Opponents:

Jerry Diddle, Axcel, (Attachment 9), gave testimony before the committee in opposition to **HB 2087**.

Tim Tucker, National Association of Professional Employer Organizations (NAPEO), (Attachment 10), appeared before the committee in opposition to **HB 2087**.

Wendy Wolf, ADP Total Source, (Attachment 11), presented written testimony in opposition to **HB 2087**.

Andrea McHenry, Administaff, (Attachment 12), presented written testimony in opposition to **HB 2087**.

James Watson, United Health Group, (Attachment 13), presented written testimony in opposition to **HB 2087**.

Larrie Ann Lower, Aetna, (Attachment 14), presented written testimony in opposition to **HB 2087**.

Hearing closed on **HB 2087**.

Representative Swenson moved to approve the January 27, February 3, and the February 5 minutes as amended. Seconded by Representative Brunk. Motion carried.

The next meeting is scheduled for February 12, 2009.

The meeting was adjourned at 4:43 p .m.

**House Insurance Committee
Guest Sign In Sheet
Tuesday, February 10, 2009**

Name	Representing
Tim Tucker	NAPED
ERIC KESSELRING	Accet HR Solutions
JERRY DIDDLE	Accet HR Solutions
Jarrood Forbes	NAPED
Sohn Meetz	KID
Ken Avitz	KID
Dick Cook	KID
David Shriver	KASB
Linda Sheppard	KID
Paula (Peakhouse)	KDOL DWC
Richard Thomas	KDOL DWC
Mark McElfish	Ks. Ins Dept
Craig Van Adelst	KID
Tom Fleisch	KOA
KEITH PANGBORN	REARNEY & ASSOC.
Bruce Witt	PHS
Natalie Haag	Security Benefit
Marlee Carpenter	KAHP
Gail Bright	Office of the Ks Securities Commission
Alex Kotyantz	P.I.A.
Bill Sneed	ANIP
Mike Reelart	KSIA
Don Murray	NFIB
Michelle Colomb	KS Chamber
Chris Wilson	KS Building Industry Assn
Wil Leiker	KS AFL-CIO
Corie Hartle	KS Assn for Justice
Wigh Keck	Hein Lawfirm



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HB 2214

HOUSE INSURANCE COMMITTEE February 10, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2214. This bill pertains to risk-based capital (RBC) instructions that have previously been updated yearly through legislation. This year we have altered the bill to allow the Kansas Insurance Department to update the RBC instructions through the rules and regulations process in an attempt to correct a fundamental flaw that I will describe in detail.

But first I will explain what RBC is and what it is used for. RBC is a method used by the Kansas Insurance Department to measure the minimum amount of capital that an insurance company needs to support its overall business operations. If a company falls below certain RBC requirements then the Insurance Department will go through a number of steps to determine the financial "health" of the company in question, with the ultimate goal of bringing that company back to a level where it is capable of meeting its contractual obligation to Kansas policy holders.

In previous years our legislation has been crafted to simply update the Kansas statute with the most recent RBC standards as promulgated by the NAIC. This yearly bill has been run by us at the request of the Kansas Association of Property and Casualty Insurance Companies as a way to allow a legislative review process for standards that are determined at the national level. In the event of dramatic RBC changes that jeopardized the solvency or AM Best rating of one of our Kansas domestic insurance companies the legislature would have the authority to not adopt those changes.

Unfortunately, the yearly legislative review process comes with a significant drawback. The national RBC standards are finalized in September of the previous year but the RBC bill does not take effect until its publication in the statute book July 1 of the next year. Thus, there is at least a 6 month "lag" between the promulgation of the new RBC standards and the moment from which companies are to be held to that standard.

To remedy this, the Kansas Insurance Department accepted legislation authored by Dave Hanson from the Kansas Association of P&C Companies that closes that 6 month "lag" yet still allows a reasonable review process for the RBC standards. HB 2214 would allow the Insurance Commissioner to adopt the new RBC instructions through the rules and regulations process unless those new RBC instructions would cause a company's total adjusted capital or RBC report from the previous year to vary by more than 2.5%, or change a company's control level. In these

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Attachment # 1 Website
www.ksinsurance.org

events the new RBC instructions would require legislative action to be adopted, thus giving the new instructions proper scrutiny.

This compromise legislation will allow the Kansas Insurance Department to hold insurance companies to the most up-to-date RBC instructions while still allowing for a review process in the event of dramatic RBC changes. Protecting Kansas insurance companies and making sure they hold appropriate capital is central to the duties of the Kansas Insurance Department. Ultimately, the ability to hold Kansas insurance companies to the most recent RBC standards is the best way to accomplish this goal so we would urge your support for HB 2214.

Thank you for the opportunity to appear today and I would now stand for any questions.

John Meetz
Government Affairs Liaison

KANSAS INSURANCE ASSOCIATIONS

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Kansas Association of
Property & Casualty Ins. Cos.

**House Insurance Committee
Testimony on House Bill 2214**

Member Companies:

Armed Forces Insurance
Exchange
Ft. Leavenworth

Bremen Farmers Mutual
Insurance Co.
Bremen

Columbia Insurance Group
Salina

Farm Bureau Mutual
Insurance Company
Manhattan

Farmers Alliance Mutual
Insurance Company
McPherson

Farmers Mutual Insurance Co.
Ellinwood

Federated Rural Electric
Insurance Exchange
Lenexa

Kansas Mutual Insurance Co.
Topeka

Marysville Mutual Insurance Co.
Marysville

Mutual Aid Association of the
Church of the Brethren
Abilene

Mutual Aid eXchange
Overland Park

Upland Mutual Insurance Co.
Chapman

February 10, 2009

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies, our state trade association for domestic property and casualty insurance companies in Kansas.

The risk-based capital provisions referenced in the Bill were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and assessing the need for regulatory control levels. The reference date in the statutory definition of "RBC instructions" was originally requested to make sure that the adopted instructions and formula were limited to those that we had had an opportunity to review, rather than potential future revisions, which could adversely affect our companies' risk-based capital evaluation and the resulting action or control levels. While we believe our companies remain in good standing under the previously adopted NAIC instructions and formulas, we also believe any significant changes in those instructions and formulas by the NAIC should be carefully considered before adoption in Kansas.

The amendments in HB 2214 will hopefully achieve this by establishing two guidelines for adoption of any future changes that may be developed by the NAIC. If those changes are projected to cause more than a 2.5% reduction in the adjusted capital of our domestic companies or cause a change in the applicable control level, then the new instructions and formula should not be adopted in rules and regulations until approved by the Legislature. Hopefully, this means that we will not have to bring this back before you next year. However, since we are dealing with a number of unknowns here, some of our member companies are not sure of the potential impact even at the 2.5% threshold and have expressed concern, but are not opposed to trying this method with the standards set as proposed. We very much appreciate the willingness of Insurance Commissioner Sandy Praeger and her staff to work with us on this proposed legislation. And we also want to express our sincere appreciation to the Legislature for your consideration of all the updates through the years that has brought us this far.

Thank you again.

Respectfully,



DAVID A. HANSON



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HB 2018

HOUSE INSURANCE COMMITTEE February 10, 2009

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today. Last year the Kansas Insurance Department introduced HB 2821 that exclusively deals with rating policy in the assigned risk pool. Due to the perception of workers compensation as a political hot button issue last session we were not able to get a hearing for HB 2821, despite its relatively non-controversial nature. During a hearing on workers compensation in the 2008 Economic Development Interim Committee the Kansas Insurance Department testified on the issue before you and requested the introduction of the same language which we were extremely appreciative of. That bill is now before you in the form of HB 2018 today.

The first two provisions of the bill deal with requirements that the assigned risk pool reduce its assessments and its size before the years 1997 and 1998 respectively. The bill repeals these sentences since both objectives were met on time.

The most significant provision of HB 2821 is the repeal of this sentence:

The commissioner shall not approve rates or rating plans which produce rates or premiums for risks with less than \$2,250 annual premium that are higher than those which would be applied to such risks in the voluntary market

There are essentially two reasons that we wish to repeal this section. First, basing rates for the assigned risk plan on rates for the voluntary market is the equivalent of comparing apples to oranges. When workers compensation was reformed in 1993 the National Council on Compensation Insurance (NCCI) filed rates for both the assigned risk plan and the voluntary market. As of 1995, however, the rating mechanism for the voluntary market was altered by the use of loss cost multipliers which promoted a more competitive voluntary market. Thus, capping premiums in the assigned risk plan using rates in the voluntary market as a benchmark is fundamentally flawed.

The second reason deals with the current subsidy of the assigned risk plan. The assigned risk plan is funded by the premiums of its own plans but when it runs a deficit the difference is picked up through an assessment on the voluntary market insurers writing workers compensation insurance in Kansas. The provisions of K.S.A. 40-2109(e) potentially hold down the premiums paid by those in the assigned risk plan and shift that cost to the voluntary marketplace.

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Repealing this sentence alone will not necessarily mean that the rates of those risks will increase, that will ultimately be decided by the actions of the Assigned Risk Plan Governing Board. However, this bill is a step toward making sure that workers compensation risks in the assigned risk plan will be paying a fair share of their premiums.

A potential result of this artificial and erroneous cap is that some risk may have no incentive to leave the assigned risk plan. The assigned risk plan was designed as a last resort for workers compensation risks that had been denied insurance in the private marketplace. It was NOT designed as a subsidized pool to compete with the voluntary workers compensation marketplace.

For this reason we urge the committee to support HB 2018. Thank you for your time and I would be happy to stand for questions.

John Meetz
Government Affairs Liaison



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HB 2087

HOUSE INSURANCE COMMITTEE February 10, 2009

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear today in support of HB 2087. The Kansas Insurance Department recognizes that professional employee organizations (PEOs) can play a vital role in trimming costs for small businesses. PEOs are capable of performing functions for small businesses more accurately and efficiently than the small business may be capable of on their own.

The Kansas Insurance Department is aware of how beneficial these organizations can be but ultimately our responsibility is to Kansas policyholders. HB 2087 is an attempt by our Department, in conjunction with several other state organizations and the KAIA, to engage in the responsible regulation of what is an essentially unregulated entity.

In the past there have been incidents where PEOs in this state have created situations that were unfair at the very least and potentially illegal at their worst. We acknowledge that none of these bad actors are here anymore. We acknowledge that the current PEOs are law abiding and progressive. Because of the fact that the current PEO entities within our borders are law abiding and thoughtful we feel that this is the right time to request such legislation.

The first of our concerns deals with a PEO's function as it relates to small group health law. We want to make sure that PEOs are adhering to all state mandates and complying with small group rating law. HB 2087 gives us the authority to do that.

In addition to the health insurance issue, today we will also discuss:

- Multiple Coordinated Policies
- Licensure
- Repackaging of Insurance
- Bonding

We view the HB 2087 as an incomplete product and only a starting point for these discussions. We have already spoken with almost all interested parties and we have facilitated discussions to continue the dialogue. We believe it is time to ask the legislature to engage in this process as well, which is precisely why we have asked this committee to look at this legislation.

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At this date and assuming the discussions continue to progress as they have we would like to discuss the possibility of an interim committee. If the discussions proceed more rapidly we would consider having a subcommittee. The Insurance Department is extremely pleased that this hearing is taking place today to give you the opportunity to hear the parameters of this discussion thus giving you the insight to guide the process of the discussion as we move forward in search of solution that benefits all parties.

Bob Tomlinson
Assistant Insurance Commissioner



Testimony on House Bill 2087
Before the House Insurance Committee
By Larry Magill
February 10, 2009

Thank you Mister Chairman and members of the Committee for the opportunity to appear today in support of House Bill 2087. 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.

This is not the first time the legislature has looked at this issue. Senate Substitute for Senate Bill 121 in the 2001 session was a similar bill. And actually this bill is based on a ballooned version of Senate Bill 156 from the 2007 session. The tax issues in SB 121 were referred to an interim study and a bill did pass in 2002 dealing with the employment tax aspects of PEOs. The remainder of Senate Sub for SB 121 died in the House in 2002 and SB 156 died in the Senate in 2008.

During the 2007 session hearings were held on SB 156, a subcommittee was appointed and KAIA worked with the other opponents of the bill to develop what we thought was a workable draft for fair and effective regulation of PEOs. That balloon with one change, that of switching the regulator from the Secretary of Labor to the Commissioner of Insurance, is what you have before you today. The parties we worked with were the Kansas Insurance Department, the Kansas Department of Labor, the Kansas Association for Justice and labor.

We highly commend the Insurance Department for introducing the bill and taking a proactive step to regulate PEOs.

We realize that this is a fairly complex bill and that time is short today with three bills up for a hearing. We will focus on the insurance aspects of the proposed regulation of PEO's and explain why we think they will protect consumers, whether they are employees of client firms, the clients themselves or other small businesses impacted by the workers compensation rating system.

"Gaming" Workers Compensation Rating

The single most important element in determining the workers compensation premium paid by a business, after the payroll class codes, is the business' experience modification. This is the primary way that the system rewards an employer for a good safety record or penalizes an employer for a poor one. To determine a firm's experience modification, the National Council on Compensation Insurance (NCCI) takes payroll, premium and loss information from member insurers and calculates it on a formula filed with the Kansas Insurance Department. An experience modification can be as high as 2.0. That means a firm would be paying twice the "standard" workers compensation premium for a bad loss record. That is ample incentive to try

to find a way to artificially lower a business' experience modification through an employee leasing scheme.

A new startup company always begins with a unity or 1.0 modification. To calculate an experience modification, NCCI skips the most recent two years and looks at the prior two years losses so it takes several years to develop one for a new firm. If that new firm is an employee leasing company, it will be able, under a master policy approach, to give all employers entering the PEO an experience modification of 1.0. In some cases in the past, a PEO will then form another PEO once the experience of the first PEO causes their experience modification to go above 1.0 or into a debit.

The simplest and cleanest way to deal with this issue is to require a multiple coordinated policy approach as the only way a PEO can buy workers compensation on its clients' employees. This has been the only option available to any PEO insured in the Kansas Workers Compensation Insurance Plan, the assigned risk, since the early 90's. That approach involves a separate policy being issued for each client of the PEO with the client maintaining their own experience modification going in, during and on leaving the PEO. They continue to have an incentive to maintain a safe workplace and reduce workers compensation injuries and they are not allowed to "wash" their mod away by joining a PEO.

Another advantage of the multiple coordinated policy (MCP) approach is that it would not undermine the Department of Labor's coverage verification system since you would be able to verify the client is covered quickly and accurately. The PEO can be named as an additional insured on an endorsement to each MCP policy. Premium notices can be sent to the PEO and communications from the carrier can come to them.

Problems With a Master Policy

The PEO's will likely argue for a master policy approach. Master Policies will only lead to gaming the workers compensation system to average a number of clients' experience modifications together. No one but a PEO would be allowed to use this master policy approach and "pool" a number of unrelated businesses under one workers compensation policy. If this makes sense, then shouldn't anyone be able to bundle a number of unrelated workers compensation policies together to "pool" them and come up with one experience modification?

Under a master policy approach it is possible for a firm to "wash" their experience mod back to unity by entering a PEO for just long enough for NCCI to not have current claims information on their operation. Then when they exit the PEO, they would have a 1.0 or unity experience modification for years until their losses catch up with them again.

Concerned With "Repackaging"

One of the major consumer concerns with a master policy is that it would leave a PEO free to set up large risk rating for a group of clients that is not revealed to their clients. For example, the PEO could purchase a retrospectively rated policy as its "master policy" and not reveal that to the client. They would then bill the client any amount for the workers compensation coverage (repackaging it in effect) and the client would have no idea what the coverage was actually costing the PEO. At the end of the policy period, the insurer might owe a substantial retro adjustment credit but the clients would never know or see the refunds. This same scenario could play out with a dividend policy, a large deductible policy or other rating mechanism.

The client could receive one bill for payroll services, tax services, W-2 preparation, workers compensation insurance, employee benefits insurance and the entire list of other services a



PEO might choose to offer and not be able to distinguish what they are actually paying for the individual services and insurance coverage. The PEO should have a requirement that each service be separately billed to the client and that each client be given their own insurance policy. That way there can be no doubt what the client is paying for workers compensation, employment practices liability or any other coverage the PEO is providing.

This is True Regulation

The PEO's proposal two years ago simply called for "registration" while this bill sets up a credible regulatory structure with adequate financial disclosure on audits, background checks, security for the PEO's clients and history of prior PEO involvement of the key players.

Must Be Licensed to Sell Insurance Or Act As An Administrator

The bill clearly calls for employees of PEOs to be licensed as insurance agents when they are selling workers compensation, health insurance, employment practices liability or any other insurance. Insurance agents and companies must provide their clients with copies of their clients' policies and separate invoices. PEOs should as well.

Tying Should Not Be Allowed

There should be a prohibition against a PEO tying the purchase of insurance to buying other services, such as payroll services, from the PEO. Why should the purchase of that coverage be mandatory when other services provided by the PEO are not? Why not leave the decision to purchase workers compensation from the PEO up to the client? There may be instances where it makes more sense for the client to obtain their workers compensation coverage separately from the PEO arrangement. There are no doubt other valid reasons why a firm would purchase services from a PEO.

No Circumvention of Small Group Reforms

Group health insurance is another case where PEOs try to use the "legal fiction" of dual employer to circumvent the small group reforms enacted in the early 90's in Kansas. In the case of health insurance, the first such special privilege is to treat all the employees of their clients as employees of the PEO to qualify as an over-50-life group and free the PEO up to negotiate with insurers outside the protections and parameters of the small group reforms enacted in 1992. An insurer cannot do this. An association cannot do this. That is why AHP (Association Health Plan) authority is being sought by business groups at the national level and why some associations have asked for the authority in Kansas. The Kansas Insurance Department opposed AHP legislation in Kansas several years ago and it did not pass.

Just as with workers compensation, each small employer must be treated as a separate entity for small group health insurance. To do otherwise opens the PEO up to taking a large group of unrelated businesses' employees and self insuring their health insurance in one "pool", possibly without their knowledge. Kansas has very little regulation of large employers who choose to self insure as they come under ERISA and the market tends to be self regulating. Only those large enough and with loss experience stable enough attempt it. But here the employees could be left high and dry with no coverage and no one to pursue to pay their health bills. There would be no "safety net" for these employees and their unpaid medical bills.

Allows Unregulated Self Insurance of Health Coverage

If you allow PEOs to define themselves as a single large employer, they have, in effect, allowed themselves to form a self-insured MEWA or Multiple Employer Welfare Arrangement. These were almost universally outlawed years ago because of an abysmal record of self-insured MEWAs failing and leaving employees and their families with tremendous unpaid medical bills.



A single large employer is much less likely to take chances with the health insurance coverage of its employees than a third party.

Conclusion

PEO's from all over the country are operating in Kansas today with virtually no regulatory oversight. A good PEO regulation bill would be good public policy. But it is a large and fairly complex subject and will take time to adequately address this session. We encourage you to begin that process and move Kansas closer to the multitude of states that have adequately protected their citizens.

We would be happy to provide additional information or answer questions. Thank you for the opportunity to appear today in support of HB 2087.



Your rights. Our mission.

To: Representative Clark Shultz, Chair
Members of the House Insurance Committee

From: Callie Denton Hartle JD

Date: February 10, 2009

RE: HB 2087 Regulation of professional employer organizations (PEOs)

The Kansas Association for Justice is a statewide nonprofit organization of attorneys. We appreciate the opportunity to submit written testimony on HB 2087.

HB 2087 is technical and complicated. While KsAJ supports regulating PEOs in the interest of protecting small businesses and consumers, we are continuing to review the particular provisions of HB 2087 and cannot effectively speak to them at this time. We believe HB 2087 needs careful review by all the stakeholders including KsAJ, the Kansas Insurance Department, Division of Workers Compensation, Kansas Association of Insurance Agents, Kansas AFL-CIO, and PEO representatives before legislation advances. We respectfully request that the House Insurance Committee charge all stakeholders to work collaboratively and openly as consideration of HB 2087 proceeds.

KsAJ supports regulating PEOs because unregulated PEOs are a threat to Kansas businesses, Kansas workers, and Kansas health care providers. PEOs are in positions of trust because employers pay them large sums of money for health insurance coverage, workers compensation insurance coverage, employee payroll, and pension benefit plans. Without adequate regulation, unscrupulous PEOs can fraudulently divert funds entrusted to them without purchasing the health insurance or workers compensation coverage as promised. Then employers are out millions of dollars, and employees are left without health insurance and work comp coverage. Downstream, doctors and hospitals also lose when there is no insurance coverage to reimburse them for the health care services they provide.

Since PEO legislation was last considered by the Legislature in 2007, Kansas has been fortunate not to have faced a crisis caused by a PEO fraud or failure. However, Kansas has not been

immune from the fraudulent schemes of fly-by-night PEOs. For years in Topeka, Kansas, a white collar criminal operated several PEOs nationwide until he was arrested in Chanute.

In July 2005, a federal grand jury sitting in Greensboro, North Carolina indicted PEO operator Steven E. Edwards on 21 counts of criminal activity including theft from a healthcare benefit program, money laundering, mail fraud, wire fraud, making false statements to a financial institution and income tax evasion, according to an August 30, 2005, press release issued by the United States Department of Justice.

According to the on-line Insurance Journal Southeast Magazine, Mr. Edwards had based his PEO operations in Kansas. Federal prosecutors believe Edwards collected money from his contracted clients and stole \$3.8 million dollars when he never took out workers compensation or health insurance which client employers thought they had purchased through Edwards' PEOs. Prosecutors believe Edwards used the money to buy a mountain villa and to maintain a collection of expensive vehicles and motorcycles.

The scheme ended after insurance carriers denied claims for employers who had been fraudulently added to their policies and fraud reports were filed in 20 states. Thousands of employees in Kansas, Florida, California, Illinois, Michigan, North Carolina, Oklahoma and South Carolina and other states were left without workers compensation and health insurance coverage. Edwards was sentenced to twelve and a half years in prison by United States District Judge William L. Osteen in Greensboro, North Carolina, on June 13, 2006, according to a website by The Szymoniak Firm, P.A., a Florida law firm specializing in pursuing insurance fraud cases.

Because Kansas' experience with PEOs has not always been beneficial, it is prudent and appropriate for the Legislature to enact appropriate regulation so that Kansas employers and employees are protected from unscrupulous PEOs. KsAJ looks forward to working collaboratively with legislators and all stakeholders to develop reasonable regulation that will protect Kansas businesses and consumers.

Thank you for the opportunity to provide you with our testimony.

Testimony in support of 2009 House Bill 2087
House Insurance Committee
Paula Greathouse, Director
Division of Workers Compensation
Kansas Department of Labor
February 10, 2009

Chairman Shultz and members of the committee

The Kansas Department of Labor provides written testimony and would like to be recognized as a proponent for House Bill 2087. This bill would create an important and needed central point of regulation and licensing for professional employers organizations (PEO).

This bill is a collaborative effort of regulatory agencies and other parties interested in providing structured oversight to allow legitimate professional employers organizations to operate within Kansas and to bar illicit professional employer organizations that are not willing to work within a regulated environment. This proposal with required licensing and regulating of PEO's enables the State of Kansas through the Kansas Insurance Department, to protect businesses and their employees who may utilize the services of a PEO.

House Bill 2087 is a result of a group effort and certainly not a one sided bill. The Kansas Insurance Department, Kansas Department of Labor, Kansas Association of Independent Agents, and the AFL-CIO are in agreement as to the necessity for passing this bill as written.

The Kansas Insurance Department would be the appropriate agency to license, regulate and monitor the PEO's doing business in Kansas because of their strong financial and auditing experience. The Kansas Department of Labor through the Division of Workers Compensation would also monitor the workers compensation insurance coverage of the Kansas employers subject to PEO agreements to insure they would be financially protected by workers compensation insurance if one of their employees is injured while working.

The Kansas Department of Labor is in favor of the current version of House Bill 2087. If the bill is modified or the regulatory or structural requirements lessened, we would withdraw our support as it would not serve and protect either the business or labor interests of this State.

Chairman Shultz, I appreciate the opportunity to provide written testimony in support of House Bill 2087.

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Attachment # 7

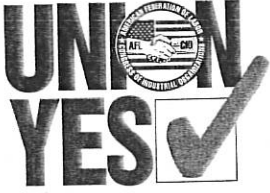
Kansas AFL-CIO

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Jim Keele
Lloyd Lavin
Lisa Ochs
Emil Ramirez
Earl Ransom
Steve Rooney
Rory Schaffer
Deb Shepard
Mark Shughart
Richard Taylor
Dan Woodard*

TESTIMONY IN SUPPORT OF HB 2087

House Insurance Committee
Wil Leiker, Executive Vice President
Kansas AFL-CIO
February 10, 2009

The Kansas AFL-CIO strongly supports strict regulation of PEOs; and in that regard SUPPORTS the passage of HB 2087. The KS AFL-CIO believes that HB 2087 contains all the critical elements necessary for *effective* regulation.

There can be no doubt that the Kansas Legislature must act to regulate PEOs. It is no exaggeration to state that we are speaking about the potential for misappropriation of millions of dollars. Furthermore, there is a huge "ripple effect" beyond the possible misappropriation. For example, the nonpayment of a health insurance premium can have a disastrous effect on multiple parties (patient & patient's family, health care providers, etc.). The Legislature is well aware of the "horror stories" of the past, and we need not dwell on them.

The Kansas AFL-CIO is primarily concerned about PEOs in the workers compensation arena. While protection of injured workers for prompt payment of benefits is the critical concern, the Kansas AFL-CIO also believes that employers must be treated equally in the assessment of premiums. Individual employers who do not join PEOs must be in the same competitive market for the system to work; including, for example, the proper classification of employees. In short, in order for the marketplace to set an appropriate premium, one group must not be given an unfair or dishonest advantage over another group.

While there may be technical and minor changes necessary to HB 2087, major changes which reduce or soften the regulation of PEOs would be inappropriate. A "watered down" version of HB 2087 would, in all probability, be worse than no legislation at all. Giving the PEOs the appearance of being regulated, if they are not, would only entice unsuspecting businesses to participate.

The passage of a bill regulating PEOs must be a legislative priority. The Legislature is well aware of this powder keg. We can be certain that without action by the Legislature "the other shoe is sure to drop."

The Kansas AFL-CIO appreciates the opportunity to provide written testimony in support of HB 2087.

House Insurance
Date: 2-10-09
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Testimony of Jerry Diddle, President, Axcet HR Solutions

Before the Kansas House of Representatives Insurance Committee

On HB 2087 – The Professional Employer Organization Registration Act

Tuesday, February 10, 2009

Good afternoon Chairman Shultz and members of the Committee. My name is Jerry Diddle, President of Axcet HR Solutions, a professional employer organization based in Lenexa, Kansas. Axcet HR Solutions has been providing professional employer services to Kansas businesses for more than 20 years. Today, Axcet is a leading PEO employing 55 direct employees and in excess of 5,000 worksite employees.

Before I comment on HB 2087, the Kansas Professional Employer Organization Act, I would like to take a moment to provide the Committee with a brief background on PEOs. PEOs are a market-based solution to the high costs and complex employment administration that burden small businesses today. PEOs specialize in offering a comprehensive suite of services that include payroll, employment tax administration, workers compensation and risk management, employment law compliance, and benefits administration -- much like the human resource departments within very large companies. By contract, the PEO and its client, usually a small to medium-sized business allocate responsibility for duties in the employer's "bundle" of responsibilities, with the PEO assuming non-operational duties and the client retaining

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retaining responsibility for its core, day-to-day operations. This unique arrangement is known as “co-employment”.

Employers today are faced with a myriad of employment laws and regulations. Complying with those employer requirements is increasingly difficult, particularly for small and medium-sized businesses. Many employers find it difficult to balance the demands of tending to the “business of employment” while maintaining and growing their businesses. By partnering with a PEO, businesses are assisted with regulatory compliance and have access to health and retirement plans they might not otherwise have.

Prior to engaging the services of a PEO, many clients either did not offer as comprehensive a employee benefit package or did not offer health or retirement plans at all. PEOs provide small and medium-sized businesses with an option to offer workers benefits often found at larger companies. Access to these services allows clients of PEOs to attract and retain the best employees.

Regarding HB 2087, the legislation before the Committee today, I must voice my strong opposition. As introduced, HB 2087 would dramatically limit the manner in which PEOs currently operate in Kansas. This legislation, as introduced by the Kansas Insurance Department, would prohibit PEOs from effectively and efficiently providing many of the core services that make up a comprehensive PEO service offering including healthcare benefits and workers’ compensation coverage.

I have met, in coordination with the National Association of Professional Employer Organizations (NAPEO) with Assistant Commissioner Tomlinson to discuss the issues that were the impetus for this legislation. Those discussions have been productive and we look forward to continued dialogue. However, despite the progress yielded by those discussions, the legislation as introduced would unnecessarily and dramatically change the way the PEO industry operates in Kansas.

The PEO industry is operating well in Kansas and passing legislation that would make significant operational changes to our business model is unwarranted.

I appreciate the opportunity to speak with you today and welcome any questions the Committee may have.

A handwritten signature in black ink, appearing to read 'Gerald F. Diddle', written in a cursive style.

Gerald F. Diddle
President



National Association
of Professional Employer Organizations

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**Testimony of the National Association of Professional Employer Organizations (NAPEO)
Before the Kansas House of Representatives Insurance Committee**

On HB 2087 – The Kansas Professional Employer Organization Registration Act

Tuesday, February 10, 2009

Good afternoon Chairman Shultz and members of the Committee. My name is Tim Tucker and I represent the National Association of Professional Employer Organizations, (NAPEO)¹. On behalf of NAPEO, I am testifying in strong opposition to House Bill 2087, The Kansas Professional Employer Organization Registration Act. As introduced, HB 2087 would dramatically and unnecessarily impede the ability of professional employer organizations (PEOs) to operate in Kansas. In doing so, thousands of small businesses and tens of thousands of workers would be precluded from the advantages provided by the PEO relationship.

By way of background, PEOs are businesses that partner with existing small businesses to enable them to cost-effectively outsource the management of human resources including employee benefits, payroll, tax withholding and remittance and workers' compensation so that PEO clients can focus on their core competencies to maintain and grow their bottom line. By forming an employment relationship with a PEO, small businesses are able to attract and retain top-level employees. Additionally, with the ever-increasing number of employer related laws

¹ The National Association of Professional Employer Organizations (NAPEO) is a national trade association of the professional employer organization (PEO) industry, representing a membership that generates more than 90% of the industry's total PEO gross revenues.

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and regulations, small businesses face the daunting task of navigating the labyrinth of requirements while running their businesses. Through a co-employment relationship, the PEO and its clients allocate the duties and responsibilities of employment, with the PEO handling much of the non-operational functions and the client focusing on its primary business functions.

The PEO business model has evolved over the last three decades into an industry that today is operating in every state across the country with estimated industry revenues of \$72 billion. Industry estimates indicate that there are between two and three million American workers currently in a PEO relationship. Businesses of virtually every type engage the services of PEOs from manufacturers, to restaurants and hotels, to doctors' offices and law firms – all finding the human resource expertise and service offered by a PEO tremendously beneficial. Equally diverse as the industries PEOs serve are the size of PEOs themselves – from publicly traded Fortune 100 companies to small Main Street or niche companies serving specific business types.

Like other employers, PEO's partner with service providers such as workers' compensation and healthcare benefit providers, as well as retirement plan administrators, to develop a suite of services and benefits. Many national and regional insurers write coverage for PEOs which is most typically secured through an insurance agent or broker. As the Committee will hear, service providers who partner with the PEO industry here in Kansas feel that the current manner in which PEOs operate in the state is working well. Other states have found that small business that partner with PEOs have access to products and service providers they would not otherwise enjoy but for the PEO relationship. As large employers, PEOs bring to the table the expertise and administrative efficiencies that are often difficult for a small business to be able to harness.

Regarding the legislation before you today let me be clear; NAPEO does not oppose the codification of a regulatory framework for the PEO industry. In fact, NAPEO has spearheaded legislative efforts in a number of states. Last year alone, NAPEO worked with lawmakers and stakeholder groups in five states (Colorado, Connecticut, Utah, West Virginia, and Wisconsin) on either new comprehensive PEO statutes or on initiatives to modernize existing laws. As introduced, HB 2087 would result in a sea-change to the manner in which PEOs operate in the state currently, and would create a regulatory system for PEOs that would be vastly different from just about any of the other 35 states that have enacted such laws.

The PEO industry in Kansas has been engaged in a dialogue with the insurance department in an effort to understand and address any issues that the regulators might have about PEOs. These initial discussions have been productive, but it is clear that more in-depth dialogue needs to take place to gain a mutual understanding of any issues that may rise to the level of legislative action.

Should the Committee determine that the creation of a statutory framework for PEOs is desired, NAPEO believes there are existing statutory frameworks in other states, as well as guidance from the National Association of Insurance Commissioners (NAIC) that would be helpful in creating a framework here in Kansas. PEOs, like other state regulated entities, operate in numerous jurisdictions. Because PEOs are multi-jurisdictional, it is helpful from a compliance perspective that PEO requirements at the state-level be as uniform as possible.

NAPEO stands ready to work with the Committee as appropriate to create requirements for PEOs operating in Kansas. However, we remain ardently opposed to HB 2087 as introduced and urge the Committee to vote in opposition to this legislation.

I appreciate the opportunity to appear before you today and stand ready to respond to any questions you may have at this time.

ADP TotalSource
10200 Sunset Drive
Miami, FL 33173



February 10, 2009

Dear Chairman Shultz and Members of the House Insurance Committee:

Please accept this letter in opposition to House Bill 2087 which attempts to create a regulatory framework for Professional Employer Organizations operating in Kansas. ADP TotalSource is a PEO that operates nationally, serving over 7,300 small business clients. We entered the Kansas market in 2008 and have 670 covered employees today. Although we strongly support the statutory and operational certainty created through the enactment of professional employer organization licensing acts, we strongly oppose HB 2087. We urge you to oppose this legislation as drafted for the reasons articulated below.

ADP TotalSource has been in the forefront of the PEO industry since 1984. Our Fortune 500 corporate parent, ADP, Inc., is a worldwide leader in providing leading edge business services, and has an unsurpassed reputation for integrity and financial stability. ADP TotalSource's integrated suite of services incorporates both traditional and Web-based products, which collectively span the entire employee life cycle, from recruitment to termination.

Major components of the integrated suite of services include human resources administration, employee recruiting and selection assistance, professional development training, regulatory and compliance management, safety and risk management, payroll and tax administration and reporting, retirement plan services, workers' compensation and benefits administration, and access to a leading edge Human Resource Management System and robust employee benefit packages that might otherwise be unavailable to a smaller employer.

The statutory framework in House Bill 2087 undermines the very nature of ADP TotalSource's services and business operations. The bill departs from the PEO regulatory frameworks established in statute in 33 other states. These state statutes codify a co-employer arrangement where the PEO co-employs the covered employees at their client work locations and becomes the W-2 employer paying wages and employment taxes. These laws articulate the PEOs and the clients' responsibilities for covered employees. They clarify that the PEO, as a co-employer, may purchase and maintain workers' compensation insurance, comprehensive benefit programs and 401(k) plans for covered employees providing human resource expertise and benefits administration. This is not the case in HB 2087 as noted in the following examples.

HB 2087 deems the client the employer for workers' compensation in Section 2(b) and in Section 13, the bill undermines our ability to maintain workers' compensation and the risk management programs for clients. Section 12 prevents PEOs from providing health insurance benefits "to covered employees in a single employer group" which would deny our covered employees access to our fully-insured major medical, dental and vision plans provided through leading licensed carriers in Kansas. Section 11 states that a PEO that provides workers' compensation or health insurance to its employees is "selling, soliciting and negotiating insurance" requiring it be "provided on separate policies in the client's name." These provisions categorically fail to recognize the "employer" status of PEOs. Further, they suggest that PEOs sell insurance, in disregard for the fact that, as employers, we purchase these products using insurance brokers and carriers licensed to do business in Kansas.

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ADP TotalSource
10200 Sunset Drive
Miami, FL 33173

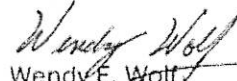


ADP TotalSource strongly urges you to recognize that HB 2087 fails to comprehend and protect the valuable services provided through a "co-employment" arrangement between a PEO and a client. As the largest publicly-traded PEO in the US with over 193,000 covered employees in every state in this country, we urge you to oppose this bill or support revisions that will make the provisions in HB 2087 consistent with those found in 33 other states. It is imperative that the PEO business model and operations in Kansas be supported by statutory standards that mirror the statutes adopted throughout the US. We hope that you will consider supporting amendments that will protect the business clients and covered employees who benefit from our services, rather than protect the proponents of this bill and effectively deny Kansas businesses the benefits offered through a PEO agreement.

As a member of NAPEO, we support their testimony before you today in opposition to this legislation as written. Although we are unable to be present to testify in opposition to this bill, we urge the committee members to vote NO on HB 2087.

Should you desire additional information or have further questions, please feel free to contact me at 866-338-5377 (toll free). Thank you in advance for your consideration of this request to oppose this legislation.

Regards,


Wendy E. Wolf
Vice President Government Affairs
ADP TotalSource



**TESTIMONY OF ANDREA C. MCHENRY, ASSISTANT GENERAL
COUNSEL, GOVERNMENT AFFAIRS, ADMINISTAFF
BEFORE THE KANSAS HOUSE INSURANCE COMMITTEE
HB 2087
FEBRUARY 10, 2009**

Chairman Shultz and Members of the Committee:

Thank you for allowing me to submit comments regarding this legislation. Administaff is a professional employer organization that provides human resource consulting services to small and medium sized businesses in Kansas and nationwide. We co-employ approximately 100,000 worksite employees nationwide and over 500 in Kansas. I would like to express my opposition to HB 2087 because it would significantly impact our ability to provide these essential services to businesses in the state.

Professional Employer Organizations partner with small businesses in the state of Kansas to help manage increasingly complex employee-related matters such as health benefits, payroll, human resources, and payroll tax compliance. In addition, PEOs like ours are able to provide access to a wide array of top quality benefit programs such as group medical insurance, dental and vision coverage, cafeteria plans, and 401(k) retirement plans that for many of our small business clients far exceed the choices and offerings they would be able to offer on their own.

We believe that HB 2087 would limit our ability to provide services in the state because it is inconsistent with statutes that exist across the nation with regard to PEOs and the services and benefits they provide. The language with regard to workers compensation for example, differs greatly from similar statutes existing in other states addressing workers compensation policies within the PEO relationship. This legislation denies PEOs the ability to assume risk under the workers compensation policy and does not allow the PEO to be considered the employer of record for purposes of coverage under the workers compensation act. This language impedes our ability to maintain "employer status" which is the foundation of the co-employment relationship between a PEO and its client.

In addition, HB 2087 would not allow fully-insured welfare benefit plans offered by a PEO to be considered single employer welfare benefit plans, thereby creating an administrative burden requiring direct purchase of individual client policies. PEOs offer benefits that are superior to mandated benefits within the small group market and often

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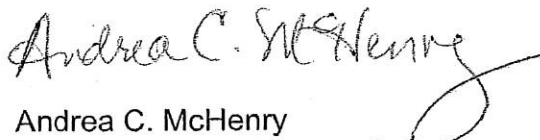
www.administaff.com

these benefits are delivered more efficiently and extend medical benefits to more workers. This legislation would create a more complex and inefficient method of providing health coverage to our clients and employees.

In closing, we would like to see legislation that is consistent with a regulatory framework that exists nationwide, however HB 2087 does not attempt to do this and will negatively impact the PEO industry and ultimately its clients in the state of Kansas. Therefore, I strongly encourage the members of the committee to vote against this legislation.

Thank you for your consideration.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Andrea C. McHenry". The signature is written in black ink and is positioned above the typed name.

Andrea C. McHenry
Assistant General Counsel, Government Affairs
Administaff



UnitedHealth Group

James S. Watson, Vice President, State Affairs
9900 W. 109th St. Suite 200
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Testimony in opposition of HB 2087
House Insurance Committee
Tuesday, February 10, 2009

UnitedHealth Group appreciates the opportunity to provide written testimony in opposition to HB 2087. We believe aggregation of worksite employees under a single Professional Employer Organization (PEO) plan enhances health coverage by spreading losses across a large pool of employee risks.

In addition, the aggregation of risks under a single PEO policy eliminates the cost of administering individual client policies, resulting in lower coverage costs. PEO benefit plans, of which most if not all are fully-insured, provide small business clients and workers with a viable option for accessing quality and affordable healthcare benefits. It is also important to remember that all of the fully-insured plans are regulated by the Kansas Insurance Department currently.

We believe HB 2087 goes too far and would likely result in more Kansans being uninsured. PEOs do provide a valuable service to Kansans and we urge you to oppose this legislation.

Again, thank you for the opportunity to provide written testimony.

Larrie Ann Lower
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785-640-2747
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Written testimony before the House Insurance Committee
HB 2087
Aetna, Inc.
February 10, 2009

Mister Chair and members of the Committee. Thank you for allowing me to submit written testimony today on behalf of Aetna, Inc. Built on our 154-year heritage, Aetna will be a leader cooperating with doctors and hospitals, employers, patients, public officials and others to build a stronger, more effective health care system. Aetna is one of the nation's leaders in health care, dental, pharmacy, group life, and disability insurance, and employee benefits. Our membership includes: 17.668 million medical members, 14.117 million dental members and 11.054 million pharmacy members. Their health care networks include: more than 874,000 health care professionals, more than 506,000 primary care doctors and specialists and 4,987 hospitals.

Aetna respectfully opposes HB 2087. We believe this bill would significantly affect the PEO market in a negative way. Aetna participates in both the small group and PEO market because they believe the markets are complimentary and do not adversely impact one another. We have approximately 10 million members in small group policies with an additional 280,000 in PEO master policies across the country. Buyers looking to join a PEO are purchasing a suite of services of which master-policy benefits would only be a part. In general, administrative expenses under PEO master policies are lower as a percentage of premium by 5-10% than similar expenses under small-group plans. We believe the consolidated buying power and the stewardship of PEO's offering master policy benefits add stability to insurance markets and advance access to healthcare.

We request that you oppose HB 2087. Thank you for your consideration and I'll be happy to answer any questions you may have.

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