

KAIA

Kansas Association of Insurance Agents



Testimony on HB 2637

Before the House Commerce and Economic Development Committee

By SueAnn Schultz

February 16, 2012

Thank you, Mr. Chair and Members of the committee, for the opportunity to offer testimony on HB2637. My name is SueAnn Schultz and I'm representing the Kansas Association of Insurance Agents today as their Government Affairs Committee Member. I am also on KAIA's Board of Directors and am Senior Vice President and General Counsel for IMA, the state's largest independent agency with six offices in the Midwest.

KAIA has more than 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas including workers compensation. Our members are free to represent many different insurance companies, allowing them to customize to clients needs. They also work with Professional Employer Organizations (PEO's), as well as working with former clients of PEO's.

Properly structured, governed and operated PEO's can be a small business employer's answer to prayers for relief from dealing with many of the human resource issues and government regulations that come with being successful and employing others. They should not, however, be allowed to operate outside of the regulatory environment that exists to encourage workplace safety and accurate underwriting for the risks specific to that business.

"Gaming" Workers Compensation Rating

The single most important element in determining the workers compensation premium paid by a business, after the payroll class codes, is the business' experience modification. This is the primary way that the system rewards an employer for a good safety record or penalizes an employer for a poor one. To determine a firm's experience modification, the National Council on Compensation Insurance (NCCI) takes payroll, premium and loss information from member insurers and calculates it on a formula filed with the Kansas Insurance Department. An experience modification can be as high as 2.0. That means a firm would be paying twice the "standard" workers compensation premium for a bad loss record. That is ample incentive to try to find a way to artificially lower a business' experience modification through an employee leasing arrangement.

Let me give you an explanation. A new startup company always begins with a unity or 1.0 modification. To calculate an experience modification, NCCI skips the most recent year and looks at the prior two years losses so it takes several years to develop an experience mod for a new company. If that new company is a professional employer organization (PEO), that PEO will be able, under a master policy approach, to give all other employers that join the PEO an experience modification of 1.0. In some cases in the past, a PEO will then form another PEO once the experience of the first PEO causes the experience modification to go through the roof.



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House Commerce & Economic
Development Committee

Date: 02/16/12

Attachment #: 2-1

The simplest and cleanest way to deal with this issue has been to require a multiple coordinated policy approach as the only way a PEO can buy workers compensation coverage for its participating Employers' employees. This has been the only option available to any PEO procuring insurance from the Kansas Workers Compensation Insurance Plan (the assigned risk pool) since the early 1990's. That approach involves a separate policy being issued for each client employer of the PEO with the client employer maintaining their own experience modification going in, during and upon leaving the PEO. The client employers continue to have an incentive to maintain a safe workplace and reduce workers compensation injuries and they are not allowed to "wash" their mod away by joining a PEO.

Insurance companies today have demonstrated that they can track claims experience tied to each client employer without using a multiple-coordinated policy. For that reason, KAIA does not object to allowing the use of master policies.

Last year, an amendment was added to HB 2139 that sets good public policy, while at the same time allowing for some flexibility. The amendment requires that PEO's use multiple-coordinated policies. The amendment included an exception that a master policy may be used if approved by the Insurance Commissioner. This provision allows PEO's currently doing business in the state with master policies to continue using the master policies if they meet the approval of the Insurance Commissioner. In meetings that dealt with this specific issue, the insurance department has indicated that approval would be, in part, conditional on the ability of the insurance company to track claims experience.

To our knowledge there is at least one insurance carrier currently doing business in the state that cannot track claims experience back to the specific client employer. Every client employer of a PEO using that insurance carrier that opts to purchase work comp insurance under the PEO's master policy would then have their experience mod (claims history) "washed" so that if the client employer leaves the PEO, it will start with a 1.0 modification instead of the rating it should have based on their own actual claims experience.

Current law sets good public policy that allows flexibility, yet maintains accountability. As written, HB 2637 would allow continued use of master policies that undermine accuracy of underwriting risks, dis-incent workplace safety, and, ultimately, raise premiums for those Kansas businesses that are "playing by the rules".

KAIA respectfully opposes HB 2637 as proposed. I would stand for questions.