Approved: March 8, 2005
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 17, 2005 in Room 241-N of the Capitol.

All members were present except:
Delia Garcia- excused
Kevin Yoder- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:
Jay Angoff, Kansas Coalition for Workplace Safety
Terri Robinson, National Council on Compensation Insurance

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2447 - Workers compensation; reforming the residual insurance market structure.**

Staff gave a briefing on **HB 2447**, stating there needs to be a technical change on page 1, line 24, to change “director” to “commissioner”. The plan of operation provides for a competitive bidding process pursuant to which the commissioner shall seek, and any insurer seeking to qualify as the residual market insurer may submit, rates at which the insurer will agree to insure any employer who is in good faith entitled to but who is unable to procure workers compensation insurance through ordinary methods. Not later than July 1, 2005, and after consultation with the workers compensation insurance industry, the commissioner shall establish an interactive internet site which shall enable any employer licensed in this state to obtain a quote from each workers compensation insurer licensed to write the coverage sought by the employer.

Jay Angoff, Roger Brown & Associates, Jefferson City, Missouri, testified as a proponent to **HB 2447**, stating that Kansas currently has a good system of property/casualty insurance. During the first six months of 2004, the property/casualty insurance industry made more money than in any other six-month period in history. It had a record profit of $23.5 billion, which is more than the industry has made in all but four 12-month periods. The industry also had an all-time-high surplus. Surplus is the amount of money insurers hold in addition to the amount they have set aside to pay future claims. This record $370 billion in surplus was the result of a record increase of $85 billion, or 30%, in only 18 months.

Workers compensation insurance is a type of property/casualty insurance. Like the property/casualty industry as a whole, workers compensation was extremely profitable in 2003. The countrywide loss ratio for workers compensation for 2003 was the lowest it has been since 1997; and even the residual market, the market created by the industry as a whole for employers who insurers refuse to voluntarily insure, which almost always produces a loss, came close to breaking even, with its best performance since 1997.

The most significant reason workers compensation insurance profitability has been increasing appears to be that injured workers are filing fewer claims. Claims filed have been declining substantially for all types of cases, against all types of employers, and in all regions of the country.

As profitable as the workers compensation insurance industry has been nationally in recent years, in Kansas it has been even more profitable. For example, the loss ratio for Kansas workers compensation insurance has steadily declined since 1995, both for indemnity payments and medical payments. Specifically, the medical loss ratio, the ratio of projected claims payments to premiums collected, dropped from .71 to .54, or by 24%, while the indemnity loss ratio dropped from .63 to .42, or by 33%. A loss ratio of .54 means that 46 cents of every premium dollar is available for profit and expenses. With loss ratios that low, even the most inefficient companies, companies with higher-than-average expenses, enjoy substantial profits (Attachment 1).

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Terri Robinson, National Council on Compensation Insurance (NCCI), gave information on workers compensation data collection. NCCI provides impact analysis of proposed and enacted system changes. Earlier this year the Workers Compensation Advisory Council asked NCCI to evaluate the changes to the benefit structure that has been included in this bill.

NCCI estimates that the benefit changes in **HB 2447** could result in an increase in Kansas workers compensation costs in the range of +1.8 ($27M) to +8.9% ($42). The provision to increase the maximum benefit level for all injury types from 75% to 100% of the state average weekly wage would increase system costs. While this language proposes a change to the maximum benefits for temporary total (TT) and permanent total (PT) injuries as shown in Section 44-510c, other injury types also reference Section 44-510c for determination of their maximum benefits; thus the changes to this section impact the maximum allowable benefits for all injury types. Under current statute, workers compensation benefits generally equal two-thirds of the claimant's pre-injury average weekly wage subject to a maximum of 75% of the state average weekly wage (SAWW) and a minimum of $25 per week. The estimated impact of increasing the maximum benefit amount to 100% of SAWW would be an increase of approximately 4.0% ($19.0 million) of total system costs.

Payment of temporary partial benefits for scheduled permanent partial injuries seeks to provide incentives for injured employees to return to work by providing temporary partial benefits for claimants receiving scheduled benefits. This proposal is expected to result in a minimum overall system cost impact.

The estimated impacts of the various provisions to adjust or remove the aggregate caps on indemnity benefits are increased dramatically.

Under current Kansas statute, a claimant would qualify as Permanent Totally Disabled when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Currently the cap on permanent total disability awards is $125,000, which is very close to the $100,000 permanent partial disability (PPD) cap. As a result, there is not significant incentive (as in many other states) to be classified as "permanent total". This proposal increases the difference in maximums from $25,000 ($125k-$100k) to $125,000 ($250k-$1125k). NCCI estimates that this proposal would increase direct system costs by 0.6% to 0.9%.

The current Temporary Total Disability (TTD) cap of $100,000 is rarely triggered. At the maximum weekly benefit of $449 per week, it would take 222 weeks to reach $100,000. It is more likely that the claimant would a) return to work at a full or reduced wage, b) reach maximum medical improvement, or c) be awarded permanent partial disability benefits prior to 222 weeks. It is felt that the increase in the TTD cap to $125 would not have a measurable impact on the system.

Eliminating the $50,000 cap on functional impairment awards would have minimal impact on the system costs as this $50,000 cap is triggered only in rare instances (Attachment 2).

The meeting adjourned at 10:15 a.m. The Chairman stated the hearing on **HB 2447** would be continued on February 18.