



KANSAS SELF-INSURERS ASSOCIATION
SERVING THE WORKERS' COMPENSATION NEEDS OF KANSAS EMPLOYERS SINCE 1994

TESTIMONY

TO: HOUSE INSURANCE COMMITTEE
FROM: TONY ANDERSEN, KSIA
RE: HB 2487
DATE: FEBRUARY 1, 2018

Mr. Chairman, members of the Committee, thank you for the opportunity to submit testimony on behalf of the Kansas Self-Insurers Association (KSIA). KSIA is the association representing self-insured employers and self funded pools for workers compensation in Kansas.

KSIA opposes passage of HB 2487. As proposed, the bill purports to reduce the effect of a no-fault motor vehicle accident on an employer's experience rating. However, enactment of this legislation will create multiple issues, increase litigation and add unneeded instability in the Kansas workers compensation insurance marketplace.

First, HB 2487 modifies an employer's experience rating when "*the accident was not caused, wholly or in part, by the employee or the employer.*" The bill does not define which tribunal, agency or department will be charged with determining fault.

If it be the Kansas Insurance Department, the bill gives no guidance on the mechanism for deciding this issue. Will KID conduct an independent investigation, hold hearings, examine witnesses and accept evidence from interested parties? Who are those parties? The injured worker? The employer? The workers compensation insurance carrier? The potential third-party tortfeasor? All would have a stake in the outcome of a KID investigation and determination. In essence, this would create a second litigation track related to an accident, driving up costs for all participants, and creating the real possibility of inconsistent results as to fault determined by the KID and a Kansas jury.

If fault is left to the rightful tribunal i.e. Kansas courts, it is quite probable many severe accidents will still be in litigation by the time a determination of fault is made. By that time, the accident no longer affects the employers experience rating. An experience rating is determined by looking at an employer's accidents during the last 3 years. After the expiration of the three years, an accident does not modify the employer's experience rating. If a case has not been judicially determined in three years, it will not have any affect on the employer's experience rating.

Second, the bill leaves undefined when a motor vehicle is "integral" to the employer's business. This lack of clarity invites litigation which, in turn, increases costs to all participants. It also leaves open the issue as to what tribunal will make this determination and when. The same procedural issues raised above will be present in determining what is integral.

Third, the bill leaves it to the Commissioner of Insurance to promulgate rules and regulations as to how a loss will modify an employer's experience rating. The bill gives no guidance to the



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Commissioner which, in turn, creates instability in the insurance marketplace. It will make it very difficult for providers of workers compensation insurance to accurately price coverage without knowing the ground rules of how losses will be treated by KID.

Fourth, workers compensation is a no-fault system. Employees are not required to prove the employer is at fault. Employers do not escape liability if an employee is injured due to his/her own negligence. Insurance carriers build their business on these principles.

As proposed, HB 2487 changes this dynamic. It will inject determinations of fault into a faultless system. Employers, employees and insurance carriers will be pitted against each other. One can envision a motor vehicle accident where, on the one hand, the workers compensation carrier argues the employer/employee is at fault for the purpose of determining experience ratings while on the other hand, asserts in civil court the insured is not at fault as it relates to a third-party tortfeasor. This conflicted position can only lead to tension between employers and carriers.

It is always unfortunate when a Kansas worker is hurt in an on-the-job motor vehicle accident. Fortunately, workers compensation exists to pay benefits quickly and efficiently. Employer's benefit from a stable insurance market with predictable insurance costs. Carriers accurately underwrite risk without having to determine if a loss was the result of the employee/employer's fault or if an auto was integral to a company's business. In short, the current system works. There is no systemic need to create preferential treatment for one particular type of loss in the Kansas workers compensation insurance system.

For the above reasons, KSIA opposes passage of HB2487. Thank you for the opportunity to submit this testimony, and we'd be glad to talk or provide more information if we can be of help.