

Approved by Chairman
Date 4-3-91

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative Turnquist at
Chairperson

3:30 ~~am~~/p.m. on Tuesday, April 2, 1991 in room 531 N of the Capitol.

All members were present except:

Tom Sawyer, Excused Dale Sprague, Excused
Henry Helgerson, Excused

Committee staff present:

Bills Edds, Revisor Chris Courtwright, Research
Nikki Feuerborn, Secretary

Conferees appearing before the committee:

Jim Braden, SS & G
Sue Anderson Community Bankers Association
Trudy Aron, American Institute of Architects
David Hanzlick, Kansas Dental Association
Ben W. Hobert, Metropolitan Medical Society Health Care Plan
Dick Brock, Insurance Department
Nancy Zogleman, Blue Cross/Blue Shield

Others attending: See Attached List

Representative Welshimer moved for the approval of the minutes for the March 28 and April 1, 1991, meetings. Representative Weiland seconded the motion. Motion carried.

Representative Wells moved to restore the language on lines 37 and 38 on Page 6 (date of July 1, 1994 for termination) of SB 38. Representative Campbell seconded the motion. Motion carried.

Representative Flower moved to reinstate Lines 21-27 on Page 14 of SB 38. This would eliminate modified tail coverage. Doctors would be required to purchase their own tail coverage. Representative Neufeld seconded the motion. Motion carried.

Representative Ensminger moved for the favorable passage of SB 38 as amended. Representative Flower seconded the motion. Motion carried.

Representative Turnquist introduced a balloon amendment for SB 251 (See Attachment 9). Representative Campbell moved for the adoption of the balloon amendment. Representative Wells seconded the motion. Motion carried.

Representative Wells moved to amend SB 251 to include HB 2415 as it left our committee. Both are municipal group-funded pool bills. Motion was seconded by Representative Cribbs. Motion carried.

Hearing on SB 196 - Exempts American Institute of Architects, Kansas Dental Association, Community Bankers Association of Kansas, and the National Association of Independent Truckers from the jurisdiction of the Kansas Insurance Commissioner on the basis of their tax exempt status.

Chris Courtwright of the Research Department gave an overview and history of the bill.

Jim Braden, SS&G, testified before the committee as a proponent of SB 196. (See Attachment 1). The AIA, KDA, and CBA of Ks. have established their health insurance plans through a Voluntary Employee Beneficiary Association trust (VEBA). This has been an affordable alternative for providing valuable health care benefits. They operate under ERISA guidelines which include registration, reporting and disclosure, annual audits and stringent fiduciary standards. The Insurance Department has stated that without passage of SB 196 these trusts must cease operation as they are not exempt under ERISA guidelines. This bill would allow for their continuation.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance

room 531 NStatehouse, at 3:30 ~~am~~ p.m. on Tuesday, April 2, 1991, 19

Sue Anderson, Executive Director of the Community Bankers Association of Kansas, testified as a proponent of SB 196. She reviewed the history of their involvement with the VEBA plan and its success. (See Attachment 2).

Trudy Aron, Executive Director of the American Institute of Architects of Kansas, appeared before the committee as a proponent of the bill. (See Attachment 3). Their VEBA was established in 1986 and is operated by a Board of Trustees who receive no compensation. The day-to-day administration and payment of claims is handled by a third party administrator. The success of their plan was emphasized and they asked that it be allowed to continue.

David Hanzlick, representing the Kansas Dental Association, appeared before the committee as a proponent of SB 196. His agency strongly supports providing professional and trade associations the option of offering self-funded health plans to their members. (See Attachment 4).

Ben W. Hobert, attorney for the Metropolitan Medical Society Health Care Plan, testified as a proponent before the committee. (See Attachment 5). The Plan was offered largely because of the rising costs of health insurance and the difficulties faced by physicians with a limited number of staff in obtaining adequate health insurance coverage for their office employees and themselves. The strong employment related bond and limited operational scope of these named associations suggests that an exemption from regulation by the Insurance Department is warranted to continue to provide participants with access to health care coverage at an affordable cost.

Dick Brock of the Insurance Department, appeared as a proponent of the bill. (See Attachment 6). The original legislation enacted in 1983 was part of an effort to prevent the exploitation of Kansas citizens by persons marketing unfunded, inadequately funded and even fraudulent health care financing plans in this state. It statutorily presumes that all persons and entities providing health insurance coverage in Kansas are subject to the jurisdiction of the Commissioner unless they can document that they were under the jurisdiction of some other state or federal agency. This bill would exempt the health insurance plans of the associations identified in the bill from the jurisdiction of the Commissioner.

Nancy Zogleman, Blue Cross/Blue Shield, testified as a proponent before the committee. She explained the differences between an insurance company, self-insurance by a single employer, and MEWA's. Caution should be exercised by the legislature especially if SB 196 were to be expanded. (See Attachment 7).

A balloon amendment to SB 196 was introduced by Representative Turnquist. (See Attachment 8). Representative Wells moved to adopt the balloon amendment which would add a Section 2 which would require certain notifications to new members joining the plan. Representative Ensminger seconded the motion. Motion carried.

Representative Wells moved to adopt the proposed amendment as suggested by Mr. Hobert in his testimony (See Attachment 5). The amendment adds to (e) the Kansas City metro group. Motion seconded by Representative Cornfield. Motion carried.

Representative Campbell made a conceptual motion to strike all five sections containing "of other benefits" and change to "as defined" or "as described herein." Representative Flower seconded the motion. Motion carried.

Representative Cornfield moved for the favorable passage of SB 196 as amended. Representative Cozine seconded the motion. Motion carried.

The meeting adjourned at 5:05 p.m.

TESTIMONY BEFORE
THE HOUSE INSURANCE COMMITTEE
ON SENATE BILL 196
APRIL 2, 1991

I am Jim Braden, CLU, appearing before you today on behalf of SS&G Administrators, Inc., third party administrators of health insurance plans for the Kansas Society of Architects, the Kansas Dental Association and the Community Bankers Association of Kansas.

I want to thank the Committee for the courtesy of honoring our request for a hearing on this bill at this late time in the session.

As I stated the last time I appeared before you, the escalating cost of health care is a concern to all of us. As a former legislator and an insurance professional with 26 years experience in the life and health insurance field, I am not only aware of this concern but, as many of you know, I have put a great deal of effort in recent years into attempting to provide solutions and alternatives to this problem. As a small businessman, I am also very much aware and concerned that this has become a serious problem for the employer who wants to provide fair and adequate benefits to employees. Therefore, I believe it is vital that we do everything possible to provide our small businesses with affordable alternatives and to encourage their creativity in providing for themselves and their employees.

*House Insurance
SB196
Attachment 1
April 2, 1991*

The aforementioned professional trade associations have established their health insurance plans through IRC 501(c)(9) Voluntary Employee Beneficiary Association (VEBA) trusts.

As you will hear, these self insured plans have been operating very satisfactorily for nearly ten years. These plans elect from their own participants those persons who make all decisions affecting benefits, premiums, expenses, levels of insurance protection and investments of the plans. These self insured plans truly offer the small businessman an affordable alternative for providing valuable health care benefits for themselves and their employees.

These plans have been operating under ERISA guidelines which include registration, reporting and disclosure, annual audits and stringent fiduciary standards. Until last year, there had been no question as to their status as ERISA plans and their resulting exemption under ERISA, from state insurance regulation. However, the Insurance Department now feels that without the passage of this legislation these plans must cease operation or become fully insured.

Senate Bill 196 allows these three associations, and one other identified by the Insurance Department, to continue to operate as they have in the past. This bill passed the Senate 35 to 5. Through the years, these plans have afforded the participants substantial savings as compared to alternative coverages available to the individual member employers through the insurance community.

We respectfully request that you act favorably on this bill in order to continue to provide accessibility and affordability of healthcare to the many Kansans who are covered under these plans.

2 of 1

Testimony before the House Insurance Committee
April 2, 1991

Mr. Chairman and members of the committee. I am Sue Anderson, executive director of the Community Bankers Association of Kansas. On behalf of our membership, I urge your support of SB 196.

1. In the mid-80's, at the request of several of our members, the association investigated the feasibility of establishing a program to offer a health and accident insurance plan to the employees of our member banks.

2. With the help of SS&G Inc., we began offering a plan through an insured company in 1987. Within a year's time, the company announced that an increase in premiums of 68% would be necessary. That kind of increase made the entire program prohibitive in cost for our members and we began to investigate alternative plans and companies which could meet the health insurance needs of our members and remain competitive in price.

3. The most viable solution we found was to endorse a VEBA trust set up in compliance with the Employee Retirement Income Security Act known as ERISA. Using a VEBA trust implemented some important controls and options concerning health care benefits. In addition, it offered our members a quality employee health plan at a cost effective price. The Independent Bankers of Colorado, a trade association similar to the Community Bankers Association of Kansas has had such a VEBA plan in place for 12 years and it has worked extremely well for their members.

4. SB 196 has been developed with the full knowledge of the Kansas insurance department and we ask for a favorable consensus so that our VEBA plan may continue to operate. Thank you.

House Insurance
April 2, 1991
Attachment 2

AIA Kansas

A Chapter of The American Institute of Architects



April 2, 1991

TO: Members of the House Insurance Committee
FROM: Trudy Aron, Executive Director
RE: **SUPPORT** of Senate Bills 196

1991 Executive Committee

Eugene Kremer, FAIA
President • Manhattan
KSU Liaison

Peter Gierer, AIA
President-Elect • Topeka

Steven A. Scannell, AIA
Secretary • Topeka

John H. Brewer, AIA
Treasurer • Wichita

Vincent Mancini, AIA
Director • Garden City

Donnie D. Marrs, AIA
Director • Salina

Gerald R. Carter, AIA
Director • Topeka

Shannon Ferguson-Bohm, AIA
Director • Wichita

Richard A. Backes, AIA
Director • Wichita

K. Vance Kelley, AIA
Director • Topeka

Ronald E. Frey, AIA
Director • Manhattan

Edward M. Koser, AIA
Past-President • Wichita

Renè Diaz, AIA
KU Liaison • Lawrence

Trudy Aron
Executive Director

I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas). Thank you for this opportunity to appear before you in support of Senate Bill 196 which deals with voluntary employees' beneficiary associations (VEBA).

I know you are aware of the challenges faced by many small businesses in providing health care benefits to their employees. Our association, at the request of numerous firms, developed a voluntary employees' beneficiary association in 1980. At that time, health care benefits were provided by an insurance company. In 1986, because of increasing costs and decreasing benefits, these same members asked us to look into self-funding.

In November 1986, our VEBA became a self-funded program offering health care and dental benefits. We purchased, and continue to purchase annually, stop loss or excess insurance for claims expense in excess of anticipated contributions by covered individuals. Since that time, our program has been operating without interruption.

I want to underscore that our VEBA is operated by a Board of Trustees. These Trustees are all architects, some participate in the VEBA, some do not. The day-to-day administration and payment of claims for the VEBA is handled by a third party administrator. However, the decisions regarding rates and benefits are made by the Board of Trustees.

The VEBA was developed to allow our members some control over plan design and cost of health care benefits for their employees. Our Board of Trustees receives no compensation. Their fiduciary responsibility is to manage our program in a prudent and fiscally responsible way. To our knowledge, the Kansas Insurance Department has received no complaints from our members regarding our plan.

We want to be able to continue to offer our members a health care plan under our VEBA. I hope you will support **Senate Bill 196**.

700 SW Jackson, Suite 209
Topeka, Kansas 66603-3731
Telephone: 913-357-5308
800-444-9853
Facsimile: 913-357-6450

House Insurance
April 2, 1991
Attachment 3



STATEMENT BY DAVID HANZLICK
HOUSE COMMITTEE ON INSURANCE
SENATE BILL 196
APRIL 2, 1991

Mr. Chairman and members of the committee, my name is David Hanzlick. I am the Assistant Executive Director of the Kansas Dental Association which represents 80 percent of Kansas dentists. I appreciate the opportunity to express the KDA's support of Senate Bill 196.

The Kansas Dental Association strongly supports providing professional and trade associations the option of offering self-funded health plans to their members. The legislation you are considering today will permit that option.

The Kansas Dental Association has shown that we can provide health coverage at a competitive price through self-funding. The KDA's Voluntary Employee's Beneficiary Association, or VEBA, successfully operated a self-funded program covering over 400 lives. The self-funded program was in place for five years and was converted to an insured plan on November 1, 1990.

The KDA's VEBA Board would like the ability to return to self-funding, if necessary, to offer top-quality health coverage at an affordable cost.

Again, Mr. Chairman, thank you for the opportunity to appear before this committee.

5200 Huntoon
Topeka, Kansas 66604
913-272-7360

House Insurance
April 2, 1991
SB196
attachment 4

TESTIMONY BEFORE THE HOUSE COMMITTEE ON INSURANCE
ON SENATE BILL 196 AND OFFER OF AMENDMENT
TO SENATE BILL 196

April 2, 1991

I am Ben W. Hobert, attorney for the Metropolitan Medical Society Health Care Plan ("MMSHCP" or the "Plan"). I thank the Committee for the opportunity to appear, offer testimony with respect to Senate Bill 196 and also to offer an amendment to this legislation. The Metropolitan Medical Society is an association of physicians (Doctors of Medicine and Doctors of Osteopathy) who are employed or practice in the Kansas City small metropolitan statistical area ("Kansas City SMSA"). The Metropolitan Medical Society was incorporated in Missouri on March 5, 1891 and qualified as a foreign not-for-profit corporation in Kansas on May 19, 1987. The 1891 date is not a misprint. The association has been in existence for 100 years.

In 1984 the Metropolitan Medical Society, at the urging of many of its members, formed the MMSHCP as a self-insured trust and plan for the purpose of providing medical coverage and benefits to the members of the association, their employees and dependents. This coverage was offered largely because of the rising costs of health insurance and the difficulties faced by physicians with a limited number of staff in obtaining adequate health insurance coverage for their office employees and themselves. Currently the MMSHCP insures more than 250 Kansans and their dependents who work at more than 50 locations in the Kansas City metropolitan area.

Since its formation in November of 1984, the MMSHCP has had its claims administered by third-party administrators, the most recent being Woodsmall Benefit Services, Inc. The MMSHCP has purchased specific and aggregate excess loss insurance coverage through major licensed carriers. The MMSHCP Board of Trustees makes the ultimate decisions as to availability of coverages, premium payments and claim denials. The MMSHCP Board is composed of participating members of the Metropolitan Medical Society who serve without pay. The Board members are elected by elected representatives of the Metropolitan Medical Society.

The MMSHCP is currently in very strong financial condition. In the Fall of 1989, the MMSHCP engaged an independent actuary to examine the Plan's reserves and potential runoff of incurred but not reported claims. The actuary determined that the Plan had adequate reserves to cover all outstanding claims, including incurred but not reported claims. The subsequent runoff of claims in 1990 was less than estimated by the actuary. As a result, the MMSHCP had a healthy surplus. Since the date of the actuarial examination, the Plan has continued to strengthen its reserve base. Consequently, the Plan has been able to reduce premium payments required of its participants during certain periods in order to flow through the benefit of its healthy reserve status. This healthy financial situation has resulted only through the diligent cost-control efforts of the Board, the third party administrator and the participants.

Ben W. Hobert
April 2, 1991
SB 196
Attachment 5

Recently, the Plan has been involved in discussions with the Kansas Department of Insurance regarding the Plan's status. During these discussions, it has become apparent that the original assumption under which the Plan was formed, that being its exemption from Kansas insurance regulation due to preemption by federal law (the Employment Retirement Income Security Act ("ERISA")), no longer holds true. In discussions with the Kansas Department of Insurance, the Department has indicated that the Plan has several options:

1. It may terminate its operations and no longer insure its Kansas participants.
2. It may obtain coverage through a licensed carrier within the state of Kansas.
3. It may obtain a legislative exemption from regulation through the Kansas legislative process.

The Plan has investigated the fully insured option and determined that this option will create a major additional expense to the Plan which will have an immediate negative impact on its finances and may negatively impact its long term viability. In addition, it will result in a significant premium increase to participants in order to maintain the healthy financial condition of the Plan. Consequently, the MMSHCP is seeking this exemption in order to continue to offer accessible and affordable health care to its participating members and their employees.

All of the reasons and history in Mr. Braden's testimony before this Committee and the Senate Committee on Financial Institutions and Insurance support the availability of this exemption for professional trade associations. The strong employment related bond and limited operational scope of these associations suggests that an exemption is warranted to provide participants with access to health care coverage at an affordable cost. Consequently, the MMSHCP respectfully requests that this Committee amend Senate Bill 196 to include the MMSHCP as a named exempt professional association which may offer health and medical benefits to its members and employees exempt from Kansas insurance regulation. Attached is suggested language which would accomplish this within the confines of Senate Bill 196.

I have discussed this issue with Mr. Jim Braden, who originally drafted Senate Bill 196 as subsequently amended by the Senate Committee on Financial Institutions and Insurance. Mr. Braden has indicated that the exclusion of the MMSHCP from insurance regulation is consistent with the exclusion of other named associations in the Bill. He strongly supports the addition of the MMSHCP in Senate Bill 196 as a named professional association exempt from Kansas insurance regulation.

The MMSHCP, its Board and participants, together with myself thank the Committee for the opportunity to present this amendment. We hope that you will act favorably on it for all of the reasons previously stated. We thank you for your consideration.

SENATE BILL No. 196

By Committee on Financial Institutions and Insurance

2-13

9 AN ACT relating to jurisdiction of the commissioner of insurance
10 and application of law with respect to voluntary employees'
11 beneficiary associations; multiple employer welfare arrange-
12 ments; amending K.S.A. 40-2222 and repealing the existing
13 section.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 40-2222 is hereby amended to read as follows:
17 40-2222. Any person or other entity which provides coverage in this
18 state for medical, surgical, chiropractic, physical therapy, speech
19 pathology, audiology, professional mental health, dental, hospital, or
20 optometric expenses, whether such coverage is by direct payment,
21 reimbursement, or otherwise, shall be presumed to be subject to
22 the jurisdiction of the commissioner of insurance unless the person
23 or other entity conclusively shows by submission of an appro-
24 priate certificate, license or other document issued by a gov-
25 ernmental agency that it is: (a) is a professional association of
26 architects incorporated in Kansas on October 4, 1954, which provides
27 for the payment of life, sickness, accident, or other benefits to the
28 members of the association or dependents through a trust established
29 November 1, 1986;

30 (b) is a professional association of dentists incorporated in Kansas
31 on July 3, 1972, which provides for the payment of life, sickness,
32 accident, or other benefits to the members of the association or
33 dependents through a trust established November 1, 1985;

34 (c) is a trade association of banks incorporated in Kansas on
35 August 9, 1978, which provides for the payment of life, sickness,
36 accident, or other benefits to the members of the association or
37 dependents through a trust established July 1, 1989;

38 (d) is a trade association of truckers incorporated in Kansas on
39 July 1, 1985, which provides for the payment of life, sickness, ac-
40 cident, or other benefits to the members of the association or de-
41 pendents through a trust established January 1, 1990;

42 [(e)] conclusively shows by submission of an appropriate certifi-
43 cate, license, letter or other document issued by the United States

(e) is an association of physicians practicing in the Kansas City metropolitan area, incorporated in Missouri on March 5, 1891, and qualified as a foreign corporation in Kansas on May 19, 1987, which provides for the payment of life, sickness, accident, or other benefits to the members of the association, their employees and dependents through a trust established November 1, 1984;

(f)

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1 department of labor that such person or entity is not subject to
 2 Kansas law; or
 3 [(f)] conclusively shows that it is subject to the jurisdiction of an (g)
 4 agency of this state or the federal government. *Any entity that*
 5 *has obtained recognition of its exempt status under section*
 6 *501(c)(9) of the federal internal revenue code of 1986 as in*
 7 *effect on the effective date of this act, and is sponsored by a*
 8 *nonprofit trade or professional association, shall be considered*
 9 *to be subject to the jurisdiction of an agency of the federal*
 10 *government and shall not be subject to the provisions of chap-*
 11 *ter 40 of the Kansas Statutes Annotated or of the jurisdiction*
 12 *of the commissioner of insurance if such entity files satisfac-*
 13 *tory proof with the commissioner that it is covered by stop*
 14 *loss or excess insurance for claims expense in excess of antic-*
 15 *ipated contributions by or on behalf of individuals covered by*
 16 *the entity. For purposes of this act, tax exempt status under section*
 17 *501(c) of the federal internal revenue code of 1986 shall not be*
 18 *deemed to be jurisdiction of the federal government.*
 19 Sec. 2. K.S.A. 40-2222 is hereby repealed.
 20 Sec. 3. This act shall take effect and be in force from and after
 21 its publication in the statute book Kansas register.

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S 277

Testimony By
Dick Brock, Kansas Insurance Department
Before the House Insurance Committee
on Senate Bill No. 196
April 2, 1991

Senate Bill No. 196 amends K.S.A. 40-2222 which was enacted in 1983 as part of an effort to prevent the exploitation of Kansas citizens by persons marketing unfunded, inadequately funded and even fraudulent health care financing plans in this state. The history of the federal legislation that aided and abetted these plans goes back farther and is more complex than you want to hear. However, very briefly, in 1974 Congress enacted the Employee Retirement Income Security Act (ERISA) which generally preempted state law with respect to employee benefit plans as defined and governed by ERISA. Not surprisingly some enterprising firms and individuals recognized an opportunity and began marketing what they called employee benefit plans with claims that they were qualified ERISA plans when, in fact, they were not.

Others, with we believe the best of intentions and with no ulterior motives, became involved in what are known as multiple employer welfare arrangements (MEWAs) under the assumption they qualified under the state law preemptions in ERISA.

However, whether their intentions were honorable or dishonorable, we had a situation where there was no way for the Insurance Department to tell who was subject to the insurance laws of Kansas and who was not because of a federal preemption. K.S.A. 40-2222 which Senate Bill No. 196 amends was enacted in an effort to address this problem by statutorily presuming that all persons and entities providing health insurance coverage in Kansas were subject to the jurisdiction of the Commissioner unless they could document that they were under the jurisdiction of some other state or federal agency.

David Burman
April 2, 1991
SB196
Attachment 6

It was in this kind of legal environment that we discovered at least three long-standing, respected Kansas associations who have health insurance plans which are not qualified for preemption of state law under ERISA and therefore are or were in violation of Kansas insurance laws. At least one and maybe two of those associations have corrected the defect and the other is presumably attempting to do so by becoming fully insured plans.

Senate Bill No. 196 as amended by the Senate Committee will make this unnecessary by, in effect, exempting the health insurance plans of the associations identified in the bill from the jurisdiction of the Commissioner of Insurance.

While we did not propose them, we assisted in drafting the Senate Committee amendments and, in doing so, included all the associations we knew of that are incorporated in Kansas. By using this criteria, we identified four such associations. We have subsequently discovered that the health benefits plan of the association described in subsection (d), lines 38-41, page 1, includes only three Kansas residents. In addition, this association has, to our knowledge, not requested an exemption. I am not suggesting that the exemption for the truckers association be removed but I do want the committee to know how it got there and how many Kansas residents are effected.

Because the associations we are aware of unknowingly and unintentionally became involved in this tangled web of state and federal law; because the covered members of these associations are apparently well satisfied with the health benefits plan available prior to discovery of the legal complications; and, because these plans cover only the members and dependents of the respective associations as opposed to their promotion

or sale to the general public, we do not object to Senate Bill No. 196 as amended by the Senate Committee.



**Blue Cross
Blue Shield**
of Kansas, Inc.

Nancy G. Zogleman
Director

Legislative Relations

**Testimony SB 196
Blue Cross and Blue Shield of Kansas, Inc.
April 2, 1991**

Mr. Chairman, members of the committee, my name is Nancy Zogleman and I am the Director of Legislative Relations for Blue Cross and Blue Shield of Kansas, Inc.

MEWAs are defined in ERISA (Employee Retirement Income Security Act of 1974) and to put it simply, they are described as employees of more than one non-union employer being covered under a single program. You may have heard them called VEBAs (Voluntary Employee Beneficiary Associations) or METs (Multiple Employer Trusts), however, in effect they accomplish the same thing. MEWA is an ERISA term, VEBA an IRS term and MET an insurance trade term.

In order to fully explain the function of a MEWA, I would like to contrast it to an **insurance company** and **self-insurance by a single employer**.

An **insurance company** will develop what it believes will be the cost to pay for the losses incurred by a group, and will charge that cost in the form of a premium rate to the group. That rate might be more than adequate, precisely the amount needed, or less than adequate. If it is more than adequate, at least some of the difference is retained by the insurance company for undertaking the risk of loss (that payments would be less than adequate). If the premium is less than adequate, the insurance company still pays all of the losses of the group. It gets that money from the other groups.

Ordinary **self-insurance by a single employer**, by contrast, works differently. The employer may require a contribution of employees, but if claims exceed the amount of employee contribution, the employer makes up the difference. The

Nancy Zogleman
SB196
April 2, 1991
Attachment 7

employer is totally at risk for the cost of services furnished to employees within his group.

And finally, **MEWAs** operate precisely as does an insurance company. That is, some amount of expected claims is developed for each of the employer groups. Each of the employer groups pays that amount of money into the trust. If the amounts paid by one group were inadequate, excessive amounts paid by another group are used to pay for the claims of the inadequate group. The function of the MEWA is no different in terms of the risk-taking activity than that of an insurance company.

However, MEWAs do not have the protections for covered persons that insurance companies afford. Insurance companies are covered by statute because the state has a concern that those persons promising to provide benefits under such financial arrangement are able to respond to the demands of insured. Important aspects of insurance company regulation from a financial solvency standpoint include minimum capital requirements, deposit requirements with the state, obligations for regular financial examinations by the Insurance Department, the ability of the Insurance Department to actually take over an insurance company which is in financial jeopardy, and other financial guarantees. Most insurance companies are required to belong to a guaranty association, which provides that if the insurer goes bankrupt, other insurers will pay the claims of the bankrupt insurer.

When ERISA was enacted in 1974, the issue of whether a MEWA was exempt from state regulation was unclear. Cases such as Bell v. Employer Security Benefit Association (437 Fed. Supp. 382), challenged the exemption under ERISA of MEWAs. Recognizing that the functions of an insurance company and a MEWA were no different in substance, Congress amended ERISA in 1983 to say that while true self-insured arrangements are exempt from state insurance laws, a MEWA could be subject to state insurance laws to the extent a state wished to apply them. Kansas, in 1983, passed a law in response to this, which requires a MEWA to obtain licensure as an insurance company, in essence.

If this bill were to be expanded, the following issues, at a minimum, should be addressed in considering any legislation which

would take a MEWA out of its current status as being deemed to be an insurance company and placing it in a separate category:

1. Should a MEWA be required to belong to the guaranty association? If not, what happens to beneficiaries if a MEWA goes broke?

2. Should a MEWA be subject to examination by the Insurance Commissioner, and to intervention by the Commissioner if solvency is threatened?

3. Should a MEWA pay premium tax?

4. Should a MEWA be obligated to provide benefits for all services currently mandated for insurance companies, including benefits for providers (D.O.s, D.C.s, dentists, O.D.s, D.P.M.s, LSCSWs, certified psychologists), benefits for services (in-and-out patient services psychiatric and substance abuse claims, mammographies, pap smears) and continuation and conversion of coverage obligations?

5. Should a MEWA be subject to organizing principals (common trade or business)? How narrowly should that be defined? Would the National Association of Retail Dealers of America, a MEWA the Illinois Insurance Department forced to obtain insurance, be overly broad?

6. Should a MEWA be subject to proposed insurance reform legislation, including obligations to take all persons in a group, to community rate, and to accept any group that applies? Should a MEWA participate in any proposed risk pool for uninsurables? Should rates be regulated?

7. Should MEWAs with a legal entity outside Kansas (a Missouri trust as a funding vehicle) be subject to the same laws if it covers persons in Kansas?

8. Will there be any principled way to distinguish between "good" MEWAs and those that have been found to be fraudulent?

SENATE BILL No. 196

By Committee on Financial Institutions and Insurance

2-13

9 AN ACT relating to jurisdiction of the commissioner of insurance
10 and application of law with respect to voluntary employees'
11 beneficiary associations; multiple employer welfare arrange-
12 ments; amending K.S.A. 40-2222 and repealing the existing
13 section.

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

16 Section 1. K.S.A. 40-2222 is hereby amended to read as follows:
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18 state for medical, surgical, chiropractic, physical therapy, speech
19 pathology, audiology, professional mental health, dental, hospital, or
20 optometric expenses, whether such coverage is by direct payment,
21 reimbursement, or otherwise, shall be presumed to be subject to
22 the jurisdiction of the commissioner of insurance unless the person
23 or other entity conclusively shows by submission of an appro-
24 priate certificate, license or other document issued by a gov-
25 ernmental agency that it is: (a) is a professional association of
26 architects incorporated in Kansas on October 4, 1954, which provides
27 for the payment of life, sickness, accident, or other benefits to the
28 members of the association or dependents through a trust established
29 November 1, 1986;

and complies with section 2 of this act;

30 (b) is a professional association of dentists incorporated in Kansas
31 on July 3, 1972, which provides for the payment of life, sickness,
32 accident, or other benefits to the members of the association or
33 dependents through a trust established November 1, 1985;

and complies with section 2 of this act;

34 (c) is a trade association of banks incorporated in Kansas on
35 August 9, 1978, which provides for the payment of life, sickness,
36 accident, or other benefits to the members of the association or
37 dependents through a trust established July 1, 1989;

and complies with section 2 of this act;

38 (d) is a trade association of truckers incorporated in Kansas on
39 July 1, 1985, which provides for the payment of life, sickness, ac-
40 cident, or other benefits to the members of the association or de-
41 pendents through a trust established January 1, 1990;

and complies with section 2 of this act;

42 (e) conclusively shows by submission of an appropriate certifi-
43 cate, license, letter or other document issued by the United States

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1 department of labor that such person or entity is not subject to
2 Kansas law; or

3 (f) conclusively shows that it is subject to the jurisdiction of an
4 agency of this state or the federal government. *Any entity that*
5 *has obtained recognition of its exempt status under section*
6 *501(c)(9) of the federal internal revenue code of 1986 as in*
7 *effect on the effective date of this act, and is sponsored by a*
8 *nonprofit trade or professional association, shall be considered*
9 *to be subject to the jurisdiction of an agency of the federal*
10 *government and shall not be subject to the provisions of chap-*
11 *ter 40 of the Kansas Statutes Annotated or of the jurisdiction*
12 *of the commissioner of insurance if such entity files satisfac-*
13 *tory proof with the commissioner that it is covered by stop*
14 *loss or excess insurance for claims expense in excess of antic-*
15 *ipated contributions by or on behalf of individuals covered by*
16 *the entity. For purposes of this act, tax exempt status under section*
17 *501(c) of the federal internal revenue code of 1986 shall not be*
18 *deemed to be jurisdiction of the federal government.*

19 Sec. 2. K.S.A. 40-2222 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after
21 its publication in the statute book Kansas register.

Sec. 2. At the time the initial application for coverage is taken with respect to new applicants and upon the first renewal, reinstatement or extension of coverage following the effective date of this act with respect to persons previously covered, each association described in subsections (a), (b), (c) and (d) of section 1 of this act shall provide a written notice stating that:
(1) the coverage is not provided by an insurance company;
(2) the plan is not subject to the laws and regulations relating to insurance companies;
(3) the plan is not under the jurisdiction of the commissioner of insurance; and
(4) if the plan does not pay medical expenses that are eligible for payment under the plan for any reason, the individuals covered by the plan may be liable for such expenses.

3

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1 located in and including Douglas, Johnson, Leavenworth, Miami and
 2 Wyandotte counties, may qualify to enter into agreements to pool
 3 their sickness and accident related liabilities in accordance with
 4 K.S.A 1990 Supp. 12-2617 *et seq.* and amendments thereto with
 5 municipalities located in other states if such a pool was formed on
 6 or before January 1, 1990. Any investments held by such pool shall
 7 be held in an entity described in K.S.A. 1990 Supp. 12-2622 and
 8 amendments thereto. *In the event the law or laws of any other state*
 9 *in which a member of the pool is located are inconsistent with or*
 10 *contrary to any provision of K.S.A. 1990 Supp. 12-2617 through 12-*
 11 *2626, 12-2628 and 12-2629 and amendments thereto, the law of the*
 12 *state with the more stringent requirement shall apply.*

13 Sec. 4. K.S.A. 1990 Supp. 12-2624 and 12-2627 are hereby
 14 repealed.

15 Sec. 5. This act shall take effect and be in force from and after
 16 its publication in the statute book *Kansas register.*

Sec. 4. K.S.A. 1990 Supp. 12-2626 is hereby amended to read as follows: 12-2626.

(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.

(b) At the time an application for coverage in a group-funded pool is taken, the applicant shall be provided a written notice stating that (1) the group-funded pool is not an insurance company; (2) the group-funded pool is not subject to general laws and regulations relating to insurance companies; (3) that, if the group-funded pool does not pay covered claims or benefits, individuals covered by the pool may be personally liable; and, (4) the group-funded pool is authorized pursuant to legislative action but such authorization does not constitute an endorsement or recommendation of the coverage provided.

(c) 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 division of workers' compensation within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to such division or until such division gives notice that the cancelled or terminating member has procured workers' compensation and employers' liability insurance, whichever occurs first.

(5)

(6)

Sharon Stevenson
April 2, 1991
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Attachment 9