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STATEMENT OF BRAD SMOOT
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THE AMERICAN INSURANCE ASSOCIATION
HOUSE INSURANCE COMMITTEE
REGARDING 2018 HB 2487
FEBRUARY 1, 2018

Mr. Chairman and Members:

Thank you for this opportunity to comment on behalf of the American Insurance Association regarding 2018 House Bill 2487. AIA is a trade group of more than 300-member insurance companies who write commercial, general liability, auto, home, life and workers compensation insurance in all 50 states. Our members include companies that are household names, employ thousands of Kansans and may even insure your family or business.

The American Insurance Association respectfully urges the Committee not to endorse the alteration of the workers compensation experience modifier formula as proposed by HB 2487. While we appreciate the problems described by the proponents of this bill, we believe the bill is the wrong remedy for the alleged ailment. The problem here is not the experience mod formula. The problem is that the proponent's business clients are using the experience mod to determine eligible bidders. That was never the purpose of such ratings and the National Council on Compensation Insurance has made that very clear. Please see the attached recent article entitled "Should Procurement Offices Use E-Mods to Compare Contractor Safety? THINK AGAIN." The article concludes, quote "It's not appropriate to use E-mods to compare the relative safety of employers."

We are aware of only one state that uses the mechanism proposed in HB 2487 to adjust individual employer experience mods in the event of an auto related claim (Colorado). That law has been on the books for a couple of decades and no other state has seen fit to replicate that legislation. In fact, another state more recently looked at this issue and chose to go the exact opposite direction – forbidding government entities from using experience mods in evaluating contract bidders (Virginia).

In addition, this bill muddies the waters of the entire workers compensation system. Workers Comp is a “no fault” system, meaning it doesn’t matter whether an employee causes an accident on the job, the employer is at fault or some third party. If a worker is injured on the job, he or she is, and should be, entitled to payment of medical care, lost wages and any disability suffered. That is Kansas law and it reflects the bargain struck between employers and employees decades ago. HB 2487 introduces the element of “fault” into the mix, requiring someone to determine if the motor vehicle involved was an “integral part” of the employer’s business and that the accident was not caused, wholly or in part, by the employee or the employer.

Nothing in the bill tells us who is to make these fact-based decisions. How that information will be presented. What will be the standards for making those determinations. Whether there will be appeals allowed. Or how the necessary parties will be notified. The bill raises more process and legal questions than it resolves.

All we know is that the Kansas Insurance Department must adopt rules and regulations to implement this bill by January 1, 2019.

Finally, the workers compensation system relies on experience modifiers and other formula features to distribute the cost of workers comp coverage as fairly as possible. Consequently, when one employer’s mod is artificially reduced those workers comp system costs are spread to other Kansas businesses. Please see the statement of the National Compensation of Insurance regarding this bill. This bill would shift those costs to the experience mods of other employers in the state and disrupt the actuarial integrity of the experience mod formula.

In summary, HB 2487, is a small tail wagging a big dog. It does not address the real problem (businesses misuse of E-Mods for bidding purposes) and we think there are better solutions for Kansas businesses who want to measure the safety record of potential contractors. AIA would be more than happy to work with business organizations and insurance agents to discourage the misuse of experience mods and reduce the likelihood of this situation happening in the future. Thank you.