

Approved

3/4/91

Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:00 a.m./~~p.m.~~ on THURSDAY, FEBRUARY 28, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~:

Senators Anderson, Francisco, Kerr, Moran, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:

Bill Wolff, Research Department
Fred Carman, Revisors Office
Louise Bobo, Secretary

Conferees appearing before the committee:

Jim Braden, S.S. & G. Administrators
Trudy Aron, American Institute of Architects
William Livingston, President, AIA
David Hanzlick, Kansas Dental Association
Jeri Steppat, Community Bankers Association
Jim Shepard, Livestock Marketing Association
Dick Brock, Kansas Insurance Department

Chairman Bond called the meeting to order at 9:10 a.m.

SB 189 and SB 196

Chairman Bond requested that these two bills be considered together since they both relate to the insurance plans of the associations of the architects, dentists, and community bankers.

Jim Braden, S.S. & G Administrators, appeared before the committee in support of these two bills. He explained that self-insured plans had been operating without incident in Kansas for about ten years; however, in 1989, the Department of Labor began encouraging states to regulate the Multiple Employer Welfare Arrangements (MEWAs) or shut them down. SB 189, according to Mr. Braden, would give the Insurance Commissioner the authority to regulate these self-insured plans and also tightens the current laws on third party administrators to more adequately protect the participants. SB 196 would allow the three plans to exist in their present condition until the end of this calendar year. Mr. Braden advised that the Insurance Department would have amendments to these bills which would address any concerns they had with these bills. (Attachment 1)

Trudy Aron, American Institute of Architects, addressed the committee in support of these bills and explained that their association, responding to numerous requests by member firms, developed a voluntary employees' beneficiary association (VEBA) in 1980 because of increasing costs and decreasing benefits. Ms. Aron stated that, to her knowledge, the Insurance Department had had no complaint from their members concerning their coverage. Ms. Aron said that the Associations needed to continue their VEBAs or face increased cost and higher deductible. She also expressed concern over whether a private insurance company would accept all of their participants and needed assurance that the less healthy would also be accepted by an insurance company. (Attachment 2)

William Livingston, President, AIA, rose in support of these two bills. Mr. Livingston encouraged adoption of these two bills so that the architects would be able to keep their self-insured plan and allow them to control the plan design and coverage options. He added that, while their costs had increased also, their premiums were still considerably lower, with better coverage, than other commercially available plans. (Attachment 3)

David Hanzlick, Kansas Dental Association, addressed the committee in support of SB 189 and SB 196. Mr. Hanzlick stated that his organization successfully operated a VEBA program covering over 400 lives for five years until converting to an insured plan in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on THURSDAY, FEBRUARY 28, 1991

1990. They would like the option of returning to self-funding, if necessary, in order to offer top quality health coverage at reasonable cost. (Attachment 4)

Jeri Steppat, Community Bankers Association, addressed the committee briefly in support of these proposed bills. She stated that their self-insured insurance plan covered 400 people and that they were in support of these bills.

Jim Shepard, Livestock Marketing Association, urged passage of legislation that would authorize and regulate MEWAs. He advised that failure to pass such legislation would leave Associations without a statutory basis for existence. Mr. Shepard added that SB 189 would protect Kansans because (1) contains a combination of reserve and stoploss requirements, (2) requires detailed financial reporting to the Insurance Commissioner, and (3) it would create a security fund to provide for payment of benefits in the event a MEWA becomes insolvent. (Attachment 5)

Dick Brock, Insurance Department, advised the committee that it was important to pass SB 196 but with substitute language suggested by the Insurance Commissioner. Mr. Brock explained that some associations unknowingly became involved in a web of state and federal law and urged passage of this amendment in order to give them time to make other arrangements. (Attachment 6)

Mr. Brock continued his testimony by advising the committee that SB 189 provided the means for business people with similar problems to join together and pool their resources in order to obtain more and better insurance coverage. He added that the Insurance Department did not oppose this bill because they did not think they had any business trying to tell business people how to manage their affairs, however, he said that they had worked with the sponsors of the bill and reached agreement on a number of amendments they thought would improve the bill. Further, Mr. Brock also suggested the committee might want to wait and see what the House does with HB 2001. (Attachment 7)

Minutes of the Tuesday, February 26, 1991, meeting were approved on a motion by Senator Reilly with Senator Strick seconding the motion. The motion carried.

Chairman Bond announced the committee would meet tomorrow morning (Friday, March 1) to continue the discussion and take possible action on SB 189 and SB 196.

The meeting adjourned at 10:00 a.m.

TESTIMONY BEFORE
THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
ON SENATE BILLS 196 AND 189

FEBRUARY 28, 1991

I am Jim Braden, CLU, appearing before you today on behalf of SS&G Administrators, Inc., third party administrators of Wichita, Kansas.

I want to thank the Committee for the courtesy of honoring our request to introduce this legislation and for holding this hearing.

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. Here in Kansas, several professional trade associations have established 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 over ten years in Kansas. These plans elect from their own members and participants those persons who make all decisions affecting benefits,

*Attachment 1
FI & I
2/28/91*

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} ~~of~~ ERISA plans and their resulting exemption under ERISA from state insurance regulation. Since late 1989, the Department of Labor has stated that it does not have the funding to properly monitor Multiple Employer Welfare Arrangements (MEWAs) and began encouraging states to regulate them or shut them down.

Kansas does not currently have laws giving the insurance department authority to regulate MEWAs and therefore the department's only choice is to shut these plans down. SB 189 not only gives the Commissioner the authority to regulate MEWAs, it also tightens the current laws on third party administrators to more adequately protect the participants.

Senate Bill 196 simply removes the cloud that has been hanging over the three plans in question by allowing them to exist in their present form for the remainder of this calendar year. In order for them to continue in operation beyond this year, each must comply with the provisions of Senate Bill 189.

We have had several meetings with the Department and feel that with the passage of Senate Bills 196 and 189 the problem will be resolved. As a result of our meetings with the Department, we are recommending that the bills be amended to resolve most of their concerns.

Through the years, these three 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 these two bills in order to continue to provide accessibility and affordability of healthcare to the many Kansans who have been covered under these plans.



AIA Kansas

A Chapter of The American Institute of Architects



February 29, 1991

TO: Chairman Bond and Members of the Senate Financial Institutions and Insurance Committee

FROM: Trudy Aron, Executive Director

RE: **SUPPORT** of Senate Bills 196 and 189.

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

Thank you for this opportunity to appear before you today. The American Institute of Architects in Kansas supports the two bills you have before you today Senate Bill 196 which deals with voluntary employees' beneficiary associations (VEBA) and the broader scope legislation which would regulate third party administrators and multiple employer welfare arrangements (MEWA).

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 1987, because of increasing costs and decreasing benefits, these same members asked us to look into self-funding.

In November 1987, 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 - S S & G Administrators of Wichita. 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.

Since the Insurance Department's investigation into the VEBAs, we have actively sought fully funded coverage provided by an insurance company. At

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

Attachment 2
AIA
2/28/91

this time, we have receive quotes from two insurance companies. One would have increased our rates by 42%.

The other quote was from Blue Cross and Blue Shield. I guess I find it ironic that they are here today in opposition to these bills. The preliminary "come on" from Blue Cross looked very good. We were told our rates would actually decrease. We were skeptical and hired an independent consultant to evaluate the proposal. Wanting to comparing "apples to apples," we asked Blue Cross to provide rates for six randomly selected firms and compared a plan design identical to one provided by the VEBA. The results: the largest firm sampled would have a decrease of 10.8%, however the other firms would experience rate increases of 23.1%, 40.3%, 68.1%, 74.5% and 85.8% respectively.

This dramatic increase in cost is the reason we need to continue our VEBA. In order for our members to provide their employees with health benefits, they must to able to afford the cost. An increase of this magnitude would cause many firms to select plans with higher deductibles which their employees must pay, or stop providing this benefit altogether.

In addition, we must protect those who currently participate in our plan. We must insure that if we convert our VEBA to an insurance company plan they will take all participants. We have participants with substantial health problems. These participants must be assured of continuing benefits. Many insurance companies want to take our healthy participants, few, if any, want to take those participants with continuing or even past health problems.

We want to encourage our members to provide this benefit for their staffs. The passage of Senate Bills 196 and 189 would allow us to continue to provide these services to our firms. We seek your support.

GOSSEN LIVINGSTON ASSOCIATES, P.A.

420 S. EMPORIA □ WICHITA, KANSAS 67202 □ (316) 265-9367 □ FAX (316) 265-5646

DATE: February 28, 1991

TO: The Honorable Richard Bond, Chairman, and Committee Members of the
Senate Financial Institutions and Insurance Committee

FROM: William B. Livingston, AIA, President
Gossen Livingston Associates, P.A.
Wichita, Kansas

Your approval of Senate Bills 196 and 189 will be most appreciated.

These two bills will allow the uninterrupted continuation of the AIA Kansas Voluntary Employees' Beneficiary Association (VEBA). The VEBA provides affordable health care benefits to architectural firms throughout the state of Kansas.

Our firm has participated in the program since its inception in November of 1980 when it was a fully insured plan. The plan continued in that form until November of 1987 when it was changed to the self-insured plan that exists today.

The plan was changed in 1987 to help contain the skyrocketing premium costs and to allow architects to control the plan design and coverage options.

Over the years, we have found the plan to be very responsive to our health care needs. It has provided benefits to our employees that exceed other commercially available plans from insurance companies at consistently lower premiums.

While our rates have increased to keep up with the rising costs of health care, the increases have been significantly below those of the commercial insurance companies.

The benefits are good, the cost is highly competitive and the service to our employees has been very good.

I urge you to pass these two bills allowing us to keep our highly desirable and affordable health care plan.



*Attachment 3
FI + I
2/28/91*



STATEMENT BY DAVID HANZLICK
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
SENATE BILLS 189 AND 196
FEBRUARY 28, 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 Bills 189 and 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 Employers Benefit 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.

**STATEMENT TO KANSAS SENATE COMMITTEE
ON FINANCIAL INSTITUTIONS AND INSURANCE**

Good morning.

My name is Jim Shepard, and I am Manager of Group Health and Life Products for Livestock Marketing Insurance Agency, Inc., or "LMIA." I am present this morning to urge passage of Senate Bill No. 189.

LMIA is the marketing and administrative body for the Livestock Marketing Association Trust, a health insurance program established by the Livestock Marketing Association. The Livestock Marketing Association is a national association of livestock auction markets. [Among its members are over 1200 auction markets and livestock merchants nationally, including members in Kansas.]

The Livestock Marketing Association Trust was established by the Livestock Marketing Association in 1984 as a low-cost and efficient means of providing health benefits for members of the Association. By providing self-funded insurance to members of the Association, it was hoped that the Trust could help members cope with the exploding cost of health insurance. Since its establishment, the Trust has grown steadily, and now provides health insurance protection for over 6000 families nationwide. Claims are paid through third-party administrators under contract with the Trust.

The Livestock marketing Association Trust currently provides health insurance for 78 families in Kansas. That number had generally increased until last year, at which time the Kansas Insurance Commissioner raised concerns about the

*Attachment 5
FI + I
2/28/91*

Trust's compliance with Kansas insurance law. In subsequent meetings, the Commissioner's office stated its view that under current Kansas law, the Trust was engaged in the unlawful, unlicensed business of insurance in Kansas. To date, the Commissioner has indicated that only two options would be acceptable for complying with Kansas insurance law. The first would be to cease operations entirely in Kansas, which would leave our members without coverage and forced to obtain insurance on their own. The second option would be to purchase full insurance coverage from an insurer licensed in Kansas, in order to provide for all benefits under the Trust. This latter option would substantially increase the cost of providing benefits to our members, and would negate the very purpose for which the Trust was established.

Because we believe that well-funded, prudently managed association-sponsored health plans offer great advantages to their members, we strongly encourage the adoption of that part of Senate Bill No. 189 that would authorize and regulate multiple employer welfare arrangements ("MEWAs"). In recognition of the state's important interest in ensuring that its residents receive the health benefits promised them by associations, this legislation would authorize oversight of MEWAs by the Insurance Commissioner and would require that a number of steps be taken to guard against financial loss by MEWAs. On the other hand, the legislation would enable properly organized MEWAs to continue to operate in Kansas. Failure to enact this legislation may leave such associations

without a statutory basis for existence. In that case, many Kansas families may be deprived the opportunity to receive adequate health coverage at a reasonable price.

Clearly, it is in no one's interest to permit unsound, poorly financed MEWAs to sell health coverage without adequate assurance that benefits ultimately will be paid. The proposed legislation protects Kansas residents against such unsound practices in a number of ways:

First, the legislation contains a combination of reserve and stop-loss requirements, to ensure that adequate funds and back-up insurance will be available to pay claims. The reserve requirement protects against insolvency of MEWAs by requiring them to maintain an adequate "cushion" against adverse experience. The requirement that a stop-loss policy be maintained limits the risk to which MEWAs (and their members) may be exposed.

Second, the legislation requires detailed financial reporting to the Insurance Commissioner, enabling the Commissioner to monitor the financial well-being of MEWAs. This will permit early steps to be taken if a MEWA begins to show signs of trouble. The Commissioner can act to ensure that the statute's reserve and other requirements are met. In particularly extreme cases, the Commissioner may revoke the MEWA's license to operate.

Finally, the legislation would create a "multiple employer welfare arrangement security fund," funded through premiums paid by MEWAs, to provide for payment of benefits in the event a MEWA becomes insolvent. This fund is analogous to state

"guaranty associations" established to protect customers of state insurance companies. It would guard against failure of MEWAs where the reserve and stop-loss requirements are inadequate to prevent insolvency. The legislation permits the appointment of a conservator in the event a MEWA becomes insolvent, to oversee payment of benefits from the security fund.

We believe that the protections contained in the legislation strike an appropriate balance between the state's need to protect its citizens' health insurance benefits, on the one hand, and on the other hand, the need to keep available as many options as possible for enabling Kansas employers to cope with the extraordinary increases in health insurance costs that they continue to face. Our association's Trust, for example, is able to provide health coverage at significantly less cost than would be possible through the purchase of commercial insurance. Association members also have a greater voice in the operation of the Association than they would if insured under a commercial plan. Given the immense difficulty faced by employers in obtaining affordable and manageable health insurance, we believe the legislature should act to keep as many avenues open as possible for providing such coverage.

In summary, we strongly urge your favorable consideration of Senate Bill No. 189.

ROADMAP TO SENATE BILL NO. 189

Minimum membership and premiums	Section 20, p. 14
Stop-loss requirement	Section 20(c), p. 15
Independent trustees; prudence requirement	Sections 27, 28; p. 17
Reserve requirements	Section 32, pp. 18-19
Financial reporting	Section 33, p. 19
Annual .25 percent fee	Section 35(b), p. 19
Suspension of MEWA's certificate	Section 36, p. 19
Establishment of security fund	Section 40, pp. 20-21
Premiums to pay for security fund	Section 41, pp. 21-22

Testimony By
Dick Brock, Kansas Insurance Department
Before the Senate Financial Institutions and Insurance Committee
on Senate Bill No. 196
February 28, 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 of 1974 (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.

*Attachment 6
FI + I
2/28/96*

At least three long-standing, respected Kansas associations have discovered their health insurance plans are or were in violation of state insurance laws. At least one of those associations has corrected the defect and the other two either have done so or are attempting to do so by becoming a fully insured plan.

Senate Bill No. 196 will further this process by establishing an additional qualification which, if met, will provide a means of these associations and any other similarly situated a means of legalization.

This is, however, not a good, permanent, solution. In the first place, the fact that a particular organization has qualified for a tax exemption under 501(c)(9) of the federal Internal Revenue Code really doesn't mean very much except it is apparently a voluntary employees' benefit association providing life, health or other benefits to its members and therefore entitled to the exemption. Aside from perhaps some indication of legitimacy, this recognition provides no assurance or evidence that a given health benefit plan can pay claims. The stop loss or excess insurance requirement is of some assistance but determining that such insurance comes into play when and to the extent it should in the absence of other reporting or oversight requirements can be very difficult and if a particular plan wanted to make it difficult, such a determination could become impossible.

For that reason, we support and urge your consideration of the amendment that will place an expiration date on this new qualification. With such a sunset provision, this bill will then create a 7 or 8 month period of modest tranquility during which they can attempt to be fully insured; qualify under the provisions of Senate Bill No. 189 if enacted, or make such other arrangements as best suit their purpose in accordance with the law. We would also suggest that the effective date of the bill be

amended to publication in the state register so that plans who find it necessary to do so may qualify under this new provision earlier.

Because the associations we are aware of unknowingly and unintentionally became involved in this tangled web of state and federal law and because the covered members of these associations would not be well served by a precipitous termination of the health benefits plan, we do not object to Senate Bill No. 196 as a temporary solution to this problem.

SENATE BILL No. 196

By Committee on Financial Institutions and Insurance

2-13

8 AN ACT relating to jurisdiction of the commissioner of insurance
9 and application of law with respect to voluntary employees' ben-
10 efitary associations; amending K.S.A. 40-2222 and repealing the
11 existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 40-2222 is hereby amended to read as follows:
15 40-2222. Any person or other entity which provides coverage in this
16 state for medical, surgical, chiropractic, physical therapy, speech
17 pathology, audiology, professional mental health, dental, hospital, or
18 optometric expenses, whether such coverage is by direct payment,
19 reimbursement, or otherwise, shall be presumed to be subject to
20 the jurisdiction of the commissioner of insurance unless the person
21 or other entity conclusively shows by submission of an appropriate
22 certificate, license or other document issued by a governmental
23 agency that it is subject to the jurisdiction of an agency of this state
24 or the federal government.

~~Any entity that has obtained recognition
of its exempt status under section 501(c)(9) of the federal internal
revenue code of 1986 as in effect on the effective date of this act,
and is sponsored by a nonprofit trade or professional association,
shall be considered to be subject to the jurisdiction of an agency of
the federal government and shall not be subject to the provisions of
chapter 40 of the Kansas Statutes Annotated or of the jurisdiction
of the commissioner of insurance if such entity files satisfactory proof
with the commissioner that it is covered by stop loss or excess in-
surance for claims expense in excess of anticipated contributions by
or on behalf of individuals covered by the entity.~~

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

36 Sec. 3. This act shall take effect and be in force from and after
37 its publication in the statute book.

STAGE REGISTER

The Kansas Insurance Department would recommend that the following language be substituted for the language on lines 24 through 34 of 1991 Senate Bill 196 and 1991 House Bill 2304: "Until January 1, 1992 any entity that has obtained recognition of its exempt status under Section 501(c)(9) of the federal internal revenue code of 1986 as in effect on the effective date of this act which has given written notice of exempt status to the Commissioner and is sponsored by a non-profit trade or professional association which has been in existence for at least two years and is formed for purposes other than that of obtaining insurance, shall be considered to be subject to the jurisdiction of an agency of the federal government and shall not be subject to the provisions of Chapter 40 of the Kansas Statutes Annotated or of the jurisdiction of the commissioner of insurance if such entity files satisfactory proof with the commissioner that it is covered by stop-loss or excess insurance in an amount approved by the Commissioner for claims expense in excess of anticipated contributions by or on behalf of individuals covered by the entity, and if such entity complies with K.S.A. 40-2224."

6-4

Testimony By
Dick Brock, Kansas Insurance Department
Before the Senate Financial Institutions and Insurance Committee
on Senate Bill No. 189
February 28, 1991

Senate Bill No. 189 is a free-standing companion to Senate Bill No. 196 which really encompasses two separate parts of primarily a health care funding mechanism although life insurance and annuity can also be involved. Sections 1 through 15 amend or add to the current Kansas laws governing what are known as third party administrators. As can be noted by the statutory definition, there are more things a third party administrator is not than there are things they are so it is not easy and somewhat dangerous to simplify. However, if one thinks of a third party administrator as being a person who does by contract with an unrelated insurance consumer everything or almost everything an insurance company does except assume the risk of loss, the description will be about as brief as I can make it.

The existing statutes governing third party administrators are really more protective than regulatory in nature. They were enacted when the use of third party administrators was relatively new and what they did was basically ministerial in nature. As a result, these statutes are designed to identify third party administrators by requiring them to be registered and imposing certain safeguards regarding what they do with and how they account for money that really belongs to someone else and what they can and can't do within the scope of their authority.

As the use of third party administrators has grown and the differing methods of financing health care and/or life insurance have become more numerous and more varied, their abilities and responsibilities have similarly expanded. As a result, the National Association of Insurance Commissioners (NAIC) adopted a new model law governing this business last

Attachment 7
FI & I
2/28/91

December. Sections 1 through 15 of Senate Bill No. 189 generally embody this new model and strengthen the regulation and accountability of those engaged in the administrative aspects of a life or health insurance plan of some kind.

For example, rather than registration Senate Bill No. 189 establishes a more formal licensing procedure including subjecting applicants to a written examination and authority to pose such interrogatories or conduct such investigations as the Commissioner deems necessary prior to issuing a license to act as a manager and in that capacity be responsible for conducting the daily operations of a third party administrator.

The third party administrator itself is then subject to a separate requirement under which the administrator must qualify for a certificate of authority. These qualifications are basically informational in nature and encompass a long list of documents ranging from organizational material to business plans to staffing levels and evidence of required agents' licenses.

Section 16 to 45 essentially create a separate regulatory structure for multiple employer welfare arrangements (MEWA's). This is, in nature, very similar to the municipal group-funded pool legislation this legislature has dealt with and enacted in recent years. Sections 16 through 45 can, I think, be accurately described as a private business counterpart to the municipal pools. And like that relating to municipalities, the Insurance Department wishes such legislation was not before you. I say this not because we don't want the added work but because its presence means the more traditional insurance mechanisms are not meeting the needs and desires of insurance consumers. As regulators we feel somewhat responsible even though we know the fault really lies

with a terrific health care system that provides us more and better care than our financing systems can afford.

Like that relating to municipalities, we also have some misgivings about this legislation. People insured by a MEWA created in accordance with the provisions of Senate Bill 189 will almost certainly believe their coverage is as secure as it would be with an insurance company. Yet, no matter how we view it, a MEWA is not an insurance company -- is not subject to the same laws and requirements as an insurance company -- and other insurance companies will not be serving as a safety net for a MEWA that cannot keep its promises.

On the other hand, the kind of MEWAs Senate Bill No. 189 is intended to permit are comprised of business people who are certainly knowledgeable and sophisticated enough that they know what they want and have decided they can't get the coverage they want at the price they want to pay from commercial insurers. On the other hand, individually they are too small to self-insure. So, in effect, Senate Bill No. 189 provides a means by which they can join with others who have the same problems and pool their resources. The principle is the same as a reciprocal insurance company and, in fact, it was the same sort of dissatisfaction that led to the creation of reciprocal insurers.

As a result, we don't believe it is appropriate for us to oppose Senate Bill No. 189 because we don't believe we have any business trying to tell independent business people how to manage their own affairs.

Consequently, we have worked with the proponents of Senate Bill No. 189 and have reached agreement on a number of amendments we believe will improve it or, in some cases, make it parallel the requirements imposed on the municipal risk pools. In other cases, we have noted some requirements imposed on municipal pools that could be considered policy

decisions to be made by legislators. In this latter category, the most prominent item is premium tax. K.S.A. 12-2624 imposes a 1% premium tax on group-funded municipal risk pools. I have not seen the amendments being proposed by the sponsors so I don't know if this is incorporated or not but if it isn't, you should be aware of this difference. Also, the Department's direct costs incurred in administering the municipal group-funded risk pool act are funded by an assessment on the pools that is authorized by K.S.A. 12-2623. Further, we believe it is quite important that those covered by a plan provided by a MEWA be well informed participants. Section 34 on page 19 contains some notice requirements and I believe this was discussed with the sponsors. Again, however, I don't know what, if any, amendments to this section have been proposed. Therefore, if not already addressed, we believe this section should require the notice to be provided at the time of solicitation and, in addition to the requirements included in the original bill, should inform prospective participants that the plan is not provided by an insurance company; is not subject to the laws governing insurance companies and is not covered by the Kansas Life and Health Insurance Guaranty Fund.

Finally, as you all know, the 1990 legislature, a special interim committee and continuing this session, a great deal of time and attention has been devoted toward efforts to at least stabilize health insurance premiums generally and, particularly, with regard to small groups. House Bill No. 2001 now being considered by the House Committee on Insurance contains a number of restrictions, prohibitions and requirements that were derived from this legislative effort. It is difficult to make a definitive suggestion at this time because the final form of House Bill No. 2001 is far from certain but whether or not the provisions of that bill should apply to MEWAs if it becomes law should be considered. One way this could be done is to amend New Section 18, subsection (b), page

13 of Senate Bill No. 189 to modify the Chapter 40 exemption so that any applicable provisions of Chapter 40 must be expressed in the MEWA Act (as now stated) or must be specifically applied to MEWAs in the relevant statutes. This would permit applicability to MEWAs to be added to House Bill No. 2001 if and when it is deemed appropriate to do so.

Last but not least is the question of mandates. People who cannot afford to self-insure are required to pay for the mandates. Thus, you will probably want to at least give this issue some thought. The mandates do not apply to municipal pools; however, as some of you will recall, such a requirement was in the bill last year authorizing municipalities to form accident and health pools but was deleted by the conference committee.

SENATE BILL No. 189

By Committee on Financial Institutions and Insurance

2-13

8 AN ACT concerning insurance; third party administrators; amending
9 K.S.A. 40-3801 to 40-3809, inclusive, and K.S.A. 1990 Supp. 40-
10 3810 and repealing the existing sections.

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

12 Section 1. K.S.A. 40-3801 is hereby amended to read as follows:
13 40-3801. Wherever the term "administrator" is used in this act,
14 it shall mean any person, company, corporation, partnership or
15 other legal entity who collects charges or premiums from, or
16 who adjusts or settles claims on, residents of this state in con-
17 nection with life or accident and sickness insurance coverage
18 or annuities other than: (a) "Administrator" or "third party ad-
19 ministrator" or "TPA" means a person (or entity) who directly or
20 indirectly solicits or effects coverage of, underwrites, collects charges
21 or premiums from, or adjusts or settles claims on residents of this
22 state, or residents of another state from offices in this state, in
23 connection with life or health insurance coverage or annuities, except
24 any of the following: (1) An employer on behalf of its employees or
25 the employees of one or more subsidiary or affiliated corporations
26 of such employer;; (2) a union or association on behalf of its
27 members;; (3) an insurance company which is either licensed in
28 this state or acting as an insurer with respect to a policy lawfully
29 issued and delivered by it in and pursuant to the laws of a
30 state in which the insurer was authorized to do an insurance
31 business, or organizations transacting business in this state pur-
32 suant to articles 18, 19, 19a, 19b or 32 of chapter 40, Kansas
33 Statutes Annotated, including their sales representatives when
34 engaged in the performance of their duties as such; (4) a life
35 or accident and sickness agent licensed insurer authorized to
36 transact insurance business in this state with respect to a policy
37 issued and delivered in and pursuant to the laws of this state or
38 another state; (4) an agent or broker licensed to sell life or health
39 insurance in this state whose activities are limited exclusively to the
40 sale and service of insurance;; (5) a creditor on behalf of its debtors
41 with respect to insurance covering a debt between the creditor and
42 its debtors;; (6) a trust;and its trustees, agents and employees acting
43

7-6

7-6

1-1

1 thereunder pursuant to such trust, established in conformity w
2 29 U.S.C. 186; (7) a trust exempt from taxation under section 501
3 of the internal revenue code, its trustees, and employees acti
4 thereunder pursuant to such trust, or a custodian, its and i
5 custodian's agents and employees acting pursuant to a custodi
6 account which meets the requirements of section 401(f) of the inter
7 revenue code; (8) a bank, credit union or other credit union
8 a financial institution which is subject to supervision or examinati
9 by federal or state banking authorities; or a mortgage lender, to i
10 extent they collect and remit premiums to licensed insurance age
11 or authorized insurers in connection with loan payments; (9) a cre
12 card issuing company which advances for and collects premiums
13 charges from its credit card holders who have authorized it to
14 so; provided such collection if the company does not adjust
15 settle claims; or; (10) a person who adjusts or settles claims in i
16 normal course of his or her that person's practice or employm
17 as an attorney at law, and who does not collect charges or premiu
18 in connection with life or accident and sickness insurance coveri
19 or annuities; (11) an adjuster licensed by this state whose activiti
20 are limited to adjustment of claims; (12) a person who acts sol
21 as an administrator of one or more bona fide employee benefit pl
22 established by an employer or an employee organization, or bo
23 for which the insurance laws of this state are preempted pursu
24 to the employee retirement income security act of 1974, such pers
25 shall comply with the requirements of subsection (k) of K.S.A. (c)
26 8811 and amendments thereto; or (13) a person licensed as a m 3810
27 aging general agent in this state, whose activities are limited exc
28 sively to the scope of activities conveyed under such license.

29 (b) "Affiliate" or "affiliated" means any entity or person u
30 directly or indirectly through one or more intermediaries, conti
31 or is controlled by, or is under common control with a specif
32 entity or person.

33 (c) "Commissioner" means the commissioner of insurance.

34 (d) "Control" shall have the meaning ascribed thereto in K.S
35 40-3302 and amendments thereto.

36 (e) "Insurance" or "insurance coverage" means any coverage
37 fered or provided by an insurer.

38 (f) "Insurer" means any person or entity undertaking to prov
39 life or health insurance coverage in this state. For purposes of i
40 act, insurer includes a licensed insurance company, a prepaid h
41 pital or medical care plan, a health maintenance organization
42 multiple employer welfare arrangement, or any other person or en
43 providing a plan of insurance subject to state insurance regulati

8-6

Insurer does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the employee retirement income security act of 1974.

(g) "Licensed administrative manager" or "manager" means that individual responsible for conducting the daily operations of a third party administrator.

(h) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the overall planning and coordinating of an insurance program, and the ability to procure bonds and excess insurance.

Sec. 2. K.S.A. 40-3802 is hereby amended to read as follows:

40-3802. (a) No administrator shall act as such without a written agreement between the administrator and the insurer, and such written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and five (5) years thereafter. Such written agreement shall contain all provisions which include the requirements of K.S.A. 40-3803, 40-3805 to 40-3809, inclusive required by this act, except insofar as those requirements do not apply to the functions performed by the administrator.

(b) Where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendments thereto shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy and five (5) years thereafter. The written agreement shall include a statement of duties which the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by such insurer.

(c) The insurer or administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer must fulfill any lawful obligations with respect to policies effected by the written agreement, regardless of any dispute between the insurer and the administrator.

Sec. 3. K.S.A. 40-3803 is hereby amended to read as follows:

40-3803. The agreement shall make provision with respect to

1-5

1 the underwriting or other standards pertaining to the business
2 underwritten by such insurer.

3 (a) An individual shall not act as an administrative services man-
4 ager unless the individual obtains and maintains a license pursuant
5 to this act.

6 (b) An application for a license to act as an administrative serv-
7 ices manager shall be made to the commissioner on forms prescribed
8 by the commissioner. The application shall include written authority
9 from an authorized TPA to act on behalf of the TPA. As used in
10 this subsection, "authorized TPA" includes a TPA which has applied
11 for a certificate of authority, the granting of which is contingent
12 upon the applicant obtaining an administrative services manager's
13 license.

14 (c) Within a reasonable time after receipt of a properly completed
15 application form, the commissioner shall subject the applicant to a
16 written examination to determine if the applicant is professionally
17 capable of providing, arranging for, or administering the services
18 offered by a TPA, and has a reasonable understanding of the laws
19 governing health care benefits. The commissioner may conduct in-
20 vestigations and propound interrogatories concerning the applicant's
21 qualifications, residence, and any other matter which the commis-
22 sioner considers necessary or advisable to determine compliance with
23 this act, or for protection of the public. The commissioner shall make
24 a decision on an application within 60 days after receipt of a properly
25 completed application form.

26 (d) After successful completion of the examination, investigation
27 and interrogatories, the commissioner shall license an applicant if
28 the applicant has passed the examination and the commissioner de- *written*
29 termines that the applicant is honest, trustworthy, and of good per-
30 sonal and business reputation.

31 (e) If the commissioner disapproves an application for a license,
32 the commissioner shall notify the applicant in writing of the reasons
33 for disapproval.

34 (f) A manager shall continue to meet the requirements of this
35 act at all times.

36 ~~(g) The commissioner may reexamine, not more often than an-~~
37 ~~ually, a licensed manager upon reasonable notice in writing with~~
38 ~~the reasons stated for the reexamination.~~] *delete*

39 Sec. 4. K.S.A. 40-3804 is hereby amended to read as follows:
40 40-3804. Whenever If an insurer utilizes the services of an admin-
41 istrator under the terms of a written contract as required in
42 K.S.A. 40-3802, the payment to the administrator of any premiums
43 or charges for insurance by or on behalf of the insured party shall

7-10

1 be deemed to have been received by the insurer, and the payment
 2 of return premiums or claims *payments forwarded* by the insurer
 3 to the administrator shall not be deemed *payment to have been*
 4 *paid* to the insured *party* or claimant until such payments are re-
 5 ceived by the insured ^{or claimant.} ~~Nothing herein shall limit in~~ *party*
 6 *this section shall limit* any right of the insurer against the admin-
 7 istrator resulting from its ~~failure~~ *the failure of the administrator* to
 8 make payments to the insurer, insureds *parties* or claimants.

9 Sec. 5. K.S.A. 40-3805 is hereby amended to read as follows:
 10 40-3805. (a) Every administrator shall maintain at its principal ad-
 11 ministrative office for the duration of the written agreement
 12 referred to in K.S.A. 40-3802 and five (5) years thereafter ad-
 13 equate and make available to the insurer complete books and records
 14 of all transactions between it, insurers and insured persons. Such
 15 performed on behalf of the insurer. The books and records shall be
 16 maintained in accordance with prudent standards of insurance record
 17 keeping and must be maintained for a period of not less than five
 18 years from the date of their creation.

19 (b) The commissioner of insurance shall have access to such
 20 books and records maintained by an administrator for the purpose
 21 of examination, audit and inspection. Any trade secrets contained
 22 therein, including but not limited to in such books and records
 23 including the identity and addresses of policyholders and certifi-
 24 cateholders, shall be kept confidential, except that the commissioner
 25 may use such information in any proceedings instituted against the
 26 administrator.

27 (c) The insurer shall ~~retain the right to continuing access to~~ *delete "retain"*
 28 such books and records of the administrator sufficient to permit
 29 the insurer to fulfill all of its contractual obligations to insured
 30 persons, subject to any restrictions in the written agreement
 31 between the insurer and administrator on the proprietary rights
 32 of the parties in such books and records *own the records gen-*
 33 *erated by the administrator pertaining to the insurer, however the*
 34 *administrator shall retain the right to continuing access to books*
 35 *and records to permit the administrator to fulfill all of its contractual*
 36 *obligations to insured parties, claimants and the insurer.*

37 (d) In the event the insurer and the administrator cancel their
 38 agreement, notwithstanding the provisions of subsection (a), the ad-
 39 ministrator may, by written agreement with the insurer, transfer all
 40 records to a new administrator rather than retain them for five
 41 years. In such cases, the new administrator shall acknowledge, in
 42 writing, that such administrator is responsible for retaining the rec-
 43 ords of the prior administrator as required in subsection (a).

7-11

1 Sec. 6. K.S.A. 40-3806 is hereby amended to read as follows:
 2 40-3806. An administrator may use only such advertising pertaining
 3 to the business underwritten by an insurer as has been approved
 4 by ~~such~~ *the* insurer in advance of its use.

5 New Sec. 7. (a) If an insurer utilizes the services of an admin-
 6 strator, the insurer shall be responsible for determining the benefits,
 7 premium rates, underwriting criteria and claims payment procedures
 8 applicable to such coverage and for securing reinsurance, in any.
 9 The rules pertaining to these matters must be provided, in writing
 10 by the insurer to the administrator. The responsibilities of the ad-
 11 ministrator as to any of these matters shall be set forth in the writer
 12 agreement under K.S.A. 40-3802 and amendments thereto between
 13 the administrator and the insurer.

14 (b) It is the sole responsibility of the insurer to provide for com-
 15 petent administration of its programs.

16 (c) In cases where an administrator administers benefits for mor-
 17 than 100 certificateholders on behalf of an insurer, the insurer shall
 18 at least ~~semiannually~~, conduct a review of the operations of th-
 19 administrator. At least one such review, shall be an on-site audit c
 20 the operations of the administrator.

annually
in every three year period

21 Sec. 8. K.S.A. 40-3807 is hereby amended to read as follows:
 22 40-3807. (a) All insurance charges or premiums collected by a
 23 administrator on behalf of or for an insurer or insurers, and ~~retur~~
 24 *the return of* premiums received from ~~such~~ *that* insurer or insurers
 25 shall be held by the administrator in a fiduciary capacity. Such fund
 26 shall be immediately remitted to the person or persons entitle
 27 ~~thereto to them~~, or shall be deposited promptly in a ~~bank~~ *fiduciar*
 28 account established and maintained by the administrator *in a fee*
 29 *erally or state insured financial institution. The written agreeeme*
 30 *under K.S.A. 40-3802 and amendments thereto between the admin*
 31 *istrator and the insurer shall provide for the administrator to p*
 32 *rtodically render an accounting to the insurer detailing a*
 33 *transactions performed by the administrator pertaining to busine*
 34 *underwritten by the insurer.*

35 (b) If charges or premiums so deposited *in a fiduciary accou*
 36 have been collected on behalf of or for ~~more than one~~ *(1)* insur-
 37 ~~one or more insurers~~, the administrator shall ~~maintain~~ *keep* recor-
 38 clearly recording the deposits in and withdrawals from ~~such~~ *tl*
 39 account on behalf of ~~or for~~ each insurer. The administrator shi
 40 keep copies of all ~~such~~ *the* records and, upon request of an insur-
 41 shall furnish ~~such~~ *the* insurer with copies of ~~such~~ *the* records pe-
 42 taining to *such* deposits and withdrawals ~~on behalf of or for su~~
 43 insurer.

1 (c) The administrator shall not pay any claim by withdrawals from
 2 such a fiduciary account in which premiums or charges are depos-
 3 ited. Withdrawals from the funds deposited in such account shall
 4 be made, as provided in the written agreement under K.S.A. 40-
 5 3802 and amendments thereto between the administrator and the
 6 insurer, for. The written agreement shall address, but not be limited
 7 to, the following: (1) remittance to an insurer entitled thereto, to
 8 remittance; (2) deposit in an account maintained in the name of such
 9 the insurer; (3) transfer to and deposit in a claims paying account,
 10 with claims to be paid as provided in K.S.A. 40-3809, subsection
 11 (d); (4) payment to a group policyholder for remittance to the insurer
 12 entitled thereto, to remittance; (5) payment to the administrator of
 13 its commission, fees or charges; or (6) remittance of return of pre-
 14 miums to the person or persons entitled thereto to such premiums.

15 (d) All claims paid by the administrator from funds collected on
 16 behalf of or for an insurer shall be paid only on drafts or checks
 17 of, and as authorized by, the insurer.

18 Sec. 9. K.S.A. 40-3808 is hereby amended to read as follows:
 19 40-3808. Any policies or certificates which an administrator ad-
 20 justs or settles, the compensation to the administrator with re-
 21 gard to such policies shall in no way be contingent on claim
 22 experience. (a) An administrator shall not enter into any agreement
 23 or understanding with an insurer in which the effect is to make the
 24 amount of the administrator's commissions, fees or charges contin-
 25 gent upon savings effected in the adjustment, settlement and payment
 26 of losses covered by the insurer's obligations. ~~The provision shall~~ This
 27 not prohibit an administrator from receiving performance based com-
 28 pensation for providing hospital or other auditing services.

29 (b) This section shall not prevent the compensation of an ad-
 30 ministrator from being based on premiums or charges collected or
 31 number of claims paid or processed.

32 Sec. 10. K.S.A. 40-3809 is hereby amended to read as follows:
 33 40-3809. (a) When the services of an administrator are utilized, the
 34 administrator shall provide a written notice approved by the insurer
 35 to covered individuals advising them of the identity of, and rela-
 36 tionship among, the administrator, the policyholder and the insurer.

37 Where (b) When an administrator collects funds, it must iden-
 38 tify and state separately in writing to the person paying to the
 39 administrator any charge or premium for insurance coverage
 40 the amount of any such charge or premium specified by the
 41 insurer for such insurance coverage. All claims paid by the
 42 administrator from funds collected on behalf of the insurer shall
 43 be paid only on drafts of and as authorized by such insurer the

1 reason for collection of each item must be identified to the insured
2 party and each item must be shown separately from any premium.
3 Additional charges may not be made for services to the extent the
4 services have been paid for by the insurer.

5 (c) The administrator shall disclose to the insurer all charges,
6 fees and commissions received from all services in connection with
7 the provision of administrative services for the insurer, including
8 any fees or commissions paid by the insurers providing reinsurance.

9 New Sec. 11. Any policies, certificates, booklets, termination no-
10 tices, or other written communications delivered by the insurer to
11 the administrator for delivery to insured parties or covered individ-
12 uals shall be delivered by the administrator promptly after receipt
13 of instructions from the insurer to deliver them.

14 Sec. 12. K.S.A. 1990 Supp. 40-3810 is hereby amended to read
15 as follows: 40-3810. (a) No person shall act as, or offer to act as,
16 or hold oneself out to be an administrator in this state, unless such
17 person holds a certificate of registration as an administrator
18 issued by the commissioner of insurance. Application for such
19 certificate shall be made to the commissioner on a form pre-
20 scribed by such commissioner and shall be accompanied by a
21 filing fee of \$100. Such certificate may be continued for suc-
22 cessive annual periods by notifying the commissioner of such
23 intent and payment of a \$50 continuation fee. Such certificate
24 shall be issued or continued by the commissioner to an ad-
25 ministrator unless the commissioner after due notice and hear-
26 ing shall have determined that the administrator is not
27 competent, trustworthy, financially responsible or of good per-
28 sonal and business reputation, or has had a previous application
29 for an insurance license denied for cause within five years.

30 Hearings under this section shall be conducted in accordance
31 with the provisions of the Kansas administrative procedure act
32 without a valid certificate of authority as an administrator issued
33 by the commissioner.

34 (b) Applicants to be an administrator shall make application to
35 the commissioner upon a form to be furnished by the commissioner.
36 The application shall include or be accompanied by the following
37 information and documents: (1) All basic organizational documents
38 of the administrator, including any articles of incorporation, articles
39 of association, partnership agreement, trade name certificate, trust
40 agreement, shareholder agreement and other applicable documents,
41 and all amendments to such documents; (2) the bylaws, rules and
42 regulations or similar documents regulating the internal affairs of
43 the administrator; (3) the names, addresses, official positions and

7-14

1 professional qualifications of the individuals who are responsible for
 2 the conduct of affairs of the administrator including all members of
 3 the board of directors, board of trustees, executive committee or
 4 other governing board or committee, the principal officers in the
 5 case of a corporation or the partners or members in the case of a
 6 partnership or association, shareholders holding directly or indirectly
 7 10% or more of the voting securities of the administrator, and any
 8 other person who exercises control of influence over the affairs of
 9 the administrator; (4) the names and addresses of each and every
 10 person who will serve as an administrative service manager and be
 11 licensed according to K.S.A. 40-3803 and amendments thereto; (5)
 12 annual financial statements or reports for the two most recent years
 13 which prove that the applicant is solvent and such information as
 14 the commissioner may require in order to review the current financial
 15 condition of the applicant; (6) a statement describing the business
 16 plan including information on staffing levels and activities proposed
 17 in this state and nationwide, and the plan must provide details setting
 18 forth the administrator's capability for providing a sufficient number
 19 of experienced and qualified personnel in the areas of claims pro-
 20 cessing, record keeping and underwriting; (7) if the applicant will
 21 be managing the solicitation of new or renewal business, proof that
 22 it employs or has contracted with an agent licensed by this state for
 23 solicitation and taking of applications. Any applicant which intends
 24 to directly solicit insurance contracts or to otherwise act as an in-
 25 urance agent must provide proof such agent has a license as an
 26 insurance agent in this state; and (8) such other pertinent information
 27 as may be required by the commissioner.

licensed

(c) The application shall be accompanied by a fee of ~~\$100~~ as the application fee and \$50 for the certificate of authority.

non-refundable \$200

(d) The applicant shall make available for inspection by the commissioner copies of all contracts with insurers or other persons utilizing the services of the administrator.

(e) The commissioner shall issue a certificate of authority to operate as a TPA if the commissioner is satisfied that all of the following conditions are met: (1) The TPA has in its employ at least one administrative services manager who is licensed under K.S.A. 40-3802 and amendments thereto, and who is responsible for the daily operation of the TPA and (2) the TPA has adequate facilities, personnel and managers to act as a third party administrator.

(f) The commissioner may refuse to issue a certificate of authority, if the commissioner determines that the administrator, or any individual responsible for the conduct of affairs of the administrator as defined in subsection (b)(3) or (b)(4), is not competent,

1 trustworthy, financially responsible or of good personal and business
2 reputation, or has had an insurance or an administrator license or
3 certificate of authority denied or revoked for cause by any state.

4 (g) A certificate of authority issued under this section shall re-
5 main valid, unless surrendered, suspended or revoked by the com-
6 missioner, for so long as the administrator continues in business in
7 this state and remains in compliance with this act. However, if a
8 TPA fails to meet the requirements of subsection (e) because of a
9 manager's death, incapacity, resignation or dismissal, the TPA shall
10 have 30 days to comply with subsection (e). Upon request and for
11 good cause shown, the commissioner may grant to a TPA a reasonable
12 extension beyond the 30 day time limit within which the TPA shall
13 comply with subsection (e).

14 (h) An administrator is not required to hold a certificate of au-
15 thority as an administrator in this state if all of the following con-
16 ditions are met: (1) The administrator has its principal place of
17 business in another state, (2) the administrator is not soliciting busi-
18 ness as an administrator in this state, and (3) in the case of any
19 group policy or plan of insurance serviced by the administrator, the
20 lesser of 5% or 100 certificateholders reside in this state.

but shall register with
the commissioner annually

21 (i) A person is not required to hold a certificate of authority as
22 an administrator in this state if the person exclusively provides serv-
23 ices to one or more bona fide employee benefit plans each of which
24 is established by an employer or an employee organization, or both,
25 and for which the insurance laws of this state are preempted pur-
26 suant to the employee retirement income security act of 1974. Such
27 persons shall register with the commissioner annually, verifying their
28 status as herein described.

29 (j) An administrator shall immediately notify the commissioner
30 of any material change in its ownership, control or other fact of
31 circumstance affecting its qualification for a certificate of authority
32 in this state.

33 (k) Every administrator shall maintain a fidelity bond in an
34 amount of not less than 10% of the amount of funds handled subject
35 to a maximum of \$500,000 provided, however, that no bonding shall
36 be required by the commissioner of any administrator whose business
37 is restricted solely to benefit plans which are either fully insured by
38 an authorized insurer or which are bona fide employee benefit plans
39 established by an employer or an employee organization, or both,
for which the insurance laws of this state are preempted pursuant
to the employee retirement income security act of 1974.

annually

42 (l) Every administrator shall maintain a policy of liability in-
43 surance in an amount not less than \$200,000 per occurrence subject

7-16

1 to not less than a \$600,000 annual aggregate for all claims made-
 2 during the policy period for loss claimed to have been caused by
 3 error, omission or negligence in the performance of such adminis-
 4 trator's professional services, provided, however, that no liability
 5 policy shall be required by the commissioner of any administrator
 6 whose business is restricted solely to benefit plans which are either
 7 fully insured by an authorized insurer or which are bona fide em-
 8 ployee benefit plans established by an employer or an employee
 9 organization, or both, for which the insurance laws of this state are
 10 preempted pursuant to the employee retirement income security act
 of 1974.

delete "made"

12 New Sec. 13. Upon request from an administrator, the com-
 13 missioner may waive the application requirements of subsection (b)
 14 of K.S.A. 40-3810 and amendments thereto if the administrator has
 15 a valid certificate of authority as an administrator issued in a state
 16 which has standards for administrators that are at least as stringent
 17 as those contained in the model statute for third party administrators
 18 of the national association of insurance commissioners and has an
 19 administrative services manager licensed by this or another state
 20 with a similar examination and licensing procedure.

21 New Sec. 14. (a) Each administrator shall file an annual report
 22 for the preceding calendar year with the commissioner on or before
 23 March 1 of each year, or within such extension of time therefor as
 24 the commissioner for good cause may grant. The report shall be in
 25 the form and contain such matters as the commissioner prescribes
 26 and shall be verified by at least two officers of the administrator.

27 (b) The annual report shall include the complete names and ad-
 28 dresses of all insurers with which the administrator had an agreement
 29 during the preceding fiscal year.

30 (c) At the time of filing its annual report, the administrator shall
 31 pay a filing fee of \$50.

and continuation of authority

32 New Sec. 15. (a) The certificate of authority of an administrator
 33 shall be suspended or revoked if the commissioner finds that the
 34 administrator: (1) Is in an unsound financial condition, (2) is using
 35 such methods or practices in the conduct of its business so as to
 36 render its further transaction of business in this state hazardous or
 37 injurious to insured persons or the public, or (3) has failed to pay
 38 any judgment rendered against it in this state within 60 days after
 39 the judgment has become final.

40 (b) The commissioner may suspend or revoke the certificate of
 41 authority of an administrator if the commissioner finds that the ad-
 42 ministrator: (1) Has violated any lawful rule or order of the com-
 43 missioner or any provision of the insurance laws of this state; (2) has

7-17

1 refused to be examined or to produce its accounts, records and files
2 for examination, or if any of its officers has refused to give information
3 with respect to its affairs or has refused to perform any other legal
4 obligation as to such examination, when required by the commis-
5 sioner; (3) has, without just cause, refused to pay proper claims or
6 perform services arising under its contracts or has, without just cause,
7 caused covered individuals to accept less than the amount due them
8 or caused covered individuals to employ attorneys or bring suit
9 against the administrator to secure full payment or settlement of
10 claims; (4) is affiliated with or under the same general management
11 or interlocking directorate or ownership as another administrator or
12 insurer which unlawfully transacts business in this state without hav-
13 ing a certificate of authority; (5) at any time fails to meet any qual-
14 ification for which issuance of the certificate could have been refused
15 had such failure then existed and been known to the department;
16 (6) has been convicted of, or has entered a plea of guilty or nolo
17 contendere to, a felony without regard to whether adjudication was
18 withheld; or (7) is under suspension or revocation in another state.

19 (c) The commissioner may without advance notice or hearing
20 thereon, immediately suspend the certificate of any administrator if
21 the commissioner finds that one or more of the following circum-
22 stances exist: (1) The administrator is insolvent; (2) a proceeding for
23 receivership, conservatorship, rehabilitation, or other delinquency
24 proceeding regarding the administrator has been commenced in any
25 state; or (3) the financial condition or business practices of the ad-
26 ministrator otherwise pose an imminent threat to the public health,
27 safety or welfare of the residents of this state.

28 (d) If the commissioner finds that one or more grounds exist for
29 the suspension or revocation of a certificate of authority issued under
30 this act, the commissioner may, in lieu of such suspension or re-
31 vocation, impose a fine upon the administrator.

32 New Sec. 16. As used in sections 16 to 45:

33 (a) "Board" means the board of trustees of the multiple employer
34 welfare arrangement security fund.

35 (b) "Covered claim" means an obligation of an insolvent MEWA
36 to pay a claim that is covered by the MEWA to a covered employee
37 or dependent who is a resident of this state.

38 (c) "Employee welfare benefit plan" means that term as defined
39 in section 3 of the employee retirement income security act of 1974,
40 U.S.C. 1002(3).

41 (d) "Fund" means the multiple employer welfare arrangement
42 security fund.

43 (e) "Insolvent MEWA" means a MEWA authorized to do busi-

81-6
7-18

1 ness in this state for which a domiciliary or ancillary receiver has
2 been appointed in this state.

3 (f) "Multiple employer welfare arrangement" or "MEWA" means
4 that term as defined in section 3 of the employee retirement income
5 security act of 1974, 29 U.S.C. 1002(3)(40) which meets either or
6 both of the following criteria: (1) One or more of the employer
7 members in the MEWA is either domiciled in this state or has its
8 principal headquarters or principal administrative office in this state,
9 or (2) the MEWA solicits an employer that is domiciled in this state
10 or has its principal headquarters or principal administrative office in
11 this state.

(g) "Act" means sections 16 to 45 of this act.

13 New Sec. 17. A person or entity shall not establish or maintain
14 an employee welfare benefit plan which is a multiple employer wel-
15 fare arrangement in this state unless the MEWA obtains and main-
16 tains a certificate of authority pursuant to this act. This act shall not
17 apply to an employee welfare benefit plan or MEWA that is fully
18 insured.

19 New Sec. 18. (a) A MEWA authorized under this act shall be
20 limited to providing the following benefits: (1) Medical, dental, op-
21 tical, surgical or hospital care benefits, (2) benefits in event of sick-
22 ness, accident, disability or death, or (3) prepaid legal services.

23 (b) Except as otherwise expressed in this act, a MEWA is exempt
24 from chapter 40 of the Kansas Statutes Annotated with respect to
25 all benefits provided on a basis other than fully insured, except that
26 if ~~life~~ benefits are provided and not fully insured, the provisions of
27 article 4 of chapter 40 of the Kansas Statutes Annotated apply.

death

and that if prepaid legal
services ~~are~~ are provided,
K.S.A. 1990 Sopp 4D-4201 et seq. apply.

28 New Sec. 19. (a) A person or entity wishing to establish an em-
29 ployee welfare benefit plan which is a multiple employer welfare
30 arrangement shall apply for a certificate of authority on a form pre-
31 scribed by the commissioner. The application shall be completed
32 and submitted to the commissioner along with all of the following:
33 (1) Copies of all articles, bylaws, agreements or other documents or
34 instruments describing the rights and obligations of employers, em-
35 ployees and beneficiaries with respect to the MEWA; (2) current
36 financial statements of the MEWA; (3) proof of a fidelity bond in a
37 form and amount approved by the commissioner; (4) a statement
38 showing in full detail the plan upon which the MEWA proposes to
39 transact business, a copy of all contracts or other instruments it
40 proposes to make with or sell to its members, together with a copy
41 of its plan description and the proposed printed ~~matter~~ material
42 in the solicitation of members.

material

43 (b) The commissioner shall promptly examine the application and

51-1

1 documents submitted by the applicant and shall have the power to
 2 conduct any investigation which the commissioner may deem nec-
 3 essary and to examine under oath any persons interested or con-
 4 nected with the MEWA.

5 New Sec. 20. (a) The commissioner shall not issue a certificate
 6 of authority to a MEWA unless all of the following conditions have
 7 been met: (1) The commissioner is satisfied that (A) the employers
 8 in the MEWA are members of an association or group of five or
 9 more businesses which are in the same trade or industry, including
 10 closely related businesses which provide support, services or supplies
 11 primarily to that trade or industry, (B) the association or group of
 12 employers in the MEWA is engaged in substantial activity for its
 13 members other than sponsorship of an employee welfare benefit plan,
 14 (C) the association or group of employers in the MEWA has been
 15 in existence for a period of not less than two years, (D) the employee
 16 welfare benefit plan of the association or group is controlled and
 17 sponsored directly by participating employers and employee mem-
 18 bers or both, and (E) the MEWA ~~has within its own organization~~
 19 ~~adequate facilities and competent personnel to service the employee~~
 20 ~~benefit plan or~~ has contracted with an authorized third party ad-
 21 ministrator to provide such services; a third party administrator con-
 22 tracting with a MEWA pursuant to this subsection shall deliver a
 23 fidelity bond to the MEWA to protect against the misappropriation
 24 or misuse of any money handled by the third party administrator in
 25 an amount approved by the commissioner; (2) the MEWA has ap-
 26 plications from not less than five employers and will provide similar
 27 benefits for not less than 200 separate participating employees and
 28 the gross annual premiums of or contributions to the plan will be
 29 not less than \$20,000 for a plan that provides only vision benefits,
 30 \$75,000 for a plan that provides only dental benefits, and ~~\$200,000~~ 500,000
 31 for all other plans; (3) unless waived by the commissioner, the
 32 MEWA possesses a written commitment, binder, or policy for both
 33 specific and aggregate excess loss insurance issued by an insurer
 34 authorized to do business in this state, in an amount approved by
 35 the commissioner, such binder or policy shall provide not less than
 36 30 days' notice of cancellation to the commissioner; (4) the MEWA
 37 has established a procedure, to the satisfaction of the commissioner,
 38 for handling claims for benefits in the event of dissolution of the
 39 MEWA; and (5) the MEWA has delivered to the commissioner such
 40 bond, deposit, or security for the protection of subscribers as the
 41 commissioner requires.

42 (b) For purposes of this section, all employers, participating em-
 43 ployees and premiums paid on behalf of participating employees shall

] delete

07-1

1 be taken into account whether or not the employer or employee is
2 employed in or resides in Kansas.

3 (a) For purposes of this section, a specific excess loss policy with
4 an attachment point of \$25,000 and an aggregate policy with an
5 attachment point at least equal to 120% of expected claims ~~will satisfy~~ *as specified in the aggregate policy will be deemed to*
6 the requirement in subsection (a)(3).

7 New Sec. 21. (a) The commissioner shall collect, and the persons
8 affected shall pay to the commissioner, the following fees: (1) Filing *A non-refundable*
9 fee to accompany application for certificate of authority in the amount
10 of \$200, (2) fee for certificate of authority in the amount of ~~\$25~~ *\$50* and
11 (3) filing fee of ~~\$25~~ *\$50* to accompany the annual statement each year.

12 (b) Each MEWA shall appoint the commissioner as its resident
13 agent for purposes of service of process. The fee for such service
14 shall be in the amount of ~~\$5~~ *\$25* payable at the time of service. *(c)*

15 (3) Fees collected under this section shall be designated for the
16 insurance department to cover the additional costs incurred as a
17 result of this act. *(d)*

18 New Sec. 22. (a) After examination and investigation, the com-
19 missioner shall issue a certificate of authority to the MEWA if the
20 commissioner is satisfied that the MEWA is in a stable and unim-
21 paired financial condition and that the MEWA is qualified to maintain
22 an employee welfare benefit plan in compliance with this act.
(d) Failure to make timely filings shall be subject to KSA 40-226.

23 (b) The commissioner shall refuse to grant a certificate of au-
24 thority to an applicant who fails to meet the requirements of this
25 act. Notice of refusal shall be in writing and shall set forth the basis
26 for the refusal.

27 (c) If the applicant submits a written request within 30 days after
28 the mailing of the notice of refusal, the commissioner shall promptly
29 conduct a hearing pursuant to the Kansas administrative procedure
30 act, at which the applicant shall be given an opportunity to show
31 compliance with the requirements of this act.

32 New Sec. 23. (a) The MEWA, upon receipt of its initial certif-
33 icate of authority, which shall be a temporary certificate, shall pro- *of up to twelve months duration*
34 ceed to the completion of organization of the proposed MEWA.

35 (b) A MEWA shall open its books to the commissioner, and a
36 final certificate of authority shall not be issued by the commissioner
37 to any MEWA until it has collected the cash reserves as provided
38 in section 32.

39 ~~New Sec. 24. (a) The policies issued by the MEWA shall provide
40 for a premium or premium deposit payable in cash and, except as
41 herein provided, for a contingent premium at least equal to one
42 month's premium or premium deposit, which may be prefunded,
43 and in no event shall a member be liable for a greater amount than~~ *delete*

12-1

1 the premium or premium deposit expressed in the policy.
 2 (b) The MEWA may issue its policy without a contingent pre-
 3 mium when it has cash reserves as provided in section 32.
 4 (c) If at any time the case reserves are less than the requirement
 5 of section 32, the MEWA shall immediately collect upon policies
 6 with a contingent premium a sufficient proportionate part thereof to
 7 restore such case reserves, except no member shall be liable for any
 8 part of such contingent premium in excess of the amount demanded
 9 within one year after the termination of the policy. The commissioner
 10 may by written order direct that proceedings to restore such reserves
 11 be deferred during the time fixed in such order. As used in this
 12 act, "cash reserves" means federally guaranteed obligations which
 13 have a recoverable principal amount.

delete

14 New Sec. 25. No MEWA authorized under this act shall take
 15 any name which is the same or closely resembles the name of any
 16 other MEWA doing business in this state. A MEWA shall transact
 17 its business under its own name, and shall not adopt any assumed
 18 name, except that a MEWA, by amending its articles, may change
 19 its name or take a new name with the approval of the commissioner.
 20 Whenever it shall be necessary, in any legal proceedings, to prove
 21 existence of a MEWA, a certified copy of such MEWA's certificate
 22 of authority shall be prima facie evidence of the existence of the
 23 MEWA.

24 New Sec. 26. Every MEWA, unless otherwise provided, or in-
 25 consistent with this act, shall have the power: (a) To have succession,
 26 by its name, for the term stated in its trust agreement, which shall
 27 be in perpetuity unless otherwise specified; (b) to sue and be sued,
 28 complain and defend, in any court of law or equity or to be a party
 29 to any proceedings before any board or commission or other public
 30 body of this state or government; suits at law may be maintained
 31 by the MEWA against any of its members for any cause relating to
 32 the business of the MEWA; (c) to have a seal which may be altered
 33 at pleasure and to use seal by causing it or a facsimile of the seal
 34 to be impressed or affixed or reproduced, or otherwise; (d) to appoint
 35 such officers and agents as the business of the MEWA shall require
 36 and allow suitable compensation; (e) to make, alter, amend and repeal
 37 bylaws for the regulation and government of its affairs; and (f) to
 38 conduct business in this state, other states, the District of Columbia,
 39 the territories of the United States and in foreign countries and the
 40 territories and colonies thereof and have one or more offices out of
 41 this state and to acquire, purchase, hold, mortgage, pledge, assign,
 42 transfer and convey real and personal property out of this state
 43 subject to the provisions of this act.

7-22

1 New Sec. 27. (a) The articles, bylaws and trust agreements of
2 the MEWA and all amendments thereto shall be filed with and
3 approved by the commissioner before becoming operative.

4 (b) Each member employer of a MEWA shall be given notice of
5 every meeting of the members and shall be entitled to an equal
6 vote, either in person or by proxy in writing by such member.

7 (c) The powers of a MEWA, except as otherwise provided, shall
8 be exercised by the board of trustees chosen to carry out the purposes
9 of the trust agreement. Not less than 50% of the trustees shall be
10 persons who are covered under the MEWA and no trustee shall be
11 an owner, officer or employee of a third party administrator who
12 provides services to the MEWA or any insurance agent who receives
13 any commission, fee or other compensation from the MEWA.

14 New Sec. 28. The trustees of a MEWA shall give attention and
15 exercise the vigilance, diligence, care and skill that prudent persons
16 use in like or similar circumstances. Trustees shall be responsible
17 for all operations of the MEWA and shall take all necessary pre-
18 cautions to safeguard the assets of the MEWA. No trustee shall be
19 held liable for any delinquency under this section after six years
20 from the date of the delinquency, or after two years from the time
21 when the delinquency is discovered by a person complaining of the
22 delinquency, whichever occurs sooner.

23 New Sec. 29. The board of trustees shall select such officers as
24 designated in the articles or bylaws and may appoint agents as it
25 deems necessary for the transaction of the business of the MEWA.
26 All officers and agents shall respectively have such authority and
27 perform such duties in the management of the property and affairs
28 of the MEWA as may be delegated by the board of trustees. Any
29 officer or agent may be removed by the board of trustees whenever
30 in their judgment the business interests of the MEWA will be served
31 thereby. The board of trustees shall secure the fidelity of any or all
32 such officers or agents who handle the funds of the MEWA by bond
33 or otherwise.

34 New Sec. 30. (a) A MEWA shall not pay any salary, compen-
35 sation or emolument to any officer or trustee of the MEWA unless
36 the payment is first authorized by a majority vote of the board of
37 trustees of the MEWA.

38 (b) A trustee, officer or employee of a MEWA shall not be com-
39 pensated unreasonably. The compensation of any trustee or officer
40 of a MEWA shall not be calculated, directly or indirectly, as a
41 percentage of money or premiums collected, without the approval
42 of the commissioner.

43 New Sec. 31. (a) A trustee or officer of a MEWA shall not know-

7-23

1 ingly and intentionally, directly or indirectly, receive any money or
2 valuable thing for negotiating, procuring, recommending or aiding
3 in any purchase by or sale to the MEWA of any property or any
4 loan from the MEWA, or be pecuniarily interested, either as prin-
5 cipal, co-principal, agent or beneficiary in any such purchase, sale
6 or loan.

7 (b) A person who violates this section is guilty of a felony pun-
8 ishable by a fine of not more than \$10,000, or by imprisonment for
9 not more than 10 years, or both.

10 New Sec. 32. (a) A MEWA shall either satisfy subsection (b) or
11 (c) or maintain reserves at the end of the fiscal year that are at least
12 equal to the greater of: (1) An amount equal to 20% of the average
13 monthly contribution per participant during the fiscal year multiplied
14 by 12 times the number of participating employees as of the last
15 day of the fiscal year; and (2) an amount equal to 30% of the average
16 claim per participant per month during the fiscal year multiplied by
17 12 times the number of participating employees as of the last day
18 of the fiscal year.

19 (b) A MEWA shall be presumed to have sufficient reserves at
20 the end of the fiscal year if it has policies of specific and aggregate
21 excess loss insurance in force for a period beginning on the first day
22 of the subsequent fiscal year and it obtains an actuarial or accountant's
23 opinion that during the period described in this subsection the ex-
24 pected income of the MEWA on behalf of participating employees
25 is at least equal to the sum of: (1) All plan expenses for the period
26 other than claims paid and (2) the greater of the minimum attachment
27 point of the aggregate policy and the estimated attachment point of
28 the policy determined by multiplying the monthly aggregate attach-
29 ment factor by the accumulated number of participant months during
30 the period. The period shall be the entire period of the aggregate
31 stop loss policy that is in force on the first day of the subsequent
32 fiscal year and shall end on the expiration date of such policy. The
33 opinion shall be obtained from a member of the american academy
34 of actuaries or the society of actuaries or from a certified public
35 accountant.

36 (c) As of the end of each fiscal year, each MEWA shall be pre-
37 sumed to maintain sufficient reserves if an actuary certifies that the
38 reserves are sufficient to meet its contractual obligations. Reserves
39 shall be determined with proper consideration given to at least all
40 of the following factors: (1) Known claims, paid and outstanding; (2)
41 the history of incurred but not reported claims; (3) claims handling
42 expenses; (4) unearned and uncollected premiums; (5) an estimate
43 for bad debts; and (6) a trend factor. The opinion must be from an

7-24

1 actuary who is a member of either the american academy of actuaries
2 or the society of actuaries and who is not a party in interest or
3 employed by a party in interest to the MEWA except for the pur-
4 poses of rendering this opinion.

5 New Sec. 33. (a) Within 60 days after the end of each fiscal
6 quarter, each MEWA shall file with the commissioner unaudited
7 financial statements, affirmed by an appropriate trustee or officer of
8 the MEWA.

9 (b) Before the close of the seventh calendar month after the end
10 of the fiscal year, each MEWA shall file with the commissioner an
11 annual report on a form prescribed by the commissioner including
12 but not limited to: (1) Financial statements audited by a certified
13 public accountant; (2) a statement certifying that the MEWA satisfies
14 the requirements of section 32; (3) the names and addresses of all
15 current trustees; (4) the names and addresses of all service providers
16 to the plan, and the names of the insurers and policy numbers of
17 all insurance contracts issued to the MEWA that were in effect at
18 any time during the year.

third

19 New Sec. 34. A MEWA, in connection with an employee welfare
20 benefit plan, shall provide the following written notice to each in-
21 dividual covered by the plan: (a) The fact that individuals covered
22 by the plan are only partially insured, (b) the fact that in the event
23 the plan or the MEWA does not ultimately pay medical expenses
24 that are eligible for payment under the plan for any reason, the
25 individuals covered by the plan may be liable for those expenses;

The MEWA is

(c) the MEWA is not an insurance company,
(d) the MEWA is not subject to general laws
and regulations relating to insurance plans.

26 New Sec. 35. (a) The commissioner, or any person appointed by
27 the commissioner, shall have the power to examine the affairs of
28 and financial condition of any MEWA that the commissioner has
with respect to the examination of insurance companies under K.S.A.
40-222a, 40-222b and 40-222c and amendments thereto.

31 (b) Each authorized MEWA shall pay an assessment annually to
32 the commissioner in an amount equal to .25% of the annual self-
33 funded contributions made to the MEWA for that year on behalf of
34 Kansas employees. The assessments paid under this section shall be
35 appropriated to the insurance department to cover the additional
36 costs incurred in the examination and regulation of the MEWAs
37 under this act.

see (b) on next page

38 New Sec. 36. The commissioner may suspend, revoke or limit
39 the certificate of authority of a MEWA if the commissioner deter-
40 mines that any of the following conditions exist: (a) The MEWA has
failed to maintain a policy for excess insurance as required by section
37; (b) the MEWA is using financial methods and practices in the
43 conduct of its business which render further transaction of business

(b) The expense of state supervision of MEWAs shall be financed in the following manner:

(1) There is hereby created in the state treasury a fund to be called the MEWA fund. All amounts which are required to be paid from the MEWA fund for the operating expenditures incident to the supervision of the MEWAs shall be paid from the MEWA fund. The commissioner of insurance shall be responsible for administering the MEWA 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.

(2) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the supervision of the MEWAs 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 MEWAs of the amount of each assessment imposed under this subsection on such MEWA and the same shall be due and payable to the commissioner on the July 1 following.

(3) 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 MEWA fund.

7-26

1 in this state hazardous or injurious to its members, employees, ben-
2 eficiaries, or to the public; (c) the MEWA has failed, after written
3 request by the commissioner, to remove or discharge an officer,
4 director, trustee or other employee who has been convicted of any
5 crime involving fraud, dishonesty or moral turpitude; (d) the MEWA
6 has willfully failed or refused to furnish any report or statement
7 required under section 33; (e) the MEWA has failed for an unrea-
8 sonable period to pay any final judgment rendered against it in this
9 state on any contractual obligation; or (f) the commissioner, upon
10 investigation, determines that the MEWA is conducting business
11 fraudulently, or is not meeting its contractual obligations in good
faith.

13 New Sec. 37. If after a hearing the commissioner determines
14 that a MEWA is violating or has violated a provision of this act, the
15 commissioner shall reduce findings and decision to writing and shall
16 issue and cause to be served upon the MEWA a copy of the findings
17 and an order requiring the MEWA to cease and desist from engaging
18 in the prohibited activity, and the commissioner may order any of
19 the following: (a) Payment of a monetary penalty of not more than
20 \$500 for each violation but not to exceed an aggregate penalty of
21 \$5,000, unless the MEWA knew or reasonably should have known
22 it was in violation of this act, in which case the penalty shall not
23 be more than \$2,500 for each violation and shall not exceed an
24 aggregate penalty of \$25,000 for all violations committed in the six-
25 month period, (b) suspension or revocation of the MEWA's certificate
26 of authority if the plan knowingly and persistently violated a provision
27 of this act, or restitution or refund to an aggrieved person.

28 New Sec. 38. If a MEWA violates a cease and desist order under
29 this act and has been given notice and an opportunity for a hearing,
30 the commissioner may order a civil fine of not more than \$10,000
31 for each violation, or a suspension or revocation of the MEWA's
32 certificate of authority, or both the fine and suspension or revocation.

33 New Sec. 39. (a) Any employer in the MEWA or any employee
34 covered under the MEWA may appeal a disputed claim to the
35 commissioner. If the commissioner determines that there is a legit-
36 imate dispute, the commissioner or the commissioner's designee shall
37 conduct a hearing pursuant to the Kansas administrative procedure
38 act.

39 (b) Proceedings for hearings, payment of fines or suspension,
revocation or limitation of a certificate of authority shall be conducted
under the Kansas administrative procedure act.

42 New Sec. 40. (a) A multiple employer welfare arrangement se-
43 curity fund is created within the state treasury. The fund shall be

727

1 administered by a board of trustees and shall be used solely to pay
2 and discharge covered claims against insolvent MEWAs authorized
3 to do business in this state.

4 (b) The board of trustees of the fund shall consist of three mem-
5 bers. The commissioner shall be an ex officio member and the re-
6 maining two members shall be representatives of authorized MEWAs
7 who shall be appointed by the governor with the advice and consent
8 of the senate. The two appointive members shall serve terms of four
9 years and shall serve without compensation, except for actual and
10 necessary expenses.

11 (c) The board may: (1) If a MEWA becomes insolvent, appoint
12 a person to act as fund administrator, which shall (A) supervise
13 disbursements for covered claims of the MEWA, (B) request pay-
14 ments from the funds for covered claims, and (C) perform such other
15 duties as are designated by the board; (2) authorize payments from
16 the fund for covered claims upon request to the fund administrator
17 by a covered employee or dependent who is a Kansas resident and
18 who is receiving or is entitled to receive benefits from an insolvent
19 MEWA that is unable to continue paying benefits, all such payments
20 from the fund shall be determined by the board and made upon an
21 order signed by a trustee; (3) promulgate rules as it deems necessary
22 to carry out the purposes of the fund; (4) maintain records, institute
23 systems and procedures and take any other administrative action as
24 it deems necessary to carry out the purposes of the fund; and (5)
25 secure legal advice and be represented by the attorney general or
26 any assistant designated by the attorney general in any matter in-
27 volving the affairs of the fund.

28 (d) All expenses authorized by the board for the proper admin-
29 istration of the fund, including but not limited to, the salary and
30 expenses of the fund administrator and the investigation, determi-
31 nation and defense of claims against the fund shall be borne by and
32 paid from the assets of the fund. All expenses incurred and charged
33 to the fund shall be accounted for on a fiscal year basis.

34 New Sec. 41. (a) To the extent necessary for payment of covered
35 expenses and for payment of reasonable costs of administering the
36 fund, the commissioner shall assess upon and collect from each
37 MEWA an amount which is in proportion that the benefits the
38 MEWA paid to Kansas employees and their dependents in the pre-
39 ceding calendar year bears to the total benefits paid by all authorized
40 MEWAs to Kansas employees and dependents in the preceding
41 calendar year. The commissioner, upon advice of the trustees, may
42 make additional assessments as the board considers necessary to keep
43 the security fund solvent. The total assessment under this section.

1 shall not exceed 2% of the benefits the MEWA paid on behalf of
2 the Kansas employees and their dependents in any calendar year.
3 Assessments shall not be collected until a MEWA's insolvency ne-
4 cessitates a payment from the fund.

5 (b) Notice of assessments shall be sent by the commissioner by
6 registered mail to each MEWA. Payment of assessments shall be
7 made so as to be received in the office of the commissioner on or
8 before a date specified uniformly in the notice, but not less than 90
9 days after the date of mailing.

10 (c) Assessments under this section shall constitute elements of
11 loss for the purpose of establishing rates.

12 (d) If an employer ceases to participate in a MEWA, the em-
13 ployer shall continue to be liable to the MEWA for the security
14 fund assessment for any benefits paid by the MEWA to Kansas
15 employees and their dependents during the previous calendar year.

16 (e) The commissioner shall certify to the trustees the collection
17 and receipt of all money from assessments, noting any delinquencies.
18 The board shall take such action as in its judgment is proper to
19 effect collection of any delinquent assessment. All money received
20 from assessments pursuant to this section shall be transferred to the
21 state treasurer who shall be custodian of the fund. The state treasurer
22 may make those investments as in the treasurer's judgment are in
23 the best interest of the fund. The earnings from the investment of
24 the money from the fund shall be credited to the fund.

25 New Sec. 42. The security fund after paying a covered claim to
26 an employee or dependent shall have all the rights of a creditor of
27 the insolvent MEWA to the extent of benefits it paid. The board
28 shall have the right and obligation to obtain reimbursement from an
29 insolvent MEWA for any money paid out as benefits to the covered
30 participants of the insolvent MEWA, including expenses pertinent
31 to payments or recovery thereof.

32 New Sec. 43. A MEWA transacting business in this state shall
33 be considered a "person" within the meaning of K.S.A. 40-2402a
34 and amendments thereto and shall be subject to the provisions of
35 article 24 of chapter 40.

36 New Sec. 44. In the case of an insolvent MEWA, the provisions
37 of article 36 of chapter 40 of Kansas Statutes Annotated shall apply
38 substituting the word "MEWA" for the term "insurer" wherever the
39 latter shall appear in such article.

40 New Sec. 45. Every MEWA in existence on the effective date
41 of this act shall notify the commissioner of its existence and intent
42 to make application for a certificate of authority by July 1, 1991.
43 Any MEWA so notifying the commissioner shall be deemed to have

52-1
7-29

1 a temporary certificate of authority as described in section 23 which
2 shall continue in effect until the earlier of December 31, 1991, and
3 the date the commissioner either issues a temporary or permanent
4 certificate of authority or the MEWA is decided to be unworthy of
5 issue of such a certificate under section 22.

6 Sec. 46. K.S.A. 40-3801 to 3809, inclusive, and K.S.A. 1990
7 Supp. 40-3810 are hereby repealed.

8 Sec. 47. This act shall take effect and be in force from and after
9 its publication in the statute book.