

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2487

As Recommended by House Committee on
Insurance

Brief*

HB 2487 would enact law relating to certain modifications made to an employer's experience rating and would require the Commissioner of Insurance (Commissioner) to promulgate rules and regulations by January 1, 2019.

The bill would provide the amount by which an employer's experience rating could be modified, if at all, as the result of a motor vehicle accident in which an employee is injured or killed must be reduced if:

- The employee is entitled to benefits under the Workers Compensation Act;
- The accident was not caused, wholly or in part, by the employee or the employer; and
- The use of a motor vehicle is not an integral part of the employer's business, as determined under rules and regulations promulgated by the Commissioner.

The bill would further specify any modification of an employer's experience rating resulting from a motor vehicle accident must reflect the deduction of a loss limitation in the amount determined under the promulgated rules and regulations.

*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>

The bill would also provide that any modification of an employer's experience rating resulting from a motor vehicle accident must be distributed among all workers compensation classifications in use in Kansas, as determined by the Commissioner. For the purposes of this distribution, classifications of businesses where a motor vehicle is an integral part may be treated differently from the classifications of business where a motor vehicle is not an integral part.

The provisions of the bill would apply to all insurers offering a liability insurance policy under the Workers Compensation Act and must be distributed to all policyholders annually.

Background

An Experience Modification Rating ("E-mod") is a numeric representation of a company's claims history and safety record as compared to other companies in the same industry. The Experience Modification Rating Factor applied to an employer's policy is either a unity (or 1.00) factor, a credit modification, or a debit modification.

The bill was introduced by the House Committee on Insurance at the request of the Kansas Association of Insurance Agents (KAIA), whose representative stated in the House Committee hearing the bill was precipitated by a recent particular situation. The representative and a representative from IMI (Industrial Maintenance, Inc.) described the November 2016 accident where two IMI employees were injured in a motor vehicle accident while returning from a job site. The IMI representative addressed the accident's impact on the company's E-mod rating, which was increased from 0.72 to 1.35, the company's Workers Compensation premiums, and current and future potential contracts. Proponent testimony was also submitted by the President of People's Insurance Group.

In the House Committee hearing, representatives of the American Insurance Association and the Property Casualty Insurers Association of America testified the bill is not the appropriate remedy for the situation presented by proponents and commented the problem is related to potential business clients using the E-mod rating to determine eligible bidders. The opponents also stated the bill seeks to change Workers Compensation with insertion of fault into a no-fault system and indicated there could be undesirable safety consequences created by the bill. Written-only opponent testimony was submitted by the Kansas Restaurant and Hospitality Association and the Kansas Self-Insurers Association.

Neutral written-only testimony was submitted by a representative of the National Council on Compensation Insurance, Inc. (NCCI), whose testimony indicated a secondary calculation of E-mods in addition to the standard E-mods could result in additional system costs associated with reporting data necessary for calculations. In addition to administrative costs associated with these calculations, the NCCI testimony states the impact of the bill is unclear as rules and regulations have yet to be determined.

According to the fiscal note prepared by the Division of the Budget, the Insurance Department indicates the administrative costs associated with the provisions of the bill, including issuing rules and regulations, would be negligible and could be absorbed within existing resources. The bill has the potential to reduce the cost of workers compensation insurance for private businesses and local governments that are required to purchase workers compensation insurance in the state. However, the Insurance Department does not have data on workers compensation cases that involve certain motor vehicle accidents to provide an estimate of the fiscal effect on policyholders.

The Department of Labor indicates the bill would have no fiscal effect on its operations. The Department does not provide workers compensation benefits in its Workers

Compensation Services Division, but rather, oversees the claims and benefits process, which takes place in the private insurance market. The Kansas Department of Health and Environment indicates the bill would have no fiscal effect on the operation of the State Employees Workers Compensation Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2019 Governor's Budget Report*.