

Approved March 26, 1987  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at  
Chairperson

9:00 a.m./p.m. on March 25, 1987 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Myrta Anderson, Legislative Research  
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Richard Wilburn, Alliance Insurance Companies  
Bill Mitchell, Alliance Insurance Companies  
Ron Todd, Kansas Insurance Department  
L. M. Cornish, Property and Casualty Insurance Companies  
Margaret Gatewood, The Ruedlinger Companies  
Nelson Hartman, Kansas State High School Activities Association

The minutes of March 24 were approved.

The hearing began on HB 2460 dealing with investment in holding corporations by insurance companies. Richard Wilburn, Alliance Insurance Companies, testified in support of the bill. (See Attachment I.) Mr. Wilburn confirmed the chairman's statement that if the bill is passed, it would allow the holding company arrangement to be done at an official board meeting instead of going to the stockholders. The chairman also asked if dividends would be paid, and Mr. Wilburn said it would be possible.

Bill Mitchell, Alliance Insurance Companies, stated his support for Mr. Wilburn's testimony. He added that it would enable them to get more liquid capital and the ability to write more insurance.

Ron Todd, Kansas Insurance Department, said that the Department had worked with the companies with the language of the bill and has no objections to the bill.

Mr. Mitchell stood to inform the committee that the bill was amended in the House to include life companies also. Bud Cornish, Property and Casualty Insurance Companies, said the statements made on behalf of the property and casualty companies apply to life companies. Sen. Karr had a question regarding the stricken words on line 18, and Mr. Cornish explained that this makes it applicable to both life and property and casualties. This concluded the hearing on HB 2460.

Sen. Harder made a motion to report HB 2460 favorable for passage, Sen. Werts seconded, and the motion carried.

The hearing on HB 2129 followed which deals with regulation of risk retention and purchasing groups and which was introduced at the request of the Insurance Department. Ron Todd of the Kansas Insurance Department testified in support of the bill. (See Attachment II.) He called special attention to page eight, new paragraph (c), explaining that this makes sure the Department can collect the taxes whether inside or outside the state.

The chairman asked what the effect of the federal law would be in absence of this bill. Mr. Todd said the state must follow the federal law, but this bill would implement the Department's enforcement and would clearly define regulations.

Sen. Kerr asked if the risk retention groups are by necessity incorporated and if they could be owned by the companies that are utilizing them to which Mr. Todd answered, "Yes". Sen. Kerr asked further if there are reserve requirements. Mr. Todd answered

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 25, 1987

this is not in the bill or federal law. They would have to comply to the law of the state in which they are incorporated. Sen. Kerr said Vermont has a captive insurance company law and asked if they could be considered a risk retention group in Kansas under this law. Mr. Todd said they could. Sen. Kerr asked why there are not captive insurance companies in Kansas. Mr. Todd said there have been discussions regarding this, and there have been no objections to it. However, groups have not gone ahead and done it.

Sen. Karr asked why the bill is to go into effect on publication in the Kansas Register. Mr. Todd said the main reason is that the federal law is already in effect so the Department wants this law to be in effect quickly to make sure Kansas has a law on the books to address these groups in collecting taxes from them. The chairman asked how many states have had this presented, and Mr. Todd did not know but felt that there would be many because this was just presented this year by the National Association of Insurance Commissioners (NAIC).

Margaret Gatewood, The Ruedlinger Companies, testified in opposition to HB 2129. (See Attachment III.) In response to part of Mr. Todd's testimony regarding the bill being a model act developed by the NAIC, she said that the bill goes beyond what the NAIC recommended in the model bill.

Nelson Hartman, Kansas State High School Activities Association, followed with further testimony in opposition to the bill. (See Attachment IV.) The chairman asked him if he had had problems with the present statute in the past, and Mr. Hartman said there had been none. Sen. Kerr asked what has been his experience in being able to collect. Mr. Hartman said there have been no problems--it works, and it does provide protection for member schools and staff.

Sen. Gannon asked if the House heard these objections to the bill. Mrs. Gatewood answered that the House had not heard their objections because it did not come to her attention in time, and she was apologetic for not acting sooner.

Mr. Todd responded to statements made by Mrs. Gatewood regarding the bill going beyond the model bill. He said the bill is not exactly contrary to the NAIC bill except the model bill did not clarify the reference to the purchasing group. In the federal act, the meaning of "location" is not clear. The Department feels "location" is where any of the risks are located, and that is why an attempt was made to define it. Mr. Todd added that they will probably end up in court anyway and that enactment of Section Eight does not prohibit insurance as Mrs. Gatewood had testified but rather deals with state regulation.

Sen. Burke asked if this bill was presented in the House as just a clean-up bill, and Mr. Todd said it was. Sen. Burke then asked if there would be any crisis for Kansas if the bill is not passed this year. Mr. Todd said it would leave the Department in the position of arguing what the federal law means. Sen. Gordon asked if Mr. Todd thought that Sections Six and Eight were unconstitutional, and Mr. Todd said he did not. The chairman asked if the federal law includes purchasing groups, and Mr. Todd said it does, but it just includes "location".

There being no further time, the meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

| DATE | NAME                | ADDRESS    | REPRESENTING             |
|------|---------------------|------------|--------------------------|
|      | L M CORNISH         | Topham     | 16 life + P/C Ins. Assoc |
|      | Roger Kiola         | Topham     | SBL                      |
|      | Richard J. Wilson   | McPherson  | Alliance Ins. Co.        |
|      | Jim Ketchum         | McPherson  | " " "                    |
|      | William L. Mitchell | Hutchinson | Alliance Ins. Co.        |



ALLIANCE INSURANCE COMPANIES

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MR. CHAIRMAN, MEMBERS OF THE COMMITTEE: I AM RICHARD WILBORN, VICE-PRESIDENT OF ADMINISTRATIVE SERVICES FOR THE ALLIANCE INSURANCE COMPANIES, MCPHERSON, KANSAS.

ON FEBRUARY 17, 1987, I REQUESTED A BILL TO BE INTRODUCED BY THE HOUSE INSURANCE COMMITTEE. THE AMENDMENT WAS TO KANSAS STATUTE 40-2a09, "INSURANCE STOCK-HOLDING CORPORATION". SINCE THEN HOUSE BILL 2460 WAS INTRODUCED. THE REASON FOR OUR INTEREST IN THIS PARTICULAR BILL IS THAT 55% OWNERSHIP BY THE PARENT COMPANY VERSUS 75% WOULD ENABLE US TO FORM A HOLDING COMPANY ARRANGEMENT WITHOUT COMMITTING A MAJOR PORTION OF OUR ASSETS TO OWNERSHIP OF THE HOLDING COMPANY.

WE HAVE TALKED TO VARIOUS INVESTMENT BANKERS. THEY HAVE INDICATED IT WOULD NOT BE FEASIBLE TO HAVE A PUBLIC STOCK OFFERING OF TEN MILLION DOLLARS OR LESS. UNDER THE PRESENT LAW, THE TEN MILLION DOLLARS WOULD EQUATE TO THE 25% PUBLIC OFFERING. THE 75% WOULD REQUIRE US TO INVEST APPROXIMATELY THIRTY MILLION DOLLARS INTO THE HOLDING COMPANY.

OUR POLICYHOLDER'S SURPLUS STANDS AT APPROXIMATELY THIRTY-ONE MILLION DOLLARS. THIS WOULD REQUIRE US TO INVEST A MAJORITY OF OUR POLICYHOLDER'S SURPLUS INTO THE HOLDING COMPANY.

BY CHANGING THE 75% OWNERSHIP REQUIREMENT TO 55% OWNERSHIP, IT WOULD REQUIRE OUR COMPANIES TO INVEST APPROXIMATELY TWELVE MILLION DOLLARS. AS YOU CAN SEE, THIS WOULD ALLOW US THE FLEXIBILITY OF NOT HAVING TO INVEST A MAJORITY OF OUR SURPLUS IN THE HOLDING COMPANY. AT THE SAME TIME, WE COULD INCREASE OUR CAPITAL THROUGH THE HOLDING CORPORATION AND BE A MORE VALUABLE ENTITY BOTH TO OUR POLICYHOLDERS AND TO THE STATE OF KANSAS FROM AN ECONOMIC DEVELOPMENT STANDPOINT.

IT WOULD ALSO GIVE US AN OPTION OTHER THAN DEMUTALIZATION TO RAISE CAPITAL FOR FUTURE EXPANSION. INCLUDED IN THE AMENDMENTS OF THIS STATUTE ARE THE PROVISIONS THE KANSAS INSURANCE DEPARTMENT RECOMMENDED AS IT RELATES TO OVERSIGHT AND REGULATION OF THE HOLDING COMPANY ARRANGEMENTS.

Explanatory Memorandum for  
House Bill No. 2129  
(Legislative Proposal No. 6)

The Federal Product Liability Risk Retention Act of 1981 was amended by the 99th Congress as a part of federal efforts to improve insurance capacity through utilization of group self-insurance and group purchasing arrangements. One of the most fundamental changes in the federal law is an expansion of the kinds of insurance to which the act applies. As its title notes, the 1981 law was designed to accommodate products liability and completed operations exposures. The 1986 amendments extend its provisions to commercial liability insurance generally and can be described as a Congressional response to the availability/affordability crisis. The resulting Liability Risk Retention Act of 1986, like its predecessor, preempts application of state laws except those state laws specifically referenced in the law. One of the most significant preemptions is the law or regulation in a state which would otherwise prohibit providing or purchasing liability insurance on a group basis. However, what is not preempted includes a continuation of a state's right to assess taxes on business written by a risk retention group; application of the unfair claims settlement practices law; participation in a mechanism to apportion losses among participants; designation of the commissioner for service of process; the right to conduct an examination, etc. In addition, a risk retention group is subject to virtually all of the laws of the state in which it is chartered. The most notable exception is participation in a state guaranty fund. Thus, even though the federal law contains a significant preemption of state law, it, at the same time, leaves significant responsibilities in the hands of state insurance regulators. House Bill No. 2129 is essentially a model act developed and adopted by the National Association of Insurance Commissioners to establish the permissible state regulatory structure appropriate for risk retention groups and purchasing groups under the revised federal act.

The federal law and this proposal relate to two types of operations. The first is a risk retention group and the second is a purchasing group.

A risk retention group is any corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion of the liability exposure of its group members. A risk retention group must be chartered and licensed as a liability insurance company in one of the 50 states.

A risk purchasing group is any group which has as one of its purposes the purchase of liability insurance on a group basis. A risk purchasing group acquires a master insurance policy and then issues certificates of insurance off the master policy to its group members. A risk purchasing group may only be composed of members whose businesses or activities are similar or related with respect to their liability exposure. A risk

purchasing group may only acquire insurance to cover its members similar or related liability exposure.

The 1986 federal act provides a state with more control over risk retention and risk purchasing groups than the original 1981 act. The original federal act specified the control a state had over risk retention and purchasing groups. If the act did not specifically grant the state authority in an area, the group was exempt from state control. The 1986 act reverses the above by specifying the areas in which a state cannot control a risk retention or risk purchasing group. Under the new act, if an area is not specifically exempt from state control, state law will govern.

This bill will allow the Kansas Insurance Commissioner the authority to regulate risk retention and risk purchasing groups to the fullest extent permissible under the 1986 federal law.

Section by Section Summary of House Bill No. 2129

- Section 1. Amends previous law and defines the terms contained in this proposal. The two fundamental definitions as to what constitutes a risk retention and risk purchasing group are also contained in this section.
- Section 2. Sets forth the requirements for risk retention groups seeking to be chartered in Kansas.
- Section 3. Enumerates the requirements for risk retention groups chartered in a state other than Kansas, but seeking to do business as a risk retention group in this state.
- Section 4. Prohibits risk retention groups from participating in any insurance insolvency guaranty fund, or similar mechanism.
- Section 5. Self-explanatory.
- Section 6. Lists the specific exemptions from state law that a risk purchasing group and its insurer may claim. If it is not specifically exempt under this section, Kansas law will apply.
- Section 7. Describes the required notice a purchasing group, intending to do business in Kansas, must provide the commissioner.
- Section 8. Restricts where a purchasing group may obtain insurance. A purchasing group may obtain insurance from a risk retention group chartered in one of the 50 states. It may also obtain insurance from an insurance company admitted in the state where the purchasing group is located (located meaning any state in which the purchasing group has a liability exposure), or from an insurance company acting pursuant to Kansas excess lines law.

Section 9. Authorizes the commissioner to utilize state laws not specifically exempt by the Liability Risk Retention Act of 1986.

Section 10. Self-explanatory.

Section 11. Requires a license for agents and brokers working for either a risk retention or risk purchasing group in Kansas.

Section 12. Allows Kansas state courts to enforce U.S. District Court findings that a risk retention group is in hazardous financial condition.

Section 13. Self-explanatory.

Section 14. Self-explanatory.



## THE RUEDLINGER COMPANIES

STATEMENT OF THE RUEDLINGER COMPANIES, TOPEKA, KANSAS,  
IN OPPOSITION TO PORTIONS OF HB 2129, March 25, 1987

### INTRODUCTION

The Ruedlinger Companies provide insurance services to several purchasing groups organized and operating under the Product Liability Risk Retention Act of 1981. The Ruedlinger Companies specialize in student accident insurance and athletic liability and accident insurance. Doug Ruedlinger began the company in 1967 and The Ruedlinger Companies now provide insurance services for schools and other groups involved with youth sports throughout the nation.

We appear before the committee in opposition to HB 2129 because the net effect of the bill and of the current Insurance Department operation under its terms is to make it impossible for Kansas members of the purchasing groups we represent to participate in purchasing group liability coverages. While we cannot speak for any other purchasing groups or insurance service providers, it is not exaggerating to state that Kansas commercial liability risks will only be able to participate in any national trade association, professional association or manufacturing association purchasing groups with the greatest of difficulty. For Kansas commercial risks, the 1986 amendments to the Risk Retention Act will not result in greater group liability coverage availability because of the current reaction of the Kansas Insurance Department to the federal act and the terms of this bill, if enacted as presently written. In fact, many Kansas persons and institutions with sports liability risks will lose access to insurance rather than gain access as is the intent of the federal Risk Retention Act of 1986. We respectfully submit that portions of HB 2129 violate both the letter and intent of the federal law it purports to enforce.



HISTORY OF THE LIABILITY RISK RETENTION ACT OF 1986

The Product Liability Risk Retention Act of 1981 (15 U.S.C. § 3901 et seq) was enacted to provide for purchase of group liability coverage of product liability and completed operations coverage. It allowed groups to purchase such coverage as part of a comprehensive liability policy or as a separate coverage. The federal law also provided for the formation of insurance companies owned by the insureds called risk retention groups. These insured product liability risks of the members of the company only. The Product Liability Risk Retention Act of 1981 broke the longstanding prohibition of state insurance laws against group liability coverage. Congress recognized the need for allowing grouping of risks to provide greater purchasing power during the scarcity of insurance and provided for pooling of the risks in risk retention groups or purchasing groups. Continued scarcity of liability insurance led other groups such as nursery school and daycare facilities, nurse-midwives and other professional groups to lobby congress successfully to expand the kinds of liability risks which could be covered by group policies for members only. The result was amendment of the Product Liability Risk Retention Act of 1981, which was renamed the Liability Risk Retention Act of 1986 and became law in October, 1986. A complete copy of the 1981 law with the 1986 amendments is provided as Exhibit A.

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KANSAS INSURANCE DEPARTMENT DOES NOT NEED ADDITIONAL AUTHORITY OVER  
PURCHASING GROUPS PROVIDED BY HB 2129

The National Federation of State High School Associations, in 1984, formed a purchasing group created for the purchase of group liability coverage under the 1981 act. The Ruedlinger Companies provides insurance management services for it. The National Federation of State High School Associations is the umbrella organization through which the state high school associations, including the Kansas State High School Activities Association, provide rules and structure for interscholastic sports

and activities. The National Federation provides uniform rules for all high school sports and through the National Federation, the state associations take other action necessary to protect high school sports in their respective state jurisdictions.

The National Federation Purchasing Group purchased a unique excess liability plan in 1984 and succeeding years which provides coverage for member schools against bodily injury to students while representing the school in interscholastic athletics under the jurisdiction of the state high school association. Many schools have had difficulty maintaining bodily injury coverage for sponsored athletics under their primary liability policies. General liability policies available to schools often are ridered to exclude coverage for sponsored athletic events. Without some liability coverage for risks due to injured football players, high school football would not be possible.

The policy purchased by the National Federation Purchasing Group, for protection of state high school associations and their member schools, is unique in that it has a guarantee to the insured school that a liability settlement offer will be made to the injured student regardless of the school's fault in the injury. The settlement proposal offers reimbursement of much of the economic loss of families with catastrophically injured student athletes such as brain injured or quadriplegic youngsters. The purchasing group coverage does not compete with the primary general liability coverage purchased by the school but is excess to it. It cannot be purchased by individual schools except as a member of the National Federation Purchasing Group.

All this is by way of describing the experience of a currently existing purchasing group upon giving notice as required by 15 U.S.C. §3903,4(d) of the federal law. In response, the Kansas Insurance Department sent a form to be completed;

but before additional information or the form was returned, the Chief Attorney for the Department notified the National Federation Purchasing Group of its decision that the purchasing group was not qualified because the company insuring the purchasing group coverage is not qualified to write insurance in Kansas. The company is admitted and domiciled in Rhode Island and the Purchasing Group, which is domiciled in Rhode Island, legally purchased the coverage there for the entire group as provided by the Liability Risk Retention Act. The Kansas Insurance Department, citing existing statute K.S.A. 40-214 as authority, added the requirement that the insuring company must be admitted or approved as an excess lines company in Kansas. This is the requirement presented in New Sec. 8 at line 0412 of HB 2129. Since the Department claims it has authority to declare a purchasing group to be operating illegally under K.S.A. 40-214, there is no need for Section 8 of HB 2129. Copies of the purchasing group's correspondence and K.S.A. 40-214 are attached for reference as Exhibit B.

We respectfully submit that the Department's interpretation of K.S.A. 40-214 as well as New Section 8 at line 0412 of HB 2129 are inconsistent with and contrary to both the intent and letter of the Liability Risk Retention Act of 1986. At Sec. 4(f) (15 U.S.C. § 3903(f)) the Liability Risk Retention Act of 1986 requires as follows:

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state."

The Kansas Insurance Department in its letter of February 11, 1987, from its Chief Attorney has added a requirement not consistent with the federal law, i.e. that the insurer of the purchasing group must be admitted or approved in Kansas as well as in the state where the policy is purchased by the purchasing group. This added require-

ment defeats the congressional intent to exempt the purchasing group liability coverage from the restrictions of state laws which inhibit group coverages. It also is contrary to the intent and specific language of congress that, with this increased purchasing power of the group, trade, manufacturing and professional association purchasing groups can seek coverage wherever it might be found so long as it is purchased legally where the purchasing group is located.

NEW SEC. 8 IS CONTRARY TO THE FEDERAL LIABILITY  
RISK RETENTION ACT AND SHOULD BE DELETED

To the extent that a state law is inconsistent with the federal act, it is unconstitutional; if it is identical to the federal law, it is unnecessary. Sec. 4(f) of the Liability Risk Retention Act of 1986 (15 U.S.C. §3903(f) states:

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state."

New Sec. 8 at line 0412 of HB 2129 adds the words "any or all the exposure of the risk insured through" at lines 0414 and 0415. These words make the section unconstitutional because they have the effect of creating restrictions contrary to the federal law. They require that the company insuring the purchasing group be admitted in the state where any member of the purchasing group has risk which is insured through purchasing group coverage. A company selling liability coverage to a purchasing group with members in every state would have to be admitted or approved in every state. This added requirement by the state of Kansas would eliminate most purchasing groups from providing coverage for Kansas members' risks. The large insurance companies which are admitted in each and every state are the

insurers which are denying athletic bodily injury liability coverage to high schools and youth athletic teams all across the nation. If these universally admitted companies were available to provide such coverage, there would be no need for group purchasing or risk retention groups. If purchasing groups are to be successful in providing coverage for their Kansas members in periods of scarcity of insurance coverage, they must not be restricted to Kansas admitted or approved companies. Those companies have already been approached by local schools, sports teams, sports officials and coaches associations with negative results for coverage of their sports liability risks; thus the need for purchasing group

New Sec. 8 should be deleted entirely. It is either unconstitutional as written or duplicative of the federal act with the unconstitutional words deleted.

NEW SEC. 6 IS UNCONSTITUTIONAL BECAUSE IT  
ATTEMPTS TO LIMIT THE FEDERAL ACT BY AN IN-  
COMPLETE AND INACCURATE PARAPHRASE OF THE ACT

It is difficult to justify a state law that does nothing but paraphrase the requirements and provisions of a federal law. New Sec. 6 at line 0345 is not even an accurate paraphrase as written; it leaves out important provisions of the federal law and adds the provisions of state law by reference which are contrary to the federal law.

Sec. 4(a) contains much more than New Sec. 6. repeats. Sec. 4(b) also contains exemptions from state insurance statute operations but is not part of the paraphrase of New Sec. 6. Following is a comparison of the paraphrase with the federal law:

## HB 2129

0345 New Sec. 6. Any purchasing group meeting the criteria es-  
 0346 tablished under the provisions of the federal liability risk reten-  
 0347 tion act of 1986 shall be exempt from any law of this state relating  
 0348 to the creation of groups for the purchase of insurance, prohibi-  
 0349 tion of group purchasing or any law that would discriminate  
 0350 against a purchasing group or its members. In addition, an  
 0351 insurer shall be exempt from any law of this state which prohibits  
 0352 providing, or offering to provide, to a purchasing group or its  
 0353 members advantages based on their loss and expense experience  
 0354 not afforded to other persons with respect to rates, policy forms,  
 0355 coverage or other matters. A purchasing group shall be subject to  
 0356 all other applicable laws of this state.

## Liability Risk Retention Act of 1986

PURCHASING GROUPS <sup>AND Section 6,</sup>

SEC. 4. (a) Except as provided in this section, <sup>AND Section 6,</sup> a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

- (1) prohibit the establishment of a purchasing group;
- (2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;
- (3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;
- (4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;
- (5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

- (6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;
- (7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or
- (8) otherwise discriminate against a purchasing group or any of its members.

(b) The exemptions specified in subsection (a) apply to—

- (1) ~~product liability or completed operations liability insurance, and comprehensive general liability insurance~~ which includes either of these coverages, provided to—
    - (A) a purchasing group; or
    - (B) any person who is a member of a purchasing group; and
  - (2) the provision of—
    - (A) ~~product liability or completed operations insurance, and comprehensive general liability coverage,~~
    - (B) insurance related services; or
    - (C) management services;
- to a purchasing group or member of the group.

CONCLUSION

We have confined our remarks to the proposed statute which impacts upon purchasing groups under the Liability Risk Retention Act of 1986 and have respectfully suggested that what duplicates the federal act is unnecessary; what is contrary to it is unconstitutional. The same can be said about most of the sections of HB 2129 which relate to risk retention groups.

As a final thought or criticism of the bill as it is currently written, we suggest that since so much of it duplicates federal statute, it is not necessary that the Commissioner be given authority to make further regulations regarding the Federal Liability Risk Retention Act of 1986.

The patience of the Committee and attention to our comments is greatly appreciated.

Respectfully submitted

THE RUEDLINGER COMPANIES



Margaret A. Gatewood  
Vice President/General Counsel

"SHORT TITLE"

"Section 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'."

DEFINITIONS

Sec. 2. (a) As used in this Act—

15 USC 3901.

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability —

"(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

"(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);"

(4) "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which—

"(i) is chartered and licensed as a liability insurance company and authorized to engage in the business or insurance under the laws of any State, or

"(ii) before January 1, 1986, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986);"

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; and

"(E) which—

"(i) has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or

"(ii) has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group (hereinafter in this section referred to as 'secondary owners');

"(F) whose members or secondary owners are engaged in businesses or activities similar or related with respect to the liability to which such members or secondary owners are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the liability of its group members or secondary owners; and

"(ii) reinsurance with respect to the liability of any other risk retention group (or any members or secondary owners of such other group) which is engaged in businesses or activities so that such group or member or secondary owner meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase "Risk Retention Group";"

(5) "purchasing group" means any group which—

"(A) has as one of its purposes the purchase of liability insurance on a group basis;

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

"(D) is domiciled in any State;"

(6) "State" means any State of the United States or the District of Columbia.

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

"(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or

"(B) to pay other obligations in the normal course of business."

A

2, (b) Nothing in this Act shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of ~~product liability and product liability insurance~~ <sup>insurance</sup> liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this Act, including recognition or qualification of risk retention groups or purchasing groups.

#### RISK RETENTION GROUPS

Sec. 3. (a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of product liability or completed operations liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist."

(E) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;"

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;"

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

#### "NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provision of—

"(A) insurance related services;

"(B) management, operations, and investment activities; or

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance."

(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

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(d) Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or  
(B) a qualified loss reserves specialist.

3  
“(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

“(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

“(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.”

“(f)(1) Subject to the provisions of subsection (a)(1)(C) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

“(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

“(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

“(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.”

#### PURCHASING GROUPS <sup>and Section 6,</sup>

Sec. 4. (a) Except as provided in this section, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) The exemptions specified in subsection (a) apply to—

(1) ~~product liability or completed operations liability insurance, and comprehensive general liability insurance~~ which includes either of these coverages, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) ~~product liability or completed operations insurance, and comprehensive general liability coverage;~~

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

“(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

“(A) shall identify the State in which such group is domiciled;

“(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

“(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

“(D) shall identify the principal place of business of the group. —

“(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

“(1) which—

“(A) was domiciled before April 1, 1986; and

“(B) is domiciled on and after the date of the enactment of this Act,

in any State of the United States;

“(2) which—

“(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State, and

“(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

“(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendment of 1986; and

“(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.”

“(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

“(h) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.”

4

APPLICABILITY OF SECURITIES LAWS

Sec. 5. (a) The ownership interests of members in a risk retention group shall be—

- (1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and
  - (2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.
- (b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- (c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

"Sec. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provisions of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide coverage prohibited by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or

permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

"(e) Nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means for managing the liability of the State or its local governments (or any agency or political subdivision thereof). Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source, or through a broker, agent, purchasing group, or any other person."

SEC. 5. INJUNCTIVE POWERS OF FEDERAL COURTS

The Act, as amended by section 7(c) of this Act, is further amended by adding at the end the following new section:

INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

"Sec. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order."



NATIONAL FEDERATION  
of  
STATE HIGH SCHOOL ASSOCIATIONS  
PURCHASING GROUP

2212 Post Road • Warwick, Rhode Island 02886  
(401) 738-3715

December 18, 1986

Insurance Commissioner

Dear Commissioner:

Pursuant to the requirements of the Liability Risk Retention Act of 1986, this is notice that the National Federation of State High School Associations Purchasing Group, formed in 1984, is domiciled in the state of Rhode Island and has its principal place of business in Rhode Island.

The National Federation of State High School Associations Purchasing Group purchases athletic liability insurance for its members from United International Insurance Company of Providence, Rhode Island.

Sincerely,

*Brice B. Durbin*  
Brice B. Durbin  
Executive Director

B



STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

FLETCHER BELL  
Commissioner

February 2, 1987

National Federation of State High School  
Associations Purchasing Group  
2212 Post Road  
Warwick, RI 02886

Attention: Brice B. Durbin

Application for Recognition as a  
Purchasing Group Doing Business  
In Kansas

Gentlemen:

Enclosed is an application for recognition as a purchasing group not domiciled in Kansas. Please complete the application, enclosing all information requested in paragraph No. 8, and return it to this department for processing.

If you should have any questions in regard to this matter, please do not hesitate to contact this department. This file shall be held in abeyance pending receipt of your reply.

Very truly yours,

Fletcher Bell  
Commissioner of Insurance

Raymond E. Rathert  
Fire & Casualty Supervisor

RER:JES:lbfc  
5351  
F-75  
Enclosure

Attachment III  
Senate F I & I - 3/25/87

KANSAS  
DEPARTMENT OF INSURANCE  
Fire & Casualty Division  
420 S.W. 9th Street  
Topeka, Kansas 66612

APPLICATION FOR RECOGNITION:  
PURCHASING GROUP NO  
DOMICILED IN KANSAS

To the Kansas Commissioner of Insurance: I, \_\_\_\_\_,

President of \_\_\_\_\_ ("Group")  
(Name of Company/Corporation)

\_\_\_\_\_  
(Address)

a purchasing group domiciled in the state of \_\_\_\_\_ and having its principal  
place of business at \_\_\_\_\_, hereby certify that  
(Address)

the Group agrees to be bound by the laws of the state of Kansas and the Liability Risk  
Retention Act of 1986. Accordingly, we agree to the following:

1. The Group hereby designates the Kansas Commissioner of Insurance as its agent  
solely for the purpose of receiving service of legal documents or process;  
  
Note: Instructions attached.
2. The Group has as one of its purposes the purchase of liability insurance on a group  
basis;
3. The Group purchases such insurance only for its group members and only to cover  
their similar or related liability exposure, as described in subparagraph No. 4;  
  
Note: A general liability policy designed to cover more than the group's similar  
or related liability exposure will not be allowed in this state.
4. The Group is composed of members whose businesses or activities are similar or  
related with respect to the liability to which members are exposed by virtue of any  
related, similar, or common business, trade, product, services, premises, or  
operations;
5. The Group is domiciled in one of the fifty states;
6. If the Group obtains insurance through a risk retention group, the risk retention  
group must be in compliance with Kansas state law relative to a risk retention  
group not chartered in this state;
7. Any person acting, or offering to act, as an agent or broker for the Group, which  
solicits members, sells insurance coverage, purchases coverage for its members  
located within this state or otherwise does business in this state shall, before  
commencing any activity, obtain an agents license from the Commissioner of  
Insurance;
8. The Group will initially supply the following information to the Commissioner and  
update the information when necessary:
  - a. Specify the lines and classifications of liability insurance which the Group  
intends to purchase;

- b. Identify the insurance company from which the Group intends to purchase its insurance and the domicile of such company;
  - c. Supply the Kansas Commissioner of Insurance with verification that the company listed in subparagraph (b) is either admitted to, or operating pursuant to the excess and surplus lines laws of the state of Kansas;
  - d. Name of any individual who will be acting as an agent or broker for the purchasing group in the state of Kansas;
  - e. Provide to the Commissioner of Insurance such other information as may be required to verify that the Group is qualified as a purchasing group; and
9. The purchasing group shall notify the commissioner of any subsequent changes in any of the items required to be provided in paragraph No. 8 above.

In addition to the above, the Group acknowledges that the Kansas Commissioner of Insurance is authorized to make use of any of the powers established under the Insurance Code of Kansas to enforce the laws of this state so long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. With regard to any investigation, administrative proceeding, or litigation, the commissioner can rely on the procedural laws and regulations of this state.

Only upon submission of this application and a reply by the commissioner finding that the group is qualified, will the Group be recognized as a bona fide purchasing group.

Executive this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
(Groups President)

State of                    )  
                                  ) ss.  
County of                 )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

FC78

INSTRUCTIONS FOR  
REQUIRED DESIGNATION OF  
COMMISSIONER FOR SERVICE OF PROCESSAPPLICATION FOR RECOGNITION  
PURCHASING GROUP NOT  
DOMICILED IN KANSAS

The purchasing group shall file with the insurance department its written consent, irrevocable, that any action or garnishment proceeding may be commenced against such group in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the present or chief officer of such corporation. Such consent shall be executed by the president of the company and shall be accompanied by a certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president to execute the same. The summons, accompanied by a fee of three dollars, shall be directed to the commissioner of insurance and shall require the defendant to answer not less than 40 days from its date. Such summons, and a certified copy of the petition shall be forthwith forwarded by the clerk of the court to the commissioner of insurance, who shall immediately forward a copy of the summons and the certified copy of the petition, to the president of the group sued and thereupon the commissioner of insurance shall make return of the summons to the court from whence it issued, showing the date of receipt by him, the date of forwarding of such copies, and the name and address of the person to whom he forwarded the copy. Such return shall be made under his hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him.



STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

FLETCHER BELL  
Commissioner

February 11, 1987

Mr. Brice B. Durbin, Executive Director  
National Federation of State High School  
Associations Purchasing Group  
2212 Post Road  
Warwick, Rhode Island 02886

Re: National Federation of State High  
School Associations Purchasing Group

Dear Mr. Durbin:

Your letter of December 18, 1986 has been received and reviewed by this Department.

From the information you have provided us, it does not appear that at this time we will be able to recognize Sports Risk Purchasing Group as a purchasing group lawfully writing business in the State of Kansas. The Liability Risk Retention Act of 1986 provides that a purchasing group may not purchase insurance from an insurer not admitted in the state in which the purchasing group is located unless the purchase of insurance is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

United International Insurance Company of Providence, Rhode Island is not licensed to transact the business of insurance in the State of Kansas nor does the company appear on our approved list of nonadmitted insurers authorized to write insurance pursuant to the excess and surplus lines laws of this State. Please advise this Department if our information is incorrect.

We are enclosing a copy of an "Application for Recognition" for purchasing groups not domiciled in Kansas. To be recognized as a purchasing group lawfully transacting business in Kansas, this application must be completed and the group must be found to be operating pursuant to the Liability Risk Retention Act of 1986 and in compliance with Kansas law not specifically pre-empted by the Act.

Please be advised that we will consider any policy issued through the group insuring a Kansas risk to be a violation of K.S.A. 40-214 and will take appropriate administrative action.

We would be happy to review any additional information you may have which indicates that you should be recognized in Kansas.

Attachment III  
Senate F I & I - 3/25/87

Mr. Brice B. Durbin  
February 11, 1987  
Page 2

INSURANCE DEPARTMENT

TOPEKA

If you should have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

Fletcher Bell  
Commissioner of Insurance

Pamela Sjöholm  
Chief Attorney

PS:ks  
cc: Margaret Gatewood  
Enclosure  
LE/3597

Attachment III  
Senate F I & I - 3/25/87

ent to issue license. *Insurance Co. v. Wilder*, 40 K. 561, 568, 20 P. 265.

**40-211. Amount of deposit of foreign company outside United States.** No insurance company organized under the laws of any government or state other than one of the United States, shall be permitted to transact the business of insurance in this state unless the aggregate of such deposits shall be at least one hundred thousand dollars in excess of all its liabilities in the United States for unpaid losses, unearned premiums on risks not expired, and all other liabilities in the United States.

**History:** L. 1927, ch. 231, 40-211; June 1.

**Source or prior law:**

L. 1879, ch. 116, § 2; R.S. 1923, 40-408.

**Research and Practice Aids:**

Insurance—21.

C.J.S. Insurance § 81.

**CASE ANNOTATIONS**

**Annotation to R.S. 1923, 40-408:**

1. Section cited; revocation of license. *Insurance Co. v. Wilder*, 40 K. 561, 568, 20 P. 265.

**40-212. Credit for reinsured risks.** In considering the liabilities of any insurance company organized under the laws of any government or state other than one of the United States, it shall not be credited with risks reinsured, except for such risks as are reinsured in companies doing business in the United States, and which are or might, under the statutes of this state, be permitted to do business in this state.

**History:** L. 1927, ch. 231, 40-212; June 1.

**Source or prior law:**

L. 1879, ch. 116, § 3; R.S. 1923, 40-409.

**CASE ANNOTATIONS**

**Annotation to R.S. 1923, 40-409:**

1. Section cited; revocation of license. *Insurance Co. v. Wilder*, 40 K. 561, 568, 20 P. 265.

**40-213. Unlawful transfer of premium notes.** It shall be unlawful for any insurance company or any agent thereof who shall have accepted premium notes in payment for policies of insurance to sell or assign such note or notes prior to the delivery of the policy or policies to the insured.

**History:** L. 1927, ch. 231, 40-213; June 1.

**Source or prior law:**

L. 1909, ch. 158, § 1; R.S. 1923, 40-225.

**CASE ANNOTATIONS**

1. Premium note valid when policy delivered. *Sutton v. Wright*, 94 K. 499, 500, 147 P. 62.

2. Holder with knowledge policy not issued takes note subject to defense. *State Bank v. Weiser*, 117 K. 389, 392, 232 P. 613.

3. Cited; holder with knowledge notes taken for premium; defense of illegality proper. *Fidelity Savings State Bank v. Grimes*, 156 K. 55, 58, 59, 131 P.2d 894.

**40-214. Conditions under which insurance may be written; certificate of authority; revocation, when; unlawful acts.** It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions of the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245 and amendments thereto. Neither the enrollment of individuals under a group policy nor the inclusion of insurance in a credit transaction under an arrangement for its purchase by the creditor in compliance with the applicable provisions of the uniform consumer credit code shall constitute the effecting of a contract of insurance.

It shall be unlawful for any insurance company organized under the laws of this state to do business in any other state or territory of the United States without being first legally admitted and authorized to do business under the laws of such state or territory, and the insurance commissioner may revoke the license of any insurance company organized under the laws of this state and doing business in another state or territory without being first authorized so to do, and may require said company to pay the taxes upon the business so unlawfully written to the state or territory in which the business was written as provided by the

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laws of said state or territory. A company shall be considered admitted and authorized for the purposes of this section when it has been legally authorized to operate in such other state or territory as a nonadmitted insurer.

**History:** L. 1927, ch. 231, 40-214; L. 1929, ch. 196, § 1; L. 1959, ch. 209, § 1; L. 1974, ch. 184, § 2; L. 1979, ch. 133, § 1; July 1.

**Source or prior law:**

L. 1871, ch. 93, §§ 18, 23, 45; L. 1885, ch. 131, §§ 6, 15; L. 1898, ch. 23, § 14; L. 1899, ch. 149, § 12; L. 1901, ch. 230, §§ 4, 18; L. 1903, ch. 334, § 2; L. 1905, ch. 159, § 3; L. 1905, ch. 270, § 1; L. 1907, ch. 228, §§ 2, 14; L. 1909, ch. 153, §§ 4, 12, 23; L. 1913, ch. 206, §§ 4, 15, 23; L. 1917, ch. 127, § 2; L. 1921, ch. 202, §§ 5, 8; R.S. 1923, 17-1803, 40-115, 40-121, 40-302, 40-365, 40-375, 40-604, 40-614, 40-622, 40-717, 40-802, 40-814, 40-1005, 40-1008.

**Research and Practice Aids:**

Insurance—5.

C.J.S. Insurance §§ 69, 1413.

Certificate of authority, Vernon's Kansas Forms § 3055.

**Law Review and Bar Journal References:**

Credit card offers of insurance may be violative of statute, 9 K.L.R. 475 (1961)[ quoting a Feb. 3, 1961, opinion of the attorney general].

**CASE ANNOTATIONS**

**Annotations to L. 1871, ch. 93, § 18:**

1. License not revocable because agent divides commissions with nonresident agent. Maxwell v. Church, 62 K. 487, 63 P. 738.

2. Policy assignable although company has lost authority since issuing same. Bank v. Renn, 63 K. 334, 339, 65 P. 698.

3. Liability of agents causing insurance of goods in unauthorized company. Latham v. Harrod, 71 K. 565, 81 P. 214.

4. The title of this act embraces this section. Harrod v. Latham, 77 K. 466, 95 P. 11.

**Annotations to L. 1905, ch. 159, § 3:**

5. Company guaranteeing payment of bank deposits must obtain certificate. Guaranty Co. v. Barnes, 81 K. 422, 424, 426, 105 P. 697.

6. State cannot abridge right to remove case to federal court. Insurance Co. v. Surety Co., 94 K. 305, 307, 146 P. 412.

7. Company may remove case even though consent to suit filed. Insurance Co. v. Surety Co., 94 K. 305, 307, 146 P. 412.

**Annotations to R.S. 1923, 40-115:**

8. Powers of agent limited to those conferred by company, Eikelberger v. Ins. Co., 107 K. 9, 10, 190 P. 611.

9. Legislature empowered, owing to public interest, to regulate insurance rates. German Alliance Ins. Co. v. Lewis, 189 F. 769. Affirmed: 233 U.S. 389, 414, 415, 416, 34 S.Ct. 612, 58 L.Ed. 1011.

**Annotations to R.S. 1923, 40-121:**

10. State empowered to bring quo warranto pro-

ceedings against insurance company. The State, *ex rel.*, v. Ins. Co., 30 K. 585, 588, 2 P. 840.

11. This section applies to fire insurance companies. Latham v. Harrod, 71 K. 565, 81 P. 214.

12. Mutual burial associations must comply with the statute. The State v. Burial Association, 73 K. 179, 84 P. 757.

13. Title of this act is sufficient to include this section. Harrod v. Latham, 77 K. 466, 95 P. 11.

**Annotation to L. 1929, ch. 196, § 1:**

14. Duties of commissioner under 40-703 ministerial; plaintiff entitled to certificate. Fidelity Life Ass'n v. Hobbs, 161 K. 163, 168, 166 P.2d 1001.

**40-215. Duration of licenses and certificates.** All certificates and licenses granted under this code shall continue in force until suspended, revoked, or otherwise terminated by the commissioner of insurance.

**History:** L. 1927, ch. 231, 40-215; L. 1978, ch. 167, § 1; July 1.

**Source or prior law:**

L. 1871, ch. 93, § 24; L. 1885, ch. 131, § 21; R.S. 1923, 40-122, 40-381.

**Research and Practice Aids:**

Insurance—5.

C.J.S. Insurance §§ 69, 1413.

**CASE ANNOTATIONS**

1. Foreign life company obtained only license to transact business, not a property right; revocation of license did not violate fourteenth amendment of U.S. Constitution. Bankers Service Life Ins. Co. v. Sullivan, 188 K. 783, 791, 366 P.2d 264.

**40-216. Business prohibited until certain filings made; filing of contracts on behalf of insurer by rating organization or another insurer; suspension or modification of filing requirements by commissioner.** No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within thirty (30) days of such filing, to the company propos-



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**STATEMENT BY NELSON HARTMAN, EXECUTIVE SECRETARY  
KANSAS STATE HIGH SCHOOL ACTIVITIES ASSOCIATION  
IN OPPOSITION TO PORTIONS OF HB 2129  
March 25, 1987**

I am Nelson Hartman, Executive Secretary of the Kansas State High School Activities Association. I speak in opposition to portions of H.B. 2129 because of the effect it will have upon Kansas high school interscholastic activities, including athletics.

The KSHSAA is a voluntary organization of public and private senior high and junior high schools created for the purpose of overseeing interscholastic activities. The member schools, individually and collectively as the KSHSAA, have had a long-time involvement in providing adequate accident coverage for students injured while representing their schools. These same schoolmen and women are often charged with the responsibility of providing liability coverage for the school covering the schools' exposure to liability for activity accidents to students. As I'm sure you have heard, liability for school athletic exposure is difficult to find and usually quite expensive. In recent years, I have been told some schools have had riders added to their general liability policies excluding coverage for sponsored athletic activities.

The KSHSAA has provided, through the National Federation of State High Schools Purchasing Group, liability coverage for member Kansas schools for their exposure to interscholastic activities and athletic injury risks. The policy also provides for guaranteed offer of settlement to the catastrophically injured student which, if accepted, covers the student's economic loss, including unpaid medical bills.

This coverage has been available under the original Liability Risk Retention Act of 1981 and availability should be continued with the 1986 expansion of the Risk Retention Act to cover more kinds of commercial liability risks. I have read nothing that leads me to believe Congress intended to reduce the availability of group liability coverage by enacting the 1986 amendments.

However, if this HB 2129 is enacted as state law, I understand and have been told, we won't be able to purchase in 1987 what we have purchased under the previous act. New Section 8 is the challenge because the practical effect upon us will be to make the coverage illegal in Kansas even though it will be legal in other states.