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**STATEMENT OF BRAD SMOOT**  
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**NATIONAL COUNCIL ON COMPENSATION INSURANCE**  
**HOUSE INSURANCE COMMITTEE**  
**REGARDING 2018 HB 2487**  
**FEBRUARY 1, 2018**

**Mr. Chairman and Members:**

**NCCI is pleased to present information to the committee regarding 2018 HB 2487. See Attached.**

**The National Council on Compensation Insurance, Inc. (NCCI) is an insurance rating and data collection organization for the workers compensation industry. It has operated on a not-for-profit basis since 1923 and provides a variety of data products and services to more than 900 insurance companies and nearly 40 state governments. Its core services include:**

- Rate and advisory loss cost filings**
- Cost analyses of proposed and enacted legislation**
- Residual market management**
- Production of experience ratings**
- Statistical and compliance services**
- Maintenance of the workers compensation infrastructure of classifications, rules, plans, and forms**

**In addition to these activities, it provides research, analytical and tools in order to help foster a healthy workers compensation system.**

**As many of you may know, NCCI has provided assistance to the Kansas Legislature in analyzing various proposed legislation impacting the state workers compensation system. That assistance often involved estimating the cost impact of workers comp bills on employers, employees and insurers. NCCI is pleased to be of assistance to the Kansas Legislature and would be pleased to provide further information on this or other proposals where our experience and data base might be helpful. Thank you for considering our comments.**



## Preliminary Cost Impact Analysis

### KANSAS HOUSE BILL 2487

*As Introduced on January 17, 2018*

**NCCI has completed a preliminary cost impact analysis of Kansas House Bill 2487. This analysis includes a description of the change, an indication as to the direction of its cost impact, and identifies potential unintended consequences or other notable items.**

The analysis was completed in an expedited manner and is considered preliminary. NCCI may supplement this document with a complete and final analysis of the bill subsequently. It is possible that the estimated impact of the final analysis will differ materially from what is provided in this document. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI's final assessment of the cost impact of the bill.

#### Preliminary Directional Impact

**House Bill (HB) 2487 proposes to limit the impact of not-at-fault motor vehicle accidents on employers' experience rating modifications ("E-mods<sup>1</sup>"). If enacted, HB 2487 could result in an increase in system administration costs in Kansas, stemming from new employer/insurer reporting requirements, and production costs related to the calculation of adjusted E-mods. It is unclear what, if any, additional impact on system costs HB 2487 would have, as rules and regulations pertaining to the adjustment of E-mods under HB 2487 have yet to be established.**

#### Summary and Comments

HB 2487 proposes to establish a process that would limit the impact of motor vehicle accidents on an employer's E-mod using a loss limitation for accidents that meet the following criteria:

- The employee is entitled to benefits under the workers compensation act
- The accident was not caused, in whole or in part, by the employee or the employer
- The use of a motor vehicle is not an integral part of the employer's business, as determined by rules and regulations promulgated by the insurance commissioner

The amount of the loss limitation which would result in a modification to an employer's E-mod is to be established by rules and regulations promulgated by the insurance commissioner no later

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<sup>1</sup> The E-mod represents the expected workers compensation loss experience for an employer in the future based on the employer's past loss experience compared with average, or expected, loss experience for all employers in the same class or classes. For most employers, the claims experience for the prior three policy years, evaluated 6 months before the effective date of the new policy, is used when determining the E-mod.



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than January 1, 2019. Any losses remaining after application of the loss limitation would then be redistributed among all workers compensation classifications<sup>2</sup>.

The process proposed under HB 2487 would require secondary E-mods to be calculated in addition to standard E-mods. The secondary E-mod would be calculated in the same manner as the standard E-mod except that the impact of any not-at-fault motor vehicle accident would be removed. This could result in added system costs associated with reporting data necessary to calculate the secondary E-mods. The amount of the additional costs has not been estimated but would be borne by employers, insurance carriers, and the rating organization.

Based on data reported to NCCI<sup>3</sup>, motor vehicle accidents involving a collision or sideswipe with another vehicle comprise 1%-2% of Kansas workers compensation lost-time claims and 2-5% of total system costs<sup>4</sup>. Of these claims, and where the use of a motor vehicle is not an integral part of the employer's business, only those accidents where the employee was found to be not wholly or partially at fault would be eligible for an E-mod adjustment. While the number of claims that would qualify for an E-mod adjustment is dependent upon how rules defining businesses where "the use of a motor vehicle is not an integral part of the employer's business" are promulgated, it is expected that only a small number of claims would be eligible for E-mod adjustments under HB 2487.

Aside from the administrative cost increase described above, the impact of HB 2487 is unclear as rule and regulations pertaining to the bill have yet to be determined. For example, if enacted, HB 2487 is expected to result in a downward impact on E-mods for some employers and potentially an upward impact for others, but the extent of such a change is dependent upon the promulgated loss limitation. Moreover, the timing of the implementation of such a change (e.g., whether or not it would apply to accidents occurring before the proposed effective date) is unclear. That is, if the law is to apply to E-mods calculated on or after the effective date (thereby not providing sufficient lead time), then there may be an immediate unanticipated shortfall in premium since the current experience rating parameters do not contemplate deductions for not-at-fault motor vehicle accidents in the E-mod calculation.

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<sup>2</sup> For distribution of losses affected by a loss limitation, HB 2487 states that classifications where motor vehicle use is an integral part of employment may be treated differently from classifications where the use of a motor vehicle is not an integral part

<sup>3</sup> Data does not typically include self-insured experience

<sup>4</sup> Based on NCCI's Statistical Plan data from accidents occurring between 2013 and 2015.



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**Additional Considerations**

Below are additional comments and considerations regarding proposed HB 2487.

- The current Experience Rating Plan removes actual subrogation received and deductible reimbursements from the losses used in the E-mod calculation.
  - E-mods may currently be receiving adjustments in many not-at-fault accidents since subrogation received is already being reflected. An NCCI study<sup>5</sup> found that more than 20% of workers compensation motor vehicle claims involve subrogation compared with 1% for all workers compensation claims. Accidents found to be not-at-fault would likely result in greater subrogation than all motor vehicle claims on average.
  - For those employers selecting deductibles, the impact of E-mod adjustments for not-at-fault motor vehicle accidents proposed under HB 2487 would be less pronounced since losses for such policies would already be reduced by deductible reimbursements.
- For those claims that are eligible for E-mod adjustments, it is unclear how losses remaining after the application of the loss limit would be redistributed among all workers compensation classes under HB 2487. Moreover, any method that requires losses from one subset of employers to be reflected in the loss costs charged for another subset of employers could introduce a subsidy for certain employers. Such subsidization would occur if not-at-fault motor vehicle accident losses are redistributed to all classifications.
- The experience rating mechanism was developed to tailor an individual employer's workers compensation premium to its experience and to provide an incentive to maintain a safe workplace; it was not developed to be used for any other purpose.

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<sup>5</sup> Restrepo, Tanya and Harry Shuford. *The Role of Traffic Accidents in Workers Compensation—An Update*. NCCI, December 2012.