



PEOPLES INSURANCE
GROUP

Date: February 1, 2018
To: The Honorable Jene Vickrey
Members of the Committee on Insurance
From: Michael Lesser, President Peoples Insurance Group
District 9 Councilman Topeka City Council
RE: Support for House Bill 2487

Good morning Mr. Chairman and members of the committee. My name is Michael Lesser, I am President of Peoples Insurance Group in Topeka, and the District 9 Councilman for the City of Topeka. I am here today to testify in support of HB2487.

Make no mistake about it, this IS Insurance legislation. This is NOT Workers Compensation legislation. HB2487 has no impact on workers compensation benefits for injured workers, has no impact on trial lawyers ability to represent their injured clients, and has no impact on an insurance companies' ability to file the rates they feel they need to charge for an exposure.

Please also make no mistake about it, this bill is pro-business. This bill will help keep Kansas jobs, and this bill is simply the right thing to do to correct an unfair application of workers compensation losses to Kansas companies workers compensation MOD factor formula.

OSHA states "a simple definition of the Experience Modification Rate or MOD, is a numeric representation of a businesses claims history and safety record as compared to other businesses in their same industry within the same state". A company with a 1.00 MOD is viewed as being an "average" risk rate, a company with a 1.25 MOD is viewed as 25% "riskier" than average, and a company with a .75 MOD is viewed as 25% safer than the average risk.

The MOD factor can also have a significant impact on a businesses workers compensation premium cost because the MOD factor is applied to all workers compensation policies. For example; a company with a workers compensation manual premium of \$25,000 and a 1.25 MOD pays a total annual premium of \$31,250 an additional \$6,250 because of their 1.25 MOD.

Conversely a company with a .75 MOD and a \$25,000 manual premium pays an annual premium of \$18,750 which is \$6,250 less than average, and \$12,500 less than the company with the 1.25 MOD.

Not only does the MOD factor have an impact on a businesses premium cost; it also has an impact on a businesses ability to work and bid on contracts. Most large companies and local, state, and federal governmental entities view the MOD as an indication of a companies safety risk. Because of this, most of these entities set a "ceiling" on how high a providers MOD can be to work for them or bid on contracts.

Real life examples are Cargill 1.00, Smuckers 1.10, UPS 1.10, and for the recently completed Capital renovations completed by JE Dunn for which we stand right now also had a MOD ceiling to work on the project.

Why are we here? IMI of Topeka is a Union millwright contractor in Topeka employing 52 full time employees. IMI provides millwright services for UPS, Mars, Frito-Lay, Hills, and many other companies in Kansas and nationwide. IMI has always made safety their top priority. IMI employs a safety coordinator on staff, as well as utilizes an outside consultant to assist them. Because of IMI's vigilant attention to safety they carried an impressive .72 MOD factor on November 9th, 2016.

On November 10, 2016 two employees of IMI while returning to their shop from a job site were severely injured in an auto accident. Specifically, a car pulled out in front of an oncoming Semi and was struck. The accident fatally injured the driver of the car. In an attempt to avoid both the oncoming semi and the struck car, the IMI employees pickup went off the roadway and rolled causing serious injuries to the two IMI employees. The investigation by the Kansas Highway Patrol determined the driver of the car was at fault for the accident, furthermore they also determined the semi driver was driving with falsified log books and should not have been on the roadway. The employee of IMI was determined to have zero fault in the accident. Subsequently a WC claim was filed on behalf of IMI with their insurance carrier and reserves for the loss were set at \$333,000.

When IMI received their 2018' WC experience rating worksheet their MOD had jumped from .74 to 1.35. as a result of this no fault auto accident. Not only did IMI's WC premium jump from \$61,250 to \$99,108; the 1.35 MOD may also cause IMI to lose contracts they are currently working on as well as preclude them from bidding on new projects.

We believe we solve this issue by HB2487. Kansas HB2487 is modeled after a similar statute in our neighboring state of Colorado and administered by a state specific rule through NCCI.

HB2487 will set a "primary loss" ceiling for not at fault motor vehicle accidents at \$2,000 for the experience rating worksheet just as Colorado does in their statute. Currently the primary loss is capped at \$16,500 in Kansas.

To qualify for the limitation the employee or employer in the motor vehicle accident must be:

- Not At Fault
- 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 admitted liability.
- The vehicle operated by the employee or employer was struck in the rear by another vehicle and the employee or employer was not convicted of a moving traffic violation.
- The operator of the other vehicle involved in the accident was convicted of a moving traffic violation and the employee or employer has not been convicted of a moving traffic violation.
- The motor vehicle operated by the employee or employer was struck by a hit-and-run vehicle.

The argument most likely for you to hear from insurance companies in opposition to the legislation is that they will lose premium for which they must recover elsewhere. This argument is not accurate. In Kansas insurance companies have the ability to "schedule rate" workers compensation policies up to 25%.

Should an insurance company feel they need additional premium in one of these cases, they have the ability to debit the account to increase the premium. This also creates competition for the policy which is in turn good for Kansas businesses. Another insurance company underwriting the same policy may believe a debit is not warranted and provide the policyholder with a more competitive proposal. Simply put, the market will address the risk and properly price the exposure.

Finally, Since we are referring to "Not-At-Fault" accidents in the legislation it should be noted that the insurance carriers paying for the workers compensation losses have full subrogation rights. In most cases where one party is without fault 100% subrogation recovery is certainly possible.

Thank you for considering our support for HB2487.



Kansas Insurance Department

Ken Selzer, CPA, Commissioner of Insurance

December 18, 2017

Michael Lesser
President
People's Insurance Group
1414 SW Ashworth Pl, Ste 100
Topeka, KS 66604

Re: Experience Rating Review; Industrial Maintenance of Topeka, Inc.

Dear Mr. Lesser:

This letter is in response to your request for review of Industrial Maintenance of Topeka's ("Insured") worker's compensation experience rating. After performing an extensive review, it is the Department's opinion that the experience rating was correctly calculated.

The facts, as they were presented to the Department, are as follows. Two employees of the Insured were returning from a job when their vehicle was struck by another car. The accident was not due to any failures in workplace training or safety protocols. Rather, it was almost entirely the fault of the other driver. Subsequent to the accident, the Insured's experience rating moved from .72 to 1.35.

Under current Kansas rules, there are protections built into the formula to reduce the risk of a significant experience rate increase due to a singular accident. However, these protections take effect when there are three or more injured employees. In this situation, only two employees were injured. Therefore, after analyzing the numbers a second time, the rate increase was appropriately calculated.

Additionally, the experience rating calculation is not altered by no fault declaration. Said another way, there is no current protection built into the experience modification formula when the accident is not caused by a negligent action on the part of the employees. Consequently, a "perfect storm" type of accident can significantly impact the Insured's experience modification. While this incident cannot be changed, the Kansas Insurance Department is open to evaluating a change in its current rules to address future situations such as this.

If you wish to discuss this issue further, I can be reached at 785-296-7812 or at Grace.Lancaster@ks.gov.

Sincerely,

Grace Lancaster
Senior Staff Attorney; Workers Compensation



The Cincinnati Insurance Company • The Cincinnati Indemnity Company
The Cincinnati Casualty Company • The Cincinnati Specialty Underwriters Insurance Company
The Cincinnati Life Insurance Company

Kyle Fredrick, CPCU, AIM, AIC
Regional Field Claims Manager
PO Box 187
Hutchinson, KS 67504

December 12, 2017

Mike Lesser
People's Insurance Group
1414 SW Ashworth Pl Ste 100
Topeka, KS 66604

RE: Our Insured: Industrial Maintenance
DOL: 11/10/2016
Claim: 2786002 & 2786341

Dear Mike Lesser:

I am writing this letter to explain the situation involving two claims for Industrial Maintenance. We have two open workers compensation claims for Industrial Maintenance the involves injuries to two of their employees. This accident is not a workplace accident but involves the two employees being injured in an auto accident that they had zero liability for. A driver pulled out and caused a semi truck to cross over and strike our vehicle. At this point they are still finishing up treatment and we are active is pursuing subrogation against the wrongdoer. Our hope is to collect 100% of what we have paid to date on these claim and it will be credited back to these files, which will place their mods back to a pre-loss position.

If you should have any questions regarding this, please contact me at 620-662-0953.

Sincerely,

Kyle Fredrick, CPCU, AIM, AIC
Regional Field Claims Manager



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Should Procurement Offices Use E-Mods to Compare Contractor Safety? Think Again

Posted Date: September 05, 2017



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Should Procurement Offices Use E-Mods to Compare Contractor Safety? THINK AGAIN



By Kathy Antonello, FCAS, FSA, MAAA,
Chief Actuary, NCCI

(NCCI Note: NCCI regularly collaborates with industry stakeholders. The use of experience rating modifications [E-mods] by procurement offices is a topic of increased interest. In this piece, Kathy Antonello shares why it is not appropriate to use E-mods to compare the relative safety of employers.)

In some states, contractors have a real challenge when bidding on new business—if their experience rating modification (E-mod) is greater than 1.00, they might be ineligible for the job. Several articles published in recent years have discussed procurement offices' misuse of E-mods. Despite this, disclosure of E-mods promulgated by NCCI or other rating bureaus continues as a requirement and relative measure of perceived safety practices by contractors bidding on projects.

Following are some of the reasons explaining this improper use:

- **An excellent risk gets misjudged.** A contractor that is at the higher hazard end of a broadly defined construction classification could have a debit E-mod because of the nature of its business.
- **Certain states allow E-mods to be calculated net of deductible recoveries.** Other states do not. Contractors that choose to purchase a deductible policy in a net-reporting state will have lower mods and a competitive advantage. This is compared to identical employers in their own

state that do not choose this option or those in other states that do not have this option. In other words, in net-deductible reporting states, a risk can “buy down the mod” by purchasing a deductible, which gives the illusion of better experience.

- **Certain employers are not large enough to be experience-rated.** So requiring an E-mod precludes them from bidding on a project.
- **An employer that pays its employees lower wages than the class average, but has average loss experience, could have a debit mod.** This is because lower wages generate lower payroll, which then generates lower expected losses in the E-mod formula.

For Example

A hypothetical, simplified example based on the last bullet above will show how the E-mod is appropriate for its intended use—modifying the manual premium—and how it can easily be misinterpreted if used for other purposes.

If we strip the E-mod formula down to just the basics, we can describe it as a ratio of actual-to-expected losses. That is, we will ignore certain elements like primary and excess losses, weights and ballasts, and credibility. Imagine that there are two construction companies—Employer A and Employer B—doing business in the same state and competing for the same contract. Each has 100% of its payroll in a single class code and therefore both employers are alike with respect to their classification mix. It follows that their expected loss rates (ELRs) from NCCI’s most recent state filing are the same. In addition, the employers have had the same actual loss experience over the last three years. So the two companies are completely identical, with one important exception: Employer B pays its employees 20% higher wages, and thus its payroll is 20% higher. While higher wages usually mean higher indemnity benefits, that is not always true.

Table 1 shows the calculation of the E-mods for Employers A and B. Employer B has \$12 million of payroll, 20% more than Employer A. Both companies were assigned the same single class code and therefore have the same manual rate (5.00) and ELR (1.86).

Expected losses are \$186K for Employer A and \$223K for Employer B. Note that this does not mean NCCI expects Employer B to have higher losses than Employer A. The expected loss calculation is an intermediate step and an input into the mod calculation. If one were to stop at this point without any context, **Employer B** could be viewed as “riskier” than Employer A.

The fact that Employer B pays its employees more does not impact its actual loss experience, which is \$200K and identical to Employer A. Taking the ratio of actual losses to expected losses leads to an E-mod of 1.08 for Employer A and 0.90 for Employer B. Just as NCCI did not expect Employer B to be “riskier” than Employer A based on expected losses, NCCI does not view Employer A as “riskier” than Employer B simply because it has a debit mod. If one were to stop at this point without any context, **Employer A** could be viewed as “riskier” than Employer B.

Table 1: E-mods For Procurement

	Employer A	Employer B	
1) Payroll	\$10M	\$12M	
2) Expected Loss Rate (ELR)	1.86	1.86	
3) Expected Losses	\$186K	\$223K	(2) x (1) / 100
4) Actual Losses	\$200K	\$200K	
5) Experience Rating Mod	1.08	0.90	(4) / (3)
6) Manual Rate	5.00	5.00	
7) Manual Premium	\$500K	\$600K	(6) x (1) / 100
8) Modified Premium	\$537K	\$537K	(7) x (5)

The manual premium is \$500K for Employer A and \$600K for Employer B. Since Employer B is identical to Employer A, there is no actuarial justification for one to pay more for workers compensation insurance. Multiplying the manual premium by each employer's E-mod brings their premium to the exact same level.

When the E-mod is used for its intended purpose—as an adjustment to manual premium—the employer with the higher payroll has its manual premium reduced by a credit mod. In this simple example, the credit mod serves to bring the premium for Employer B down to the same level as Employer A—an appropriate adjustment because they have identical loss experience, classification mix, etc. If the E-mods from this example were used for procurement rankings, the employer with the lower payroll would not get the contract—even though it was identical to its competitor and may very well have bid lower because of its lower payroll costs.

In Summary

It's not appropriate to use E-mods to compare the relative safety of employers. NCCI's *ABCs of Experience Rating* guide states, "In general, an employer with better-than-average loss experience receives a credit, while an employer with worse-than-average experience carries a debit rating." The key words are "in general" and cannot be overlooked, as Table 1 clearly shows.

To learn more, read the *ABCs of Experience Rating* (PDF), available at ncci.com.

Finally: In 2016, Virginia amended its Public Procurement Act to prohibit procurement officers from conditioning eligibility for a contract on a bidder's E-mod. NCCI views this as a positive move. We also believe that furthering the conversation on this subject will help clarify how E-mods should and should not be considered in the procurement process.

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