

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2139

As Amended by Senate Committee of the Whole

Brief*

HB 2139, as amended, would enact and amend certain workers compensation provisions and would amend insurance rate filing and risk classification law.

Workers Compensation – State Fair Board

The bill would enact new law to authorize the State Fair Board (Board), notwithstanding the self-insurance assessment rating provisions in the law, to purchase workers compensation insurance from an admitted carrier. The bill would further provide that the contract for the purchase of the workers compensation insurance must comply with the competitive purchase process outlined in current law for the Division of Purchases (Department of Administration). If the contract includes a premium or rate in excess of \$500, the bill would provide that it must be purchased on the basis of sealed bids. The contract, under the bill, would not be subject to the requirements for purchase through the state Committee on Surety Bonds and Insurance.

The bill also would provide that if the Board enters into a private contract for the purchase of workers compensation insurance, the Board would no longer be subject to the self-insurance assessment and the Director of Accounts and Reports would then cease the transfer of any amounts for the self-assessment for the Board, with one exception; the Board would continue to be assessed for any moneys paid relating to existing claims made by the Board within the self-insurance fund until all claims have been closed and settled.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

If the Board opts to enter into a private contract, the bill would provide that the State Workers Compensation Self-Insurance Fund (the SSIF) would not be liable for compensation of any claims under the Workers Compensation Act relating to the Board during the term of the private contract. Finally, the Board would be required to notify the Secretary of Administration and the Kansas Health Policy Authority of the effective date of any workers compensation policy acquired pursuant to the contract provisions of the bill.

Workers Compensation – Prohibition, Master Policies; Rule and Regulation Authority

The bill also would provide that any entity purchasing a workers compensation policy for the covered employees of more than one employer pursuant to a shared employment relationship (e.g. a PEO, Professional Employment Organization) must purchase the workers compensation policy on a separate multiple coordinated policy basis. These policies must be issued pursuant to the Workers Compensation Act (KSA 44-501 *et seq.*) from an insurer holding a certificate of authority to do business in Kansas and providing workers compensation coverage.

The bill would authorize the Insurance Commissioner to adopt such rules and regulations as are reasonable and necessary to carry out the purpose and provisions for the purchase of workers compensation policies through a shared employment relationship.

Workers Compensation – Assigned Risk Pool

The bill also would delete a requirement in the current law governing the workers compensation assigned risk pool that prohibits the Insurance Commissioner from approving workers compensation rates or rating plans when the annual premium is less than \$2,250 (with some exceptions). The bill would instead provide that the Commissioner approve rates and rate modifications which can include the application of surcharges, experience modifications, or other rating

variables. Under current law, the approval of the application, modifications and other rating variables has been limited to claims experience and individual risk.

The bill would delete out-of-date requirements for the workers compensation assigned risk pool to reduce both its assessments and its size (premium volume) before the years 1997 and 1999, respectively.

Workers Compensation – Schedule Rating

Finally, the bill would delete an exception in current law that disallowed schedule rating for workers compensation policies. [Schedule rating would allow an insurer to adjust the premium from a filed rate based on special or unique characteristics of the business.]

Background

The bill was introduced at the request of the Kansas Insurance Department whose representative indicated that the bill is a result of an actuarial study of the plan which concluded that the rates charged to risk with premium under \$2,250 are inadequate and recommended that the surcharge be applied to all risks. The representative also indicated that the assigned risk pool was meant to be the place of last resort for workers compensation coverage for employers who have been denied coverage in the private marketplace; it was not intended to be a subsidized pool which competes with the voluntary workers compensation market. A representative of the National Council on Compensation Insurance (NCCI) appeared in support of the bill and stated that the bill would remove outdated pricing restrictions and give the governing board of the Kansas Workers Compensation Insurance Plan and the Kansas Insurance Department the necessary flexibility to determine the appropriate pricing methods for this government-run insurance safety net. The Kansas Association of Insurance Agents (KAIA) also appeared in support of the bill and offered a conceptual amendment. The

KAIA representative indicated that smaller companies, such as a regional mutual insurer, would like to be able to offer the same choices as the large stock companies but do not want the increased expense of maintaining separate companies (separate rate and form filings, maintaining a number of licenses). The representative concluded that allowing up to four loss cost multipliers should cautiously stimulate competition in workers compensation rating, but not jeopardize the market.

There were no opponents to the bill at the time of the House Committee hearing.

The House Insurance Committee recommended an amendment that allows a single insurance company to file up to four loss cost multipliers and up to four dividend plans and to use underwriting judgment to determine which rate is used. The amendment was requested by the KAIA.

The House Committee of the Whole amended the bill to include provisions for the State Fair Board in its purchase of workers compensation insurance. The 2010 Legislature considered legislation to authorize the State Fair Board to purchase workers compensation insurance through a competitive bid process. Both 2010 SB 364 and a proviso in the Omnibus budget appropriations bill (H. Sub. for SB 572) also would have exempted the Board from participation in the State Self Insurance Fund if the Board purchased private workers compensation insurance. A hearing was held on the 2010 Senate bill, but no further action was taken. The Governor vetoed the proviso in the Omnibus appropriations bill. The Committee of the Whole amendment incorporates the proviso language.

The Senate Committee on Financial Institutions and Insurance amendments:

- Require, if the State Fair Board opts to purchase commercial workers compensation, it must purchase from an admitted carrier;

- Delete the loss cost multiplier provisions and amend a statute pertaining to risk classification and rate filing to instead allow schedule rating for workers compensation policies; and
- Insert a provision to require purchase of workers compensation policies in shared employer relationships on a separate multiple coordinated policy basis.

The amendments were requested by the Kansas Insurance Department, in consultation with other interested parties to the bill. The proponents at the Senate Committee hearing generally spoke to the bill and submitted amendments, noting that purchasing from an admitted carrier would give the Insurance Department regulatory oversight of the carrier, including the ability to resolve disputes between the board and a carrier; the use of schedule rating would be an alternative to the use of loss cost multipliers; and the provision for Professional Employer Organizations would prevent entities from purchasing master policies and allow for better tracking of the claims experience of each business.

The Senate Committee of the Whole amendment requires the State Fair Board, if the Board opts to purchase commercial workers compensation insurance coverage, to continue to be assessed for existing claims paid by the State-Self Insurance Fund (SSIF) until the Board's claims have been closed and settled.

The fiscal note prepared by the Division of the Budget on the original bill states that the Kansas Insurance Department indicates that passage of the bill would have no fiscal effect on its operations. While no fiscal note is available for the amendments pertaining to the State Fair, fiscal information provided at the time of a Senate Committee hearing for 2010 SB 364, indicated that the State Fair paid \$33,823 in FY 2009 for workers compensation insurance premiums. The amount, the State Fair indicated, was then increased to \$120,011 in FY 2011. According to *The FY 2011*

Budget Instructions, which is published by the Division of the Budget and includes *Budget Cost Indices*, the Kansas State Fair Workers Compensation Assessment rate increased from 2.499 percent for FY 2009 to 9.274 percent for FY 2011. The State Fair indicated, at the time the fiscal note was published in 2010, that it obtained estimates from a private insurer that could reduce premium costs by approximately \$100,000 in FY 2011. *The FY 2012 Budget Instructions and Cost Indices* indicate the following assessment rates for the State Fair's experience-based assessment rates as follows: 1.002 percent (FY 11); 1.038 percent (FY 12); and 1.060 percent (FY 13).