

Approved: May 3, 2010
Date

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 1:00 p.m. on March 22, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Amanda Nguyen, Kansas Legislative Research Department
Sue Fowler, Committee Assistant



Conferees appearing before the Committee:

Representative Arlen Siegfried, District 15
Representative Dave Crum, District 77
Dan Murray, National Federation of Independent Business-Kansas
Beverly Gossage, HSA Benefits Consulting
Linda Sheppard, Kansas Insurance Department
Richard Cram, Kansas Department of Revenue

Others attending:

See attached list.

Hearing on:

HB 2682 **Allowing employees to retain and receive contribution from employer on individual policies, requiring employer to provide cafeteria plan, and requiring administering carriers to provide health savings accounts and high deductible health plans**

Melissa Calderwood, Kansas Legislative Research Department, gave an overview on **HB 2682**.

Proponents:

Representative Arlen Siegfried, District 15, (Attachment 1), appeared before the committee in support of **HB 2682**.

Representative Dave Crum, District 77, (Attachment 2), appeared before the committee in support of **HB 2682**.

Dan Murray, National Federation of Independent Business-Kansas, (Attachment 3), gave testimony before the committee in support of **HB 2682**.

Beverly Gossage, HSA Benefits Consulting, (Attachment 4), presented testimony before the committee in support of **HB 2682**.

Ken Daniel, Topeka, Independent Business Association, (Attachment 5), presented written testimony in support of **HB 2682**.

Ron Gaches, Kansas Association of Health Underwriters, (Attachment 6), presented written testimony in support of **HB 2682**.

Tim Witsman, Wichita Independent Business Association, (Attachment 7), presented written testimony in support of **HB 2682**.

Opponents:

Linda Sheppard, Kansas Insurance Department, (Attachment 8), gave testimony before the committee in opposition to **HB 2682**.

Richard Cram, Kansas Department of Revenue, (Attachment 9), gave testimony before the committee in opposition to **HB 2682**.

Hearing closed on **HB 2682**. The Chairman asked if there was any objection to working **HB 2682**. There was no objection.

CONTINUATION SHEET

Minutes of the House Insurance Committee at 1:00 p.m. on March 22, 2010, in Room 152-S of the Capitol.

Discussion and action on:

HB 2682 **Allowing employees to retain and receive contribution from employer on individual policies, requiring employer to provide cafeteria plan, and requiring administering carriers to provide health savings accounts and high deductible health plans**

Representative Peck made a conceptual motion to strike lines 27-41, page 1, of HB 2682 (new Section 2). Seconded by Representative Anthony Brown. Motion carried.

Representative Neighbor made a motion to amend HB 2682 by striking Section 6. Seconded by Representative Swenson. Motion failed.

Representative Peck made a motion to strike the language in SB 126 and create a Substitute bill by inserting the contents of HB 2682. Upon discussion with the Revisor, Representative Peck made a substitute motion to instead remove SB 174 from the table, insert HB 2682, as amended, and create House Substitute for SB 174. Seconded by Representative Brunk. Motion passed.

Representative Peck made a motion to pass House Substitute for SB 174 favorably for passage. Seconded by Representative Brunk. A vote was taken and division was called for with 7 in favor and 5 in opposition. Motion passed.

Discussion and action on:

SB 389 **Dentists; prohibition on limiting payment for services not covered under insurance policy**

Representative Neighbor made a motion to move SB 389 out favorably for passage. Seconded by Representative Swenson.

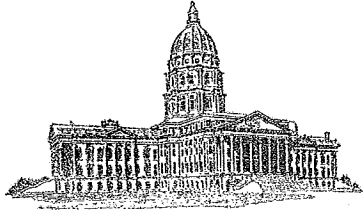
Representative Anthony Brown made a substitute motion to amend SB 389 with the balloon language presented. Seconded by Representative Olson. After discussion, a vote was taken and a division was called for, with an outcome of 4 in favor and 8 in opposition. Motion failed.

Representative Peck made a motion to insert a part of the balloon language presented, to add "issued or renewed" after July 1, 2010 in Section 1, line 14. Seconded by Representative Olson. After discussion, a vote was taken. The substitute motion failed.

The Chairman then asked the Kansas Dental Association for comment and the KDA representative presented a balloon for consideration. Representative Davis offered a substitute motion to adopt the balloon presented by the Kansas Dental Association. Seconded by Representative Neighbor. Motion passed.

Representative Neighbor made a motion to pass SB 389 out favorably, as amended. Seconded by Representative Swenson. Motion passed.

The meeting was adjourned at 2:45 p.m.



ARLEN H. SIEGFREID
SPEAKER PRO TEM

March 22, 2010

House Bill 2682
House Insurance Committee

Mr. Chairman and members of the committee,

I come before you today in support of HB 2682. As you are each aware, personal health insurance coverage is an issue of critical importance. While national legislation seeks to fundamentally alter the landscape of the healthcare and insurance industry, the bill before us today represents a modest, yet notable step for Kansans in providing affordable insurance coverage to small businesses and their employees.

Currently, small businesses, entrepreneurs, and farming operations not only face skyrocketing rates and premiums, but also restrictive rules regarding taxation of those policies and premiums. While the legislation before you is not the ultimate solution for small businesses, it's an important start.

By enabling businesses to attract employees and grow their companies, we not only improve the well being of the workers they hire, but also bolster the state's economy. Kansas businesses operate in an incredibly competitive environment. The simple ability to provide an affordable healthcare package is an important determinant in recruiting talented workers—which you'll find at the nucleus of any successful business, large or small.

These are the businesses and individuals we need to be not only protecting, but also incentivizing. They represent organic job growth in Kansas, and they need the ability to provide adequate and affordable care to potential employees. This legislation provides them with a rational tool to continue putting Kansans to work, and maintain reasonable rates for a basic job requirement in today's market.

I stand firmly in support of this legislation and encourage each of you vote yes on HB 2682.

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIR: HEALTH AND HUMAN SERVICES

MEMBER: APPROPRIATIONS
SOCIAL SERVICE BUDGET

3-22-10

Testimony on **HB 2682** House Committee on Insurance

When employees are responsible for all health care costs up to the high deductible they have a strong financial incentive to contain their health care costs. In other words, the individual is not insulated from the true cost of health care.

Little or no cost sharing, as seen in medicare, medicaid, and most employer sponsored health plans, produces enormous demand on the health care system, driving up costs.

HD health plans provide the cost sharing so badly needed in the health care market place.

In a survey by the Wichita coalition on health care, there was a recognition "that a history of rich benefits has led to a lack of accountability on the part of employees for managing their health care costs and has made them less aware of the true cost of health care and health insurance."

A BCBS study found that participants that enrolled in a HD plan were more likely to research health information, take part in wellness programs, track current and future health care expenses, and use the emergency room less than those in traditional plans. The study also found that those enrolled in HD plans did not forego needed health care. In fact, most HD plans have first dollar coverage for preventive services such as yearly physical, prenatal and well child care, child and adult immunizations, mammograms, and others.

There are significant advantages for employees who establish a HSA.

1. Annual contributions are made with pre-tax dollars and monies paid from the HSA for qualified medical expenses are not taxed as regular income. In other words, the money is not taxed going in or coming out.
2. Individuals can use the dollars they save by purchasing the High Deductible health Plan to fund their HSA.
3. The HSA can accumulate interest and be carried over from year to year and allowed to grow.
4. Under special circumstances, health insurance premiums can be paid from the HSA such as when an individual is receiving unemployment compensation or requires continuation coverage under COBRA.
5. Funds from the HSA can be used to purchase a qualified long-term insurance contract.
6. Although contributions to the HSA cannot be made after enrolling in Medicare, the account can still be used to pay for medical expenses tax free or distributed and declared as regular income.

Model Health Savings Account/High Deductible Health Insurance Plan Company
- LDF of Wichita

LDF operates multiple Wendy's Restaurants and other ventures. The company has 340 employees. In 2006 the company was seriously considering dropping their employee sponsored health plan due to double digit increases in costs in recent years. As a last resort, the company changed to a HSA/HD plan. It was somewhat of a gamble because it was the only option made available to the employees and, initially, was met with considerable resistance. The specifics of the plan were as follows:

1. The company self-insures with a stop-loss reinsurance plan.
2. High deductible health plan of \$2,500.00 for a single and \$5,000.00 for a family.
3. The company contributes \$600.00 per year to the employees HSA for a single and \$1,500.00 for a family. Sixty percent of the employees make additional contributions on a tax free basis as a payroll deduction. The vast majority have a positive balance in their HSA after three years.
4. The company provides wellness and prevention options outside the deductible at no cost to the employee such as annual physicals, vision care, dental care, and cancer screening.
5. A discount has been arranged at the YMCA for company employees.

6. Employees have access to a nurse hotline 24 hours per day 7 days per week. The goal of the program is to keep the employees healthy and out of the hospital.

In summary, the program has been a huge success. Not only have the companies health care costs not gone up in the past three years but there have actually been savings. Bill Goodlatte, the company CEO, states that "this is the best program the government has ever created." The plan has been a win-win because the employees also think it is fantastic.

The amendment would also eliminate new section 2 of the bill. This section would allow individuals who go to work for an employer who already offers a group health plan to retain their individual health plan.

My concern is that this section would undermine the group health insurance market by eliminating healthy individuals from the group insurance pool.



The Voice of Small Business®

House Taxation Committee
Daniel S. Murray: State Director, NFIB-Kansas
Testimony in Support of HB 2682
March 5, 2010

Mr. Chair, Members of the Committee: My name is Dan Murray and I am the State Director of the National Federation of Independent Business-Kansas. NFIB-KS is the leading small business association representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB-KS represents the consensus views of its 4,000 members in Kansas. Thank you for the opportunity to comment on HB 2682.

Since 1986, the National Federation of Independent Business' members have said that healthcare costs are their No.1 concern. In a recent NFIB poll, nearly 81 percent of small business owners say that finding affordable healthcare for themselves and their employees is a challenge. Fifty percent of small business owners say they anticipate having difficulty keeping up with the cost of healthcare over the next four years. And, of the nearly 46 million Americans without healthcare, more than 26 million are small business owners, employees and their dependents.

Further, small businesses do not have the purchasing power and large pools to spread experience that big business does. In fact, small businesses, on average, pay about 18 percent more for health insurance than their larger counterparts for the same group of services. Such data suggests that small employers either pay more for the same services or receive less (in terms of services) for their health insurance. In either case, the point remains that health insurance is more expensive for small businesses.

Thus, with the rising cost of providing healthcare benefits, an increasing number of employers are looking for innovative ways to stretch their healthcare dollars. Additionally, many small businesses which do not currently offer health insurance benefits are looking for ways to actually provide insurance to their employees. As you know, health benefits are key tool to recruit and retain qualified employees. Many employers look to market-driven reforms aimed at empowering individuals and employees to become better consumers by giving them the freedom to choose how they are spending their healthcare dollars, including: health savings accounts (HSAs), health reimbursement arrangements (HRAs) and flexible spending accounts.

Very simply, HB 2682 allows small business employers which have HRAs to be able to contribute to the insurance premiums of their employees' individually underwritten health plans. The amount the employer contributes to the employees' individually underwritten health plan must be the same percentage of premium, or up to the same dollar amount, that the employer pays toward the health insurance premium of the other employees of the same classification. This arrangement will allow employees to maintain their individually underwritten plans if they prefer, and should benefit small employers because the contributions would be made to tax-sheltered HRAs.

In closing, we believe HB 2682 will help slow the rising cost of insurance and reduce the number of uninsured Kansans by allowing small businesses and their employees more choice in the current small-group market. NFIB asks that you support HB2682. Thank you for your time and consideration.



Written Testimony to the Committee on Insurance

Date: March 22, 2010
From: Beverly Gossage
To: Mr. Chairman and Members of the Committee

It is an honor to address this committee.

Subject: HB 2682

Introduction:

My name is Beverly Gossage and I am the Director of HSA Benefits Consulting. I serve on the health board for Kansas Policy Institute and am a research fellow for Show Me Institute. I am here today to give testimony on how HB 2682 can give small business employers and their employees a tax savings and can help cover more uninsured.

Purpose:

This bill addresses three problems in our state:

Problem 1: Uninsured Kansans. The US Chamber of Commerce reports that 60 percent of the uninsured work for small businesses. Most Kansas employers do not offer group health insurance.

Solution: Allow small business owners to pay toward individually purchased, underwritten policies

Problem 2: Under current law if an employer pays toward premium, the policy would no longer be subject to individual policy regulations but would be subject to group plan regulations.

Solution: If an employer pays toward premium on an individual policy, it will remain an individual policy and it will not be considered a group policy and, therefore, not subject to group regulations

Problem 3: Inequity in health premium tax law which gives a tax deduction on group health premiums but not for privately owned health insurance premiums.

Solution: Allow a state tax deduction on health premiums for private, individual policies

Information:

This bill would permit small employers to contribute to employees' individually selected policies through a health reimbursement arrangement with a defined contribution without these private plans being considered a small group health insurance plan. Under current Kansas legislation if an employer gives premium assistance toward these individual policies, they would be subject to such rules as group mandates and guaranteed issue which would drastically raise the rates of the premiums and no longer make them portable. This bill permits the employer to offer premium assistance without changing the fact that the policy is a personal, individually underwritten portable policy.

According to a Kaiser Foundation Study, in 2008 only 41 percent of small businesses in Kansas with fewer than 50 employees offered group health insurance. Insurance carriers tell us that even more employers have dropped coverage in 2009. Those who have dropped group health plans cite various reasons:

1) *Lack of time and personnel*

Particularly in this economy, small business owners do not have a fulltime HR department to oversee the health insurance benefits. The employer is busy trying to run the company, make a profit, and keep employees on the payroll.

2) *High cost of group premiums*

State and federal mandates, guaranteed issue, community rating and the demographics of the group can lead to high premiums. Due to the small pool, if one person develops a severe health issue, everyone can experience significant rate increases at renewal.

3) *Employee participation requirements*

To avoid adverse selection, most carriers mandate that at least 50% of the full time eligible employees and 75% of employees without other group coverage be on the plan. Often expensive premiums and other factors can make it difficult to meet those participation percentages.

4) *Employer contribution requirements*

Carriers require that the employer pay at least 50% of the employee premium. As rates accelerate, employers find that they can't keep increasing this portion of their employees' compensation, so they drop the plan and might increase salaries in an attempt to stay competitive and keep employees. But they and the employees receive no tax deduction on that portion of salary which the employee could apply to purchasing a policy.

5) *Retention*

1 in 4 employees change jobs annually and go in and out of employer group plans. This can make it especially difficult for a small business to keep up with the paperwork and budget for insurance costs. At each annual renewal they could have a very different employee pool which could drastically affect the premium. When you have a pool of 5 people and one person leaves, you have changed the underwriting by 20%.

6) *Portability*

Kansas requires that employees be offered state continuation when they leave the plan. In many cases, employers must do the paperwork to offer the employees this option and monitor if the terminated employee has paid the full premium and is still on the plan. They must keep up with the ever changing subsidy renewals and legislation. Even then, group plans are only portable for a time until the employee has exhausted the continuation period.

In 2007 over 175,000 Kansans were covered by a private policy. The fact that most small business employers are not offering health insurance and the fact that we live in a mobile and global society has contributed to the growing number of Kansans who own an individual policy.

Some businesses in Kansas hire employees who work remotely from other areas around the state. Finding a small group policy with a broad network to cover these employees can be daunting. This growing population with private policies is apparent in the number of group insurance carriers who have entered the individual marketplace in the past three years and now advertise these private policies on billboards, radio and television.

Yet, about 30 percent of workers in firms with fewer than 25 employees are still uninsured.

Expected outcome of HB 2682:

- 1) *More employers will contribute to premium.*
Some employers who currently do not offer a group plan will be more likely to encourage employees to select a private health insurance policy to which they, the employer, can contribute and receive a tax deduction.
- 2) *More employees will become insured.*
Employees will be more likely to purchase a policy if the employer contributes to the premium and they can receive a tax deduction on their premium.
- 3) *Employees will have more coverage options.*
This bill gives employees more choices and they can act as a consumer, selecting the best policy for their needs.
- 4) *No minimum number of participants will be an incentive for employers to provide assistance.*
Employers not offering a group plan will offer premium assistance since they don't have to have a minimum number of employees participate.
- 5) *Part time employees may be covered*
A group plan requires full time employment for coverage. An employer could now offer premium assistance to part time employees.
- 6) *No minimum percentage of premium will be an incentive for employers to provide assistance.*
Group plans require a minimum of 50% of premium be paid for all policies. With this plan employers determine the amount that their budget can allow toward premium, as long as it is the same for employees in the same classification. For example, an employer may contribute \$100 toward premium for full time employees and perhaps he would want to put \$50 toward part time employees' health policies.
- 7) *Portability* is an incentive for an employee to be covered. If the employer dropped his group plan, the employee with a private policy has the security of knowing that his policy is intact. This ownership provides for more judicious utilization of the benefits and promotes wellness.
- 8) *Security* in owning a personal policy gives an incentive to be covered.
For example: though it is not a group plan, his policy cannot be cancelled nor his rates increased due to his personal claims; his newborn babies can be added to his policy without going through underwriting within the first 31 days of birth; and with many

plans, his adult child could be transferred to an individual policy without going through underwriting, building a ladder of the insured.

- 9) Employers and employees will discover the *convenience* of personal policies. Employee is not subject to an employer waiting period to access health insurance. Most carriers offer a list bill in which an employer may provide the convenience of payroll deduction and send one check to the carrier monthly for the employees who have selected policies from that carrier. When the employee leaves, he merely calls the carrier and starts paying his premium directly to the carrier.
- 10) Employers and employees will begin to see a *tax savings*
Through a premium-only cafeteria plan, the employees who have purchased individual health insurance will have a tax advantage on their portion of the premium, equalizing the tax discrimination. In addition, the employer will have a tax advantage by reimbursing his portion of the premium through the health reimbursement arrangement. This will give an incentive for the employer and employee to contribute to health insurance, covering more uninsured.
- 11) Some employees will choose a personal policy because they can receive a *state tax deduction*.
As the popularity of individual plans has increased, the injustice of the tax system has become more pronounced. Under this bill an individual will receive a state tax deduction on their personal health policy.

Conclusion

Turning uninsured employees into insured consumers benefits all of Kansas, including small business employers who currently offer a group plan. HB2682 takes a step toward equalizing the tax treatment of personal health insurance policies and will cover more uninsured Kansans without subsidizing any premiums.

Attached please find:

- Documentation from the Kaiser Foundation
- Clarification from the Department of Treasury regarding employers paying toward individual health policies
- Op-ed from the Council for Affordable Health Insurance (CAHI)

I will gladly respond to your questions.

August 10, 2007

IRS Clarifies Use of Cafeteria Plans

The U.S. Treasury Department has just released a regulation that reiterates and clarifies certain tax provisions with regard to individually purchased health insurance, ensuring that many employees with access to an employer-provided cafeteria plan who buy their own health insurance can get a tax break, as do those who have employer-provided coverage.

"This is an important clarification," said Dr. Merrill Matthews, Executive Director of the Council for Affordable Health Insurance (CAHI), "because it helps to level the playing field on the tax treatment of health insurance."

The IRS regulations clarify that employees can pay their individual health insurance and life insurance premiums through a tax-favored cafeteria plan. Employees in an employer-provided group health insurance plan have always been able to do that. But some had questioned whether individuals working for an employer who did not provide health insurance could do the same thing. This isn't a new tax provision; the regulation simply provides clear guidance that employees are allowed to have their premiums payroll deducted from their paychecks. They can either be reimbursed directly or paid through a "list billing" arrangement, in which the employees buy individual health insurance policies using a payroll deduction plan.

"We have been calling on the IRS to make this clarification; it could be a big boost for the uninsured who work for small employers," said J.P. Wieske, CAHI's Director of State Affairs. "Employers who don't provide health insurance can still help their employees get coverage through a list bill arrangement. And now we know those employees can pay for their premiums tax free."

One of the reasons for the Connector, part of the new Massachusetts health insurance reform legislation, was to help employees buying individual health insurance get a tax break for that coverage through a cafeteria plan. This IRS clarification essentially eliminates the need for a Connector to achieve tax fairness.

For more information on list billing see CAHI's [One Solution for the Small Group Market](#). To see the August 6, 2007, *Federal Register* document outlining the clarification, see [Employee Benefits -- Cafeteria Plan; Proposed Rule](#)



kff.org kaiserhealthnews.org kaiseredu.org

Kansas: Percent of Private Sector Establishments That Offer Health Insurance to Employees, by Firm Size, 2008

Compare Kansas to: United States

Percent of Private Sector Establishments That Offer Health Insurance to Employees, by Firm Size, 2008		Compare
	KS %	US %
Firms with Fewer than 50 Employees	41.3%	43.2%
Firms with 50 Employees or More	96.8%	95.5%

[\(show/hide notes\)](#)

Kansas: Health Insurance Coverage of Nonelderly 0-64, states (2007-2008), U.S. (2008)

Compare Kansas to: United States

Health Insurance Coverage of Nonelderly 0-64, states (2007-2008), U.S. (2008)					Compare
	KS #	KS %	US #	US %	
Employer	1,500,000	63.0%	156,860,100	59.7%	
Individual	175,100	7.4%	13,823,100	5.3%	
Medicaid	292,800	12.3%	39,256,200	14.9%	
Other Public	78,500	3.3%	7,123,600	2.7%	
Uninsured	334,800	14.1%	45,693,300	17.4%	
Total	2,381,200	100.0%	262,756,400	100.0%	



TOPEKA INDEPENDENT BUSINESS ASSOCIATION

March 22, 2010

TESTIMONY TO HOUSE INSURANCE COMMITTEE
ON HOUSE BILL 2682

Board Members

Tara Dimick, Chair
E² Communications

Tom Anderson, MD
St. Francis Hospital

Kevin Doel
TK Magazine

Ping Enriquez
Ad Veritas Construction

Rick Farrant
GreatLife Golf & Fitness

Webb Garlinghouse
National Electronic Type

Jim Hamilton, MD
Tallgrass Surgery

Scott Hamilton, DDS
Drs. Hamilton & Wilson

Scott Hughes
Silver Lake Bank

Marc Johnson
Kennedy & Coe CPAs

Rick Kendall
Kendall Construction

David Lippe
MACI Publishing

Larry Magill
KAIA

Rise Quinn
Lower's

Tim Royer
Fidelity State Bank

Marvin Spees
Capital City Oil

Matt Strathman
Strathman Sales

Director of Governmental
Affairs

Ken Daniel
Midway Wholesale

By Ken Daniel
Chairman, Midway Wholesale
Director of Governmental Affairs, Topeka Independent Business Assn.

Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is the Governmental Affairs Director of the Topeka Independent Business Association. He is publisher of KsSmallBiz.com, a small business e-newsletter and website. He is Chairman of the Board of Midway Wholesale, a business he founded in 1970.

Mr. Chairman and members of the committee.

I would like to speak in support of House Bill 2682.

The purpose of this bill is to stem the precipitous drops in health insurance coverage among the employees of small businesses.

In 2004-05 there were 282,000 uninsured Kansans. The next year, that increased to 307,000. The following year it increased to 340,000.

Kansas was one of only ten states where the percentage of uninsured increased during that period.

Perhaps the single biggest explanation is that the Kansas small group law (2-50 employees) has put small group coverage into a "death spiral".

In 2000, 50% of employees of 3-24 firms were insured. By 2005, that had dropped to 41.3%.

In 2000, 63% of employees of 25-49 firms were insured. By 2005, that had dropped to 55%.

This law passed in 1992 and small group coverage has been dropping ever since. IN KANSAS, THE PRESENT SMALL GROUP LAWS ARE A DISMAL FAILURE.

Furthermore, the employees of these small firms have to pay higher taxes on their health benefits. Some employees of big businesses and unions pay no taxes at all on their health insurance benefits.

Following is a chart which shows the tax treatments on various forms of businesses. A more complete chart showing more forms of businesses follows as "Exhibit A".

TAX TREATMENTS OF VARIOUS ASPECTS OF HEALTH INSURANCE	Policy owned by an individual or family.	Owners of sole proprietorship, partnership, Sub-S Corp, and key employees of Sub-S	Premiums for owners and employees of small "C" Corp, paid by the business.	Premiums for owners & employees of large self-insured "C" Corp, paid by the business.
Federal Income Taxable?	Yes	No	No	No
Section 125 Cafeteria Plan Prohibited?	Yes	Yes	No	No
Social Security Taxes Owed?	Yes	Yes	No	No
Medicare Taxes Owed	Yes	Yes	No	No
State Income Taxable?	Yes	No	No	No
Kansas Premiums Taxes Owed?	Yes	Yes	Yes	No
Required to Pay for 39 Kansas Mandates?	Yes	Yes	Yes	No
Required to Pay Into KS High Risk Fund?	Yes	Yes	Yes	No
Required to Pay for Bankrupt KS Insurers?	Yes	Yes	Yes	No

Small Group Insurance Laws have done great damage to the employees of small businesses, and continue to do so. House Bill 2682 is not a panacea, but it is a beginning. In summary, here is what this bill will accomplish:

- If an employer offers a Section 125 Plan, individuals can qualify and use it to obtain tax-free treatment of their premiums even if they own an individually-purchased insurance policy.
- Employers can contribute to the premium costs for an employee's individually underwritten policy without triggering small group laws.
- This at least takes a "baby step" toward tax equity for employees of small businesses.

I hope you will support HB2682. I'll be happy to answer any questions,

FACTS ABOUT KANSAS SMALL BUSINESS HEALTH INSURANCE
March 22, 2010

In 2000, 50% of employees of 3-24 firms were insured. By 2005, that had dropped to 41%.

In 2000, 63% of employees of 25-49 firms were insured. By 2005, that had dropped to 55%¹.

CONCLUSION: THE PRESENT SMALL GROUP LAWS IN KANSAS ARE A FAILURE.

In 2006-07, the percentage of uninsured Kansas adults 19-64 was 17.1%, up from 14.2% in 2004-05.²

2002-03	13.5%
2003-04	14.1%
2004-05	14.2%
2005-06	15.5%
2006-07	17.1% ³

KANSAS WAS ONE OF ONLY TEN STATES WHERE THE PERCENTAGE OF UNINSURED INCREASED IN THAT TWO-YEAR PERIOD.

Number of uninsured in 2007 (latest available)

- Self-employed 33,400
- 1-9 employees 44,500
- 10-24 employees 25,000
- These 3 groups totaled 37% of the 278,000 uninsured adults in Kansas.⁴

63% of uninsured adults 19-64 worked full-time. Another 20% worked part-time.⁵

Applying the statistics of the Kansas State Employee Health Plan to AHIP statistics, there are approximately 305,000 Kansans covered under individually underwritten policies.

According to the Kansas Insurance Department, there are approximately 290,000 Kansans insured under small group policies⁶. These are the groups with 2-50 employees.

NOTE: MORE KANSANS ARE COVERED BY INDIVIDUALLY-UNDERWRITTEN POLICIES THAN BY SMALL GROUP POLICIES.

¹ Firms with 50-100 dropped from 60% to 59%. Over 200 dropped from 67% to 66%.

² Op. Cit., page 2.

³ Op. Cit., page 14

⁴ Op. Cit., page 35.

⁵ Health Insurance and the Uninsured in Kansas", Kansas Health Institute, April 2009, page 25.

⁶ Linda Sheppard, Kansas Insurance Dept., March 4, 2010

In 2006 (latest available), there were 61,902 employer firms in Kansas. 52,600 (85%) of them were firms with 1-19 employees.

In 2006, there were 183,600 non-employer firms – firms with no employees other than the owners.

Section 125 Cafeteria Plans:

- 65% of firms with 2-9 employees do not have 125 plans.
- 50% of firms with 10-24 employees do not have 125 plans.
- 30% of firms with 25-99 employees do not have 125 plans.

According to the Kansas Insurance Department, there are 1800 people in the High Risk Group now. Rates are about 130% of normal rates⁷.

Offer rates for individual policies, 2008⁸

88.8% of those 18-34 were offered policies
85.6% of those 35-49 were offered policies
80.4% of those 50-54 were offered policies
76.0% of those 55-59 were offered policies
70.8% of those 60-64 were offered policies.

⁷ Ibid.

⁸ "Individual Health Insurance 2009", AHIP, October 2009, page 10.



Board Members

Tara Dimick, Chair
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Rick Farrant
GreatLife Golf & Fitness

Webb Garlinghouse
National Electronic Type

Jim Hamilton, MD
Tallgrass Surgery

Scott Hamilton, DDS
Drs. Hamilton & Wilson

Scott Hughes
Silver Lake Bank

Eric Johnson
Kennedy & Coe CPAs

Rick Kendall
Kendall Construction

David Lippe
MACI Publishing

Larry Magill
KALA

Rise Quinn
Lower's

Tim Royer
Fidelity State Bank

Marvin Spees
Capital City Oil

Matt Strathman
Strathman Sales

Director of Governmental
Affairs

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FISCAL NOTE ON HOUSE BILL 2682
By Ken Daniel, Topeka Independent Business Association

I. ABOUT INDIVIDUALLY WRITTEN HEALTH INSURANCE POLICIES

The huge majority (about 72%) are already tax-deductible under federal and Kansas law. (Line 29 on Schedule 1040).

Contributions to Health Savings Accounts, whether by the employer or by the employee, are already tax-deductible under federal and Kansas law. (Line 25 on Schedule 1040),

Every time one of these policies is sold, both the insurance company and its agent make profits that are then taxed by the federal government and the State of Kansas. The State gets an additional 2% premiums tax.

II. TAX EFFECTS OF HB2682

1. Calculate the tax effects on the existing individually underwritten policies.
2. Calculate the tax effects of small group policies being switched to individually underwritten policies.
3. Calculate the tax-effects of increased number of new individually underwritten policies being paid by employers under a health reimbursement plan.

III. FISCAL NOTE ON EXISTING INDIVIDUALLY UNDERWRITTEN POLICIES.

The fiscal note is ZERO compared to current law.

If a Form 1040 reports business income or loss on schedules "C" or "C-EZ", schedule "F", or schedule "E", and the insurance coverage is established under the business, the cost of the premium is already fully

deductible from adjusted gross income (1040 line 29). Therefore, the premium cost for an individually underwritten policy is already 100% deductible for these businesses.

The remaining individually underwritten policies are NOT deductible now, nor will they be if HB2682 is enacted. The state will collect taxes on them the same as it does now.

IV. REPLACING EXISTING SMALL GROUP POLICIES WITH INDIVIDUALLY OWNED POLICIES

According to AHIP, in 2007 individually owned single policies in Kansas cost \$2363 per year on the average while small group single policies cost \$3588 or 66% as much.

According to AHIP, in 2007 individually owned family policies in Kansas cost \$5011 per year on average while small group family policies cost \$9420 or 53% as much.

Assume that employees drop 5500 single and 4500¹ family small group policies and replace them with individually underwritten private policies. The State of Kansas will realize a **positive fiscal note of \$1.329 million** based on its "saved" deductions @5%.

V. NEW ENROLLMENTS IN INDIVIDUALLY UNDERWRITTEN HEALTH INSURANCE POLICIES BECAUSE OF REIMBURSEMENT DEAL.

Assume 10,000 additional non-insured, non-owner employees take advantage of the now-legal ability to make a health premium reimbursement arrangement.

5500 single policies @ \$2363 =	\$12,996,500
4500 family policies @ \$5011 =	<u>\$22,549,500</u>
TOTAL	\$35,546,000

At a 5% tax rate and a 2% premiums rate, the State will realize a **negative fiscal note of \$1.067 million.**

Note however, that the State will collect income taxes on any profits agents and insurance companies make, and will realize savings on

¹ These ratios were chosen because, in the State Employee Health Plan, 55% of plans are individual plans and 45% are family plans.

Medicaid, SCHIP, DSH payments and more because an additional 20,000 Kansans are now insured.

Taxes.

Also drug cos. will pay

VI. SECTION 125 PLANS

Nationally, about 50% of all employees pay health insurance premiums through a Section 125 plan according to the Kansas Health Institute.

92% of employers with more than 200 employees offer a Section 125 premium-only plan.

Only 60% of employers with under 200 employees offer a Section 125.

Only a tiny percentage of businesses with under 20 workers offer a Section 125 because:

- The owners cannot use it.
- Families of the owners cannot use it.
- Key employees cannot use it.
- Highly compensated employees cannot use it.
- The high red tape burden on the employer.

Conclusion: The fiscal effects of Section 125 Plans will be minimal or even positive. If employees switch to individual policies, the total premium will be less and lowered Section 125 deductions will result in more income to the state. On the other side, because of the red tape, it will be years, if ever, that the minimal effects of Section 125 plans will be felt.

We estimate the fiscal note for this portion (Section 125 Plans) to be zero or positive.

Written Testimony in Support of HB2682
By Ron Gaches, Gaches, Braden and Associates on behalf
Of the Kansas Association of Health Underwriters
House Insurance Committee
Monday, March 22, 2010

Thank you for the opportunity to provide written testimony in support of HB2682.

The Kansas Association of Health Underwriters supports any efforts of the Kansas legislature to improve the affordability of health insurance premiums for small businesses. HB2682 would accomplish this by providing the following:

- Allows an employer to contribute to an employee's individually owned health plan on a tax-deductible basis through an established cafeteria plan;
- Provide an option of a high deductible benefit plan in conjunction with the establishment of a health savings plan.

Allowing an employer to contribute to an employee's purchase of his or her own individual insurance policy would be an incentive for the individual to purchase insurance and maintain the insurance they have, thus decreasing the number of uninsured. It will also improve the portability of insurance.

Additionally, HB2682 encourages the use of Health Savings Accounts. Use of the Health Savings Accounts will reduce the cost of health insurance for both employees and employers.

And one of the most effective ways to lower the cost of insurance for those with modest incomes is to provide individuals and families with a tax credit for the purchase of health insurance. The cost of the tax credit in this case would be offset in the long run through the savings in increases in health care costs.

The Kansas Association of Health Underwriters encourages the House Taxation Committee to support a health care reform program such as HB2682 that encourages competition and reduces the cost of private health insurance for all Kansans. This will assist the small group market needs added flexibility and incentives to better serve uninsured Kansans.

Ron Gaches
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House Insurance
Date: 3-22-10
Attachment # 6



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

**House Committee on Insurance
Written Testimony in Support of HB 2682
By: F. Tim Witsman**

March 22, 2010

Chairman Shultz and honorable committee members:

My name is Tim Witsman, and I am the President of the Wichita Independent Business Association (WIBA). As a representative of organizations charged with the mission to promote a strong business environment in Kansas, I am here as the voice for more than 1,000 business members from across the state of Kansas and can assure the rising cost of health care insurance is the top concern for our members. Thank you for the opportunity to submit written testimony in favor of HB 2682, which provides for small employers the option of contributing to the cost of an employee's individual policy through a Health Reimbursement Account (HRA).

The members of WIBA support HB 2682 because it proposes a tool that may be used by employers to assist their employees in obtaining health care insurance. HRA's, under current law, are attractive to employees because they deposit pre-tax dollars and use those dollars to pay for health care expenses. Under existing law, employers are denied the option of contributing dollars to employees HRA's that can be used to pay for individual policies. HB 2682 would remove this restriction and allow employers to deposit dollars into an employee's HRA account, affording the employee the benefit of leveraging both contributions towards the premium of an individual health care policy. HB 2682 will give employers and employees an additional choice, which we believe is what is needed in the health care arena. It also fosters additional individual choice and control over one's health care insurance, which we believe is a necessity in ultimately reducing health care costs.

There is concern that passage of this bill might circumvent the small group market and we would offer that this is a legitimate concern. However, we also recognize that if we are going to reduce the cost of health care, we need to be willing to try new approaches.

WIBA is committed to working with Kansas legislators to find market driven solutions that assist employers with providing health care to their employees and urge your support of HB 2682. We look forward to working with lawmakers in developing the best possible options and outcomes for all Kansans. Thank you for the opportunity to share our position with you.



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HOUSE BILL No. 2682

INSURANCE COMMITTEE March 22, 2010

Chairman Carlson and Members of the Committee:

Thank you for the opportunity to testify today on behalf of the Kansas Insurance Department regarding House Bill No. 2682 pertaining to health reimbursement arrangements and individually underwritten health insurance plans. My name is Linda Sheppard and I am Director of the Department's Accident & Health Division.

As you may know, under existing Kansas law, specifically the small employer health care act, employers with 2-50 full time employees have the opportunity to purchase health insurance for their employees on a guaranteed-issue basis, which means that a policy must be issued regardless of the employer's or an employee's claims history, pre-existing conditions, or health status. Therefore, every small employer that applies may purchase a policy at some price. At this time there are 22 insurance companies authorized to sell small group insurance in Kansas. A survey of just three of those companies indicates that as of February 28, 2010, there are over 290,000 individuals with coverage through their small employers.

Based on our understanding of this bill, which would permit small employers to contribute to the premium of an employee's individually underwritten health plan through a health reimbursement arrangement, we believe that HB 2682 would result in negative consequences for some employees in the small employer marketplace and the small employer marketplace as a whole in a number of ways.

House Insurance
Date: 3-22-10
Attachment # 8

First, HB 2682 does not prohibit small employers who currently provide group insurance for their employees from terminating that group coverage in favor of contributing to the cost of individual coverage for their employees. If that were to occur, some of those employees who previously had coverage would lose that coverage and would then be unable to obtain individual coverage for the amount contributed by the employer, or at any price, depending on their age and/or health status.

This bill would also permit an employee who already has individual coverage to retain that coverage rather than enrolling in their small employer's health plan, with the employer contributing to the cost of that individual coverage. One of the criteria used by health insurers when they are marketing small employer health plans is the percentage of participation by the employees. This requirement permits the health insurer to spread the risk across all of the small employer's employees and impacts the cost of the coverage provided. If some employees elect to retain their own individual coverage paid for, in part, by their small employer, the employer may be unable to obtain small group coverage for the remaining employees because they no longer have a sufficient number of eligible employees willing to participate in the small group plan. Again, if that were to occur, some of the remaining employees would be able to obtain individual coverage but others would not.

Finally, HB 2682 would eventually weaken or destroy the small group market as it currently exists because of the potential impact on premiums for those employers who choose to remain in the small group market. The premium rate structure for small employer groups has two major components: the index premium rate and adjustments to that premium required because of specific characteristics of a small group. That index premium rate is calculated from a company's overall claims experience for all of the participants in a company's small employer

"block" or "class" of business. That block or class generally includes all of the small employer groups that the company insures in Kansas. The more small groups and their employees in that block of business, with good and bad claims experience, the more reasonable the base rate. If individual, healthier employees, are no longer required to participate in their small employer's group plan, over time a couple of things are likely to occur: (1) the number of small groups, and their employees, in the small group market over which to spread the risk will be reduced, and (2) the small group employees who do remain in the small group market will most likely be those individuals unable to obtain individual coverage and who generate the highest number of claims. When this occurs the result will be a significantly higher index premium rate for those small employers who choose to remain in the small group market and a continuing loss of small employer groups in the market due to increasing premiums. With the cost of group health insurance already a burden on many small employers this increased expense could very well lead to even more uninsured Kansans.

For these reasons the Kansas Insurance Department opposes HB 2682 and I would be happy to stand for any questions you may have regarding this testimony.

Linda J. Sheppard, Director
Accident & Health Division, Kansas Insurance Department

House Insurance Committee

Richard Cram

March 22, 2010

Testimony in Opposition to House Bill 2682

Representative Shulz, Chair, and Members of the Committee:

Section 6 of House Bill 2682 amends K.S.A. 2009 Supp. 79-32,117 to provide for a subtraction modification from federal adjusted gross income for amounts paid for health insurance premiums for any individual insurance policy primarily providing health care coverage for the taxpayer, taxpayers spouse or dependents. The subtraction modification appears to apply to health insurance premiums on policies purchased by individuals and not obtained through their employer, and would have a negative fiscal impact estimated to be \$27.2 million in fiscal year 2011.

A negative fiscal impact of \$27.2 million, is far beyond what the State can afford. The monthly revenue report released by the Department of Revenue for February 2010 shows that for the month, revenues are \$71 million below the Consensus Revenue Estimate, and for Fiscal Year 2010 to date, revenues are \$105 million below the Consensus Revenue Estimate.

The Department's fiscal note is attached.

2010 House Bill 2682j Fiscal Note

Amended by House Committee

Brief of Bill

House Bill 2682, as amended by house committee, provides that a small employer who does not offer a group health insurance plan may contribute to the premium of an eligible employee's individually underwritten health benefit plan.

New Section 2 provides that an eligible employee may choose to retain their individually underwritten plan when such employee is entitled to enroll in a small employer health benefit plan. The small employer may, through the establishment of a health reimbursement plan, contribute to the premium of the employee's individual plan. The employer shall pay the employee the same amount the employer would have contributed to such employer's health benefit plan had the employee elected to participate.

New Section 3 provides that with an open enrollment period beginning in 2010, the administering carrier shall offer the option of health care coverage through a high deductible health plan and the establishment of a health savings account.

New Section 4 provides that any insurer who offers small group health benefit plans shall offer a high deductible health plan in conjunction with the establishment of a health savings account.

Section 5 amends KSA 40-2240 to provide that any health benefit plan may be offered through a section 125 cafeteria plan and offer all eligible individuals the option of receiving health care coverage through a high deductible plan.

Section 6 amends KSA 79-32,117 to provide for a subtraction modification from federal adjusted gross income of amounts paid for health insurance premiums for any individual insurance policy primarily providing health care coverage for the taxpayer, taxpayers spouse or dependents.

The effective date of this bill is on publication in the statute book for tax years beginning after December 31, 2009.

Fiscal Impact

Passage of this bill would reduce fiscal year 2011 state general fund revenues about \$27.2 million.

Information from a 2007 survey conducted by the Kaiser Family Foundation and the Health Research Educational Trust found that 60% of businesses with 3 or more employees offered their employees health care benefits. The average total premium was about \$4,500 for a single plan and about \$12,100 for a family plan in 2007. A single plan employee paid about \$700 for health benefits, a family plan employee paid about \$3,300 for health benefits and the employer paid the balance.

The fiscal impact that follows assumes that the language in section 6 of the bill allows a subtraction modification for only individually underwritten health insurance paid solely by the individual. Premiums paid by an employee for group health insurance provided by the employer would not be allowed to claim this subtraction modification.

Assuming 60% of Kansas taxpayers have health insurance through their employer, 15% have no health insurance, and the remainder have private insurance, using the average insurance costs mentioned above, the total health insurance premiums in Kansas would be about \$4.3 billion in 2007. Assuming 6% growth in 2008, 2009 and 2010, the total premiums would be about \$5.1 billion. Approximately 16% of all taxpayers will have no taxable income, so this deduction will have no impact for them and about 26% will be able to use a partial amount of this deduction. If 16% receive no benefit for this deduction and only 50% of the deduction can be used by 26% of the taxpayers, only about 71% of total premiums paid could be deducted from federal gross income.

The National Compensation Survey indicates that nearly 40% of private industry employees participate in health savings accounts and flexible spending accounts. Assuming that 40% of the estimated \$5.1 billion in premium expenditures are currently excluded from federal adjusted gross income and the remaining 60% could be deducted as a Kansas subtraction modification, the net impact of allowing all health insurance premiums to be deducted, using an average tax rate of 5%, is a \$108.6 million ($\$5.1 \text{ billion} \times 60\% \times 71\% \times 5\%$) reduction in state general fund revenues.

The language in 79-32,117 is amended to clarify that the health insurance premium modification is only for individually underwritten health insurance paid solely by the individual, the reduction in state general fund revenues would be about \$27.2 million ($\$2.2 \text{ billion} \times 25\% \times 5\%$) in fiscal year 2011.

The bill should be further amended to include language that allows a subtraction modification for payments for individually underwritten health insurance premiums to the extent included in federal adjusted gross income. If individually underwritten health insurance premiums that are currently exempt from taxation due to a section 125 cafeteria plan exclusion are allowed to be subtracted from income a second time, the fiscal impact of this bill would be about \$38.1 million.

Administrative Impact

The estimated costs necessary to implement this bill are \$146,300 in fiscal year 2011. Those costs include about \$123,120, or 1,368 hours, of contract APA programming time. The estimated user testing resources necessary to implement the bill are \$20,880, or 720 hours, for testing the new programs. One times costs for form changes is about \$2,300

Administrative Problems and Comments