

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0308.01 Thomas Morris x4218

SENATE BILL 21-063

SENATE SPONSORSHIP

Sonnenberg and Fields,

HOUSE SPONSORSHIP

Hooton and Pelton,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING AN EXPANSION OF THE ABILITY OF AN EXISTING**
102 **ASSOCIATION CONSISTING OF MULTIPLE EMPLOYERS TO OFFER**
103 **HEALTH CARE BENEFITS TO THE MEMBERS OF THE ASSOCIATION,**
104 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law allows an existing association consisting of multiple employers, referred to as a "multiple employer welfare arrangement" (MEWA) to offer health care benefits to the association's members only

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 30, 2021

if, among other requirements, the MEWA has been in existence continuously since at least January 1, 1983. The bill changes that date to January 1, 2010.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-903.5, **amend**
3 (7)(c) introductory portion; and add (7)(d) as follows:

4 **10-3-903.5. Jurisdiction over providers of health care benefits.**

5 (7) (c) A multiple employer welfare arrangement is any arrangement
6 which THAT complies with EITHER the following requirements OR
7 SUBSECTION (7)(d) OF THIS SECTION:

8 (d) (I) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT
9 MEETS THE REQUIREMENTS SPECIFIED IN SUBSECTION (7)(c) OF THIS
10 SECTION OTHER THAN SUBSECTION (7)(c)(I) OF THIS SECTION MAY FILE AN
11 APPLICATION FOR A WAIVER WITH THE COMMISSIONER. THE APPLICATION
12 MUST INCLUDE:

13 (A) A COPY OF THE MULTIPLE EMPLOYER WELFARE
14 ARRANGEMENT'S ARTICLES OF INCORPORATION, CONSTITUTION, TRUST
15 AGREEMENT, BYLAWS, AND ANALOGOUS ORGANIC DOCUMENTS THAT
16 GOVERN THE OPERATION OF THE ARRANGEMENT;

17 (B) A COPY OF MEMBERSHIP CRITERIA, A STATEMENT OF
18 OWNERSHIP OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT'S
19 MEMBERS, AND A SUMMARY OF THE ACTIVITIES AND BENEFITS, OTHER
20 THAN HEALTH PLAN COVERAGE, PROVIDED TO MEMBERS;

21 (C) A LIST OF NAMES, ADDRESSES, AND OFFICIAL CAPACITIES WITH
22 THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT OF THE INDIVIDUALS
23 WHO WILL BE RESPONSIBLE FOR THE MANAGEMENT AND CONDUCT OF THE
24 AFFAIRS OF THE ARRANGEMENT, INCLUDING ALL TRUSTEES, OFFICERS, AND

1 DIRECTORS, ALONG WITH A FULL DISCLOSURE OF THE EXTENT AND NATURE
2 OF ANY CONTRACTS BETWEEN THE INDIVIDUALS AND THE ARRANGEMENT,
3 INCLUDING POSSIBLE CONFLICTS OF INTEREST;

4 (D) CRIMINAL BACKGROUND RECORDS. EACH INDIVIDUAL
5 SPECIFIED IN SUBSECTION (7)(d)(I)(C) OF THIS SECTION SHALL SUBMIT A
6 SET OF FINGERPRINTS TO THE COMMISSIONER. THE COMMISSIONER SHALL
7 FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF
8 INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL
9 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING
10 RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE
11 FEDERAL BUREAU OF INVESTIGATION. THE MULTIPLE EMPLOYER WELFARE
12 ARRANGEMENT SHALL BEAR ONLY THE ACTUAL COSTS OF THE RECORD
13 CHECK. WHEN THE RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY
14 RECORD CHECK OF AN INDIVIDUAL PERFORMED PURSUANT TO THIS
15 SUBSECTION (7)(d)(I)(D) REVEAL A RECORD OF ARREST WITHOUT A
16 DISPOSITION, THE COMMISSIONER SHALL REQUIRE THAT INDIVIDUAL TO
17 SUBMIT TO A NAME-BASED CRIMINAL HISTORY RECORD CHECK, AS DEFINED
18 IN SECTION 22-2-119.3 (6)(d).

19 (E) A COPY OF THE POLICY, CONTRACT, CERTIFICATE, SUMMARY
20 PLAN DESCRIPTION, OR OTHER EVIDENCE OF THE BENEFITS AND
21 COVERAGES PROVIDED TO COVERED EMPLOYEES, INCLUDING FOR EACH
22 FORM OF EVIDENCE A TABLE OF THE RATES CHARGED OR PROPOSED TO BE
23 CHARGED;

24 (F) A COPY OF THE MULTIPLE EMPLOYER WELFARE
25 ARRANGEMENT'S STOP-LOSS OR EXCESS INSURANCE AGREEMENT, IF ANY;

26 (G) A COPY OF AUDITED FINANCIAL STATEMENTS OF THE MULTIPLE
27 EMPLOYER WELFARE ARRANGEMENT FOR THE PREVIOUS FIVE YEARS THAT

1 WERE PREPARED BY A LICENSED CERTIFIED PUBLIC ACCOUNTANT,
2 INCLUDING AN ACTUARIAL OPINION; AND

3 (H) A COPY OF EVERY CONTRACT BETWEEN THE MULTIPLE
4 EMPLOYER WELFARE ARRANGEMENT AND ITS ADMINISTRATOR OR SERVICE
5 COMPANY, INCLUDING, IF APPLICABLE, A COPY OF THE FIDELITY BOND
6 SPECIFIED IN SUBSECTION (7)(d)(II)(C) OF THIS SECTION.

7 (II) TO QUALIFY FOR A WAIVER, A MULTIPLE EMPLOYER WELFARE
8 ARRANGEMENT MUST:

9 (A) MAINTAIN UNALLOCATED RESERVES OF NOT LESS THAN TWO
10 MILLION DOLLARS OF MINIMUM SURPLUS PLUS THREE TIMES THE MULTIPLE
11 EMPLOYER WELFARE ARRANGEMENT'S AUTHORIZED CONTROL LEVEL OF
12 RISK-BASED CAPITAL;

13 (B) BE MANAGED BY AND PROVIDE BENEFITS THROUGH AN
14 ADMINISTRATOR OR SERVICE COMPANY THAT IS IN GOOD STANDING IN ALL
15 OTHER STATES IN WHICH THE ADMINISTRATOR OR SERVICE COMPANY
16 OPERATES, AND IF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT
17 PROVIDES COVERAGE THROUGH ONE OR MORE BROKERS, THE BROKERS
18 MUST BE LICENSED AS PRODUCERS PURSUANT TO ARTICLE 2 OF THIS TITLE
19 10;

20 (C) BE MANAGED BY AN ADMINISTRATOR OR SERVICE COMPANY
21 THAT IS A LICENSED THIRD-PARTY ADMINISTRATOR OR IS COVERED BY A
22 FIDELITY BOND IN THE AMOUNT OF TWO HUNDRED THOUSAND DOLLARS;

23 (D) MAINTAIN A COMPLAINT SYSTEM THAT COMPLIES WITH
24 SECTION 10-3-1104 (1)(i) AND MAKE THE SYSTEM AVAILABLE TO THE
25 DIVISION UPON REQUEST;

26 (E) FILE THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT'S
27 PLAN MARKETING MATERIALS WITH THE DIVISION;

1 (F) PROVIDE TO THE COMMISSIONER QUARTERLY FINANCIAL
2 STATEMENTS TO DEMONSTRATE THAT THE RESERVES REQUIRED PURSUANT
3 TO SUBSECTION (7)(d)(II)(A) OF THIS SECTION ARE BEING MAINTAINED
4 ALONG WITH ANNUAL AUDITED FINANCIAL REPORTS; AND

5 (G) PROVIDE NONDISCRIMINATORY PLAN COVERAGE TO ITS
6 MEMBERS THAT IS APPLIED EVENLY AND EQUITABLY TO ALL EMPLOYEES
7 OF THE MEMBERS AND THAT MATCHES WHAT IS OTHERWISE REQUIRED OF
8 HEALTH BENEFIT PLANS, INCLUDING ELEMENTS COVERAGE OF ESSENTIAL
9 HEALTH BENEFITS AND COMPLIANCE WITH THE FEDERAL "PATIENT
10 PROTECTION AND AFFORDABLE CARE ACT", AS AMENDED, PUB.L.
11 111-148; NETWORK PROVIDER REQUIREMENTS AND COMPLIANCE WITH
12 NETWORK ADEQUACY STANDARDS; GUARANTEE ISSUE; AND ANNUAL RATE
13 AND FORM FILINGS WITH THE DIVISION.

14 (III) THE COMMISSIONER SHALL CONSIDER GRANTING A WAIVER TO
15 A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT HAS SUBMITTED A
16 COMPLETE APPLICATION PURSUANT TO SUBSECTION (7)(d)(I) OF THIS
17 SECTION AND THAT IS IN COMPLIANCE WITH SUBSECTION (7)(d)(II) OF THIS
18 SECTION IN ACCORDANCE WITH THE FOLLOWING FACTORS:

19 (A) WHETHER THE ESTABLISHMENT OF A MULTIPLE EMPLOYER
20 WELFARE ARRANGEMENT HAS THE POTENTIAL TO LOWER INSURANCE
21 COSTS FOR ITS MEMBERS OR PROVIDE ADDITIONAL INSURANCE OPTIONS IN
22 A REGION OR REGIONS OF THE STATE WHERE THERE MAY NOT BE
23 SUFFICIENT COMPETITION;

24 (B) POTENTIAL IMPACT ON THE FULLY INSURED MARKET;

25 (C) CONSUMER EXPERIENCE WITH ACCESSING COVERAGE AND THE
26 POTENTIAL FOR CONSUMER HARM;

27 (D) WHETHER THE ADMINISTRATOR OF THE MULTIPLE EMPLOYER

1 WELFARE ARRANGEMENT HAS DEMONSTRATED FINANCIAL SOUNDNESS SO
2 AS TO NOT JEOPARDIZE THE VIABILITY OF THE ARRANGEMENT OR HARM ITS
3 MEMBERS; AND

4 (E) OTHER FACTORS THAT DEMONSTRATE THE NEED FOR
5 ADDITIONAL INSURANCE OPTIONS TO INCREASE COMPETITION OR LOWER
6 HEALTH-CARE COSTS FOR CONSUMERS.

7 (IV) A WAIVER GRANTED PURSUANT TO THIS SUBSECTION (7)(d)
8 SUBJECTS THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT TO THE
9 DIVISION'S FULL ENFORCEMENT AUTHORITY AVAILABLE PURSUANT TO THIS
10 TITLE 10 AND ALLOWS THE ARRANGEMENT TO OPERATE PURSUANT TO THIS
11 SUBSECTION (7) FOR TWO YEARS. TO CONTINUE TO OPERATE PURSUANT TO
12 THIS SUBSECTION (7), AN ARRANGEMENT MUST REAPPLY FOR A WAIVER;
13 EXCEPT THAT, IF THE COMMISSIONER GRANTS FIVE CONSECUTIVE WAIVERS
14 PURSUANT TO THIS SUBSECTION (7)(d), AN ARRANGEMENT MAY CONTINUE
15 TO OPERATE PURSUANT TO THIS SUBSECTION (7) WITHOUT AGAIN
16 APPLYING FOR A WAIVER.

17 **SECTION 2. Appropriation.** For the 2021-22 state fiscal year,
18 \$13,352 is appropriated to the department of regulatory agencies for use
19 by the division of insurance. This appropriation is from the division of
20 insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
21 on an assumption that the division will require an additional 0.2 FTE. To
22 implement this act, the division may use this appropriation for personal
23 services.

24 **SECTION 3. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to conduct occurring on or after the applicable
8 effective date of this act.