

ENROLLED SENATE
BILL NO. 440

BY: CAPPS of the SENATE

and

GLOVER of the HOUSE

AN ACT RELATING TO MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; DEFINING TERM; REQUIRING INSURER WHICH ADMINISTERS A MULTIPLE EMPLOYER WELFARE ARRANGEMENT (MEWA) TO PROVIDE INSURANCE COMMISSIONER WITH CERTAIN INFORMATION; REQUIRING MEWA BE ADMINISTERED BY LICENSED INSURER OR LICENSED THIRD PARTY ADMINISTRATOR; MAKING OPERATION, MAINTENANCE OR ESTABLISHMENT OF MEWA UNLAWFUL UNLESS LICENSED BY INSURANCE COMMISSIONER; MAKING MEWA OPERATING WITHOUT A VALID LICENSE AN UNAUTHORIZED INSURER; PROVIDING CERTAIN EXEMPTIONS; REQUIRING STRICT PROOF ESTABLISHING EXEMPTION; SETTING OUT REQUIREMENTS OF MEWA FOR LICENSURE AND TO MAINTAIN A MEWA; REQUIRING MEWA ISSUE CERTAIN EVIDENCE OF BENEFITS AND COVERAGE; REQUIRING CERTAIN STATEMENT; REQUIRING CERTAIN STATEMENT IF APPLICABLE; STATING CONDITIONS FOR NOT GRANTING OR CONTINUING A LICENSE; REQUIRING CERTAIN FILING OF CONTRACTS FOR QUALIFYING FOR AND RETAINING LICENSE; GRANTING CERTAIN AUTHORITY TO REQUIRE RENEGOTIATION OF CERTAIN CONTRACTS; SETTING FILING FEES; MAKING FAILURE TO MAINTAIN COMPLIANCE GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE; PROHIBITING CERTAIN REPRESENTATIONS BY MEWA; REQUIRING ASSOCIATION SPONSORING MEWA TO FILE APPLICATION FOR LICENSE; REQUIRING CERTAIN ATTACHMENTS AND INFORMATION; REQUIRING ADMINISTRATOR RETAINED BY MEWA TO BE LICENSED THIRD PARTY ADMINISTRATOR; PROVIDING FOR CERTAIN BOND OF CERTAIN PERSONS; REQUIRING MEWA COMPLY WITH CERTAIN LAWS; REQUIRING ANNUAL REPORT OF FINANCIAL CONDITION; REQUIRING REPORT CONTAIN CERTAIN INFORMATION; REQUIRING SUBMISSION OF ACTUARIAL CERTIFICATION INDICATING CERTAIN INFORMATION; AUTHORIZING COMMISSIONER TO REQUIRE FILING OF QUARTERLY FINANCIAL STATEMENT UNDER CERTAIN CIRCUMSTANCES; MAKING MEWA FAILING TO FILE REQUIRED REPORTS SUBJECT TO CERTAIN LAW AND AUTHORIZING INSURANCE COMMISSIONER TO SUSPEND AUTHORITY TO ENROLL INSUREDS OR TO DO BUSINESS FOR CONTINUED FAILURE; STATING CONDITIONS UNDER WHICH INSURANCE COMMISSIONER SHALL DENY, SUSPEND OR REVOKE LICENSE OF MEWA AND CONDITIONS UNDER WHICH COMMISSIONER MAY TAKE DISCIPLINARY ACTION; AUTHORIZING COMMISSIONER TO ORDER MEWA TO FILE CORRECTIVE ACTION PLAN UNDER CERTAIN CONDITIONS; SETTING OUT PROVISIONS TO BE ADDRESSED IN CORRECTIVE ACTION PLAN; AUTHORIZING

COMMISSIONER TO ORDER CERTAIN CORRECTIVE ACTION
IF MEWA FAILS TO SUBMIT PLAN; STATING CONDITIONS
PERTAINING TO ORDER TO SUSPEND AUTHORITY TO
ENROLL INSUREDS AND FOR REINSTATEMENT OF SUCH
AUTHORITY; PROVIDING FOR CODIFICATION; AND
PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 633 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this act, the term "Multiple Employer Welfare Arrangement" or "MEWA" means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1002(40)(A), as amended, that meets either or both of the following criteria:

1. One or more of the employer members of the MEWA is either domiciled in this state or has its principal place of business or principal administrative office in this state; or

2. The MEWA solicits an employer that is domiciled in this state or that has its principal place of business or principal administrative office in this state.

B. Each insurer licensed to do business in this state, including any corporation organized under the provisions of Article 26 of Title 36 of the Oklahoma Statutes, that administers a MEWA shall provide the Insurance Commissioner with such information regarding the insurer's administrative services contract or contracts with such MEWA or MEWAs that the Commissioner may reasonably require.

C. A MEWA shall be administered only by a licensed insurer or a licensed third party administrator.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 634 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful to operate, maintain or establish a MEWA unless the MEWA has a valid license issued by the Insurance Commissioner. Any MEWA operating in this state without a valid license is an unauthorized insurer.

B. This act shall not apply to:

1. A MEWA that offers or provides benefits that are fully insured by an authorized insurer;

2. A MEWA that is exempt from state insurance regulation in accordance with the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 43-406);

3. Any plan that has no more than two employer members which share substantial common support other than income generated by their respective similar business classification;

4. A plan that has no more than two employer members, which together have a combined net worth of more than Five Million Dollars (\$5,000,000.00) and each of such member employers participated in the continuous sponsorship and maintenance of such MEWA for the benefit of their employees for a period of more than ten (10) years next preceding the effective date of this act; or

5. A MEWA which has been in existence and has provided health insurance for at least five (5) years prior to January 1, 1993, and which was established by a trade, industry or professional association of employers that has a constitution or by-laws, that has been organized and maintained in good faith for at least thirty

(30) continuous years prior to January 1, 1993, and its members are persons, firms or corporations qualified to print legal notices pursuant to Section 106 of Title 25 of the Oklahoma Statutes.

C. Any entity which claims to be exempt from state regulation pursuant to subsection B of this section shall provide to the Commissioner strict proof establishing such exemption.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 635 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA either must be:

1. a. nonprofit,
 - b. (1) established by a trade association, industry association or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of five (5) years for purposes other than that of obtaining or providing insurance, or
(2) requires membership in an association described in division (1) of this subparagraph in order to obtain the insurance offered by the MEWA,
 - c. operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all operations of the MEWA. Except as provided in this paragraph, the trustees must:
 - (1) be owners, shareholders, partners, officers, directors, or employees of one or more employers in the MEWA. With the Insurance Commissioner's approval, a person who is not such an owner, shareholder, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, shareholder, partner, officer or employee of the administrator or service company of the MEWA,
 - (2) have the authority to approve applications of association members for participation in the MEWA, and
 - (3) have the authority to contract with an authorized administrator or service company to administer the operations of the MEWA,
 - d. neither offered nor advertised to the public generally,
 - e. operated in accordance with sound actuarial principles, and
 - f. offered only after Two Hundred Thousand Dollars (\$200,000.00) of cash or securities eligible for the investment of capital funds of a domestic insurance company under Title 36 of the Oklahoma Statutes is titled in such a manner that it may not be traded, sold or otherwise expended without the consent of the Insurance Commissioner; provided, said funds shall be taken into account in determining whether the MEWA is actuarially sound, and evidence of said investment shall be filed with the State Treasurer; or
2. a. operated pursuant to a trust agreement for a trust which has its situs in this state and which has as one

- of its trustees a financial institution which is independent of the entity which established the MEWA,
- b. operated and administered in a manner that causes all assets of the MEWA to be held in trust until paid either:
 - (1) for the benefit of individuals who receive medical, dental or similar benefits from the MEWA, or
 - (2) for the expenses of the MEWA, such as the fees of the trustee, licensed agents, administrator, service company, and all expenses of complying with the provisions of this act,
 - c. offered only to employers for the benefit of their employees,
 - d. operated in accordance with sound actuarial principles, and
 - e. offered only after Two Hundred Thousand Dollars (\$200,000.00) of cash or securities eligible for the investment of capital funds of a domestic insurance company under Title 36 of the Oklahoma Statutes is titled in such a manner that it may not be traded, sold or otherwise expended without the consent of the Insurance Commissioner; provided, said funds shall be taken into account in determining whether the MEWA is actuarially sound, and evidence of said investment shall be filed with the State Treasurer.

B. 1. The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided.

2. The evidence of benefits and coverages provided shall contain, in boldface type in a conspicuous location, the following statement: "THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST FUND ESTABLISHED BY A GROUP OF EMPLOYERS (name of MEWA). THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE (name of MEWA)." If the MEWA has excess insurance, the following statement shall be added: "EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN AMOUNTS."

3. If applicable, the same documents shall contain in boldface type in a conspicuous location: "THE BENEFITS AND COVERAGE DESCRIBED HEREIN ARE FUNDED BY CONTRIBUTIONS FROM EMPLOYERS, EMPLOYEES, AND OTHER INDIVIDUALS ELIGIBLE FOR COVERAGE." (If the MEWA has excess insurance, the following statement shall be added: "EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN AMOUNTS.") "THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND COVERAGES."

4. Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.

C. The Commissioner shall not grant or continue a license to any MEWA if the Commissioner reasonably deems that:

1. Any trust, manager or administrator is incompetent, untrustworthy, or so lacking in insurance expertise as to make the operations of the MEWA hazardous to the potential and existing insureds;

2. Any trustee, manager or administrator has been found guilty of or has pled guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of one (1) year or more under the law of any state or country, whether or not a judgment or conviction has been entered; or

3. Any trustee, manager or administrator has had any type of insurance license justifiably revoked in this or any other state.

D. To qualify for and retain a license, a MEWA shall file all contracts with administrators or service companies with the Insurance Commissioner, and report any changes in such contracts to the Commissioner in advance of their implementation. The Commissioner shall have the authority to cause any contract with an administrator or service company to be renegotiated if the Commissioner reasonably determines that the charges under any such contract are excessively high in light of the services being delivered under the contract.

E. An initial filing fee of One Thousand Dollars (\$1,000.00) is required for licensure. Each subsequent year the MEWA is in operation, an annual fee of Two Hundred Fifty Dollars (\$250.00) shall be required.

F. Failure to maintain compliance with the eligibility requirements established by this section is a ground for denial, suspension or revocation of the license of a MEWA.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 636 of Title 36, unless there is created a duplication in numbering, reads as follows:

No licensed MEWA shall use in its name, contracts, literature, advertising in any medium, or any other printed matter any words or descriptions which would cause beneficiaries or potential beneficiaries to believe it is an insurance company.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 637 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each MEWA shall file with the Insurance Commissioner an application for a license on a form prescribed by the Commissioner and signed under oath by officers of the association or the administrator of the MEWA. The application shall include or have attached the following:

1. A copy of any articles of incorporation, constitution and bylaws of any association;

2. A list of the names, addresses and official capacities with the MEWA of the individuals who will be responsible for the management and conduct of the affairs of the MEWA, including all trustees, officers and directors. Such individuals shall fully disclose the extent and nature of any contracts or arrangements between them and the MEWA, including possible conflicts of interest;

3. A copy of the articles of incorporation, bylaws or trust agreement that governs the operation of the MEWA;

4. A copy of the policy, contract, certificate, summary plan description or other evidence of the benefits and coverages provided to covered employees, including a table of the rates charged or proposed to be charged for each form of such contract. An actuary who is a Fellow of the Society of Actuaries (FSA) and has experience in establishing rates for a self-insured trust and health services being provided, shall certify that:

a. the rates are neither inadequate, nor excessive, nor unfairly discriminatory,

b. the rates are appropriate for the classes of risks for which that have been computed, and

c. an adequate description of the rating methodology has been filed with the Commissioner and such methodology follows consistent and equitable actuarial principles;

5. Any administrator retained by the MEWA must be a licensed third party administrator. Any other individual who does not meet the definition of a third party administrator, but handles the funds

or assets of the MEWA, must provide a copy of a fidelity bond in the amount of Fifty Thousand Dollars (\$50,000.00);

6. A copy of the MEWA's excess insurance agreement, if any;

7. In the case of a MEWA which has not been in operation for at least three (3) years on January 1, 1993, a feasibility study, made by a Fellow of the Society of Actuaries (FSA) with an opinion acceptable to the Commissioner, that addresses market potential, market penetration, market competition, operating expenses, gross revenues, net income, total assets and liabilities, cash flow and other items as the Commissioner requires. The study shall be for the greater of three (3) years or until the MEWA has been projected to be profitable for twelve (12) consecutive months. The study must show that the MEWA would not, at any month end of the projection period, have less than ninety percent (90%) of the reserves as required by the Fellow of the Society of Actuaries (FSA);

8. A copy of an audited financial statement of the MEWA prepared by a licensed certified public accountant;

9. A copy of every contract between the MEWA and any administrator or service company; and

10. Such additional information as the Commissioner may reasonably require.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 638 of Title 36, unless there is created a duplication in numbering, reads as follows:

Every MEWA shall comply with Articles 15 through 19 and Sections 308 through 310, 311.1 and 619 of Title 36 of the Oklahoma Statutes which pertain to examinations, deposits and solvency regulation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 639 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every MEWA shall, within one hundred twenty (120) days after June 30, or in the case of a MEWA which has been in existence for at least three (3) years on January 1, 1993, one hundred twenty (120) days after the end of each fiscal year of the MEWA, or within any such extension of time that the Insurance Commissioner for good cause grants, file a report with the Commissioner, on forms acceptable to the Commissioner and verified by the oath of a member of the board of trustees or by an administrator of the MEWA, showing its financial condition on the last day of the preceding fiscal year. The report shall contain an audited financial statement of the MEWA prepared in accordance with generally accepted accounting principles, including its balance sheet and a statement of the operations for the preceding fiscal year certified by an independent accounting firm or individual holding a permit to practice public accounting in this state. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

B. Annually, in conjunction with the annual report required in subsection A of this section, the MEWA shall submit an actuarial certification prepared by a Fellow of the Society of Actuaries (FSA) that indicates:

1. The MEWA is actuarially sound, with the certification considering the rates, benefits, and expenses of, and any other funds available for the payment of obligations of the MEWA;

2. The rates being charged and to be charged for contracts are actuarially adequate to the end of the period for which rates have been guaranteed;

3. Incurred but not reported claims and claims reported but not fully paid have been adequately provided for;

4. Whether amounts reserved to cover the cost of health care benefits are:

- a. calculated in accordance with the loss reserving standards that would be applicable to a private insurance company writing the same coverage,
- b. computed in accordance with accepted loss reserving standards, including a reserve for Incurred But Not Reported Claims (IBNR), and
- c. fairly stated in accordance with sound loss reserving standards; and

5. Such other information relating to the performance of the MEWA that is reasonably required by the Commissioner.

C. If reasonable grounds exist, the Commissioner may require a MEWA to file quarterly, within forty-five (45) days after the end of each of the remaining fiscal quarters, a financial statement on a form prescribed by the Commissioner, verified by the oath of a member of the board of trustees and an administrator of the MEWA, showing its financial condition on the last day of the preceding quarter.

D. Any MEWA that fails to file a report as required by this section is subject to Section 311 of Title 36 of the Oklahoma Statutes; and, after notice and opportunity for hearing, the Commissioner may suspend the MEWA's authority to enroll new insureds or to do business in this state while the failure continues.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 640 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall deny, suspend or revoke a MEWA's license if, after notice and opportunity for a hearing, the Commissioner finds that the MEWA:

1. Is insolvent;
2. Is using such methods and practices in the conduct of its business as to render its further transaction of business in this state hazardous or injurious to its participating employees, covered employees and dependents, or to the public;
3. Has failed to pay any final judgment rendered against it in a court of competent jurisdiction within sixty (60) days after the judgment became final;
4. Is or has been in violation of any material provisions of this act;
5. Is no longer actuarially sound; or
6. Is charging rates that are excessive, inadequate or unfairly discriminatory.

B. The Commissioner may deny, suspend or revoke the license of any MEWA if, after notice and opportunity for a hearing, the Commissioner determines that the MEWA:

1. Has violated any lawful order or rule of the Commissioner or any applicable provisions of this act;
2. Has refused to produce its accounts, records or files for examination under Sections 308 through 310 of Title 36 of the Oklahoma Statutes or through any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to an examination;
3. Utilized persons to solicit enrollments through an unlicensed agent; or
4. Has violated any provision of the Unfair Claim Settlement Practices Act, Section 1221 et seq. of Title 36 of the Oklahoma Statutes.

C. Whenever the financial condition of the MEWA is such that, if not modified or corrected, its continued operation would result

in impairment or insolvency, in addition to any provisions in this act, the Commissioner may order the MEWA to file with the Commissioner and implement a corrective action plan designed to do one or more of the following:

1. Reduce the total amount of present potential liability for benefits by reinsurance or other means;
2. Reduce the volume of new business being accepted;
3. Reduce the expenses of the MEWA by specified methods; or
4. Suspend or limit the writing of new business for a period of time.

If the MEWA fails to submit a plan within the time specified by the Commissioner or submits a plan that is insufficient to correct the MEWA's financial condition, the Commissioner may order the MEWA to implement one or more of the corrective actions listed in this subsection.

D. The Commissioner shall, in the order suspending the authority of a MEWA to enroll new insureds, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met prior to reinstatement of its authority to enroll new insureds. The order of suspension is subject to rescission or modification by further order of the Commissioner before the expiration of the suspension period. Reinstatement shall not be made unless requested in writing by the MEWA; however, the Commissioner shall not grant reinstatement if it is found that the circumstances for which suspension occurred still exist.

SECTION 9. This act shall become effective January 1, 1993.

Passed the Senate the 19th day of May, 1992.

President of the Senate

Passed the House of Representatives the 27th day of May, 1992.

Speaker of the House of Representatives