

Approved 3/6/91 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./~~xxx~~ on MONDAY, MARCH 4, 1991 in room 529-S of the Capitol.

~~xxx~~ members ~~xxx~~ were present ~~except~~

Senators Anderson, Francisco, Kerr, McClure, Parrish, Salisbury, Strick and Yost.

Committee staff present:

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

Conferees appearing before the committee:

Eric Wade, City Administrator, Merriam
Neale Peterson, Mayor of Fairway
Dick Brock, Kansas Insurance Department
Nancy Zogleman, Blue Cross Blue Shield
Larry Magill, Independent Insurance Agents

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

SB 251 - Municipal group funded pool insurance.

Eric Wade, City Administrator, Merriam, addressed the committee in support of this bill. Mr. Wade explained to the committee that this bill would allow an existing, well run, municipal health insurance trust, Mid-America Regional Council Insurance Trust (MARCIT), to continue to operate across the Kansas-Missouri state line. Mr. Wade advised that, in Kansas, 13 municipalities are in the pool and 37 members on the Missouri side. In addition, 50 smaller municipal entities in the greater Kansas City area now participate. Mr. Wade explained that this legislation was necessary because SB 587, passed during the 1990 session, authorized only intrastate pools and MARCIT was informed by the Insurance Department that the statutes did not permit interstate pooling. Thus, MARCIT will be forced to shut down entirely, establish a Kansas pool, or, hopefully, pass this bill which would permit an existing interstate, regional municipal health insurance pool to continue operation. (Attachment 1)

Neale Peterson, Mayor of Fairway, Johnson County, appeared before the committee in support of this proposed legislation. Mr. Peterson informed the committee that his small city struggled to provide health insurance for 15 full-time employees until MARCIT was established in 1984. Mr. Peterson concluded by stating that they had been able to hold down costs by pooling their risks without regard to the state line and by not being held at the mercy of a profit-oriented market place. (Attachment 2)

Written testimony, strongly supporting the passage of SB 251, from the cities of Leavenworth, Gardner, Lansing, Edwardsville and Basehor, was passed out to the committee members. (Attachments 3,4,5,6 and 7)

Dick Brock, Kansas Insurance Department, advised the committee that his Department had no position on this bill, however, they were concerned about the possibility of conflict with the laws of another state and he offered an amendment which provides that, should a conflict arise in the laws governing a multistate pool, the law of the state with the most stringent requirements would prevail. (Attachment 8)

During a brief discussion, the Chairman remarked that, since they were operating illegally, perhaps it would be better to move the effective date to publication in the Kansas Register rather than the statute books. The conferees agreed. Ted Fay, representing the city of Merriam, stated that they would cooperate with the Insurance Department to unify the state laws.

Chairman Bond announced that the hearing on SB 251 was closed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on MONDAY, MARCH 4, 1991

Senator Salisbury made a motion to approve the amendment proposed by the Insurance Department. Senator Yost seconded the motion. The motion carried.

Senator Salisbury made a motion to make the effective date of the bill publication in the Kansas Register. Senator Strick seconded the motion. The motion carried.

Senator Strick made a motion to pass SB 251 out of committee favorably as amended. Senator Anderson seconded the motion. The motion carried.

SB 189 and SB 196 - Insurance: third party administrators and voluntary employees' beneficiary association.

Hearing resumed on the above two bills, continued from Thursday, February 28.

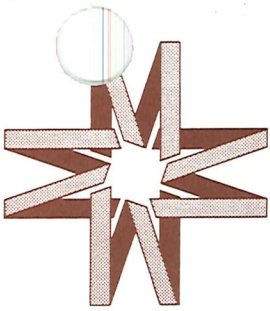
Nancy Zogleman, Blue Cross Blue Shield, explained to the committee the differences between a MEWA, an insurance company, and self-insurance by a single employer. Ms. Zogleman explained that MEWAs are no different in terms of risk-taking activity than an insurance company and, furthermore, MEWAs do not offer the protections for their clients that insurance companies afford. Ms. Zogleman advised the committee that it might be unwise at this time to authorize a new form of coverage when the state is considering major insurance reform legislation. (Attachment 9)

Larry Magill, Independent Insurance Agents, appeared before the committee in opposition to these two bills. Mr. Magill stated that his organization was not opposed to individual self insurance or group self insurance programs if all competitors are treated fairly and equitably. He also said that these bills do not adequately define at what point a group becomes self-insured. Mr. Magill concluded by stating that his biggest concern is the insolvency risk and that the members of his organization may not be very enthusiastic about representing MEWAs even if enabling legislation is enacted. (Attachment 10)

Considerable discussion ensued. Bill Sneed, Health Insurance Association of America was asked his position on these bills. Mr. Sneed replied that HB 2001 is a dramatic change in the health care industry and said that the way that proposal is ultimately resolved would make a difference in how his client would testify on SB 189 and 196. Until then, Mr. Sneed said that they would take no position. Chairman Bond told the committee that they had several choices about what to do with these bills: (1) the bills could be passed out of committee with the technical language as is; (2) with regard to the MEWA question, the committee could pass it out and address the regulation of them in HB 2001; (3) MEWAs can be outlawed; or (4) an amendment could be passed that will protect those people who are in MEWAs currently. Committee members expressed some confusion over the bills and reluctance to take action until HB 2001 comes over from the House. Chairman Bond requested Dick Brock to clear up the language in the amendments to SB 189 and 196 and the committee will resume discussion at a later date.

Minutes of the Wednesday, February 27, and Thursday, February 28, meetings were approved on a motion by Senator Salisbury. Senator Yost seconded the motion. The motion carried.

The meeting adjourned at 10:10 a.m.



THE CITY OF MERRIAM

9000 WEST 62nd TERRACE
MERRIAM, KANSAS 66202

(913) 722-3330

ERIC WADE
City Administrator

The following is a copy of a presentation to the Kansas Senate Finance and Insurance on March 4, 1991 by Eric Wade, City Administrator, Merriam, in support of SB-251.

Introduction:

Good Morning.

It is both an honor and a privilege to have this opportunity to address this committee in support of SB-251.

By way of introduction my name is Eric Wade. I am the City Administrator in Merriam and also an executive board member of the Mid America Regional Council Insurance Trust (MARCIT).

The proposed special legislation that this committee is now considering, in very simple terms does one thing — it allows an existing, well run, municipal health insurance trust to continue to operate across the Kansas/Missouri state line.

In the next few minutes, I would like to share with you why I believe this is an important piece of legislation.

Background on MARCIT:

First, I'd like to tell you about the municipal insurance pool that this legislation, if passed, will help.

The old adage that "there is strength in numbers" is no where truer than in the business of insurance. Over the last decade, across the country, smaller municipalities have joined together in self-funding pools in an effort to help make insurance affordable. Health insurance, in particular, we have all discovered is becoming unaffordable or unavailable.

In response to this growing need, MARCIT was established in 1983 using sound underwriting and risk management techniques. Since 1984 13 municipalities in Kansas have joined this health pool. On the Missouri side MARCIT now has 37 members. A total of 50 small to medium sized municipal entities in the greater metropolitan Kansas City area now participate.

A breakdown of the employees covered under this plan shows a total of over 2,900 lives and nearly \$7 million in premiums. Roughly 15% of the members and premiums are Kansas. This health insurance pool provides comprehensive medical and dental care at an affordable price to its members.

Why this legislation is necessary:

Second, I'd like to describe where our problem lies.

As I understand, up until last year, there was no specific statute that prescribed the way a municipal health pool was to be operated. Then, when SB 587 was passed, the

*Attachment 1
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3/4/91*

regulations specifically authorized the establishment of municipal health pools in the state. The language, however, authorized only intrastate pools and was silent about interstate pools. (Kansas municipalities joined MARCIT under the assumption that statutes allowing interlocal agreements and self-funding of insurance permitted their membership.)

The Kansas Insurance Department has informed the MARCIT board that the intention of the statute was to only allow intra-state pooling. Since MARCIT was informed of this last fall, we have been working cooperatively with the Insurance Department to figure out a way to continue operating. There is realistically only one option, to shut down the operation of the MARCIT in Kansas. This is causing many problems, which we are now in the process of trying to overcome.

One obvious possibility and one that we will have to pursue if this legislation doesn't pass, will be for the Kansas members to form a separate pool. This is not necessarily a good option. It would require a lot of work, time and money and result in a pool that is not as sound from an actuarial and financial standpoint because it would be considerably smaller. With the current Kansas members, the minimum premium as described in the statutes of 1 million dollars would barely be met. Operating that close to the margin is not a comforting prospect. Additionally, to start a new pool there would be all those expenses up front to get off the ground. Needless to say, there would be many transition problems.

What this bill would do:

The other and better solution to our problem is the passage of this legislation.

This bill allows an existing interstate, regional municipal health insurance pool to continue operation. The proposed amendment specifically does three things:

1. Adds a new section (12-2630) that specifically allows for municipalities to enter into agreements for the purpose of multi-state pooling for health insurance in the counties of Douglas, Johnson, Leavenworth, Miami, and Wyandotte in accordance with the Kansas statutes regulating municipal health insurance pools.
2. Requires that any investments held by the pool, including out of state funds, be invested according to KSA 12-2622 which requires the funds be invested in a Kansas financial institution. and restricts the manner in which these funds are invested.
3. Amends Sections 12-2624 so that the per annum one percent fee applies only to Kansas members of the pool and amends Section 12-2627 which amends the way that trustees are selected for such pool, giving in this instance of a multi-state pool, proportional representation based on the percent of premiums paid by Kansas entities, and also in this instance, Missouri entities.

Summary:

The following Kansas municipalities are currently members of MARCIT: Baldwin City, Basehor, Bonner Springs, Edgerton, Edwardsville, Fairway, Lansing, Leavenworth, Leawood, Mission, Merriam, Osawatomie, and Spring Hill. The financial impact on these cities if this special legislation is not passed is considerable. Some members have indicated that prior to joining MARCIT they were unable to find insurance companies that would quote them because of their small size or experience. Allowing MARCIT to continue through this legislation makes sense because it allows these cities a way to provide a benefit to their employees that is considered a traditional part of the compensation program of public employees at a savings to our collective taxpayers. Thank you.

600 BROADWAY 300 RIVERGATE CENTER
KANSAS CITY, MISSOURI 64105-1554

816 / 474-4240

MARC

MID-AMERICA REGIONAL COUNCIL

STATEMENT TO STATE SENATE COMMITTEE
ON FINANCIAL INSTITUTIONS AND INSURANCE

MONDAY, March 4, 1991

(READING TIME --- 2 minutes)

Mr. Chairman, members of the Committee....

....I'm Neale Peterson, Mayor of Fairway in Johnson County. We've never made enough trouble for anyone to make ourselves known, so let me tell you that we are a small city of a few more than 4,000 souls. We are located a little bit across the State Line from the Plaza in Kansas City, Missouri.

As of now -- short of an assassination attempt, or a recall effort, upon returning home -- I will have survived the Mayor's role for about 30 years. During most of that time -- UNTIL 1984 with the advent of the Mid American Regional Council Insurance Trust (MARCIT) -- we struggled with the problem of providing health insurance for our 15 full-time employees. And, doing so, with careful concern for its cost to our taxpayers. An example of just what MARCIT can do, and did for us, 6 years ago our long-serving Police Chief underwent the first liver transplant ever done at the Nebraska University Medical Center in Omaha, where KU Med sent him by helicopter at the very last minute. Today, he is retired in good health. MARCIT covered that procedure and its ongoing costs, which very probably would not have been done by a commercial carrier.

Chairman
Johnna Lingle
Commissioner
Johnson County, KS

1st Vice Chairman
John O'Renick
Mayor
Sugar Creek, MO

2nd Vice Chairman
Neale Peterson
Mayor
Fairway, KS

Secretary
Frank Corbett
Councilman
Kansas City, MO

Treasurer
Betty Gregoire
County Assessor
Platte County, MO

Attachment 2
FI + I
3/4/91
David A. Warm
Executive Director

That's enough about Fairway's good experiences with MARCIT, because I also appear here today urging support for SB-251 as Board Vice President of the Mid America Regional Council, which conceived and gave birth to this Trust that shares the MARC acronym.

MARC is the central planning agency for the Metropolitan Kansas City region serving over 1.5 million people residing in both Kansas and Missouri with representation from 8 counties and 112 cities. MARC has been the guiding factor in focusing on resolution of our common bi-state needs. Our particularly visible successes include development and implementation of the Metro 9-1-1 system and the beginning of flood control across the State Line.

In conclusion, please know that MARCIT has proven to be another of our most notable successes. And, we fervently hope not to lose it with your help by support of SB-251. In your deliberations, I suggest each of you remember that all of us in public office have a fiduciary responsibility, as well as a moral obligation, to honor our constituents' tax dollars. The Trust has permitted its members to do just that by holding down costs through pooling our risks without impedance of the State Line and by not being held at the mercy of a profit-oriented market place.

Thank you for your attention and consideration.



The City of Basehor

2620 North 155th Street • P. O. Box 406 • Basehor, Kansas 66007 • (913) 724-1370

February 28, 1991

The Honorable Richard L. Bond
State Senate
State Capitol, Room 128-S
Topeka, Kansas 66612

Dear Senator Bond:

I wish to express the City of Basehor's appreciation for your efforts on our behalf regarding the amending of the insurance statues so that MARCIT may continue to pool in its present Kansas counties.

It is impossible for a small city to provide health insurance for its employees because of the exhorbant charges by the major insurance companies, but due to MARCIT and its competitive low rates we are able to provide insurance to our employee's. Without Marcit our city would be unable to provide health insurance to its employee's.

Again, I want to thank you for your assistance on the above legislation.

Respectfully,

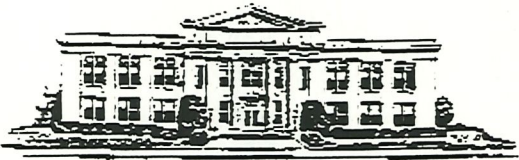
CITY OF BASEHOR

Joseph P. Odle,
Mayor

JPO/mm

cc: Susan Prater, Director
Marcit

Attachment 3
FI + I
3/4/91



City of
LEAVENWORTH, KANSAS

City Hall 66048
913/682-9201

February 27, 1991

The Honorable Richard L. Bond
Kansas State Senator
Chairman, Kansas Senate Committee on
Financial Institutions and Insurance
State Capitol Building
Topeka, KS 66612

Dear Senator Bond:

This letter is in support of Senate Bill 251 which I understand currently is under review by your committee. I further understand that if this bill is adopted by the legislature, it will amend KSA 12-2622, 2624, 2630.

It is vitally important to the City of Leavenworth for municipalities to be specifically allowed by statute to enter agreements for the purpose of multi-state pooling for health insurance. Beginning January 1, 1989 the City of Leavenworth became part of the Mid America Regional Council Insurance Trust (MARCIT) for city employees' health insurance purposes. We are now in our third year of offering the MARCIT health insurance as one of three health insurance options to our employees. Two of these insurance options are health maintenance organizations (HMO) which, as you know, restrict usage to a specified list of physicians and medical facilities. The MARCIT insurance is our only option with more flexible coverage in that a covered employee plus dependents can use it for any doctor or facility they choose or need.

Prior to 1989, the City's third option for the more flexible coverage was the traditional Blue Cross health insurance. From 1986 through 1988, however, the City was incurring 20% to 30% premium increases in each of those years from Blue Cross. When Blue Cross quoted an increase of almost 40% near the end of 1988 for 1989, the City was forced by financial considerations to look for an alternative. Fortunately we found that alternative in the MARCIT insurance. I might also add that with MARCIT we have seen premium increases each year of 10% to 15% versus a range of 15% to 20% for our other HMO options. Because of the significant increases in our HMO options from 1990 to 1991, our MARCIT enrollment grew from 19 to 29.

*Attachment 4
FI + I
3/4/91*

The Honorable Richard L. Bond
February 27, 1991

Page 2

Senate Bill 251 is also important because the risk and cost would be considerably higher if the Kansas entities in MARCIT had to form their own separate pool. The risks and costs would be higher simply because the pool would be much smaller. We have been pleased with the services by MARCIT, as we know it, and we would like to be able to continue our participation in the multi-state form which is now familiar to us. Again, this proposed legislation is very important to the City of Leavenworth's financial and employee benefits concerns.

Thank you for your consideration and time.

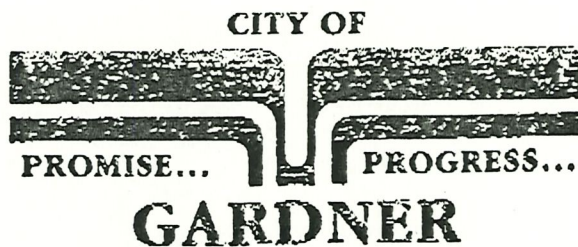
Sincerely,



CAROLYN A. TILLOTSON
Mayor

DWF:sq

cc: W. Mark Pentz, City Manager
City Commission
Senator Ed Reilly
Representative Clyde Graeber



MAYOR
CAROL LEHMAN

COUNCILMEN
ROBERT PAGE, PRESIDENT
DAVID GRINNELL, VICE PRESIDENT
BRADLEY ANSON
RICHARD LUDWIG
VERNON PICKERT

CITY ADMINISTRATOR
DEL DOLISI

CITY CLERK
GWEN SCOTT

GENERAL SUPERINTENDENT
JIM COLE

February 28, 1991

The Honorable Richard L. Bond
State Senate
State Capitol, Room 128-S
Topeka, Kansas 66612

Dear Senator Bond:

The City of Gardner, its Governing Body and City employees, strongly supports Senate Bill 251.


Senate Bill 251 would allow the Mid-America Regional Council Insurance Trust (M.A.R.C.I.T.) Health Plan to continue providing health care benefits to the City of Gardner. Gardner became a member of M.A.R.C.I.T. on April 1, 1989, after an exhaustive search for a health care plan. M.A.R.C.I.T. proved to be the only option available to the City.

M.A.R.C.I.T., as it now exists, remains to be Gardner's only alternative for comprehensive group health care benefits. As a small but rapidly growing municipality in Johnson County it is essential that Gardner be competitive in the job market while holding costs to absolute minimum.

The passage of Senate Bill 251 is vital to the City of Gardner. Thank you for your consideration of this legislation.

Sincerely,

CITY OF GARDNER


Carol Lehman
Mayor

CL:so

*Attachment 5
FI & I
3/4/91*



The City of
Lansing

OFFICE OF THE CITY ADMINISTRATOR

February 28, 1991

The Honorable Richard L. Bond
State Senate
State Capitol, Room 128-S
Topeka, KS 66612

Dear Senator Bond:

I am writing to seek your support for Senate Bill 251, regarding the regulation of municipal group-funded pools. The city of Lansing is currently a member of the Mid-America Regional Council Insurance Trust (MARCIT) plan for health insurance. The MARCIT plan offers our city employees a comprehensive health care package at premiums which are not available elsewhere.

The amendments proposed in Senate Bill 251 would allow MARCIT to continue as a bi-state pool. This arrangement produces economies of scale that allow the pool to offer quality health care benefits at competitive rates. If a separate MARCIT pool was established just for Kansas cities, those economies would be undercut. A smaller pool would mean reduced benefits, higher premiums, or both. In short, establishing a separate Kansas MARCIT pool will only serve to diminish the quality of health care benefits that Kansas municipal employees enjoy under the present plan.

As you know, the cost of providing health care benefits increases yearly for inflationary reasons alone. Increasing costs for purely administrative and state boundary reasons is an unreasonable burden to place on dedicated municipal employees. Therefore, I am requesting your support of Senate Bill 251, so that the present MARCIT pool can remain intact.

Thank you for considering this request.

Sincerely,

William Lundberg
City Administrator

Attachment 6
F I T I
3/4/91

CITY OF EDWARDSVILLE

690 South 4th St.

P. O. Box 13243

Edwardsville, Kansas 66113
(913) 441-3707 • FAX (913) 441-3805

February 25, 1991

The Honorable Richard L. Bond
State Senate
State Capital, Room 128-S
Topeka, Kansas 66612

Dear Senator Bond,

The City of Edwardsville is a recent member to the Mid-America Regional Council Insurance Trust (MARCIT) and as Mayor I am greatly concerned about the recent events which may jeopardize MARCIT for Kansas members. The City is very satisfied with the MARCIT insurance and the protection it provides our employees and their dependents.

Before selecting MARCIT, we compared it to six other insurance programs and we were able to save our tax payers over \$25,000 in annualize premiums from the insurance company we had at the time.

On behalf of the City of Edwardsville, I want to thank you for proposing the special legislation that would allow MARCIT to continue to serve Edwardsville and the other Kansas communities. We support Senate Bill 251.

Sincerely,



Donald E. Harbour
Mayor

DEH:pjf

Attachment 7
F I I
3/4/91

Testimony By
Dick Brock, Kansas Insurance Department
Before the Senate Financial Institutions and Insurance Committee
on Senate Bill No. 251
March 4, 1991

Senate Bill No. 251 obviously involves a public policy decision that is outside the purview of the Insurance Department. However, we do have one concern with the bill that we hoped we could resolve prior to this hearing. Specifically, we are somewhat concerned about the possibility of an inconsistency or conflict with the laws of another state (Missouri) which would pose an insoluble administrative dilemma should Senate Bill No. 251 be enacted in its current form. We had hoped to be sufficiently advanced in our review of the multi-state pool involved that this question would be answered but we have not been able to reach this goal.

As a result, attached to my testimony is a suggested amendment which will hopefully accommodate any conflict or inconsistency should such a situation arise.

In essence, this amendment simply provides that if a conflict or inconsistency in the laws governing a multi-state pool arise, the law of the state with the most stringent requirement will apply at least as far as the Kansas municipalities are concerned.

The one exception is K.S.A. 1990 Supp. 12-2627 as amended by Section 2 of the bill. We question that it would be appropriate for Kansas municipalities to relinquish their proportional representation on the pool's board of trustees. Therefore, the proposed amendment recognizes this consideration.

Attachment 8
FI & I
3/4/91

1 Wyandotte counties, may qualify to enter into agreements to pool
2 their sickness and accident related liabilities in accordance with
3 K.S.A 1990 Supp. 12-2617 *et seq.* and amendments thereto with
4 municipalities located in other states if such a pool was formed on
5 or before January 1, 1990. Any investments held by such pool shall
6 be held in an entity described in K.S.A. 1990 Supp. 12-2622 and
7 amendments thereto.

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

10 Sec. 5. This act shall take effect and be in force from and after
11 its publication in the statute book.

8-2

In the event the law or laws of any other state in which a member of the pool is located are inconsistent with or contrary to any provision of K.S.A. 1990 Supp. 12-2617 through 12-2626, 12-2628 and 12-2629 and amendments thereto, the law of the state with the more stringent requirement shall apply.



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

Nancy G. Zogleman
Director

Legislative Relations

Testimony SB 189 & SB 196
Blue Cross and Blue Shield of Kansas, Inc.
February 28, 1991

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

Since both of these bills address Multiple Employer Welfare Arrangements (MEWAs), I would like to speak to both at the same time.

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

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

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

*Attachment 9
F I T I
3/4/91*

Ordinary self-insurance by a single employer, by contrast, works differently. The employer may require a contribution of employees, but if claims exceed the amount of employee contribution, the employer makes up the difference. The employer is totally at risk for the cost of services furnished to employees within his group.

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

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

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

SB 196 would treat a MEWA having 501(c)(9) status as sufficient to pull the MEWA out of this "deemed insurance company" law". This is an odd suggestion, since the tax status of an entity bears no relationship to whether that entity is transacting the business of insurance, whether it has sufficient reserves to meet its obligations, and so on. That is, the tax status has nothing to do with the issues that prompted the passage of the 1983 state and federal laws.

SB 189 would permit the commissioner to license and monitor the operations of a MEWA.

The following issues, at a minimum, should be addressed in considering any legislation which would take a MEWA out of its current status as being deemed to be an insurance company and placing it in a separate category:

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

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

3. Should a MEWA pay premium tax?

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

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

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

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

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

There should be real concern about authorizing a new form of risk taking at a time when the state is considering major insurance reform legislation. (HB 2001, SB 179, SB 229) Nothing would prevent an insurance company from converting all of its association business to numerous MEWAs in order to escape, to whatever extent possible, the impact of such reform.

In particular, community rating seeks to have all employer groups of less than a specified number rated together by an insurer. Because a MEWA is essentially an insurer for a single association of employers, even if it were "community rating", it would involve a much narrower segment of the community than an insurance company's business would. By highly selective marketing practices, MEWAs - even if subject to community rating obligations - could be used as vehicles to frustrate the objective of such obligations.

Testimony on SB 189 and 196

Presented to: The Senate Financial Institutions of Insurance Committee
By Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you Mr. Chairman and members of the committee for the opportunity to appear here today in opposition to these two bills.

If we are interpreting them correctly, SB 196 would create a permanent grandfathering of all present association sponsored MEWA's from the provisions of SB 189, assuming either of them are passed. Although we have the highest regard for the sponsors of these association programs, we do not believe this would be good public policy although we can support a temporary "grandfathering".

You have heard from other conferees about MEWA's, VEBA's and MET's. I would like to add to the list RRG's (Risk Retention Groups), Workers Compensation Group Funded Pools, Municipal Group Self Insurance Pools and Captives. All of these alternatives to traditional insurance have more in common than differences. In general, up to this point the legislature has treated all of them as essentially the same as assessable mutual insurance companies.

Our association is not opposed to individual self insurance or even carefully structured group self insurance programs as long as all competitors are treated fairly and equitably. In fact, our members are involved in both traditional as well as non-traditional risk sharing approaches.

Given that MEWA's are essentially the same as mutual or policy holder owned insurance companies, we would suggest the following:

1. MEWA's be required to comply with Kansas's mandatory group health insurance requirements including mandated coverage for certain providers and procedures and mandates for continuation and conversion coverage. Or, in the alternative, eliminate mandates for all group insurers.
2. Require the payment of premium taxes by MEWA's. Domestic insurers presently pay a 1% premium tax on all premiums collected.
3. Include MEWA's under the provisions of HB 2001 that restricts insurers rights to medically underwrite, requires community based rating and makes a number of other significant changes.
4. Include MEWA's under any assigned risk health plan the legislature may pass to deal with the uninsured and the uninsurable.
5. Require adequate disclosure to the consumer of the risks being assumed when they join a MEWA such as the disclosure used when coverage is placed with an excess and surplus lines insurer under current law.
6. Require that MEWA's be set up on an assessable basis. That will be, in the end, the only thing that will protect their solvency. If a firm chooses to participate in a MEWA, it is contractually obligated to pay assessments to keep the MEWA solvent.

Another very important issue to be considered in regard to this

Attachment 10
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3/4/91

legislation is the question of at what point a group becomes self insured. What is to prevent an insurance company from filing an insured program with a nominal deductible as a self assured MEWA and escape the premium tax and mandated coverages? As the cost of mandates escalates, this is going to become increasingly attractive to creative minds.

Our biggest concern with MEWA's is with the insolvency risk. Because of that insolvency risk, our association endorsed professional errors and omissions insurer, Employers Reinsurance Corporation in Overland Park, will not cover our members if they are involved in selling a MEWA. For that reason, our members may be less than enthusiastic about representing MEWA's even if an enabling legislation is enacted.

Thank you for the opportunity to appear today. We would be happy to provide additional information or answer questions.