

Approved \_\_\_\_\_

3/18/91

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. ~~XXXX~~ on FRIDAY, MARCH 8, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~XXXXXX~~

Senators Francisco, Kerr, McClure, 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:

None

Chairman Bond called the meeting to order at 9:14 a.m.

SB 189 and SB 196

Discussion resumed on these two bills first heard in committee on Thursday, February 28.

Chairman Bond explained that the amendments to SB 189, prepared by the Insurance Department and now before them, referred to third party administrator language and picked up a lot of National Association of Insurance Commissioners (NAIC) language and goes considerably beyond Kansas statutory language. (Attachment 1)

The Chairman informed the committee that the amendments to SB 196, as prepared by Staff and now before them, would grandfather in those multiple employee welfare arrangements (MEWAs) that are currently operating but new MEWAs would not be permitted unless the Department of Labor says they are eligible under ERISA. (Attachment 2)

Chairman Bond advised the committee that they needed to make the decision whether to let new MEWAs be formed or just let the present ones continue to exist or prohibit them altogether.

Considerable discussion ensued. One member asked who now had the oversight of MEWAs. Dick Brock, Insurance Department, answered that the regulatory framework for MEWAs was the last half of SB 189. Inquiry was raised as to the difference between MEWAs and municipal risk pools. Mr. Brock advised that the municipal risk pool was required to set aside 70% of its revenue in a claim fund while the MEWAs have reserve requirements that are set aside. Chairman Bond added that a municipal risk pool had the opportunity to impose a municipal tax to bail them out while the MEWAs would just become insolvent or self assess.

Chairman Bond recommended to the committee that they adopt SB 196, as amended, and pass the first half of SB 189 that speaks of third party administrators. He further advised that SB 189, if passed in its entirety, would let old associations continue to operate and new ones to form and there would be no need for SB 196. Mr. Brock advised that the four or five associations now operating were happy with their existence but existing Kansas law does not permit their existence. He added that the question was to whether to adopt a regulatory framework and see what happens or exempt the associations now in existence. A member remarked that he thought the Legislature had failed in trying to regulate the health care industry and leaned toward allowing some creativity by permitting those MEWAs in existence to continue and also allowing others in.

Senator Kerr made a motion to recommend SB 189, with the amendments, favorably permitting older MEWAs to continue and new ones to come in and establishing regulatory language. Senator Francisco seconded the motion.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m./p.m. on FRIDAY, MARCH 8, ~~191~~.

Chairman Bond agreed that the health care industry needed reform but questioned whether we would be further eroding the private carrier's ability to operate competitively in the market place by passing the above motion.

On a voice vote the motion failed.

Senator Parrish made a motion to take the existing groups and put them in the MEWA portion of SB 189 down through p. 12, section (d) of the balloon. Senator Reilly seconded the motion.

Senator Strick made a substitute motion to pass favorably SB 196 as amended. The motion died for lack of a second.

Senator Yost made a substitute motion to recommend favorably SB 196, as amended, and to recommend favorably for passage the first half of SB 189, page 12, line 31, ending with section (d). Senator Salisbury seconded the motion. The motion carried.

The meeting adjourned at 10:07 a.m.



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

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

Attachment  
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1 ~~thereunder pursuant to such trust~~, established in conformity with  
 2 29 U.S.C. 186; (7) a trust exempt from taxation under section 501(a)  
 3 of the internal revenue code; its trustees; and employees acting  
 4 ~~thereunder pursuant to such trust~~, or a custodian; ~~its and the~~  
 5 ~~custodian's~~ agents and employees acting pursuant to a custodian  
 6 account which meets the requirements of section 401(f) of the internal  
 7 revenue code; (8) a ~~bank; credit union or other credit union or~~  
 8 a financial institution which is subject to supervision or examination  
 9 by federal or state banking authorities; ~~or a mortgage lender, to the~~  
 10 ~~extent they collect and remit premiums to licensed insurance agents~~  
 11 ~~or authorized insurers in connection with loan payments~~; (9) a credit  
 12 card issuing company which advances for and collects premiums or  
 13 charges from its credit card holders who have authorized it to do  
 14 so; ~~provided such collection if the company does not adjust or~~  
 15 ~~settle claims; or~~; (10) a person who adjusts or settles claims in the  
 16 normal course of his or her ~~that person's~~ practice or employment  
 17 as an attorney at law, and who does not collect charges or premiums  
 18 in connection with life or accident and sickness insurance coverage  
 19 or annuities; (11) an adjuster licensed by this state whose activities  
 20 are limited to adjustment of claims; (12) a person who acts solely  
 21 as an administrator of one or more bona fide employee benefit plans  
 22 established by an employer or an employee organization, or both,  
 23 for which the insurance laws of this state are preempted pursuant  
 24 to the employee retirement income security act of 1974, such person  
 25 shall comply with the requirements of subsection ~~(h)~~ of K.S.A. 40-  
 26 ~~38F~~ and amendments thereto; or (13) a person licensed as a man-  
 27 aging general agent in this state, whose activities are limited exclu-  
 28 sively to the scope of activities conveyed under such license.

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

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

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

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

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

(i)  
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1 Insurer does not include a bona fide employee benefit plan estab-  
2 lished by an employer or an employee organization, or both, for  
3 which the insurance laws of this state are preempted pursuant to  
4 the employee retirement income security act of 1974.

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

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

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

14 40-3802. (a) No administrator shall act as such without a written  
15 agreement between the administrator and the insurer, and such  
16 written agreement shall be retained as part of the official records of  
17 both the insurer and the administrator for the duration of the agree-  
18 ment and five (5) years thereafter. Such written The agreement  
19 shall contain all provisions which include the requirements of  
20 K.S.A. 40-3803, 40-3805 to 40-3809, inclusive required by this  
21 act, except insofar as those requirements do not apply to the func-  
22 tions performed by the administrator.

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

34 (c) The insurer or administrator may, with written notice, ter-  
35 minate the written agreement for cause as provided in the agreement.  
36 The insurer may suspend the underwriting authority of the admin-  
37 istrator during the pendency of any dispute regarding the cause for  
38 termination of the written agreement. The insurer must fulfill any  
39 lawful obligations with respect to policies effected by the written  
40 agreement, regardless of any dispute between the insurer and the  
41 administrator.

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42 Sec. 3. K.S.A. 40-3803 is hereby amended to read as follows:  
43 40-3803. The agreement shall make provision with respect to

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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-  
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 nually, a licensed manager upon reasonable notice in writing with  
38 the reasons stated for the reexamination.~~

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

written

Delete

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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  
 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.

— party

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~~  
 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.*

— delete

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).*

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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 istrator, 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 written  
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 more  
17 than 100 certificateholders on behalf of an insurer, the insurer shall,  
18 at least ~~semiannually~~, conduct a review of the operations of the  
19 administrator. At least one such review shall be an on-site audit of  
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 an  
23 administrator on behalf of or for an insurer or insurers, and ~~return~~  
24 *the return of* premiums received from ~~such~~ *that* insurer or insurers,  
25 shall be held by the administrator in a fiduciary capacity. Such funds  
26 shall be immediately remitted to the person or persons entitled  
27 ~~thereto to them~~, or shall be deposited promptly in a ~~bank~~ *fiduciary*  
28 account established and maintained by the administrator *in a fed-*  
29 *erally or state insured financial institution. The written agreement*  
30 *under K.S.A. 40-3802 and amendments thereto between the admin-*  
31 *istrator and the insurer shall provide for the administrator to pe-*  
32 *riodically render an accounting to the insurer detailing all*  
33 *transactions performed by the administrator pertaining to business*  
34 *underwritten by the insurer.*

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

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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  
 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

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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*

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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 licenses 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 surance 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.

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

non-refundable \$200

30 (d) The applicant shall make available for inspection by the com-  
 31 missioner copies of all contracts with insurers or other persons uti-  
 32 lizing the services of the administrator.

33 (e) The commissioner shall issue a certificate of authority to op-  
 34 erate as a TPA if the commissioner is satisfied that all of the following  
 35 conditions are met: (1) The TPA has in its employ at least one  
 36 administrative services manager who is licensed under K.S.A. 40-  
 37 3802 and amendments thereto, and who is responsible for the daily  
 38 operation of the TPA and (2) the TPA has adequate facilities, per-  
 39 sonnel and managers to act as a third party administrator.

40 (f) The commissioner may refuse to issue a certificate of au-  
 41 thority, if the commissioner determines that the administrator, or  
 42 any individual responsible for the conduct of affairs of the admin-  
 43 istrator as defined in subsection (b)(3) or (b)(4), is not competent,

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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,  
40 for which the insurance laws of this state are preempted pursuant  
41 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

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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  
 11 of 1974.

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.

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

Delete

and continuation of authority



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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 29 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-

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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.

12 (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

and except as expressly designated therein,

death

and that if prepaid legal services are provided, K.S.A. 1990 Supp. 40-4201  
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 to be used  
42 in the solicitation of members.

material

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



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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~~  
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.

Delete

\$500,000

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

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

3 (c) 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  
6 the requirement in subsection (a)(3).

— as specified in the aggregate policy will be deemed to

7 New Sec. 21. (a) The commissioner shall collect, and the persons  
8 affected shall pay to the commissioner, the following fees: (1) Filing  
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 and  
11 (3) filing fee of \$25 to accompany the annual statement each year.

— A non-refundable filing

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, payable at the time of service.

— \$50

— \$50

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.

— \$25

— (c)

— (d) Failure to make timely filings shall be subject to K.S.A. 40-226.

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.

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-  
34 ceed to the completion of organization of the proposed MEWA.

— of up to twelve months duration

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

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1 ~~the premium or premium deposit expressed in the policy.~~ Delete  
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.~~  
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.

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-

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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

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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.

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.

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  
29 with respect to the examination of insurance companies under K.S.A.  
30 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.~~

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  
41 failed to maintain a policy for excess insurance as required by section  
42 20; (b) the MEWA is using financial methods and practices in the  
43 conduct of its business which render further transaction of business

third

at the time an application for coverage in  
is taken  
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 companies.

(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 oper-  
ating expenditures incident to the supervision of the MEWAs shall be paid from  
the MEWA fund. The commissioner of insurance shall be responsible for admini-  
stering 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.

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  
12 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,  
40 revocation or limitation of a certificate of authority shall be conducted  
41 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

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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

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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

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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.

Sec. 46. In addition to any other fees or assessments required by this act, and as a condition precedent to the continuation of the certificate of authority provided in this act, all MEWAs shall pay no later than 90 days after the end of each fiscal year a tax upon the annual Kansas gross premium collected by the MEWA at the rate of 1% per annum applied to the collective premium of the MEWA for the preceding fiscal year. In the computation of the tax, all MEWAs shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such MEWAs or expenditures used for the purchase of specific and aggregate excess insurance, as provided in section 20(a)(3).

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# 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 efiary 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  
25 of its exempt status under section 501(c)(0) of the federal internal  
26 revenue code of 1986 as in effect on the effective date of this act,  
27 and is sponsored by a nonprofit trade or professional association,  
28 shall be considered to be subject to the jurisdiction of an agency of  
29 the federal government and shall not be subject to the provisions of  
30 chapter 40 of the Kansas Statutes Annotated or of the jurisdiction  
31 of the commissioner of insurance if such entity files satisfactory proof  
32 with the commissioner that it is covered by stop loss or excess in-  
33 surance for claims expense in excess of anticipated contributions by  
34 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.~~

: (a) is a professional association of architects incorporated in Kansas on October 4, 1954, which provides for the payment of life, sickness, accident, or other benefits to the members of the association or dependents through a trust established November 1, 1986;

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

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

(d) is a trade association of truckers incorporated in Kansas on July 1, 1985, which provides for the payment of life, sickness, accident, or other benefits to the members of the association or dependents through a trust established January 1, 1990;

(e) conclusively shows by submission of an appropriate certificate, license, letter or other document issued by the United States department of labor that such person or entity is not subject to Kansas law; or

(f) conclusively shows that it is

Attachment 2  
F I T I  
3/8/91

For purposes of this act, tax exempt status under section 501(c) of the federal internal revenue code of 1986 shall not be deemed to be jurisdiction of the federal government.

Kansas register