

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative Turnquist at  
Chairperson

3:35 ~~2:27~~ p.m. on Thursday, February 6, 1962 in room 526 S. of the Capitol.

All members were present except:      Representative Campbell - Excused  
   Representative Sebelius - Excused

Committee staff present:

Mr. Fred Carman, Revisor  
Mr. Chris Courtwright, Research  
Mrs. Nikki Feuerborn, Secretary

Conferees appearing before the committee:

Mr. Larry Magill, Independent Insurance Agents of Kansas  
Mr. Skip Hutton, KC Chapter of the Associated General Contractors  
Mr. John Grace, Kansas Association of Homes for the Aging  
Ms. Anne Smith, Kansas Association of Counties  
Mr. Thomas E. Slattery, Associated General Contractors of Kansas

The meeting was called to order at 3:35 p.m. by Chairman Turnquist.

Representative Kerry Patrick requested the introduction of legislature regarding the repeal of the credit against premium tax liability for contribution to guaranty funds.

Representative Ensminger moved this request be introduced into legislation. Representative Helgeson seconded the motion. Motion carried.

**Hearing for HB 2753**

Mr. Dick Brock of the Insurance Department presented testimony in support of this bill. This bill suggests a technical amendment to the statutes governing group-funded workers' compensation pools. It would make the reporting date consistent with the end of the fiscal year for pool. This change would also make the reporting date provisions for group-funded workers' compensation pools and municipal group-funded pools this year. (See Attachment 1).

There were no opponents to this bill.

**Hearing for HB 2414**

Mr. Chris Courtwright of the Research Department gave a review of the bill. This bill would tighten regulation of group-funded workers compensation pools by subjecting such entities to assessment levied by the workers compensation assigned risk plan. It would mandate that the required specific and aggregate excess insurance could be provided only by an insurer authorized to do business in Kansas. It would also stipulate that proposed pools would be subject to the Unfair Trade Practices Act. It would also stipulate that persons soliciting business for proposed as well as existing pools would be required to be licensed pursuant to state statutes. (See Attachment 2).

Mr. Larry Magill, representing the Independent Insurance Agents of Kansas and the Professional Insurance Agents of Kansas, appeared as a proponent of the bill. (See Attachment 3). He stated his organizations' position on the proposed changes in the group-funded pools. He stated that pools provide an important alternative market to traditional insurance and there is a place for them so long as the participants fully understand the risks involved and the fact that they are not transferring risks but assuming it through the formation of their own insurance company. Mr. Magill asked for the enactment of the bill to:

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 526, Statehouse, at 3:35 ~~xx~~ p.m. on Thursday, February 6, 1992

1. Avoid discriminating against local businesses that currently have to pay for the Kansas Workers Compensation Plan including those firms that do not happen to belong to a particular trade association.
2. To avoid giving pools a legislated 22% cost advantage over insured plans.
3. To eliminate a significant present incentive to move from guaranteed cost insurance to higher risk pools.
4. To prevent pools from "skimming the cream" of certain types of businesses leaving the rest who have adverse loss experience to end up in the Kansas Workers Compensation Plan.

Mr. Skip Hutton of the Kansas City Chapter of the Associated General Contractors and the Builders' Association, appeared as an opponent to the bill. He also spoke on behalf of the Kansas Hospital Association, the Kansas Health Care Association, and the Kansas Restaurant Association. Reasons for opposition included:

1. The proposal ignores many fundamental differences between insurance and group pools or individual self-insureds.
2. Pools have their own "over burden" charges in the form of "joint and several" liability for the pool and each participating employer in a group pool.
3. Group-funded pools provide quality specialized safety and loss control services that improve participants' safety performance and keep them out of the assigned risk plan.
4. Kansas funding requirements for pools make it impossible for them to pay assigned risk plan assessments and to continue to operate.
5. Because pools cannot pay such assessment and continue to operate, very little or no assessments would be paid by the pools to the assigned risk plan if the bill were passed.
6. If pools are forced out of business by a requirement they cannot meet, a great number of pool participants will be forced into the assigned risk plan, thus exacerbating existing problems with the plan.
7. The real answer to the financial problems of the assigned risk plan lies in finding and correcting the root causes of those problems facing the plan; HB 2414 would only aggravate those problems.

Mr. Hutton elaborated on each point and fielded questions from the committee. (See Attachment 4). Eligibility, cancellation of insurance, and benefits of the pool were discussed.

Mr. John Grace, representing the Kansas Association of Homes for the Aging, appeared as an opponent to the bill. Since the inception of their pool in 1988 they have lowered the cost of workers compensation premiums. Also a lowering in work related injuries and lost work time through aggressive loss control and safety programs has resulted. Even though opposition to HB 2414 was voiced, Mr. Grace indicated a willingness to work with legislature and insurance representatives in addressing the overall problems with reforming workers compensation laws and the assigned risk pool. (See Attachment 5).

Ms. Anne Smith, Director of Legislation for the Kansas Association of Counties, appeared as an opponent to the proposed legislation. She stated that HB 2414 is nothing more than a thinly veiled attempt to put competitive self insurance workers compensation pools out of existence. (See Attachment 6).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 526 S Statehouse, at 3:35 ~~xxm~~ p.m. on Thursday, February 6, 1992

Mr. Thomas E. Slattery, Executive Vice President of the Associated General Contractors of Kansas, Inc., appeared as an opponent to the bill. He stated that this proposed legislation would put the ten self-insured pools now operating in Kansas out of business. These only represent about 3.5% of the cost of work comp for the state. The 160 self-insured companies, e.g., Hallmark, Boeing, Rockwell, are not included. (See Attachment 7).

Written testimony in opposition was presented by Don L. McNeely, Kansas Motor Care Dealers Association, (See Attachment 8); Mr. Donald A. Wilson, President of Kansas Hospital Association, (See Attachment 9); and Mr. George Puckett, Kansas Restaurant and Hospitality Association, (See Attachment 10).

Representative Neufeld moved a subcommittee be appointed to work out compromises on this bill with the conferees. Representative Helgerson seconded the motion. Motion carried.

Chairman Turnquist appointed Representatives Weiland, Welshimer, and Sprague to serve on this committee.

The hearing on HB 2511 will continue on Monday, February 10, 1992, in Room 526 S at 3:30 p.m.

Representative Helgerson moved for the approval of the minutes of February 4, 1992. Representative Neufeld seconded the motion. Motion carried.

Meeting adjourned at 5:05 p.m.

GUEST LIST

COMMITTEE: \_\_\_\_\_

*Hause*

DATE: \_\_\_\_\_

*2-6-92*

NAME (PLEASE PRINT) *DAVID A. ROSS*

ADDRESS *Topeka*

KANSAS ASSN. LIFE  
(AND WRITER)  
COMPANY/ORGANIZATION

NAME (PLEASE PRINT)	ADDRESS	KANSAS ASSN. LIFE (AND WRITER) COMPANY/ORGANIZATION
DICK CARTER	TOPEKA	PETE MCGILL & ASSOCIATES
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
<i>Bill McBride</i>	<i>TOPEKA</i>	<i>IND. INS. AGENTS OF KS.</i>
<i>Nenny Poir</i>	<i>Salina</i>	<i>Ind. Ins. Agents Ks.</i>
LARRY MAGILL	TOPEKA	IAAK
Alex Hawkins	Topeka	KS Board of Ag
Jacky Eaton	Topeka	KS Board of Ag.
Bick Liby	Topeka	Gehrt & Roberts
<i>Janie Morris</i>	<i>Kansas City</i>	<i>The Woodsmall Cos</i>
<i>Jeff Cox</i>	<i>Kansas City</i>	<i>Woodsmall Co's</i>
<i>Rich McKee</i>	<i>Topeka</i>	<i>KLA</i>
MAC HUMPHRIES	<del>TOPEKA</del> KANSAS CITY	WOODSMALL COS.
DONALD ANDERSON	OLATHE	KERIT
Tom Bell	Topeka	KHA
<i>Dale D. Harms</i>	<i>Topeka</i>	<i>KHA</i>
<i>Larry Shaffer</i>	<i>Topeka</i>	<i>KHA</i>
<i>Gene Geis</i>	<i>Lansburg</i>	<i>PIAK</i>
JIM OLIVER	TOPEKA	PIAK
<i>Paul Elliot</i>	<i>Lansburg KS</i>	<i>PIAK</i>
<i>Art Brown</i>	<i>KC</i>	<i>KS ISR Assoc</i>
ALAN COBB	TOPEKA	KS Assoc. For Small Business
Kevin D. McFarland	Topeka	KS Homes for Aging
John Crane	Topeka	" "
GEORGE PUCKETT	WICHITA / TOPEKA	KS RESTAURANT & HOTELRY ASSN
<i>Brad Swoot</i>	<i>Topeka</i>	<i>AIA</i>

*Dave Hanson  
LEE WRIGHT  
ROSS HARTLEY*

*Topeka  
Overland Park  
BAXTER SPRINGS*

*Ka Anne P & C Cos  
FIG  
INDEP. INSURANCE AGENT*

Testimony by  
Dick Brock, Kansas Insurance Department  
Before the House Committee on Insurance  
House Bill No. 2753

House Bill No. 2753 suggests a technical amendment to the statutes governing group-funded workers' compensation pools. Obviously, the fiscal year of each pool does not end at the same time yet the current statute establishes a common date of March 31 as the deadline for submission of a certified financial statement to the Commissioner. As a result, the statement is either very difficult to develop by the reporting date or its content is somewhat outdated by the time the Commissioner receives it. House Bill No. 2753 suggests a minor amendment that will make the reporting date consistent with the end of the fiscal year for each pool. This change would also make the reporting date provision for group-funded workers' compensation pools and municipal group-funded pools the same.

*Ins. Comtee*  
*2-6-92*

*Attachment 1*

HB 2414 would tighten regulation of group-funded workers compensation pools by subjecting such entities to assessments levied by the workers compensation assigned risk plan pursuant to KSA 40-2109; by adding language to mandate that the required specific and aggregate excess insurance could be provided only by an insurer authorized to do business in Kansas; by stipulating that proposed (as well as licensed) pools would be subject to the Unfair Trade Practices Act; and by stipulating that persons soliciting business for proposed (as well as existing) pools would be required to be licensed pursuant to KSA 40-240 to 40-243.

HB 2459 would allow SINGLE employers who have been in business for at least 5 years and have 5 or more operating locations within the state to form group-funded workers compensation pools. Under current law, only groups of 5 or more employers in a trade or professional association in existence for at least 5 years who are engaged in the same or similar type of businesses may form the pools.

HB 2753 would make a minor change in the group-funded workers compensation law to change the date for submission by the pools of their certified independent audited financial statement from "on or before March 31 of each year" to "no later than 90 days after the end of the pool's fiscal year." This change was recommended by the Insurance Commissioner.

*Insurance Center  
2-6-92  
Attachment 2*

Testimony on HB 2414  
Presented to the House Insurance Committee  
By: Larry W. Magill, Jr.  
Independent Insurance Agents of Kansas  
and  
Professional Insurance Agents of Kansas  
February 6, 1992

Thank you, Mr. Chairman, and members of the committee, for the opportunity to appear today in support of HB 2414 introduced at our request last session. This bill is our association's top legislative priority for 1992 and we do appreciate the opportunity to take action on it again this year.

For those of you that are new to the committee, the bill was passed out favorably last session along with a companion bill, HB 2415. However, because of a very busy House calendar last year, it was re-referred to the committee at the end of the session.

The bill basically makes four changes to the group funded workers compensation pools statutes. It would require that pools help pay for the Kansas Workers Compensation Plan; it would provide that pools are subject to the Unfair Trade Practices Act while they are being formed; it would require that persons soliciting coverage for a proposed pool must be properly licensed; and it would require that pools purchase their excess coverage from a Kansas licensed insurer. I would like to address the first change calling for pools to help pay for the Kansas Workers Compensation Plan first, since it is the more controversial.

#### **Background on Pooling**

The present group-funded workers compensation pool act was passed in 1983 after an interim study and is largely patterned after a similar Florida statute.

*Ins. Cmte*  
*2-6-92*  
*Attachment 3*

We feel it is important to note that pools now pay the assessment for the Kansas Workers Compensation Fund (second injury fund), the costs of the director of workers compensation's office and the cost of Insurance Department supervision through assessments.

The only reason, in our view, that workers compensation group funded pools were not required to pay their fair share to support the Kansas Workers Compensation Plan (assigned risk) was because it was thought at the time the law was enacted that pools could not participate because they were not technically licensed insurance companies. And frankly the assessment rate to cover the underwriting losses of the Workers Compensation Plan back in 1983 was not high enough to make it a significant issue.

Since then, we have found that they can participate in supporting the underwriting losses of the Kansas Workers Compensation Plan without having to reinsure the plan itself. Insurance companies must do both. Pay the assessments to cover the underwriting losses of the plan and reinsure the plan for those losses. In our view the reinsurance is not a significant issue.

Throughout the debate on both group-funded workers compensation pools and public entity pools, the legislature has essentially treated them as assessable mutual insurance companies with some major exceptions:

- 1) They are not subject to the capital (net worth) requirements of a normal insurance company. For multi-line insurance companies in Kansas, that would be \$1.5 million of net worth in addition to the premiums an insurer might collect.

- 2) They are not subject to the insurance laws and regulations of Kansas except to the extent specifically spelled out in the act. Although



it is difficult to quantify, we feel this saves them substantial amounts of money in the cost of their operation and allows pools greater flexibility.

3) They are not under the Kansas Guaranty Fund Law nor are they subject to assessments for the guaranty fund's losses.

4) They do not have to support the assigned risk plan for workers compensation through the payment of assessments.

We also want to point out that our two associations support the concept of self-insurance as a viable risk management alternative for larger firms. However, when it is extended to pooling, it becomes indistinguishable from mutual insurance companies. Our members are also involved with both individual self-insurance and pooling, although pooling activities tend to be limited to only the larger agencies because of the specialized knowledge needed.

Unquestionably, pools provide an important alternative market to traditional insurance and there is a place for them so long as the participants fully understand the risks involved and the fact that they are not transferring risks but assuming it through the formation of their own insurance company. And so long as the pools are on a level playing field with other mutual insurance companies.

#### **The Kansas Workers Compensation Plan**

The Kansas Workers Compensation Plan or assigned risk plan was formed under K.S.A. 40-2109 through a plan of operation submitted and approved by the Kansas Insurance Department. If their payrolls exceed \$10,000 a year and they are not in one of the exempt classifications, the state requires employers to carry workers compensation insurance or qualify as an individual self-insured or as a participant in a licensed pool.

Because of this state mandate, the workers compensation plan was established to provide a market of last resort. Insurance companies are required to back the Workers Compensation Plan through the reinsurance pool and by paying assessments to cover the excess losses.

In 1990, the plan grew from 24.1% of the market to 27.7% or nearly 28% of the market. At the same time, the plan suffered an underwriting loss in 1990 of \$44,036,000 on a total premium written of \$84,684,000. This has led to the current record assessment rate of 23% and is on the verge of drying up the voluntary workers compensation insurance market.

#### Growth of Pools

Attached to my testimony is a chart we have prepared from Insurance Department records on the eleven business and public entity pools now in existence. This legislation, however, does not affect the last three public entity pools on the chart. They were formed under the public entity pooling statute, which was addressed last year in SB 251.

We have also attached a chart showing a rough breakdown between group self-insurance, individual self-insurance and insurance for workers compensation. At the bottom of that same page is a chart showing the growth in group self-insurance in Florida since 1973. Over that span of time, self-insured funds have increased from 3.5% of the total marketplace to 25.3% in 1990.

Finally, we have prepared a chart showing the growth trends for pools in Kansas. As you can see, although the group funded workers compensation pool statute was enacted in 1983, the dramatic growth has occurred in the last two years. The chart tracks both the number of pools in existence as well as the premium volume and number of participants. In addition, there are a number of other pools in various stages of being formed today.

We have a copy of promotional material from one pool that is attempting to form that stressed the main reason they were exploring a pool was to escape the Workers Compensation Plan assessment. In fact, the same insurance company that had been providing their workers compensation insurance, was going to help them administer the pool and provide the excess insurance.

### **Impact on Assessments**

We have also attached to our testimony a chart providing three examples of the impact on the assessment rate of including or not including self-insured pools. Example #2 shows the impact using December 31, 1990 numbers, which are the most current available, of including existing pools at their present estimated premium level today. That would result in a 9.6% reduction in the plan assessment or a .8% reduction in the actual rate.

Example #3 shows the potential impact in the future if pools account for 25% of the market as they presently do in Florida. Again, using 1990 numbers, that would raise the 21.3% assessment to 33.4%, an increase in the assessment rate of 56.8%. If that were to happen today, insurance companies would not be able to leave the workers compensation market fast enough. HB 2414 is needed as much for its impact in the future as for its impact today. If the legislature is not able to address the issue today, it certainly will not be able to when the pools reach 25% of the marketplace.

### **The Need For HB 2414**

We urge you to enact HB 2414 to:

\*Avoid discriminating against your local businesses that currently have to pay for the Kansas Workers Compensation Plan including those firms

that do not happen to belong to a particular trade association.

\*To avoid giving pools a legislated 22% cost advantage over insured plans.

\*To eliminate a significant present incentive to move from guaranteed cost insurance to higher risk pools. If HB 2414 is not enacted, businesses may find it harder to find voluntary (non assigned risk) workers compensation coverage, particularly offering cost saving options like deviations and dividends.

\*To prevent pools from "skimming the cream" of certain types of businesses leaving the rest who have adverse loss experience to end up in the Kansas Workers Compensation Plan. Pools are presently using and benefiting from the Kansas Workers Compensation Plan without paying for it.

We anticipate that the opponents will argue that HB 2414 will put them out of business. We question that since most of them are offering front-end discounts as shown on our chart attached to our testimony and the possibility of back-end dividends. Plus it would be a simple matter for the legislature to grant them authority to make a separate charge for the Workers Compensation Plan assessment up front. Insurance companies are not allowed to do this, but pools could be.

#### **Unfair Trade Practices Act and Agents Licensing Changes**

In our view, these two changes are simply a clean-up of the original legislation clarifying that the Unfair Trade Practices Act and agents licensing requirements apply while a pool is being formed as well as after one has been authorized by the Department.

To do otherwise would allow pools to ignore the Unfair Trade Practices Act and licensing requirements during the crucial formation

stage. This could lead to misrepresentations and inaccurate comparisons with insurance that the proposed change would hopefully avoid. Everything that a pool does in promoting itself is identical to what insurance agents and insurance companies do when they market their products. There is no logical reason to not apply the same rules prior to a pool being formed.

After a pool has been formed and a number of entities have already been convinced to join, it is too late and very difficult and possibly costly for a participant to withdraw. This change simply gives the consumer protection from pool consultants and promoters and allows the Insurance Department to adequately regulate the activities from day one.

#### **Admitted Excess Insurer**

This change contained on page 2, lines 14-17, simply brings the workers compensation group self-insurance act into line with the municipal group self-insurance act. In the 1990 session, the municipal pooling law was changed to clarify that the excess insurance must be provided through a Kansas admitted or licensed insurance company.

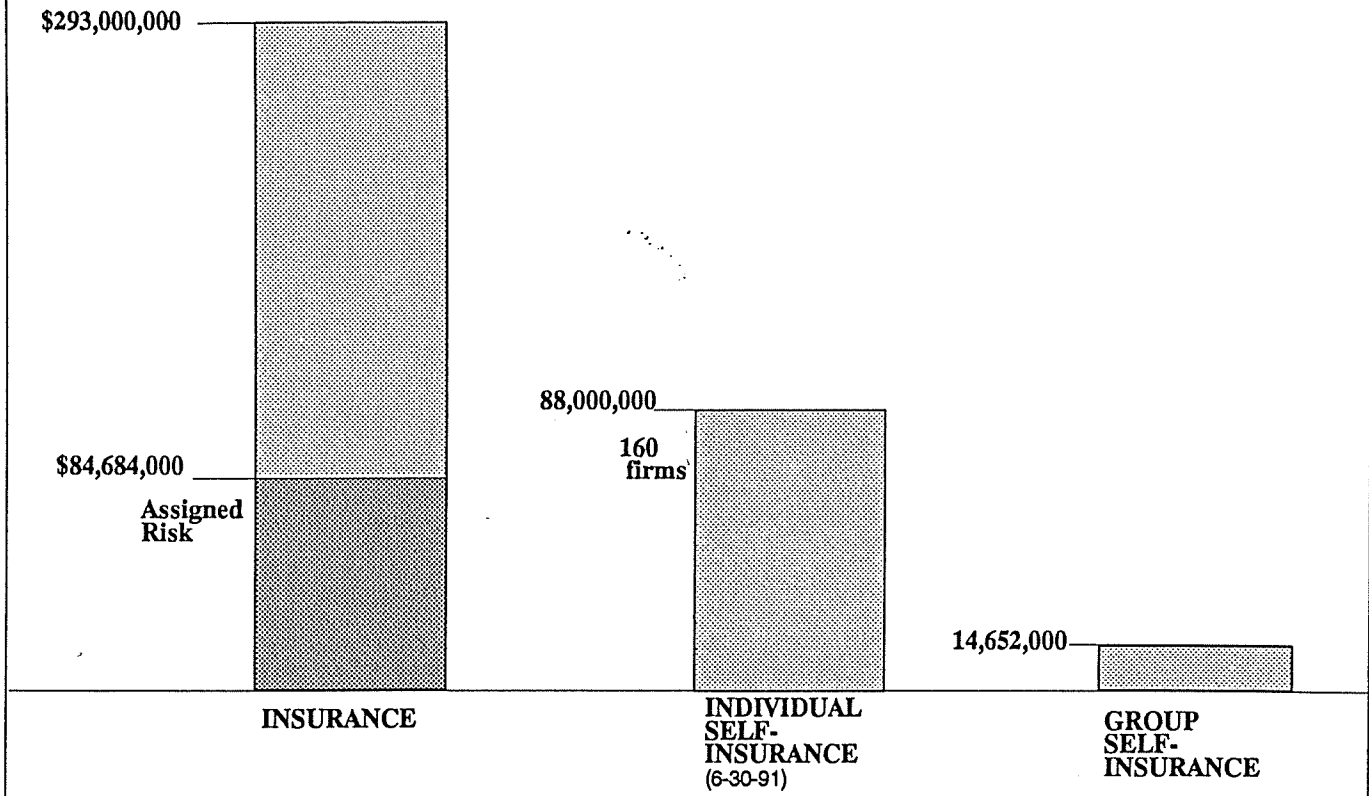
Requiring a licensed excess insurer gives the Insurance Department regulatory control over the excess insurer's activities, rates and forms and gives the pool participants the benefit of the Kansas guaranty fund coverage for the excess carrier, should they become insolvent.

#### **Conclusion**

We urge this committee to act favorably on HB 2414. We are simply asking that everyone be put on as nearly equal a footing as possible. We are asking for fair and equitable treatment and clarification of what we feel was clearly the legislative intent when this act was originally passed. We are asking you to head off a problem before it becomes a potential disaster. Thank you very much for the opportunity to appear

today. We will be happy to answer questions or provide additional information.

**1990 Kansas Workers Compensation "Premium" Distribution by Type  
of Risk Management Program**  
(000,000 omitted)

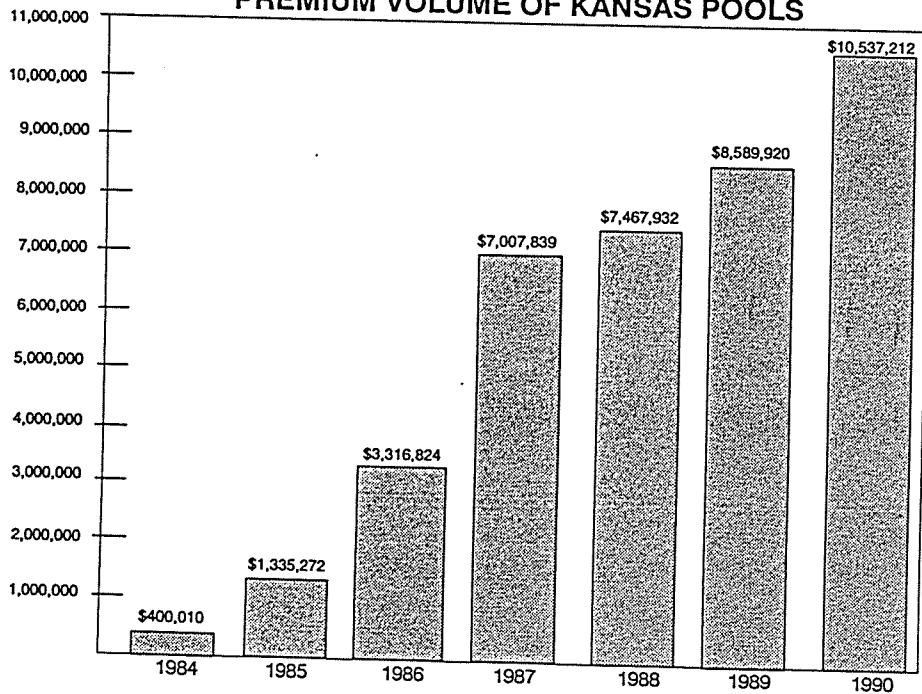


(Sources: Best's, NCCI Management Summary 1990, Kansas Division of Workers Compensation, Kansas Insurance Department)

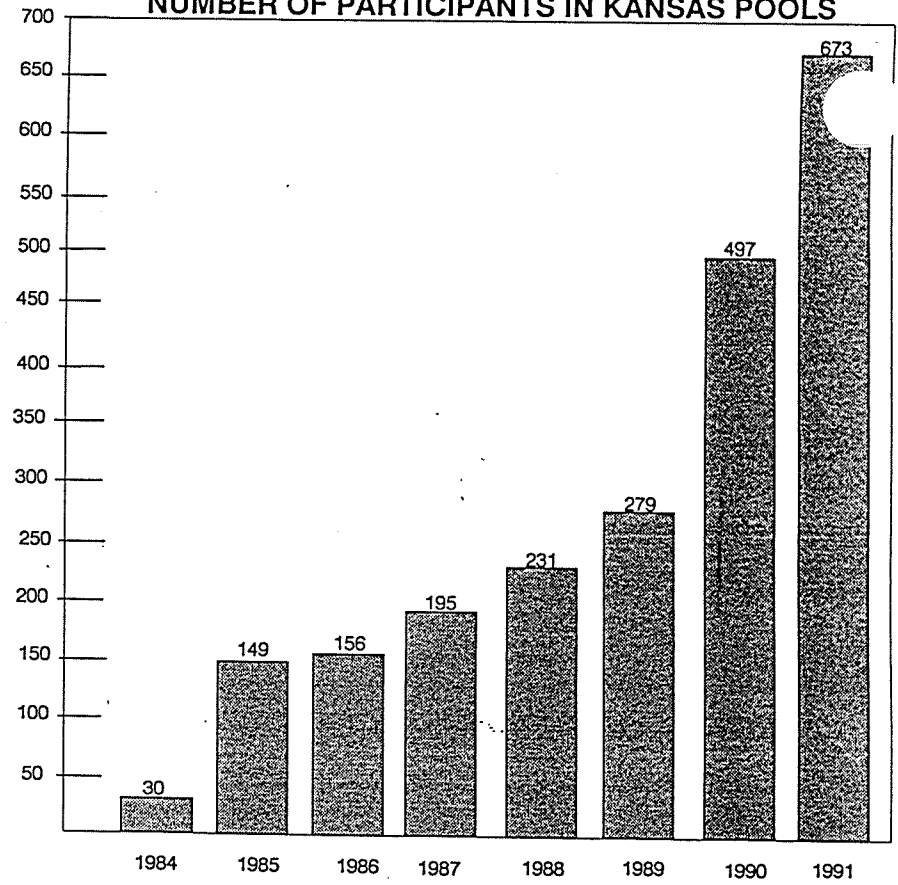
**INCREASE IN INDIVIDUAL AND GROUP SELF-INSURANCE IN FLORIDA**

Year	Private Carriers	Private Carriers & Self-Insurers	Carriers % of total	Self-Insurer Funds % of Total	Individual Self-Insurers % of Total	All Self-Insurers % of Total
1973	251,579,796	280,077,613	89.8	3.5	6.7	10.2
1977	468,825,443	585,349,385	80.1	5.5	14.4	19.9
1981	634,068,591	927,443,006	68.4	11.5	20.1	31.6
1986	860,447,389	1,351,944,614	63.6	20.5	15.8	36.4
1990	1,361,431,800	2,334,757,528	58.3	25.3	16.4	41.7

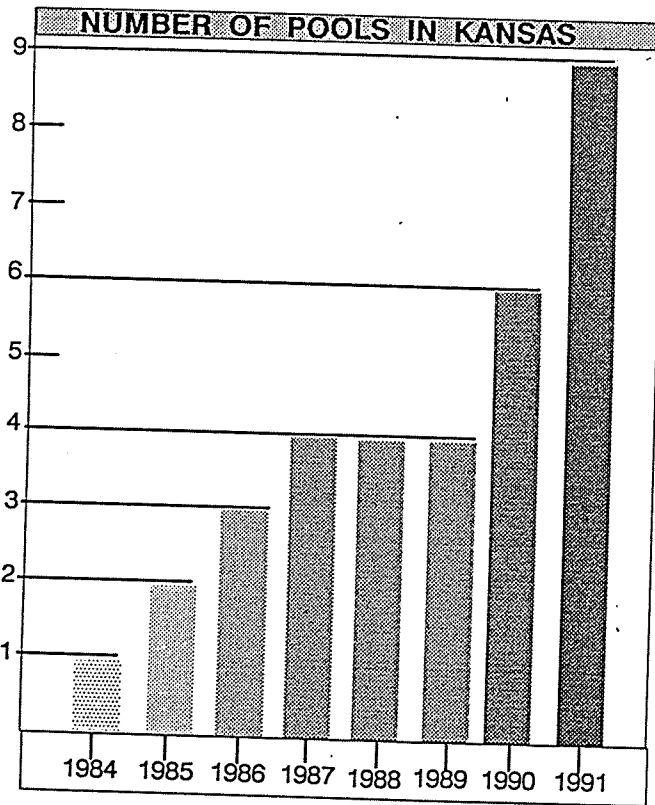
**PREMIUM VOLUME OF KANSAS POOLS**



**NUMBER OF PARTICIPANTS IN KANSAS POOLS**



**NUMBER OF POOLS IN KANSAS**



10  
5



Impact of Including/Not Including Group  
Self-Insurance Funds and Individual Self-Insureds  
In the Assessments for the Kansas W.C. Plan

Example #1

Reduction in present assessment if both group self-insurance funds and individual self-insureds were included in 1990's assessment:  
(000,000 omitted)

1990 Assessment Base (excludes Plan volume)	206
Individual Self-Insureds	88
Group Self-Insurance	<u>15</u>
	309

1990 Plan Losses = $\frac{44.036}{309}$ = 14.3% Assessment
New Premium Base
1990 Actual Assessment
<u>Reduction in Assessment</u>

Example #2

If HB 2414 passed and group self-insurance funds were included in paying the assessment:

1990 Plan Base Premium Volume	206
1990 Group Self-Insurance Funds	<u>9</u>
	215
1990 Plan Losses	$\frac{44.036}{215}$ = 20.5% Revised Assessment
Revised Premium Base	
Present Assessment	21.3%
<u>Reduction in Assessment</u>	9.6%
(In actual rate - .8%)	

Example #3

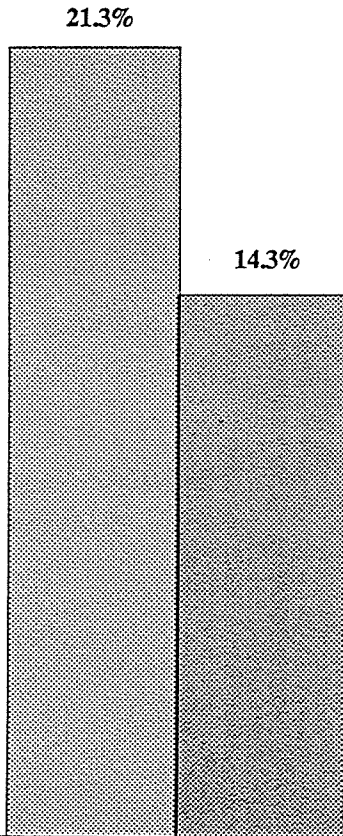
If Kansas had the same percentage business in group self-insurance as Florida of 25.3% using 1990 numbers and assuming all of the business came out of the voluntary market:

1990 Assessment Base	206
Less Group Self-Insurance Funds @ 25.3%	<u>-74.1</u>
Base left for assessment	131.9
1990 Plan losses	$\frac{44.036}{131.9}$ = 33.4% Assessment
1990 Actual Assessment	21.3%
<u>Increase in Assessment</u>	<u>56.8%</u>

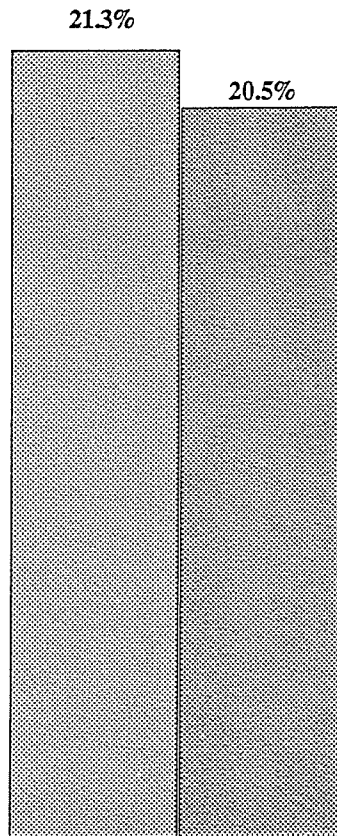
# WHO PAYS – WHO DOESN'T

## Kansas Workers Compensation Plan (Assigned Risk)

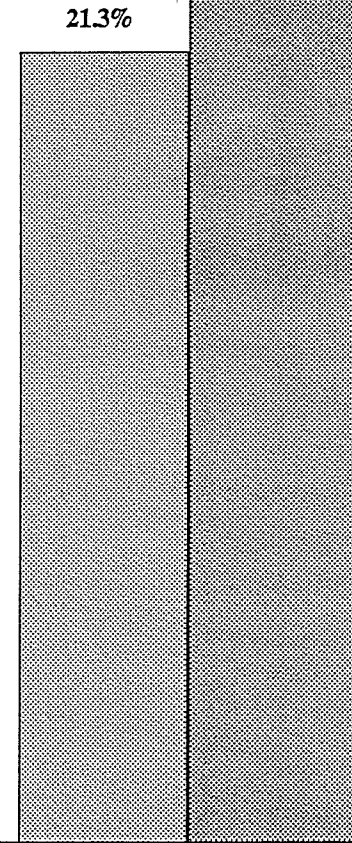
**EXAMPLE #1**  
INCLUDING ALL GROUP AND  
INDIVIDUAL SELF-INSUREDS



**EXAMPLE 2**  
IMPACT TODAY OF INCLUDING  
GROUP SELF-INSURANCE ONLY

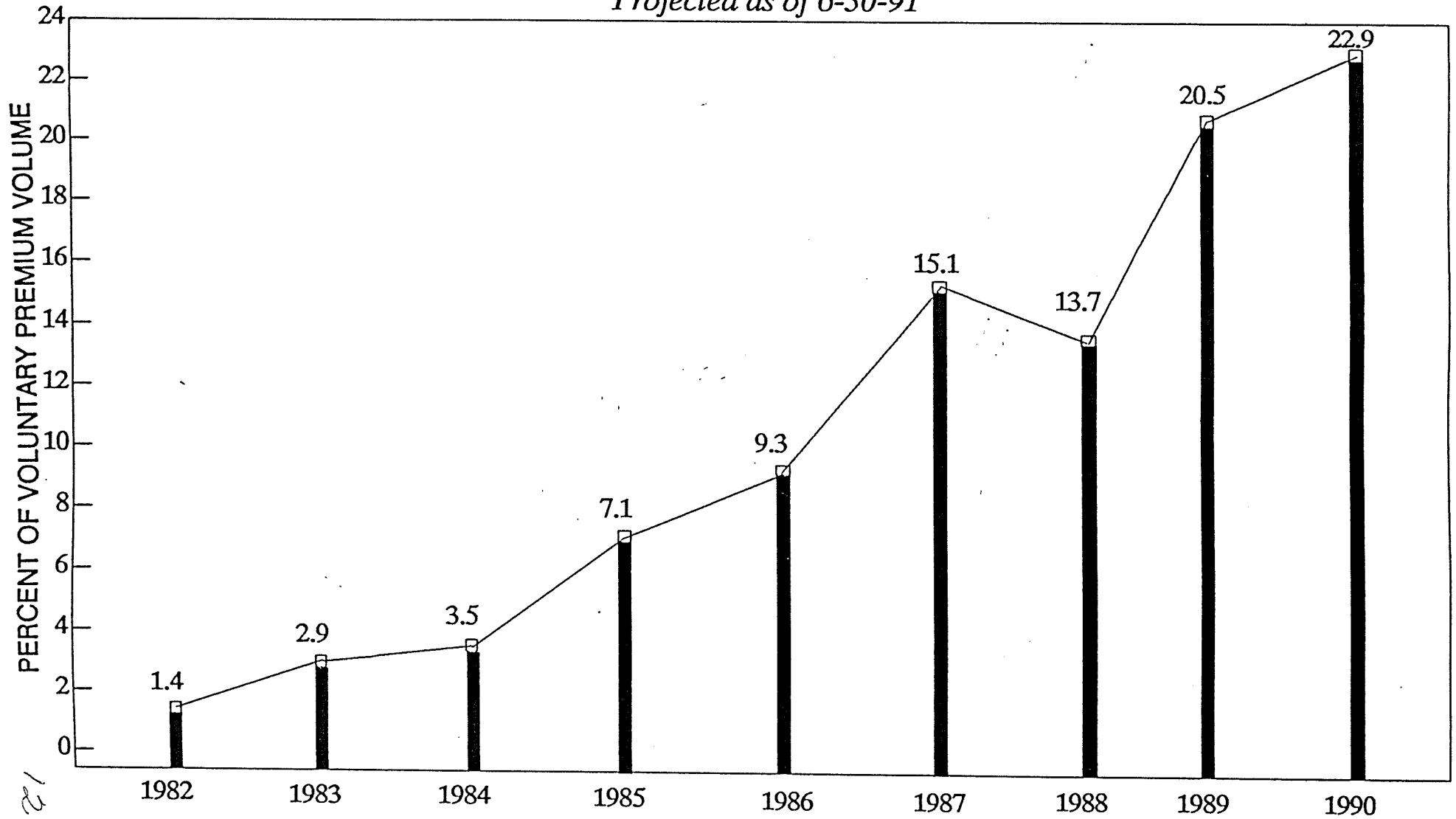


**EXAMPLE 3**  
IMPACT ON INSURED  
BUSINESSES IF  
POOLS REACH 25%  
OF MARKET AND DO  
NOT HELP SUPPORT  
THE ASSIGNED RISK  
PLAN



# KANSAS RESIDUAL MARKET BURDEN (ASSESSMENT)

*Projected as of 6-30-91*



1283

## Pools Formed in Kansas

Fund Name	Original Start-up Date	Excess carrier	# of Members	Premium Contribution	Dividends	Front-End Discount	Assessments Made	Retained Earnings/ Net Worth	Total Claims Reserves
<b>Builders' Association Self-Insurers of Kansas</b> P.O. Box 32246 Kansas City, MO 64111 James L. Hutton Jr. Administrator	1/1/84	National Reinsurance Corporation	169	\$2,465,531 (1-1-90/91)	requested release of dividend for 1986 & 1988 KID denied	up to 15% avail./Underwriting decision	None	\$33,894 (Fund balance as of 6-30-91)	\$1,556,011 (Claim reserve as of 6-30-91)
<b>Medicalodges Affiliates Workers Compensation Self Ins. Pool</b> P.O. Box 509 Coffeyville, KS 67337 Larry Fischer, Administrator	10/7/85	Aetna Casualty & Surety Co.	5	\$940,771 (11-1-90/91)	None	up to 15% avail./Underwriting decision	None	\$76,850 (Total Pool Equity as of 7-31-91)	\$590,453 (unreported claims & reserves)
<b>Kansas Eastern Region Insurance Trust</b> City of Leawood 9617 Lee Blvd. Leawood, KS 66206 Julie Baer, Administrator	11-1-86	Employers Reinsurance Corporation	14	\$1,715,720 (4-1-91)	None	10% deviation filed	Yes, 1987-90 \$1,200,000	\$185,938 (as of 10-30-90)	\$2,196,704 (as of 10-30-90)
<b>Kansas Restaurant &amp; Hospitality Assoc. Self-Insurance Fund</b> P.O. Box 235 Wichita, KS 67211 George Puckett, Administrator	1-1-90	Safety Mutual Casualty Corporation	226	\$732,322 (1-1-91/92)	None	Up to 15% Available	\$251,387 (1990)	(\$188,148) (as of 12-31-90)	\$664,274 (as of 12-31-90)
<b>Kansas Assoc. of Homes for the Aging Insurance Group</b> 634 S.W. Harrison Topeka, KS 66603 John Grace, Administrator	4-1-90	Employers Reinsurance Corporation	31	\$1,061,325 (4-1-91/92)	None	5.1% deviation filed	None	Not filed yet	Not filed yet
<b>KHA Workers Compensation Fund, Inc.</b> P.O. Box 2308 Topeka, KS 66601 Larry Shaffer, Administrator	3-31-91	Employers Reinsurance Corporation	35	\$944,249 (5-1-91/92)	Not yet applicable - pool formed in 1991	up to 15% available	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991
<b>Kansas Motor Car Dealers Workers Compensation Fund</b> 800 Jackson St. Topeka, KS 66612 Don L. McNeely, Administrator	9-15-91	Midwest Employers Casualty Company	11	\$275,357 (Initial application)	Not yet applicable - pool formed in 1991	up to 15% available	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991
<b>Kansas Health Care Assoc Workers Comp. Ins. Trust</b> 221 SW 33rd St Topeka, KS 66611 John Kiefhaber, Administrator	10-1-91	Midwest Employers Casualty Company	18	\$904,438 (Initial application)	Not yet applicable - pool formed in 1991	up to 15% available	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991
<b>Kansas Assoc. of School Boards Workers Compensation Fund</b> 5401 SW 7th Ave Topeka, KS 66606 William Curtis, Administrator	7-1-87	Employers Reinsurance Corporation	147	\$5,611,789 (7-1-91/92)	None	13-20% based on experience modification	None	756,549 fund balance (as of 6-30-90)	\$2,047,801 (as of 6-30-90)
<b>Kansas County Association Multi-Line Pool</b> 212 SW 7th St. Topeka, KS 66603 John Torbert, Administrator	1-1-91	St. Paul Fire & Marine (specific property) National Union Fire (specific liability & aggregate)	30	\$1,835,633 (1-1-91/92)	Not yet applicable - pool formed in 1991	Rates on file with Kansas Insurance Department	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991	Not yet applicable - pool formed in 1991
<b>Kansas Workers Risk Cooperative for Counties (KWORCC)</b> 217 S.W. 7th St. Topeka, KS 66603 John Torbert, Administrator	1-1-92	National Unions Fire & Ins. Co. of Pittsburgh	27	\$1,573,333 (initial application)	Not yet applicable - pool just formed	Up to 10% available - based on experience modification	Not yet applicable - pool just formed	Not yet applicable - pool just formed	Not yet applicable - pool just formed

**TESTIMONY BEFORE THE HOUSE  
INSURANCE COMMITTEE**

regarding  
**HOUSE BILL No. 2414**  
by Skip Hutton  
Kansas City Chapter,  
Associated General Contractors  
and  
The Builders' Association  
February 6, 1992

Thank you, Mr. Chairman and members of the Committee. My name is Skip Hutton. I am Executive Director of the Kansas City Chapter of Associated General Contractors and President of the Builders' Association, headquartered in Kansas City. I appreciate the opportunity to appear before you this afternoon in opposition to House Bill 2414 on behalf of the 250 contractor members who are participants in our Kansas group-funded workers' compensation pool called the "Builders' Association Self Insurers' Fund" (BASIF).

There are a number of other associations represented here today that have group pools that would be devastated if HB 2414 were passed. In the interest of time we have agreed to limit the number of conferees who will give oral testimony and I have been "elected" to present the collective view of our members and a number of other groups opposing this legislation including the Kansas Hospital Association, the Kansas Health Care Association, the Kansas Restaurant Association and others.

The proponents of this legislation argue that HB 2414 would "level the playing field" between group pools and insurance companies by requiring pools to pay assessments for the Kansas assigned risk plan. I submit to you that such a requirement would do nothing more than put group pools out of business and worsen the financial condition of the assigned risk plan.

If HB 2414 is intended to help the assigned risk plan situation it would fail miserably. If the intention is to put group pools out of business, it would certainly have that result if passed. We ask that you oppose this effort to put group pools out of business. If group pools were driven out of business, there would be many more employers dumped into the assigned risk plan, greater plan deficits and greater assessments.

You should have written copies of our testimony before you. Rather than read directly from the script, however, I'd like to summarize the various reasons for our opposition in my own words. The following points will be briefly explained:

- Kansas law provides that group-funded pools shall not be deemed to be insurance or insurance companies. This proposal ignores many fundamental differences between insurance and group pools or individual self-insureds.
- Pools have their own "over burden" charges in the form of "joint and several" liability for the pool and each participating employer in a group pool.
- Group-funded pools provide quality specialized safety and loss control services that improve participants' safety performance and keep them out of the assigned risk plan.
- Kansas funding requirements for pools make it impossible for them to pay assigned risk plan assessments and to continue to operate.

*Ins. Cmte*  
*2-6-92*

*Attachment 4*

- Because pools cannot pay such assessments and continue to operate, very little or no assessments would be paid by pools to the assigned risk plan if HB 2414 were passed.
- If pools are forced out of business by a requirement they cannot meet, a great number of pool participants will be forced into the assigned risk plan, thus exacerbating existing problems with the plan.
- The real answer to the financial problems of the assigned risk plan lies in finding and correcting the root causes of those problems facing the plan, HB 2414 would only aggravate those problems.

**Group-funded pools are not insurance or insurance companies.** In 1983, the Kansas Legislature passed legislation (Senate Bill 8) authorizing group-funded workers' compensation pools after two years of extensive review in legislative committees and interim study. Introductory language found in K.S.A. 44-581 specifically provides that "such pools shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of Chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein". The proponents' argument that it is unfair not to assess groups ignores a fundamental difference between individual or group self-insurance and insurance.

**Pools already have their own "over burden" charges.** Pools have their own "over burden" charges in the form of "joint and several" liability for obligations under the Kansas Workers' Compensation Act. The members of group pools have acknowledged the possibility of deficits stemming from insufficient premium collections, and each member of each group has assumed responsibility for funding deficits through their own assessments. Group pool members do not receive any help from the insurance industry when they run deficits, and the industry is not entitled to help from the members of groups in order to deal with its inadequacies. Group members have already taken responsibility for their portion of the problem, and assessing them would be asking them to respond twice. It would be unfair to require pools and their participants to be jointly and severally responsible for their own financial solvency and also to require that they contribute to the financial solvency of the assigned risk plan.

**Group pools provide specialized safety and loss control services that improve safety performance.** Group-funded pools provide a unique and effective safety-enhancing service to participants and their employees that is unavailable in the conventional insurance market. By statute, pools are made up of employers who are engaged in the same or similar type of business. Consequently, they have the same types of safety problems which can be addressed by specialized safety programs that meet their specific needs. Group pools employ the services of safety specialists who help pool participants reach and maintain relatively high safety standards. Group pools provide a valuable service to participating Kansas employers and their employees.

**Pool funding requirements make it impossible to pay assigned risk plan assessments.** Kansas law regulating group workers' compensation pools requires that 70% of premium be placed in a claims account to pay for claims. Thirty percent is left for administration. In addition, Kansas law requires group pools to purchase reinsurance which generally costs 10% of premium. Together these requirements exhaust 80% of premium. One can easily see that additional assessments of 18-22% or more for the assigned risk plan leaves nothing for the administration of group pools. They would have no choice but to cease operations. (See Addendum A, pie chart.)

Because pools cannot pay such assessments and survive, no assessments will be paid by pools to the assigned risk plan. As previously explained, because group-funded pools cannot afford to pay assigned risk assessments and continue to administer their operations, they will have no choice but to shut down their operations. Consequently little or no assessments will be paid to the assigned risk plan by group-funded pools prior to their demise. It should be made clear that this legislation has very little to do with the economics of funding assigned risk plan deficits. Even if group pools could pay assessments and continue to operate, they write such a small percent of premium (approximately 5%) in the state that they would have minimal affect on the plan's deficit levels.

If pools are put out of business, many ex-pool participants will be forced into the assigned risk plan thus exacerbating the current problem. The legislation also ignores the fact that groups are willing to provide coverage for many of the same employers who the insurance industry rejects. The insurance industry's approach to many legitimate employers is to throw them into the assigned risk pool, take the fees that are paid for servicing the pool, and then ask the rest of the community to make up the deficit, some of which may very well flow from the industry's inadequate safety programs and poor claims handling of fund accounts. It is common knowledge that a large number of current group-funded pool participants would be in the assigned risk plan but for their participation in pools. If pools are forced out of business by a requirement they cannot possibly meet, the assigned risk plan will be forced to absorb a large number of these employers. (See statistics for BASIF, Addenda B and C.) This will do nothing but aggravate the current financial problems facing the assigned risk plan.

The answer to the current financial problems of the assigned risk plan lies in finding and correcting their root causes. The financial problems of the assigned risk plan must be addressed and need to be resolved. The resolution is not more assessments or more taxes, but to find and correct the root causes of the financial burden accruing to the plan. Several of those root causes are:

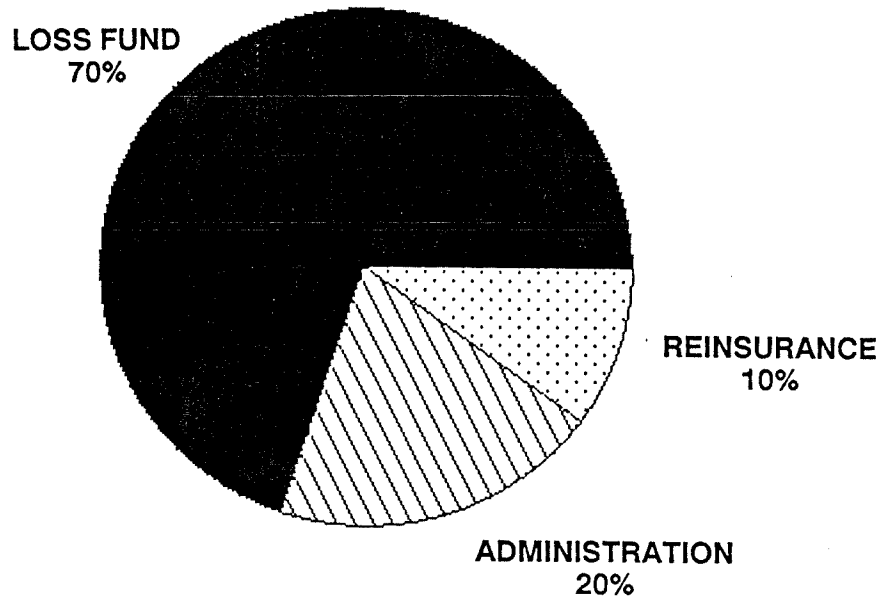
- Employers must be motivated to create a safe work place environment.
- Insurance companies must work together with agents to motivate assigned risk plan policy holders to understand that by creating a safer work place environment they will reduce their costs for workers' compensation insurance.
- There must be an understanding that for every workers' compensation benefit increase there must be a rate increase that is compatible with the risk exposure involved.
- The plan has to be made self-sufficient -- expanding the assigned risk pool adjustment program surcharge and/or including retrospective rating plans would help stabilize the Kansas assigned risk plan.

The only equitable approach to dealing with assigned risk plan deficits is to maintain adequate rates, provide a voluntary market for employers who are willing to do the right thing when it comes to safety and workers' compensation, force the assigned risk plan servicing carriers to provide quality safety and claims programs, and require that employers who belong in the plan pay what it costs to provide them with coverage. Any other approach simply ignores the real problems.

In closing, let us point out once again that group-funded pools are not insurance or insurance companies. Such pools are nothing more than individual self-insurers who, because of their size, cannot financially accept the risk exposure acceptable to large self-insurers. Because of their inability to finance their own risk, members of a pool collectively fund their premium to create financial strength with the objective of increasing work place safety and reducing the cost of workers' compensation insurance. Passage of HB 2414 would destroy those objectives.

Addendum A

# GROUP POOL FUNDING REQUIREMENTS







# Builders' Association Self-Insurers' Fund

632 WEST 39th STREET • KANSAS CITY, MO 64111  
PHONE 816/531-4741



## Addendum B

### BASIS OF KANSAS NEW BUSINESS STATISTICS JANUARY 1, 1990 THROUGH DECEMBER 31, 1991 (last 2 years)

Number of New Participants:	58
Number of Participants taken from the <b>Assigned Risk Pool:</b>	41 (71%)
Number of Participants taken from the <b>Voluntary Market:</b>	17 (29%)



# Builders' Association Self-Insurers' Fund

632 WEST 39th STREET • KANSAS CITY, MO 64111  
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## Addendum C

### BASIF OF KANSAS NEW BUSINESS STATISTICS JANUARY 1, 1987 THROUGH DECEMBER 31, 1991 (last 5 years)

Number of New Participants:	164
Number of Participants taken from the <b>Assigned Risk Pool:</b>	98 (60%)
Number of Participants taken from the <b>Voluntary Market:</b>	66 (40%)



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MEMORANDUM

**Date:** February 6, 1992  
**To:** Chairman Larry Turnquist,  
Members of House Insurance Committee  
**From:** John Grace, President/CEO

---

Thank you Mr. Chairman,

The Kansas Association of Homes for the Aging is a trade association of over 130 not-for-profit retirement and nursing homes in Kansas. Homes that are sponsored by religious, governmental and community agencies all across the state are members of our group.

In December of 1988, in response to increased workers compensation premiums and an effort to control rising costs and losses, we began to investigate the formation of a self-funded pool. In April of 1990 after over a year of study we began operating a self-funded pool.

These Homes and their Boards understand this forming of the pool does contain an element of risk. They also understand that if the program is operated successfully they can effectively control their losses and workers compensation costs.

We began with 15 homes and now have 40 homes in the pool. Some of the initial homes were in the assigned risk and it is our estimate that at least 75% of our current members would go back into the assigned risk pool, should our pool not be available.

Because of this pool, we are lowering our cost of workers compensation premiums. In addition, we are reducing work related injuries and lost work time through aggressive loss control and safety programs. We were not getting this aggressive approach with our commercial carriers.

Because of lower costs, we are positively impacting our costs to the residents of our facilities. Since roughly 50% of our residents rely on Medicaid funding, we are also lowering the costs to the State.

-over-

*Attachment 5  
2-6-92  
Ins. Cmtee*

We endorse the position paper attached to our testimony. As is stated the real solution to the problem, is to address the problems of the assigned risk pool and resolving them.

Mr.Chairman, we are opposed to HB 2414. We are however, wanting to work with the legislature and insurance representatives in addressing the overall problems with reforming workers compensation laws and the assigned risk pool.

Thank you very much.

**POSITION STATEMENT**  
**OF THE**  
**KANSAS AUTHORIZED GROUP-FUNDED WORKERS' COMPENSATION POOLS**  
**REGARDING HOUSE BILL 2414**

A coalition of Kansas authorized group-funded workers' compensation pools has been formed to coordinate opposition to House Bill 2414. This proposed legislation would require group-funded workers' compensation pools in Kansas to pay assessments levied by the Workers' Compensation Assigned Risk Plan pursuant to K.S.A. 40-2109. House Bill 2414 was introduced in the 1991 legislative session at the request of the Independent Insurance Agents of Kansas and carries over to the 1992 session.

The proponents of HB 2414 advance a sort of "fairness argument" for this proposal which is at once attractive and misleading. The argument goes, "If insurance companies are required to pay assessments into the Workers' Compensation Assigned Risk Plan, so should group-funded pools". Closer scrutiny reveals, however, that this proposal would not only devastate group-funded workers' compensation pools in Kansas, it would also adversely impact the Assigned Risk Plan. In the last analysis, the implementation of proposed HB 2414 would be counter-productive and unfair.

The following points will be briefly discussed in the following paragraphs:

- Kansas law provides that group-funded pools shall not be deemed to be insurance or insurance companies.
- Pools have their own "over burden" charges in the form of "joint and several" liability for the pool and each participating employer.
- Group-funded pools provide quality specialized safety and loss control services that improve participants' safety performance and keep them out of the Assigned Risk Plan.
- Kansas funding requirements for pools make it impossible for them to pay Assigned Risk Plan assessments.
- Because pools cannot pay such assessments and continue to operate, no assessments will be paid by pools to the Assigned Risk Plan.
- If pools are forced out of business by a requirement they cannot meet, a great number of pool participants will be forced into the Assigned Risk Plan, thus exacerbating existing problems with the Plan.
- The real answer to the financial problems of the Assigned Risk Plan lies in finding and correcting the root causes of those problems. Rather than addressing the root causes of the financial problems facing the Plan, HB 2414 would only aggravate those problems.

Group-funded pools are not insurance or insurance companies

In 1983, the Kansas Legislature passed legislation (Senate Bill 8) authorizing group-funded workers' compensation pools after two years of extensive review in legislative committees and interim study. Introductory language found in K.S.A. 44-581 specifically provides that "such pools shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of Chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein". To make group-funded pools subject to assessments for the Assigned Risk Plan as though they were insurance companies would be counter-productive and unfair.

Pools already have their own "over burden" charges

Pools have their own "over burden" charges in the form of "joint and several" liability for obligations under the Kansas Workers' Compensation Act. K.S.A. 582 (i) provides that the application for a certificate of authority to operate a pool shall include, among other things, "An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workmen's (sic) compensation law. Such indemnity agreement shall be in a form acceptable to the commissioner". It would be unfair to require pools and their participants to be jointly and severally responsible for their own financial solvency and also to require that they contribute to the financial solvency of the Assigned Risk Plan.

Pools provide specialized safety and loss control services that improve safety performance

Group-funded pools provide a unique and effective safety-enhancing service to participants and their employees that is unavailable in the conventional insurance market. By statute, pools are made up of employers who are engaged in the same or similar type of business. Consequently, they have the same types of safety problems which can be addressed by specialized safety programs that meet their specific needs. Pools employ the services of safety specialists who help pool participants reach and maintain relatively high safety standards. Financial incentives for working safe are also provided in the form of up front discounts and possible year end dividends. Pools provide a valuable service to participating Kansas employers and their employees.

Pool funding requirements make it impossible to pay Assigned Risk Plan assessments

Kansas law governing group-funded pools requires that at least 70% of the premium received by the pools be placed in a Claims Account for the sole purpose of paying claims. The remaining 30% accrues to an Administrative Account to pay the cost of administering the fund. Proponents of HB 2414 have suggested that the assessment could be paid by discontinuing pool premium discounts. We would point out that the ability to provide premium discounts will depend on the year-to-year financial condition of any given pool. Where premium discounts can be offered to participants, only 30% of the discount would be available to pay toward the Assigned Risk assessment anyway. The remaining 70% of the discount would by law accrue to the pool's Claims Account. Pools simply cannot purchase required excess insurance, administer their operations and pay Assigned Risk assessments on 30% of premium.

Because pools cannot pay such assessments and survive, no assessments will be paid by pools to the Assigned Risk Plan

As previously explained, because group-funded pools cannot pay Assigned Risk assessments and administer their operations, they will have no choice but to shut down immediately. Consequently little or no assessments will be paid to the Assigned Risk Plan by group-funded pools prior to their demise.

If pools are put out of business, many ex-pool participants will be forced into the Assigned Risk Plan thus exacerbating the current problem

It is common knowledge that a large number of current group-funded pool participants would be in the Assigned Risk Plan but for their participation in pools. If pools are forced out of business by a requirement they cannot possibly meet, the Assigned Risk Plan will be forced to absorb a large number of these employers. This will do nothing but aggravate the current financial problems facing the Assigned Risk Plan.

The answer to the current financial problems of the Assigned Risk Plan lies in finding and correcting their root causes

The financial problems of the Assigned Risk Plan must be addressed and need to be resolved. The resolution is not more assessments or more taxes, but to find and correct the root causes of the financial burden accruing to the Plan. Several of those root causes are:

- Employers must be motivated to create a safe work place environment.
- Insurance companies must work together with agents to motivate Assigned Risk Plan policy holders to understand that by creating a safer work place environment they will reduce their costs for Workers' Compensation insurance.
- There must be an understanding that for every Workers' Compensation benefit increase there must be a rate increase that is compatible with the risk exposure involved.
- The Plan has to be made self-sufficient -- expanding the Assigned Risk Pool Adjustment Program Surcharge and/or including Retrospective Rating Plans would help stabilize the Kansas Assigned Risk Pool.

In closing, let us point out once again that group-funded pools are not insurance or insurance companies. Such pools are nothing more than individual self-insurers who, because of their size, cannot financially accept the risk exposure acceptable to large self-insurers. Because of their inability to finance their own risk, members of a pool collectively fund their premium to create financial strength with the objective of increasing work place safety and reducing the cost of Workers' Compensation insurance. Passage of HB 2414 would destroy those objectives.

# # #



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**Executive Director**  
John T. Torbert, CAE

February 6, 1992

**Testimony**

**To:** Representative Larry Turnquist, Chairman  
House Insurance Committee

**From:** John T. Torbert, Executive Director  
Anne Smith, Director of Legislation

**Subject:** HB 2414

The Kansas Association of Counties, as the parent organization for KWORCC (Kansas Workers Risk Cooperative for Counties) is opposed to HB 2414.

KWORCC was granted its certificate of authority by the Kansas Insurance Department on December 31, 1991 and officially went into business on January 1, 1992. Thirty-two counties are the charter members of KWORCC and we expect to add members as we progress through 1992. We anticipate that contributions to the pool in 1992 will total approximately \$1.9 million. Of those thirty-two counties, twenty-four of them were in the assigned risk pool. Their contributions will constitute about 80% of KWORCC's total contributions.

We did not "underwrite" KWORCC. Any county that is a member of the Kansas Association of Counties is eligible to become a KWORCC member. We did not and do not believe that there is any such thing as an inherently "bad" risk. We plan to be very aggressive in our loss control and safety programs to make sure that the pool maintains a good loss history. We already have one full time loss prevention specialist on staff and expect to add another one later this year. KWORCC also has a quality claims operation that will do more than simply process paper. KWORCC, in its own small way, has thus provided some valued assistance to the assigned risk pool.

KWORCC was organized under the Kansas Municipal Group Funded Pool Act which is found in Chapter 12 of the statutes. Accordingly, this bill, as it is currently written, does not impact us directly. We are certain however, that if Chapter 44 pools are made subject to workers compensation assigned risk assessments, then Chapter 12 pools will not be far behind.

*Inw. Cmtee*  
*Attachment 6*  
*2-6-92*



Even the proponents of this bill would agree that this legislation will not solve the current problems with the assigned risk pool. In fact, by driving the pools out of business, it may well worsen the situation. The "level playing field" to which the proponents of this bill refer is really a field that only has one team on it - the independent insurance agents.

We urge your opposition to HB 2414. It is nothing more than a thinly veiled attempt to put competitive self insurance workers compensation pools out of existence.

Testimony Before The House

Insurance Committee by

Thomas E. Slattery, Executive Vice President

Associated General Contractors of Kansas, Inc.

2-6-92

House Bill 2414 would, in my opinion, immediately put the ten self insured pools now operating in Kansas out of business. The pools make up about 3.5% of the cost of work comp for the state. It is interesting to note that HB 2414 applies only to the pools while the 160 self insured companies, e.g., Hallmark, Boeing, Rockwell, Beach, are not included.

Our AGC chapter is a part of the BASIF fund which has been in operation since 1984. We currently have 28 members participating in the fund from the cities of Derby, Dodge City, Emporia, Hays, Hutchinson, Newton, Salina, Topeka and Wichita. In addition to our 28 members there are another 155 construction companies participating from the metropolitan Kansas City area.

The law passed by this legislative body in 1984 provided for these members of the construction industry to join together in a special way, highly regulated by the Insurance Department, to provide work comp insurance for its employees in our industry. During the past eight years the fund has provided coverage at a competitive rate with incentives for

*Ins. Comte*  
*2-6-92*  
*Attachment 7*

members to conduct their operations in a manner that would provide other opportunities for savings.

You are all aware of the great crisis the entire nation is facing with increased costs of providing work comp coverage. This session there are a number of bills that will be introduced to ease this problem. I believe HB 2414 is a step in the wrong direction.

In 1983 the legislature declared it was good public policy to allow for this system to operate. I hope you will agree that is still good public policy and will defeat or take no action on HB 2414.



KANSAS MOTOR CAR DEALERS ASSOCIATION

800 Jackson, Suite 808 • Topeka, Kansas 66612 • (913) 233-6456 • (800) 748-8201 (KS only) • FAX (913) 233-1462

February 5, 1992

To: Representative Larry Turnquist, Chairman House Insurance Committee  
House Insurance Committee Members

From: Don L. McNeely, Executive Vice-President

Re: House Bill 2414

The Kansas Motor Car Dealers Association is a trade association representing 320 franchised car and truck dealers in Kansas.

The Kansas Motor Car Dealers Association Worker's Compensation Pool received a certificate of authority from the Kansas Department of Insurance on September 15, 1991 to operate a group funded workers' compensation pool. Since our pool's inception, twenty members have made the conscious decision to collectively fund a workers' compensation pool with the objective of increasing work place safety and reducing the cost of workers' compensation insurance.

The Kansas Motor Car Dealers Association is opposed to House Bill 2414 because of the fact the proposed legislation is counter-productive as to its intended purpose. The proponents argue that HB 2414 is matter of fairness, in that if insurance companies are required to pay assessments into the Workers' Compensation Assigned Risk Plan, so should the group-funded workers' compensation pools. Nothing could be farther from the truth.

*Insurance Center  
Attachment B  
2-6-92*

Group-funded workers' compensation pools are not insurance nor are they insurance companies. The 1983 Kansas Legislature after two years of extensive study and review passed legislation authorizing group-funded workers' compensation pools. Language that can be found in K.S.A. 44-581 specifically states, "that such pools shall not be insurance or insurance companies and shall not be subject to the provisions of Chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein".

Group-funded workers' compensation pools have their own "over burden" charges, as pool participants are jointly and severally liable for all liabilities of the pool under the Kansas Workers' Compensation Act. If the occasion arises when the pool cannot pay its outstanding claim liabilities with collected premiums, the pool will have to assess its members, not unlike insurance companies having to make up for the deficiencies in the Assigned Risk Plan. To make group-funded pools subject to the assessments for the Assigned Risk Plan as though they were insurance companies, while at the same time requiring pools to be jointly and severally liable for their own financial solvency, is entirely unfair.

Passage of HB 2414 would only make the Kansas Assigned Risk Plan situation worse. The subjecting of group-funded workers' compensation pools to assessments levied by the Assigned Risk Plan will force the pools out of business. Consequently, little or no assessment will be paid to the Assigned Risk Plan and a large number of current group-funded pool participants would be forced into the Kansas Assigned Risk Plan. Presently 20% of the members of the Kansas Motor

Car Dealers Association Pool have come from the Assigned Risk Plan. The group-funded and self-insured pools are pulling a large number of their members out of the Assigned Risk Plan. The answers to the current problems of the Assigned Risk Plan lies in finding and correcting their root causes, not in adding to the problems and increasing the number of employers in the Kansas Assigned Risk Plan.

The Kansas Legislature designed a very well structured law in 1983 for group-funded workers' compensation pools with appropriate regulations and supervision. The law should not be allowed to be altered by the proponents of HB 2414, whose only true interest is to see to the demise of the group-funding and self-funding arrangements of Kansas employers, in which they receive no compensation.

Group-funded pools provide a unique and effective safety enhancing service to their participants and employees, as group-funded pools are made up of employers who are engaged in the same or similar type of business. Consequently, the members of the pools share the same types of safety problems, which can be addressed by specialized safety programs to meet their specific needs. Group-funded pools provide a valuable service to participating Kansas employers and their employees. To make the group-funded workers' compensation pools subject to assessments for the Kansas Assigned Risk Plan as though they are insurance companies would be counter-productive and unfair.



## Memorandum

**Donald A. Wilson**  
President

February 6, 1992

TO: House Insurance Committee

FROM: Kansas Hospital Association

RE: HOUSE BILL 2414 — GROUP-FUNDED POOLS

The Kansas Hospital Association is opposed to House Bill 2414, which will be heard by the House Insurance Committee on Thursday, February 6. This bill would require group-funded workers' compensation pools, such as the one formed by KHA last year, to pay assessments levied by the workers' compensation assigned risk plan.

The KHA Workers' Compensation Fund was established in March 1991. Our pool was formed for the express purpose of assuring that our members had access to workers' compensation coverage. Our decision to establish the pool was due to withdrawal of the major Kansas hospital workers' compensation insurer from the state. We were left with two choices. We could allow our hospitals to be forced into the assigned risk plan. Or, we could attempt to provide them with a source of insurance. We chose the latter.

The argument advanced by the proponents of House Bill 2414 is based on the notion that because insurance companies are required to pay into the assigned risk plan, then so should group-funded pools. For a number of reasons, we strongly disagree with this argument.

First, when Kansas legislation authorized group-funded workers' compensation pools in 1983, they expressly provided that such pools should not be considered insurance companies nor should they be subject to the insurance provisions of Kansas law. To change the law now would conflict with the encouragement the Legislature has previously given to such pools.

*Insurance Cmte*  
*Attachment 9*  
*2-6-92*

Second, members of group-funded pools are required to be jointly and severally liable for obligations under the workers' compensation laws. In other words, each pool member is responsible for every other member of the pool. To require them to additionally pay into the assigned risk plan would make them responsible for entities outside the scope of their authority.

Third, group-funded pools provide a unique and effective safety enhancing service to participants that is unavailable in the conventional insurance market. The KHA group-funded pool employs a number of such measures. During the first nine months of our pool's existence, we have conducted eight regional claims management and loss prevention workshops for the members of the pool. In addition, each member receives an on-site loss prevention survey consultation and other educational services as requested from the pool's third-party administrator. During that nine-month period, our pool's loss experience has been approximately 44 percent.

Finally, passage of House Bill 2414 would be disastrous for the KHA group-funded pool. Current law requires that at least 70 percent of the premiums received by such pools be placed in a special claims account for the sole purpose of paying claims. It would be impossible for us to administer our operations, purchase excess insurance and pay assigned risk assessments out of the remaining 30 percent. This could end up creating a situation where pools cease operations and force many insureds back into the assigned risk plan. We estimate that of the current 49 member hospitals participating in our pool, 30 of them would be in the assigned risk plan without the pool. A number of these hospitals do not have the type of high-loss experience for which the assigned risk plan was designed. Nevertheless, without our pool they were unable to find any other source of insurance.

In conclusion, we urge you to vote against House Bill 2414. It will not solve any of the many problems facing workers' compensation insurance. In fact, it may make the situation worse. Thank you for your consideration of our comments.

TLB / pc





# KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION SELF INSURANCE FUND

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KRHA LEGISLATIVE OFFICE: HARRISON PLACE #609•635 SW HARRISON•TOPEKA, KS 66603  
1(913)354-1551 TALK OR FAX

February 5, 1992

To: House of Representatives Insurance Committee

From: George Puckett, KRHA Executive Vice President and Self Insurance Fund Administrator

Subj: OPPOSITION TO HB 2414 (Section 2, Subsection 3,) BY THE KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

The Kansas Restaurant and Hospitality Association consists of a membership of approximately 900 foodservice and hospitality industry businesses statewide, most of whom are small businesses.

In 1989, the KRHA was unexpectedly forced to find an alternative to its endorsed workers compensation insurance program due to the pulling out of Kansas by its previously endorsed carrier for the past 15 years. Since workers compensation insurance was becoming virtually impossible to acquire for restaurant owners (unless of course premiums are large and experience modifiers low), the KRHA Board of Directors voted to model a workers compensation pool program after the Oklahoma Restaurant Association and the Louisiana Restaurant Association to provide a valuable service to its members. The name of this pool is the Kansas Restaurant and Hospitality Association Self Insurance Fund. KRHA had only four months to meet statutory requirements and be approved by the Kansas Insurance Department prior to January 1, 1990, when most of our members policies would expire with the former commercial insurance company.

A separate KRHA Self Insurance Fund Board of Trustees was established for the Fund, comprised of restaurant and hospitality industry operators participating in the Fund. It was their sincere hope that, upon approval by the Kansas Insurance Department, unused premium could be returned to the eligible members, thus providing workers compensation insurance at cost. Likewise, liabilities were to be the responsibility of the members if there was a shortfall. Our startup year resulted in a shortfall for several reasons, and, at the recommendation our our CPA on our first annual certified audit, and backed up by the Department, we were advised we must cover our reserves and Incurred But Not Reported to make our Fund as healthy as possible. For, in the unlikely event our Fund would liquidate and close its doors as of the end of December 31, 1990, we would eventually be short an estimated \$252,000 to finish all claims payments and IBNR until all claims were closed out, without the support of continuing income. Recent articles in an insurance trade magazine might give one the erroneous impression our Fund was "broke" and

*Insurance Cmte  
Attachment 10*

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ne \$252,000 to pay the bills. That article is misleading at best, the facts are not all there.

At the end of Year One, following our Fund's certified audit and to meet the requirements of the Kansas Insurance Department, our Board of Trustees of the Self Insurance Fund decided to "bite the bullet" and assess Year One members for the shortfall needed to safely cover reserves and IBNR for its first year of operation, monitor the situation closely the second year, and look positively on to Year Three to continue to build this valuable new service to the KRHA membership. It was indeed a scary thing to assess members of a brand new Fund at the end of the first year for fear of what this might do to the future of the program. The truth in fact is, however, the KRHA Self Insurance Fund has continued to grow daily from approximately \$465,000 in standard premium at the beginning of Year One, to over \$1.3 million at the beginning of Year Three (January 1, 1992). Many new corporations, franchises, as well as mom and pop operations that the majority of commercial carriers do NOT want because of their low premiums, are joining the Fund following careful consideration and approval of their boards of directors. This speaks highly of the KRHA Self Insurance Fund.

Another important point should be noted. If our Year One \$252,000 Assessment had not properly been explained by our licensed agent at the time of sale, members would have reason for contesting their assessment invoices. To date, the amount of Assessment collected, with no legal action taken against any member to date, is approximately \$244,000. I believe this speaks for itself regarding the credibility of the program by the vast majority of its members.

**OTHER IMPORTANT FACTS:**

1) Rates charged by the KRHA Self Insurance Fund are the same state rates charged by any insurance company based in accordance to the NCCI approved state rates for workers comp. No discounts are given other than the premium discount approved by the NCCI.

2) The establishment of the Kansas Restaurant and Hospitality Association Self Insurance Fund on January 1, 1990, provided insurance for approximately 175 restaurants that would have been without upon the unexpected abandonment of our previously endorsed workers compensation carrier for fifteen years. The KRHA pool very likely kept a large majority of these restaurants from going into the Assigned Risk Pool. The Self Insurance Fund premium totals were \$465,000 at the beginning of Year One. At the beginning of 1992 (Year Three), premiums total just over \$1.3 million.

3) If HB2414 were to pass, the results would be catastrophic. Not only would there be no solution to the financial problems of the Assigned Risk Pool, in our case it will very likely result in the decision to dissolve the KRHA Self Insurance Fund by its Board of Trustees because of no workable financial solution to paying this additional assessment. This would result in approximately 350 restaurants and hotels suddenly being without workers compensation insurance, the majority of which will likely be headed for the state Assigned Risk Pool, with surcharges. This will create an additional heavy burden on the already financially plagued Pool. Furthermore, this reinforces the fact that our pool provides an opportunity to help keep restaurants and hotels OUT of the state Assigned Risk Pool.

The Kansas Restaurant and Hospitality Association Self Insurance Fund urgently requests your opposition to Section 2, Subsection c, of HB2414. KRHA has no objection to the other two proposed changes listed in the measure pertaining to licensed agents and excess insurance company requirements.