

Approved: 2-11-98
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Dennis Wilson at 1:32 p.m. on February 2, 1998 in Room 527-S of the State Capitol.

All members were present except:

Committee staff present: Bill Wolff, Legislative Research Department
Robert Nugent, Revisor of Statutes
Beth James, Committee Secretary

Conferees appearing before the committee: Tom Wilder, Kansas Insurance Department
Chris McKenzie, League Of Kansas Municipalities
Bill Curtis, Kansas Association Of School Boards

Others attending: See attached list

The meeting was called to order at 1:32 p.m. by Chairperson Dennis Wilson. The Chairperson told the committee that the minutes of the January 29, 1998 meeting had been handed out and to go over them so they could be voted on at the end of the meeting. The Chairperson opened the hearing on **HB2638**.

HB2638: **Solvency requirements for group funded municipal insurance pools.**

Chairperson Wilson called Tom Wilder to the podium to speak as a proponent on **HB2638**. (Attachment #1). Mr. Wilder said that the bill was designed to strengthen the authority of the Kansas Insurance Department to regulate municipal group funded pools and employer workers compensation pools. He related what caused them to see the inadequacy in the current laws. Then he went through the bill and pointed out what the changes are, and after that he discussed with the committee a few amendments that the Department suggested. Mr. Wilder said that the Department is willing to work with the people these changes regulate in regard to language. He then stood for questions.

Someone asked how many consumers have been injured financially or otherwise. Mr. Wilder said there are none, but, some of these pools are right on the edge. Representative Johnson stated that the school districts in his legislative district are very small and that some of the teachers do not have any coverage. These teachers want to know if all Kansas school teachers could be in one pool. Mr. Wilder said that there is currently a provision in the law that allows school districts to join the state employees health care commission. Mr. Wilder was asked how many schools are currently members of the state employees health care pool. He said none. He was asked whether there was some barrier that was keeping them from joining. He said that Commissioner Sebelius is very supportive of the school boards and other municipalities joining the state employees health pool. Chairperson Wilson asked if passing this bill would help the pools that are currently in trouble or could be in trouble in the next 60 to 90 days. Mr. Wilder said no, but, this bill could prevent pools from getting in trouble in the future.

There were no other proponents to speak on this bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE ROOM 527-S STATEHOUSE AT 1:30 P.M., FEBRUARY 2, 1998

Chairperson Wilson called Chris McKenzie, an opponent, to the podium. (Attachment #2). Mr. McKenzie said the League helped form the Kansas Municipal Insurance Trust (KMIT), a municipal workers compensation pool organized to provide workers compensation coverage to the cities of Kansas. He said the pool was not easy to start because the Group Funded Pool Act erected some hurdles, appropriate hurdles. But, they are worried, based on their own experience, that they not make it so difficult that other groups that want to start pools in the future will not have to much difficulty doing so. Mr. McKenzie then touched on some of the issues that they have a difference of opinion on from the Kansas Department Of Insurance. In summation Mr. McKenzie said that the League would be happy to meet with the representatives of the Department of Insurance to work out agreeable compromise language.

Representative Tomlinson asked if there was really a need for this bill. Mr. McKenzie said that he thought that after listening to Tom Wilder he felt Tom made some reasonable points about the importance of having intermediate measures and the point he made in terms of what the insolvency language would provide for their ability to work with pools that are facing problems.

Chairperson Wilson then called Bill Curtis, an opponent, to the podium. (Attachment #3). In regard to the first proposed amendment, Mr. Curtis does not think it is necessary for the Commissioner to decide what the definition of "adequate surplus funds" means. In regard to the second proposed amendment, it says "...along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner." Mr. Curtis wants to know who is going to decide when you start counting those weeks. This is based on previous disputes with the Department that took several weeks to resolve. As to the fourth amendment, Mr. Curtis said that the premiums would be so high to cover a 100% adequate level, as certified by an actuary that the pools would not be competitive.

Representative Garner asked what percentage of school districts did not have a health insurance plan. Mr. Curtis said 10%, which is about 100 schools. Small schools.

There were no other conferees on this bill. The Chairperson closed the hearing on HB2638.

Tom Wilder had an amendment to HB2637 that was handed out to the committee members.

HB2637: **Filing procedures for redomestication of foreign insurance companies.**

Mr. Wilder went over the amendment with the committee. Chairperson Wilson asked if there was anyone who wanted to speak on HB2637. There were none, so the Chairperson closed the hearing on that bill. Representative McCreary made a motion to pass out HB2637 with the amendment. The motion was seconded by Representative Stone. The committee voted to pass the bill out favorably with the amendment.

Tom Wilder had a substitute for HB2640 that was handed out to the committee members.

HB2640: **Fire lien notification requirements.**

Mr. Wilder went over this substitute bill with the committee. The Chairperson closed the hearing on this bill.

The Chairperson asked if everyone had time to look over the minutes of the January 29, 1998 meeting, and he would entertain a motion as such. Representative Campbell made a motion to accept the minutes as presented. The motion was seconded by Representative Tomlinson. The committee voted to accept the minutes as presented.

The Chairperson asked if there was any old business and there was none. The Chairperson asked if there way any new business. Representative Kirk said she would like to have a committee bill drawn up to cover the hospital stay of people that need to be at the hospital for oral surgery. Insurance currently covers the surgeons fees but not the hospitals. Representative Kirk further explained "who" needs oral surgery in a hospital. The Chairperson called for discussion. Representative Kirk made a motion to have this bill drawn up as a committee bill. The motion was seconded by Representative Campbell. The committee voted in favor of this motion.

There was no other business. The meeting was adjourned at 2:26 p.m. The next meeting will be February 3, 1998.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Feb 2, 1998

NAME	REPRESENTING
Tom Wilder	Kansas Insurance Dept
MARTY HAZEN	KANSAS INSURANCE DEPT
Alan Ebert	Kansas Insurance Department
Mark McClain	Kansas Insurance Dept
Rich Hunciker	Kansas Ins. Dept.
Jimmie Wagner	KID
Ron Hein	Ks Restaurant + Hospitality Assn
Larry Shaffer	Ks. Health Service Corp.
Kevin McFarland	Ks Homes & Services for the Aging
Pat Morris	KAIA
Bill Curtis	Kansas Assoc. of School Bds
Chris McKenzie	League of Ks Municipalities
Deana Sturd	Pi
KENT ERWIN	KCAMP + KWORCC GALLAGHER WOODSMALL, INC.
JEANIE Cowan	Kansas Counties Assoc Multi-line Pool + Kansas Workers Risk Cooperative for Counties



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: House Insurance Committee

From: Tom Wilder

Re: House Bill 2638 (Group Funded Pools)

Date: February 2, 1998

House Bill 2638 is intended to provide the Kansas Insurance Department with more flexibility in its regulation of municipal group funded insurance pools and employer workers compensation pools. The legislation covers both pools established by cities and counties (municipal pools) and those set up by employers to provide workers compensation coverage for their employees.

The law governing employer workers compensation pools was originally passed in 1983 and the municipal group funded pool statutes date from 1989. These laws were designed to give cities and counties and employers the means to insure risks where coverage might not be available on the private market or in cases where the cost of insurance was prohibitive.

Currently, there are six municipal group funded pools providing accident and health coverage and five municipal workers compensation pools. Municipalities can also set up pools for other types of coverage such as general liability, however, no cities and counties have chosen to do so. In addition, there are 19 existing employer workers compensation pools (five of these are dormant because of the improved workers compensation insurance market in Kansas).

The Insurance Department is requesting this legislation, in part, because of problems we have encountered over the past year with several municipal group funded pools providing accident and health coverage to school districts. The Department is

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working with those pools to improve their financial condition. These municipal group funded pools are in the process of making assessments against those school districts which are pool members to help pay for past health claims and to set up adequate reserves for future losses.

When the Insurance Department was working through these problems with the municipal group funded pools, we realized that our current pool laws might not be fully adequate to regulate municipal group funded pools and employer workers compensation pools. It is important to understand that the municipal group funded pool law and the employer workers compensation pool statutes specifically exempt pools from regulation by the Insurance Department except as provided in the pool laws or in the Insurance Code. The practical effect is that our regulation of pools is more limited than that of insurance carriers doing business in this state. House Bill 2638 makes the following changes to our pool statutes:

(1.) Section 1 (K.S.A. 12-2618) - First, the statute is amended to make it clear that the Commissioner has the authority to approve the type of stop-loss insurance policy used by the municipal group funded pool. Under current law, there is some question whether the Commissioner can require specific types of stop-loss coverage if she believes it would be inadequate to cover claims made by the pool. The new language also gives the Commissioner approval over the amount and types of surplus funds maintained by the pools.

The statute is also amended to give the Department the ability, after notice to the municipal pool and the opportunity for a hearing, to fine a pool if they do not provide information to the Commissioner as requested. One of the issues raised by our staff is that some municipal pools are often late in supplying vital information to the Insurance Department, such as applications for approval of rates, which we need to regulate their business operations. This authority is the same as applied to insurance carriers in K.S.A. 1997 Supp. 40-2,125.

(2.) Section 2 (K.S.A. 12-2620) - The statute is amended to state that if a municipal group funded pool is insolvent, the insolvency will be handled in the same manner as for insurance companies as set out in the Insurance Code. The existing law

provides that if a municipal group funded pool is in violation of any of the laws or is in an unsound financial condition, our only recourse is to shut down the pool. This would leave the members of the pool without any coverage.

The insurance insolvency statutes give the Insurance Department more flexibility in dealing with carriers that are having financial problems. For example, K.S.A. 40-3613 gives the Commissioner the ability to establish a “work-out” procedure by which the insurer will take corrective action to improve its financial condition. A copy of the statute is attached to my testimony. These procedures make it possible for the Insurance Department to rehabilitate an insurer without having to put it out of business. We believe the same procedures ought to be applied to a municipal group funded pool before taking the drastic step of dissolving them completely.

(3.) Section 3 (K.S.A. 1997 Supp. 12-2621) - This statute concerns the rates which pools can charge to cover estimated claims. The municipal group funded pools must submit rating information to the Insurance Department, however unlike insurance companies, the justification for rates does not have to be certified by an actuary. Usually, the pool administrator may provide the rating application to the Department for approval. The problems we have seen with municipal group funded pools are directly related to inadequate rate estimates.

The amendment would require all pools to file with the Department at the end of each plan year and in connection with any rate filing an actuarial certification that adequately estimates potential claims and establishes correct rates for those estimated losses. This standard is similar to that currently required for employer workers compensation pools in K.S.A. 44-583.

(4.) New Section 4 - This provision would make employer workers compensation pools subject to fines and penalties if they fail to provide information to the Commissioner in a timely manner. It is the same requirement applied to municipal group funded pools in Section 1 of the bill and what is currently required of insurance companies in K.S.A. 1997 Supp. 40-2,125.

(5.) Section 5 (K.S.A. 1997 Supp. 44-584) - This amendment allows the Commissioner to handle the insolvency of an employer workers compensation pool in the

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same manner as insolvencies of insurance companies. The provision would allow the Department to establish work-out procedures with workers compensation pools in lieu of putting the pool out of business.

There are a number of additional technical amendments which I would like the Committee to consider. These changes are attached to my testimony.

House Bill 2638 would provide the Insurance Department with improved regulatory authority over municipal group funded pools and employer workers compensation pools. We believe these changes are necessary given the potential financial problems which pools may face in the future. I urge your support for the legislation with the amendments which I have proposed.

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control.

obstruct or interfere
in the conduct of any

delinquency proceeding or any investigation
preliminary or incidental thereto.

(c) This section shall not be construed to
abridge otherwise existing legal rights, includ-
ing the right to resist a petition for liquidation
or other delinquency proceedings, or other or-
ders.

(d) Any person included within subsection
(a) who fails to cooperate with the commis-
sioner, or any person who obstructs or inter-
feres with the commissioner in the conduct of
any delinquency proceeding or any investiga-
tion preliminary or incidental thereto, or who
violates any order the commissioner issued va-
lidly under this act may:

(1) Be sentenced to pay a fine not exceed-
ing \$10,000 or to imprisonment for a term of
not more than one year, or both; or

(2) after a hearing held in accordance with
the Kansas administrative procedure act, be
subject to the imposition by the commissioner
of a civil penalty not to exceed \$10,000 and
shall be subject further to the revocation or
suspension of any insurance licenses issued by
the commissioner.

History: L. 1991, ch. 125, § 6; July 1.

40-3611. Same; proceeding commenced
prior to effective date of act. Every proceed-
ing heretofore commenced under the laws in
effect before the enactment of this act shall be
deemed to have commenced under this act for
the purpose of conducting the proceeding
henceforth, except that in the discretion of the
commissioner the proceeding may be contin-
ued, in whole or in part, as it would have been
continued had this act not been enacted.

History: L. 1991, ch. 125, § 7; July 1.

40-3612. Same; restrictions upon insur-
ers subject to delinquency proceedings. No in-
surer that is subject to any delinquency pro-
ceedings, whether formal or informal shall:

(a) Be released from such proceeding, un-
less such proceeding is converted into a judicial
rehabilitation or liquidation proceeding;

(b) be permitted to solicit or accept new
business or request or accept the restoration
of any suspended or revoked license or certifi-
cate of authority;

(c) be returned to the control of its share-
holders or private management; or

(d) have any of its assets returned to the
control of the shareholders or private manage-
ment;

until all payments of or on account of the in-
surer's contractual obligations by all guaranty

associations, along with all expenses thereof
and interest on all such payments and ex-
penses, shall have been repaid to the guaranty
associations or a plan of repayment by the in-
surer shall have been approved by the guaranty
association.

History: L. 1991, ch. 125, § 8; July 1.

40-3613. Same; supervision of insurer
by commissioner, grounds for, determination
and order of commissioner; appointment of
supervisor; conditions imposed upon insurer;
service of notice of hearings and orders; civil
penalties for violation of supervision order;
enforcement of orders by court; personal li-
ability of persons violating orders resulting in
loss. (a) Whenever the commissioner has rea-
sonable cause to believe, and has determined
after a hearing held under subsection (f), that
any domestic insurer has committed or en-
gaged in, or is about to commit or engage in,
any act, practice or transaction that would sub-
ject it to delinquency proceedings under this
act, the commissioner may make and serve
upon the insurer and any other persons in-
volved, such orders as are reasonably necessary
to correct, eliminate or remedy such conduct,
condition or ground. Such orders may be made
confidential by the commissioner and may not
be subject to release under the Kansas open
records act.

(b) If upon examination or at any other
time the commissioner has reasonable cause to
believe that any domestic insurer is in such
condition as to render the continuance of such
domestic insurer's business hazardous to the
public or to holders of its policies or certificates
of insurance, or if such domestic insurer gives
its consent, then the commissioner shall upon
such determination:

(1) Notify the insurer of such determina-
tion; and

(2) furnish to the insurer a written list of
the commissioner's requirements to abate the
determination.

(c) If the commissioner makes a determi-
nation to supervise an insurer subject to an
order under subsections (a) or (b), the com-
missioner shall notify the insurer that such in-
surer is under the supervision of the
commissioner. During the period of supervi-
sion, the commissioner may appoint a super-
visor to supervise such insurer. The order
appointing a supervisor shall direct the super-
visor to enforce orders issued under subsec-
tions (a) and (b) and may also require that the

insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the supervisor:

- (1) Dispose of, convey or encumber any of its assets or its business in force;
- (2) withdraw from any of its bank accounts;
- (3) lend any of its funds;
- (4) invest any of its funds;
- (5) transfer any of its property;
- (6) incur any debt, obligation or liability;
- (7) merge or consolidate with another company; or
- (8) enter into any new reinsurance contract or treaty.

(d) No provision of subsection (c) shall restrict the commissioner's authority to issue an order under K.S.A. 40-222 or 40-222b and amendments thereto.

(e) Any insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of such insurer's failure to comply with in such time, the commissioner may institute proceedings under K.S.A. 40-3615 or 40-3620 to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(f) The notice of hearing under subsection (a) and any order issued pursuant to such subsection shall be served upon the insurer pursuant to the Kansas administrative procedure act.

(g) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying wherein the action complained of is believed not to be in the best interest of the insurer.

(h) Any person who has violated any supervision order issued under this section, which as to such person was still in effect, shall be liable to pay a civil penalty imposed by the district court of Shawnee county not to exceed \$10,000.

(i) The commissioner may apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be necessary and proper to enforce a supervision order.

(j) In the event that any person, subject to the provisions of this act, including those per-

sons described in K.S.A. 40-3610(a), shall knowingly violate any valid order of the commissioner issued under the provisions of this section and, as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, such person shall become personally liable to the insurer for the amount of any such reduction or loss. The commissioner or supervisor is authorized to bring an action on behalf of the insurer in the district court of Shawnee county to recover the amount of the reduction or loss together with any costs.

History: L. 1991, ch. 125, § 9; July 1.

40-3614. Same; seizure of insurer; petition of commissioner; order of court; vacation of order; petition for hearing and review of order; failure to give notice to affected person. (a) The commissioner may file in the district court of Shawnee county a petition alleging, with respect to a domestic insurer:

(1) That there exists any grounds that would justify a court order for a formal delinquency proceeding against an insurer under this act;

(2) that the interests of policyholders, creditors or the public will be endangered by delay; and

(3) the contents of an order deemed necessary by the commissioner.

(b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, other records of an insurer and of the premises occupied by it for transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents and employees from disposition of its property and from the transaction of the insurer's business except with the written consent of the commissioner.

(c) The court shall specify in the order what the order's duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on the court's own motion, the court may from time to time hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this act after

having had a reasonable opportunity to be heard. An order of the court proceeding under this section shall not be subject to the seizure order.

(d) Entry of a seizure order shall not constitute a breach of any contract of the insurer.

(e) An insurer subject to an order under this section may petition for a hearing and review of the order at any time after the order is issued. The hearing shall hold such a hearing within 15 days after the order is issued. This subsection may be invoked by the insurer and it shall be proceeded against so long as the order remains in effect.

(f) If, at any time after the order is issued, an order, it appears to the commissioner that the person whose interest is affected by the order is unable to appear for a hearing and has not been given notice, the commissioner may order that notice be given shall be given by the commissioner or order previously issued.

History: L. 1991,

40-3615. Confidential documents in proceedings under 40-3614; exceptions. In proceedings under 40-3614, all records, documents, and all in-court and court records and proceedings, shall be confidential, except as is necessary for the proceedings, unless an order of the district court of Shawnee county, upon application of the parties in confidence, otherwise; or unless the matter be made public by the district court of Shawnee county, upon application of the clerk in a confidential proceeding.

History: L. 1991,

40-3616. Rehabilitation by commissioner on grounds. The commissioner may petition to the district court for an order authorizing the commissioner to rehabilitate a domestic insurer on any one or more of the following grounds:

(a) The insurer is unable to conduct its business or further transaction or is insolvent or otherwise financially to the detriment of the public;

Proposed Amendments To H.B. 2638
February 2, 1998

(1.) Section 1 (K.S.A. 12-2618): Page 1; Lines 15-16

Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than ~~30~~ 60 days prior to the proposed inception date of the pool.

Reason for change: Same standard as currently applied to applications for certificates for employer workers compensation pools in K.S.A. 44-582.

(2.) Section 3 (K.S.A. 1997 Supp. 12-2621): Page 4; Lines 6-8

Such rates shall either be ~~the rates effective June 1, 1994, or~~ the prospective loss costs, as defined in K.S.A. ~~40-1113e~~ 40-955(b), and amendments thereto, plus expenses necessary to administer the pool.

Reason for change: Makes statute consistent with workers compensation loss cost changes made last year. K.S.A. 40-1113c has been repealed. **Note: This same change should be made to K.S.A. 44-585 which is not currently part of the bill.**

(3.) Section 3 (K.S.A. 1997 Supp. 12-2621): Page 4; Lines 31-32

(3) the projections of earned premiums and incurred claims for the entire period for which the ~~rate~~ rates were calculated.

(4.) New Section (amending K.S.A. 40-3606)

This act shall apply to all insurance companies, fraternal benefit societies, mutual nonprofit hospital and medical service corporations, captive insurance companies, group funded pools ~~except including~~ including municipal group funded pools governed by K.S.A. 12-2616 through 12-2629 and amendments thereto and employer group funded workers compensation pools governed by K.S.A. 44-581 through 44-593, prepaid service plans operating under ~~articles~~ article 19a, ~~19b or 19d~~ of chapter 40 of the Kansas Statutes Annotated, regardless of whether such entities are authorized to do business in this state, and such entities which are in the process of organization.

Reason for change: Makes it clear that municipal group funded pools and employer workers compensation pools come under the insolvency statutes. In addition, Articles 19b and 19d of Chapter 40 were repealed last year.



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: House Committee on Insurance
FROM: Chris McKenzie, Executive Director
DATE: February 2, 1998
SUBJECT: League Opposition to Portions of HB 2368

Thank you for the opportunity to appear this afternoon in opposition to portions of HB 2368 on behalf of the 530 member cities of the League of Kansas Municipalities. In 1993 the League helped form the Kansas Municipal Insurance Trust (KMIT), a municipal workers compensation pool organized to provide workers compensation coverages to the cities of Kansas. KMIT began operation with 13 cities plus the League on January 1, 1994. Today its membership numbers 83 cities, ranging in size from Dodge City (22,033) to Chautauqua (129). A map of the KMIT member cities is attached for your information.

The KMIT pool has provided some major benefits to its member cities and their taxpayers since its inception in 1994. Some of the highlights of its operations, include:

- **Loss Control.** KMIT provides an extensive loss control program, which includes accident prevention workshops, safety manual training, a bi-monthly newsletter and training tools. All such programs are provided at no additional charge to every member city.
- **Member Information.** KMIT provides a monthly mailing to every member reflecting the current status of all open and closed claims for that city. In addition, other information related to the financial position of the Trust is included.
- **Board of Trustees of City Officials.** An elected eleven-member Board of Trustees composed of city officials represents KMIT members and establishes the policies for the Trust. Trustees serve on a staggered basis and are elected each year at KMIT's annual membership meeting.
- **Workplace Inspections.** KMIT inspects the workplace environment of every member, every year, at no additional charge to the city.
- **Case Management Program.** KMIT utilizes an aggressive program of case management to help reduce claims expenses. This program has been expanded every year since 1994 and now includes a medical and pharmaceutical discount program. These discounts are in addition to the State's workers' compensation fee schedule.

HOUSE INSURANCE
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- **Experience Modification Reductions.** Since KMIT's inception in 1994, the average experience modification for all members has declined by over 12%.
- **Average Experience Modification.** Beginning in 1998, the average experience modification ratio for all members is 1.00, which represents a remarkable accomplishment for a pool with this many members.
- **Kansas Funds Stay in Kansas.** Approximately 95% of all KMIT funds remain in Kansas, invested in Kansas banks.

Forming KMIT was not an easy endeavor, and we are keenly aware of the challenges posed by the Kansas Municipal Group-Funded Pool Act (K.S.A. 12-1216 et seq.) to those municipal entities that will try. We did succeed, however, and the League is proud of KMIT's track record of responsive services and fiscal integrity. In fact, many of the members of the Trust were not able to secure workers compensation insurance coverage from the traditional market. These cities were invited into KMIT, subscribe to its commitment to safety and risk management, and have experienced major benefits as a result.

We value our relationship with the Kansas Insurance Department, and we appreciate the guidance its officials have provided KMIT over the years. We are aware of the Commissioner's concerns about the financial condition of certain pools providing health insurance type coverages to local units of government, and will support changes in the Kansas Municipal Group-Funded Pool Act which give the Department additional tools to address these concerns without erecting impossible barriers to either the formation of new municipal pools or the operation of existing pools.

Our specific concerns about this legislation can be summarized by the following points:

- ① Obstacles to Pool Formation--Page 2, Lines 18 - 21. Under current law municipal pools in the process of formation are required to secure **either** (1) specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority, **or** (2) maintain adequate surplus funds. The terms "surplus funds" and "adequate surplus funds" are already defined in lines 23-29 of this subsection. The proposed amendment would require **both** requirements to be met, with the adequate surplus funds being "in an amount and form as approved by the commissioner." If this is approved, we believe few, if any, new pools will be formed. Further, since this subsection already defines "adequate surplus funds," it is difficult to understand why the Commissioner should have to approve the amount and form of the funds.

Proposed Alternative: We respectfully suggest that the Commissioner be authorized to approve the minimum amount of the aggregate excess insurance (as well as the maximum attachment point) secured by municipal pools, as the Commissioner is allowed to do under K.S.A. 44-582(m) for private group-funded workers compensation pools.

- ② New Penalties--Page 2, Lines 38 - 43. Under current law the Commissioner or the Attorney General may suspend or revoke a certificate of authority to operate a municipal pool (see Sec. 2(a), page 3, lines 2 -5). Furthermore, pools are required to file quarterly financial reports, complete an independent financial audit within 90 days after the end of the fiscal year, and are subject to periodic audit by the Commissioner's office, the costs of which are all borne by the pool. This new penalty provision would subject pools to additional financial penalties for failure to file any report, document or information as required by the act, or fails to respond to any "proper inquiry" of the Commissioner. The reality is that municipal pools are already subject to revocation or suspension of their certificate of authority for failure to comply with such requirements, their records are subject to examination under the Kansas Open Records Act (K.S.A. 45-215 et seq.), all municipal officials are subject to ouster from office (K.S.A. 60-1205) for willful misconduct or willful neglect of any public duty, and municipal pool officials may be compelled to perform any official duty by a mandamus action (K.S.A. 60-801). We respectfully submit that these existing safeguards that apply to public officials and pools only reduce the need for the proposed penalties. Finally, we feel the terminology in line 40, page 2, referring to "any proper inquiry of the commissioner" is sufficiently vague to make reasonable persons wonder what it means. Is "proper" the same as "lawful," for example?
- ③ Actuarial Certifications--Page 4, lines 23-32. While not directly applicable to KMIT at this time since it does not offer accident and sickness coverage, we would share that our experience with workers compensation actuarial studies would suggest that the requirement that an actuarial certification be filed "not less than 30 days prior to the end of each plan year" would be virtually impossible due to the fact most actuarial studies cannot commence until after the audit of a completed fiscal year.

RECOMMENDATION: Based on the foregoing, the League recommends careful study of HB 2638 and amendments where suggested. In the alternative, we would be happy to meet with representatives of the Department and other municipal pools to try to work out agreeable compromise language.

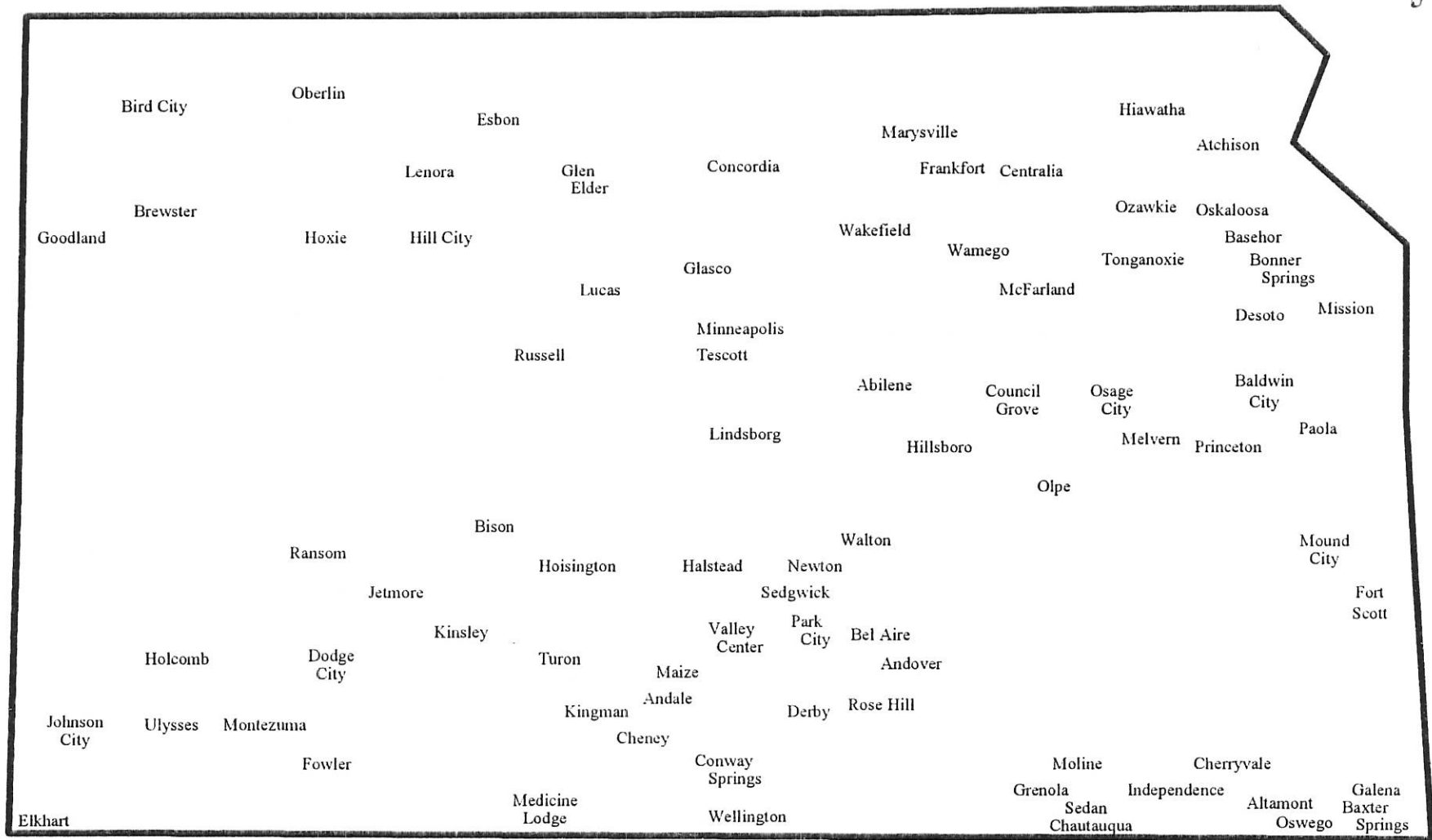
Thank you.

2-3

1998 KMIT Members

82 Cities plus the League

2-4



2-4



TO: House Committee on Insurance
FROM: Bill Curtis, Fund Administrator
DATE: February 2, 1998

RE: HB2638, Amendments to the Kansas Municipal Group-Funded Pool Act

Mr. Chairman and members of the Committee, we appreciate the opportunity to testify today on HB2638. KASB opposes the amendments to the Kansas Municipal Group-Funded Pool Act contained in this bill.

The first proposed amendment is on page 2 of the bill, lines 18 through 21. This amendment would give the Commissioner the authority to dictate the amount and form of excess insurance that must be carried by the pool and the authority to specify the amount and form of surplus funds that must be maintained by the pool. The Commissioner has no control over the availability and affordability of the excess insurance market. What if it is impossible to buy excess insurance in the amount and form approved by the Commissioner? The Act currently states that adequate surplus funds means the amount necessary for the pool to fund its self-insured obligations. Why then is it necessary for the Commissioner to decide what the definition of that term means? It seems to us this amendment simply provides for an ongoing dispute with the Department. It should also be noted here that the Commissioner sets the loss rates for workers compensation. If those rates are adequate, then a pool should not have any difficulty funding its obligations.

The second amendment also begins on page two, line 38. This language change gives the Commissioner the authority to levy fines if a pool fails to file any report or documentation or information required by this act. The problem with this amendment is one of timing. Who decides when the clock begins? We have had several disputes with the Department over the form of a required report and those disputes took several weeks to resolve.

We have no specific comments on the third amendment. It would change the way an insolvent pool would be handled to coincide with the treatment of an insolvent insurance company. Pools do not pay into the guaranty fund.

The fourth amendment, on page 4, would require health pools to file an annual actuarial certification that the premiums charged are adequate to fund the plan year. Our experience would indicate that it is extremely difficult to find an actuary that would certify that premiums are 100% adequate. If so, premiums would be so high that they would not be competitive. Pools need flexibility to make decisions based upon their history. We do not believe that pools should deliberately fund at a deficit level unless the pool has ample surplus funds to cover that deficit. Ultimately, pools must assess their members if there are not adequate funds available to pay claims and administrative expenses.

Thank you for listening to our concerns. We believe these proposed amendments simply place too much arbitrary authority in the hands of the Department of Insurance.

*House Insurance
Attachment # 3
2-2-98*

Amendment to HB 2637

New Section 2. A foreign insurer shall file restated articles of incorporation and a certificate of domestication with the Secretary of State in a form prescribed by the Secretary of State and approved by the Insurance Commissioner, to transfer to this state. A domestic insurer shall file with the Secretary of State a certificate or order issued by the Insurance Commissioner approving the transfer to another state. **An insurer who has transferred to this state prior to the effective date of this subsection, with the approval of the insurance commissioner pursuant to this act, shall be deemed in compliance with the provisions of this act.**

House Insurance
Attachment #4
2-2-98

DRAFT (1/26/98) Fire Liens

Substitute for HOUSE BILL No. 2640

AN ACT concerning cities and counties; regarding the filing of fire liens; amending K.S.A. 40-3905 and repealing the exiting section.

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

Section 1. K.S.A. 40-3905 is hereby amended to read as follows: 40-3905. Every city or county which adopts an ordinance or resolution under the provisions of K.S.A. 40-3901 to 40-3904, inclusive, shall notify the commissioner of insurance within 14 days after the adoption of such ordinance. At least once each quarter of each calendar year, the The commissioner shall prepare and distribute a list of all cities and counties adopting an ordinance or resolution under the provisions of this act during the preceeding quarter to all ~~notify~~ insurance companies which issue policies insuring buildings and other structures against loss by fire or explosion ~~within 14 days after notification from cities or counties adopting an ordinance or resolution under the provisions of K.S.A. 40-3901 to 40-3904, inclusive.~~ Insurance companies shall have 60 days after the commissioner notifies them of the adoption of such ordinance or resolution to establish procedures within such cities or counties to carry out the provision of this act.

Section 2. K.S.A. 40-3905 is hereby repealed.

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

House Insurance
Attachment #5
2-2-98