

Approved 3-5-87  
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative William Bryant at  
Chairperson

3:30 ~~XXX~~/p.m. on March 2, 1987 in room 531-N of the Capitol.

All members were present except:  
Rep. Brown, Rep. Littlejohn, Rep. Wells, all excused

Committee staff present:  
Emalene Correll, Chris Courtwright, Research Department  
Bill Edds, Revisor's Office  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:  
Dick Brock, Kansas Insurance Department  
Rep. Sandy Duncan  
Bill Pitsenberger, Blue Cross Blue Shield  
Norm Wilks, KASB  
Larry Magill, IIAK

The meeting was called to order by the Vice Chairman.

The minutes of the February 24 and 25 meetings were approved.

Hearing on: HB 2167 - General insurance code changes

Mr. Dick Brock, Kansas Insurance Department, said that the bill came from the Joint Committee on Administrative Rules and Regulations. Statutes provide for a review of the Insurance Department every five years. It was determined that some statutes were obsolete and that there was reference to types of companies no longer in existence. New Section 1 relates to all organizations for which there is rate approval control and combines them all in one section. On Line 31 "unfairly discriminatory" was inadvertently left out. He pointed out the other changes, using the bill.

Mr. Brock said that the bill would not change what the Department does or how it is done, but that it would provide cleanup language. The only changes in the way insurance companies operate would be to allow any to sell mortgage life, and to take out the distinction between life and other-than-life regarding ceilings for investment in foreign bonds.

Rep. Duncan spoke in support of the bill. He classified it as a technical cleanup and said it is a step towards looking at the insurance code. It was drafted with the cooperation of the Insurance Department and has no significant policy changes. It removes redundant language. He said the Joint Committee had chosen not to include allowing all companies to invest in real estate mortgages; he believes the bill is needed and thus controversial items should be left out. A committee member who had served on the Joint Committee on this bill concurred.

The Chairman joined the committee after testimony before another committee.

Hearing on: HB 2484 - Insurance; group health policies;

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 531-N, Statehouse, at 3:30 ~~xxx~~/p.m. on March 2, 1987

continuation and conversion; exceptions

Per staff, the bill would repeal a section of the group insurance statute that requires certain insurers to continue coverage after termination of employment. Those who employ 20 or more persons are also subject to federal regulations. These employers would be exempted from state regulations.

Mr. Brock stated that the Insurance Department believes the bill would resolve some conflicts between federal and state regulations.

Mr. Bill Pitsenberger, Blue Cross and Blue Shield, presented testimony in support of the bill. (Att. 1.) He also provided a comparison of benefits under state and federal law. This would change nothing for groups under 20; there are places where the state law has broader benefits than federal law, but that there are give and takes.

He was asked about the possibility of specifying that in no case the benefit would be less than state law, that maybe a blanket adoption of the federal regulations isn't what is needed; he responded that that is the situation which we now have and that it can be very confusing.

Discussion on: HB 2109 - School districts, pooling arrangements

A proposed substitute for HB 2109 was presented with the changes which had been suggested by the committee in the February 25 meeting. (Att. 2.)

Mr. Norm Wilks, KASB, suggested changes to the above bill. (Att. 3.)

Mr. Brock said that if something wrong turns up in an examination, action can be taken under the hazardous conditions law. The pools would also be subject to the unfair trade practices act and could be, after a hearing, directed to cease writing new business.

Mr. Wilks said there might be problems obtaining excess insurance if the pools are subject to assigned risk participation. He stated that it would likely be the poor risks who would desire to join the pool. Other reasons for which he felt they should be exempted from assigned risk participation were: they would not be selling to the general public and are not an insurance company.

He said their members have requested this legislation; also, they believe it is the vehicle to use to provide risk management services.

It was suggested that expertise of persons not serving on school boards might be helpful; he said they are hiring persons for that capacity: Jim Metzler, insurance; and Woodsmall Risk Management. Other residents of the district not on the boards would not have the vested interest as the elected officials.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 531-N, Statehouse, at 3:30 ~~am~~/p.m. on March 2, 1987

Mr. Larry Magill, IIAK, presented a revised copy of the proposed substitute bill showing IIAK recommended changes. (Att. 4.)

He stated that the pools would not be seeking poor risks, rather good ones in order to be successful; thus, the assigned risk provision should apply.

The Chairman stated that the discussion would continue at 3:30 p.m. on Tuesday, March 3, 1987.

The meeting was adjourned at 5:30 p.m.

House Insurance Committee  
March 2, 1987

Testimony of Blue Cross and Blue Shield (Bill Pitsenberger) on  
House Bill 2484.

°For several years, we have had state laws that provide a right to continue group coverage for 6 months (1985 changes brought in Blue Cross and Blue Shield).

°Comprehensive Omnibus Budget Reconciliation Act of 1986 ("COBRA") creates a federal right to continue an "employer group health plan" for 18 to 36 months for groups of 20 or more employees.

°Both laws have same objectives -- provide a cushion or safety net for some period of time following a circumstance where one would otherwise lose insurance (termination of employment, death of employee, divorce, etc).

°Some conflicts between the laws are noted in attached excerpt from Insurance Department bulletin.

°Other conflicts:

State Law

If employer changes insurers, people on continuation stay with old insurer.

Changes from single to family may be allowed during continuation.

No right to continue "non-core" benefits (dental, vision, etc.)

Federal Law

If employer changes insurers, people on continuation go to new insurer.

Changes from single to family may not be possible during continuation.

Right to continue "non-core" benefits.

°Biggest problems -- sorting out conflicting rights, responsibilities, liabilities of employees and employers, insureds and insurers.

°House Bill 2484 merely exempts from state law those persons having continuation rights under federal law.

Advantages:

--Clarifies the rights of the employees/insureds and the obligations and liabilities of the employers/insurers.

--Simplifies administration.

--Promotes sound decision-making.

--Increases the insureds/employees' understanding.

Comparison of  
Continuation and Conversion of Group Health Benefits

KANSAS LAW  
APPLICABILITY

All insured groups  
regardless of size

RESPONSIBILITY FOR ADHERENCE

The obligation is on the  
insurance company

ELIGIBILITY

Employees or covered dependents  
who have been covered  
continuously for three months,  
and has his/her group insurance  
terminated for any reason, is  
generally eligible for  
continuation and conversion  
benefits. The continuation  
period applicable is 6 months.

Continuation and conversion  
privileges are available to a  
spouse or child whose coverage  
under the group terminates  
because of:

1. Death of the employee
2. A divorce of an employee;  
or,
3. Child ceasing to be an  
eligible dependent as  
defined in the group  
policy

TERMINATION OF PERIOD OF  
CONTINUATION

There are no provisions for  
termination of the period of  
continuation once it  
has started, with the  
exception of failure to pay the  
required premium. There are  
reasons that could preclude  
an insurer from offering the

FEDERAL LAW\*  
APPLICABILITY

Employer sponsored groups  
with 20 or more employees including  
self-funded arrangements, however  
federal employers and church plans  
are exempted.

RESPONSIBILITY FOR ADHERENCE

The obligation is on the  
employer

ELIGIBILITY

Employees who lose group health  
coverage due to voluntary termination  
or discharge (other than for gross  
misconduct). These individuals will  
be allowed to continue to self-pay  
their group health insurance for  
18 months.

The following individuals are eligible  
for 36 months continued coverage:

1. Surviving spouses and children of  
deceased employees
2. Legally separated, divorced or  
Medicare ineligible spouses and  
children of current employees
3. Children of current employees who  
lose coverage because of age or  
marriage.

TERMINATION OF PERIOD OF CONTINUATION

Eligibility for continuation benefits  
end if:

1. The individual has group health  
coverage through another employer  
(including a spouse's employer)  
or from Medicare

continuation or conversion benefits otherwise required by Kansas law. These reasons are applicable if the insureds coverage terminated because:

1. Any discontinued group coverage was replaced by similar group coverage within 31 days.
2. The employee or member is or could be covered by any other similar group health plan which would not be available prior to termination.
3. He or she failed to pay any required premium contribution.
4. The employee or member is or could be covered by Medicare

#### NOTIFICATION

The entire responsibility for notification is placed on the insurer, therefore a covered person's failure to notify the carrier, employer, or administrator, should not constitute a waiver of any right under state law. After receiving notification of the right to continue health benefits or convert to an individual health policy, the insured has 31 days in which to notify the carrier that continuation or conversion is desired.

#### RATES

The insurer may charge the individual what the group is being charged and change premiums when the group's premiums are changed.

2. The premium for continuation coverage is not paid on time, or
3. The employer no longer sponsors group health coverage for any of its employees.

#### NOTIFICATION

The employee or family member has the responsibility to inform the plan administrator of a divorce, legal separation, or a child losing dependent status under a qualifying group health plan. The employer has the responsibility to notify the plan administrator of the employee's death, termination of employment, reduction in hours, or Medicare eligibility. The insured has at least 60 days from the date that coverage would terminate, to notify the plan administrator that continuation coverage is desired.

#### RATES

For insured plans, the employee may be charged up to 102% of the rate charged to the group. For a self-insured plan, a reasonable estimate of the per person cost of the plan

may be assessed to the employee or to the person continuing coverage.

#### CONVERSION

The option of converting to an individual health insurance policy is subject to the same eligibility requirements as those applicable to the continuation privilege. These are outlined in the eligibility section of this appendix.

One difference is that if the group policy is terminated and not replaced, the employee or member, at their option or at the option of the insurer, may be issued a conversion policy.

\*The information contained in this comparison is based upon a preliminary interpretation of the Federal Act. Federal regulations and interpretation may result in changes in the administration of COBRA.

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#### CONVERSION

At the end of the 18 or 36 month continuation period, the insured must be provided 180 days to enroll under an individual conversion policy otherwise available under the plan.

HOUSE BILL NO. \_\_\_\_\_

By Committee on Insurance

AN ACT xxxx

Be it enacted by the Legislature of the State of Kansas:

Section 1. Twenty-five or more unified school districts, community colleges, area vocational-technical schools, educational service centers or educational interlocals, who are members of the same bona fide professional association, which has been in existence for not less than five years may enter into agreements to pool their liabilities for Kansas fire, marines, inland marines and allied lines, as defined in K.S.A. 40-901, and amendments thereto, and casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and amendments thereto, including workers' compensation and employers liability. Such pools shall not include accident, health or life insurance. Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

Sec. 2. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the



board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) An individual application for each initial member of the pool.

(e) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000, for each line of insurance or a cumulative annual gross premium of not less than \$1,500,000 for all lines of insurance. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance for workers' compensation and rates filed by a licensed rating organization for all other lines of coverage or rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool.

(f) An agreement binding the group and each member thereof to comply with the provisions of the workmen's compensation act. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(g) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(h) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(i) A confirmation of specific and aggregate excess insurance, or adequate surplus funds in the pool.

(j) Any other relevant factors the commissioner may deem necessary.

Sec. 3. Every group-funded pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department

a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

Sec. 4. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the compliance with statutory provisions and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement on or before August 31 of each year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall

have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

Sec. 5. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool must use rules, classifications and rates as promulgated by the national council on compensation insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner.

(b) An amount equal to at least 70% of the annual premium shall be maintained in the designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs in an administrative fund account.

(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year. The trustees shall determine that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including

incurred but not reported claims prior to authorizing any refunds. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

Sec. 6. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or in shares or savings deposits in a federally insured savings and loan association located in Kansas.

Sec. 7. The expense of the administration of the group-funded pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded pools fee fund. All amounts which are required to be paid from the group-funded pools fee fund for the operating expenditures incident to the administration of the group-funded pools shall be paid from the group-funded pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded pools of the amount of each assessment imposed under this subsection on such group-funded pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such remittance to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded pools fee fund.

Sec. 8. In addition to the fees required to be paid in section 7, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay a tax annually on or before August 31 upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection (c) of section 5 at the rate of 1% per annum applied to the collective premium of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (i) of section 2.

Sec. 9. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and K.S.A. 44-588.

(b) If automobile insurance is provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2102, and amendments thereto. If workmen's compensation or employer's liability insurance, or both, are provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2109, and amendments thereto.

(c) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

(d) Each licensed pool shall be subject to the provisions of 40-246b to 40-246e, inclusive, and amendments thereto.

Sec. 10. (a) After the inception date of the group-funded pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for

membership pursuant to the bylaws of the pool. The application of membership and approval shall then be filed with the commissioner. Membership shall take effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a workers' compensation member, the pool shall notify the commissioner within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.

Sec. 11. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons whom a pool appoints for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state and a member on the board of education of a school district, board of control of any area vocational-technical school or board of trustees of any community college that is a member of the pool. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required

for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregated loss fund as defined in the aggregate excess policy. All administrative costs and other disbursements shall be made from the administrative fund account. The administrator of the pool may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The trustees shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for payment of a premium.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.

Sec. 12. Any person soliciting the business of insurance for a group-funded pool shall be a regularly paid employee of the pool and shall hold a current license authorizing such person to sell each line of insurance offered for sale.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.



SUGGESTED CHANGES TO HOUSE BILL NO. 2109  
BY THE KANSAS ASSOCIATION OF SCHOOL BOARDS

We suggest the following changes in House Bill No. 2109.

Section 4. (b) In line 3 add "affairs and". The additional language will allow the commissioner to examine the affairs of the pool as well as financial condition.

Section 8. The first sentence should be changed to read: In addition to the fees required to be paid in section 7, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay a tax annually on or before August 31 upon the annual Kansas gross premium at the rate of 1% per annum applied to the collective premium of the pool for the preceding fiscal year.

Section 9. We propose to delete section (b) and (d). The assigned risk participation will cause the pool problems in obtaining adequate excess coverage. Further, the licensing requirements are covered in section 12.

Section 11. In line 13 the phrase "that is a member of the pool" should be deleted. This will allow the pool to use the expertise of other board members not members of the pool.

Section 12. The section should be changed to read: "Any person soliciting the business of insurance for a group-funded pool shall hold a current license authorizing such person to sell each line of insurance offered for sale. In addition, any person passing the insurance examination for the kind of insurance offered by the pool shall be deemed to be certified by a company for the kinds of insurance permitted by the pool."

Section 13. The last two words of section 13 should be changed from "statues book" to Kansas Register.

HB.2109/MT1

HOUSE BILL NO. \_\_\_\_\_

By Committee on Insurance

AN ACT xxxx

Be it enacted by the Legislature of the State of Kansas:

- 1.) Section 1. Twenty-five or more ~~unified school districts,~~ municipalities as defined in KSA 75-6102, community colleges, area vocational-technical schools, educational service centers or educational interlocals, who are members of the same bona fide professional association, which has been in existence for not less than five years and who are the same or similar type of municipality may enter into
- 2.) agreements to pool their liabilities for Kansas fire, marine, inland marine and allied lines, as defined in K.S.A. 40-901, and amendments thereto, and casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and amendments thereto, including workers' compensation and employers liability. Such pools shall not include accident, health or life insurance. Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

Sec. 2. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the

board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) An individual application for each initial member of the pool.

3.) (e) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000, for each line of insurance and ~~or~~ a cumulative annual gross premium of not less than \$1,500,000 for all lines of insurance. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance for workers' compensation and rates filed by a licensed rating organization for all other lines of coverage or rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. The pool shall notify the commission within 30 days if the KS gross premium is less than \$250,000

(f) An agreement binding the group and each member thereof (cont'd.) to comply with the provisions of the workmen's compensation act. For all lines of coverage, all members of the pool shall be and severally in proportion to their premiums paid. 4.) jointly liable for the payment of claims to---the---extent---of---the ~~assets-of-the-pool.~~ The indemnity agreement shall be in a form acceptable to the commissioner.

(g) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(h) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

5.) (i) A confirmation of specific and aggregate excess insurance, or adequate surplus funds in the pool/ subject to approval by the commissioner. The pool shall notify the commissioner within 30 days after any change in k(j) Any other relevant factors the commissioner may deem the specific & aggregate necessary.

6.) (j) Proof of payment by each member of not less than 25% of the estimated annual excess. Sec. 3. Every group-funded pool applying for authority to premium operate a pool in this state, as a condition precedent to the pool. to obtaining such authority, shall file in the insurance department

(1) See attached.

for any line of coverage or if the cumulative annual gross premium is less than \$1,500,000.

a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

Sec. 4. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the compliance with statutory provisions and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement on or before August 31 of each year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall

have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

7.) Sec. 5. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium, except the discount on workers compensation & employers liability shall The pool must use rules, classifications and not rates as promulgated by the national council on compensation exceed 15%. insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the 8.) commissioner/ for the pool.

(b) An amount equal to at least 70% of the annual premium shall be maintained in the designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs in an administrative fund account.

9.) (c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year, upon approval by the commis- ~~The trustees~~ sioner. Such approval can be obtained only upon satisfactory evidence ~~shall--determine~~ that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including

incurred but not reported claims prior to authorizing any refunds. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

Sec. 6. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or in shares or savings deposits in a federally insured savings and loan association located in Kansas.

Sec. 7. The expense of the administration of the group-funded pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded pools fee fund. All amounts which are required to be paid from the group-funded pools fee fund for the operating expenditures incident to the administration of the group-funded pools shall be paid from the group-funded pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded pools of the amount of each assessment imposed under this subsection on such group-funded pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such remittance to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded pools fee fund.

Sec. 8. In addition to the fees required to be paid in section 7, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay a tax annually on or before August 31 upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection (c) of section 5 at the rate of 1% per annum applied to the collective premium of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (i) of section 2.

Sec. 9. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and K.S.A. 44-588.

(b) If automobile insurance is provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2102, and amendments thereto. If workmen's compensation or employer's liability insurance, or both, are provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2109, and amendments thereto.

(c) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

(d) Each licensed pool shall be subject to the provisions of 40-246b to 40-246e, inclusive, and amendments thereto.

Sec. 10. (a) After the inception date of the group-funded pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for



membership pursuant to the bylaws of the pool. The application of membership and approval shall then be filed with the commissioner. Membership shall take effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a workers' compensation member, the pool shall notify the commissioner within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance,

10.) whichever occurs first, subject to the provisions of KSA 40-2,120 & KSA 40-2,2121

Sec. 11. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons whom a pool appoints for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state governing body of the municipality, and a member on the ~~board of education of a school district;~~

11.) ~~board of control of any area vocational technical school or board of trustees of any community college~~ that is a member of the pool. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required

for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregated loss fund as defined in the aggregate excess policy. All administrative costs and other disbursements shall be made from the administrative fund account. The administrator of the pool may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

12.) (c) Audit the accounts and records of the pool annually or at any time as required. The commissioner ~~trustees~~ shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for payment of a premium.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.

13.) Sec. 12. Any person soliciting the business of insurance for a group-funded pool ~~shall be a regularly paid employee of the pool and~~ shall hold a current license authorizing such person to sell each line of insurance offered for sale/ as provided in KSA 40-240 to 40-243, and amendments thereto.

Sec. <sup>14</sup>~~13~~. This act shall take effect and be in force from and after its publication in the statute book.

14.) Sec. 13. See attached

(1) After evaluating the application the commissioner shall notify the applicant <sup>if</sup> that the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing and the cost thereof shall be assessed against the applicant requesting the hearing.

Section 12. Same; subject to K.S.A. 40-246(b) to K.S.A. 40-246(e).

Each licensed pool shall be subject to the provisions of K.S.A. 40-246(b) to K.S.A. 40-246(e).

Section 13. K.S.A. 12-2906 is hereby amended to read as follows:

12-2906. Same; additional approval of certain agreements. In the event that an agreement made pursuant to this act shall deal in whole or in part with the provisions of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition

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precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by the state officer or agency as to all matters within his, hers or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorney general pursuant to K.S.A. 12-2904(f). This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.

Any agreement to purchase insurance or to self-insure shall be subject to the provisions of 1987 House Bill \_\_\_\_\_.

Section 14. K.S.A. 75-6111 is hereby amended to read as follows: (see attached copy of the statute).

Section 15. K.S.A. 12-2906 and K.S.A. 75-6111 are hereby repealed.

Section 16. This act shall take effect and be in force from and after its publication in the statute book.

## 75-6111 STATE DEPARTMENTS; PUBLIC OFFICERS, EMPLOYEES

of cities, counties and school districts, to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located in such county or such school district. All such tax levies shall be exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto, and shall not be subject to or limited by any other tax levy limitation prescribed by law.

History: L. 1979, ch. 186, § 10; July 1.

**75-6111.** Same; purchase of insurance by governmental entities; interlocal agreements for purchase of insurance or pooling arrangements; expenditures for certain costs not budgeted for 1979. (a) A governmental entity may obtain insurance to provide for (1) its defense, (2) for its liability for claims pursuant to this act, including liability for civil rights actions as provided in K.S.A. 75-6116, (3) the defense of its employees, and (4) for medical payment insurance when purchased in conjunction with insurance authorized by (1), (2) or (3) above.

Any insurance purchased under the provisions of this section may be purchased from any insurance company or association. In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto. With regard to claims pursuant to the Kansas tort claims act, insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of K.S.A. 75-6105 shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased.

(b) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

(1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or

(2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses. ~~With regard to establishing and maintaining such pooling arrangements or other agreements to share in expenditures incurred pursuant to this act, governmental entities and employees or agents thereof shall not be required to be licensed pursuant to the insurance laws of this state.~~

(c) Any municipality which for the year 1979 has failed to budget sufficient money to pay premiums for the purchase of liability insurance under the provisions of this act, or to pay the cost of risk management and insurance consultant services or other direct and indirect costs of implementing this act during the year 1979, is hereby authorized to expend any uncommitted moneys which may be available to it which may be expended for such purpose, notwithstanding the provisions of K.S.A. 79-2935. If no such moneys are available to a municipality authorized by law to issue no-fund warrants, such a municipality may issue no-fund warrants therefor in accordance with the procedures set forth in K.S.A. 79-2938 but the approval of the state board of tax appeals as to the issuance of such no-fund warrants shall not be required.

History: L. 1979, ch. 186, § 11; July 1.

Law Review and Bar Journal References:

"A Practitioner's Guide to the Kansas Tort Claims Act," Jerry R. Palmer, 48 J.B.A.K. 299, 309 (1979).

"Survey of Kansas Law: Civil Procedure," 29 K.L.R. 449 (1981).

### CASE ANNOTATIONS

1. Statutory liability limit of act inapplicable where insurance purchased providing greater coverage. *Jackson v. City of Kansas City*, 235 K. 278, 320, 680 P.2d 877 (1984).

**75-6112.** Same; judgments against municipalities, how paid; interest; periodic payments. (a) Upon motion of a municipality against whom final judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding ten years.

Any periodic payments shall be made in whole or in part by periodic payments. Any judgment shall specify the amount of each payment. Payments to be paid shall bear interest at the rate of 16-204, and amount of such payments shall be made or payments, but the amount awarded by such judgment shall be subject to periodic payments over a period of time.

(b) A court may order periodic payments only if the court finds that the amount of such payments is insufficient to cover the cost of the judgment.

(1) Payments shall be made in whole or in part by periodic payments.

(2) Funds for such payments may be used from any source, including the budget of expenditures, but the payment of such judgments shall be covered by insurance.

History: L.

Law Review and Bar Journal References:  
"Constitutionality of the Turnpike Authority," 1980.

"The Kansas Tort Claims Act," Susan C. Jacobson.

**75-6113.** Same; judgments against municipalities, source of moneys, how paid. This act may be used to pay judgments against municipalities in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding ten years.