KAIA | Kansas Association of Insurance Agents

DATE: February 1, 2018

TO: The Honorable Jene Vickrey
Members of the Committee on Insurance

FROM: Will Larson, Attorney
Kansas Association of Insurance Agents

RE: Support for House Bill 2487

Thank you for the opportunity to speak in support of House Bill 2487.

The Kansas Association of Insurance Agents (KAIA) is a statewide association of independent insurance agents. It has approximately 340 member insurance agencies with more than 2,500 licensed independent insurance agents throughout the state of Kansas.

House Bill 2487 would limit the amount an employer's workers compensation experience modifier (mod) could be increased as a result of a motor vehicle accident (MVA) in which neither an employee of the employer, nor the employer itself, was at fault. This bill was precipitated by particular situation which recently occurred, but there have been other similar situations.

In the recent situation the employer is a millwright company in Topeka. Millwright company installs industrial equipment. This particular millwright company contracts with large companies in Topeka, and nationwide such as Frito-Lay, Mars, UPS, FedEx etc. These companies, in common with many large companies, will not contract with a company that has an experience mod of higher than 1.10.

Workers compensation experience mods can either increase or decrease the Workers compensation premiums paid by employers. If an employer has an experience modifier of 1.00 it pays the standard premium rate for employers in similar businesses. If its mod is less than 1.00 its premium would be less, if it's higher its premium would more.

The experience modifier is based on the employer's claims experience and is typically determined by the National Council on Compensation Insurance (NCCI). The number of claims, and the amount paid on the claims can either lower or raise the experience mods. Large companies like the ones the millwright company contracts with consider the experience mod an indicator of the safety record of the companies they contract with which is why they don't contract with companies with mods higher than 1.10.

In the case of the Topeka millwright company, two of its employees returning from a job site in a company vehicle were seriously injured in a MVA in which another vehicle pulled in front of a tractor trailer and was struck. The vehicle that was struck then caused the employees to roll their vehicle on the road embankment. Subsequently it was also determined the tractor trailer driver was driving with falsified logs and should not have been on the roadway. The millwright's employees were totally without fault. But as a result of this single accident the millwright's mod went from approximately .70, i.e. well below normal, to approximately 1.30, higher than the 1.10 required by many of the companies it contracts with. This could potentially put this fairly large millwright company out of business with the consequent loss of jobs in the Topeka area.

The proposed bill would give the Insurance Commissioner the discretion to limit the amount of a loss attributable to a MVA that can be included in the experience mod calculations in situations like the one described above where there is a no fault motor vehicle accident. It is patterned after a Colorado statute that addresses the same issue.

The way it works in Colorado is the Colorado Insurance Commissioner, based on his statutory discretion, has limited the amount of a no fault MVA loss to be applied to the experience mod calculation to $2,000. Normally for a large loss the amount to be applied to the calculation could be up to $16,500 which is what the NCCI calls the split point. Limiting the amount of the primary loss to be applied to $2,000 for no fault MVAs significantly reduces the amount the employers experience mod would increase. It is anticipated that if HB 2487 is enacted, giving the Kansas Insurance Commissioner the discretion to limit the amount of the loss to be applied to the calculation, the Commissioner would limit the amount to something similar to what Colorado Commissioner did. Thus, the impact on an employer's experience mod for a no fault MVA would be much less than it is now.

HB 2487 would be implemented by the Kansas Insurance Department requiring NCCI to establish a rule to be approved by the Department. Presumably the rule would be similar to the NCCI rule in Colorado that is attached.

The KAIA believes that drastic increases to an employer's experience mod due to MVAs in which an employer is entirely innocent may be rare but are certainly not unique. Attached are two e-mails from other KAIA members describing other instances where this has occurred. Although these instances may be rare the effect on a business may be catastrophic.

Thank you for your considering our support for HB 2487.

Will Larson

From: Joan Sutton
Sent: Thursday, January 25, 2018 1:23 PM
To: Dave Hulcher; Will Larson; 'Dan Murray'
Subject: Experience MOD example- Aaron Hale

See below

Joan Sutton
Vice President Marketing & Membership
(785) 554-4771

From: Aaron Hale [mailto:ahale@kellerleopold.com]
Sent: Thursday, January 25, 2018 1:21 PM
To: Joan Sutton <Joan@kaia.com>
Subject: Experience MOD increase

Hi Joan,

I've got an insured where their driver was on the road and another driver crossed the center line in another semi-truck and caused damage to my insureds vehicle and also resulted in a work comp claim.

Of course my insureds workers comp policy responded and paid at least $15,000 on a settlement and other medical related items which caused a significant increase in their experience mod. Now the case has been in some black hole of subrogation between the 2 carriers representing the drivers that has gone on for a couple years.

Meanwhile, my insured has been paying extra for their work comp premiums since the MOD adjusted leaving them holding the bag. The whole situation has penalized my insured paying extra premiums for years to come or at least until that particular injury falls off. Either way, the MOD will be artificially higher than it ever should have been.

Please let me know if you need further details.

Thank you
Aaron

Aaron Hale, CISR, CLCS, CAWC | Commercial and Agri-Business Agent

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Will Larson

From: Joan Sutton
Sent: Thursday, January 25, 2018 12:17 PM
To: Will Larson; Dave Hulcher; 'Dan Murray'
Subject: Experience Mod Example- Dave Vogel

See below

Joan Sutton
Vice President Marketing & Membership
(785) 554-4771

From: David Vogel [mailto:dvogel@kfsa.com]
Sent: Thursday, January 25, 2018 12:13 PM
To: Joan Sutton <Joan@kaia.com>
Subject: FW: Legislative Call to Action - Experience Mod examples

Joan,

I have a farm that had an auto accident in June of 2016 that was determined to be 100% the fault of the other driver. Our insured's truck was turned into our carrier, paid, and since all of it has been subrogated back from the at-fault insurance company (State Farm). However, we have an open work comp claim totaling nearly $200K and it's going to be included on their experience mod effective May of 2018. Our insured's work comp carrier can't subrogate this claim until it settles and it's not known yet when they expect to have it settled. We all know the work comp system can take a long time to settle claims of this nature.

This claim places a significant negative impact on their experience mod going forward until the claim eventually settles and subrogates back to the at fault carrier (assuming there are sufficient liability limits). This is a farm and the only consequence is the additional premium from the carrier and acceptability if we shop it. It's not like they are a contractor that will be impacted in a significant way because their customer can no longer use them due to an excessively high experience mod but the circumstances of this farm are exactly what I think you are looking for in order to push our legislature to place some restrictions on how much NCCI can change a mod due to a non-at fault auto accident.

I hope this helps illustrate how a non at-fault auto accident can impact workers comp.

Dave Vogel, MBA, CIC, AFIS, CAWC
Commercial Sales Manager

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NCCI Rule CO

8. Actual Excess Losses

Change Rule 2-C-8 as follows:

Actual Excess Losses are determined by subtracting the total actual primary losses from the total actual incurred losses. Within the experience rating calculation, the excess portion of a loss reflects its severity and is given partial weight based on the size of the risk. As risk size increases, so does the amount of the actual excess losses used in the calculation.

13. Limitation of Losses Employed in a Rating

Add the following to Rule 2-C-13:

a. Single and Multiple Claim Limitation

Change the Basic Loss Limitation Table of Rule 2-C-13-a as follows:

Basic Loss Limitation Table

If . . . Then . . .
An accident involves only one person

•
The loss is subject to the per claim accident limitation

•
The actual primary loss is subject to the maximum primary value of [___] the applicable state primary/excess split point value, even if the loss does not exceed the per claim accident limitation

An employers liability-only loss exists

•
The loss is subject to the employers liability per claim accident limitation

•
The actual primary loss is subject to the maximum primary value of [___] the applicable state primary/excess split point value, even if the loss does not exceed the employers liability per claim accident limitation

c. Not-at-Fault Motor Vehicle Accidents

The calculation of an experience rating modification must not include any loss amount in excess of $2,000 per accident as a result of a motor vehicle accident in which the employee or the employer of the employee was:

(1)
Not at fault, and

(2)
The use of the motor vehicle is not an integral part of the employer's business

Not-at-fault motor vehicle accidents are those occurring under any of the following circumstances:

•

The operator of the other vehicle involved in the accident has been found liable or has admitted liability for the accident

- The motor vehicle operated by the employee or the employer of the employee was struck in the rear by another vehicle or the employer of the employee has not been convicted of a moving traffic violation in connection with the accident

- The operator of the other motor vehicle involved in the accident was convicted of a moving traffic violation and the employee or employer of the employee has not been convicted of a moving traffic violation in connection with the accident

- The motor vehicle operated by the employee or the employer was struck by a hit-and-run motor vehicle

Note:
When it has been determined that a claim amount is to be limited in accordance with this rule, the insurance provider must submit written notification to the rating organization. The notification must include the policy number, policy effective date, state code, and claim number of the claim being limited in accordance with this rule. Correction reports are not to be submitted for this program. This is an experience rating calculation amendment only.