

ENROLLED HOUSE  
BILL NO. 2371

By: Adkins and Liotta of the  
House

and

Pruitt of the Senate

An Act relating to insurance; amending 36 O.S. 2001, Sections 635, 637 and 639, which relate to multiple employer welfare arrangements; modifying license eligibility requirements; requiring that certain information be filed with the Insurance Department; modifying policy statements; modifying license application requirements; modifying qualifications for actuary; defining term; modifying time for filing of financial reports; modifying information to be included in actuarial certification; requiring that certain annual report be sent to employers and requiring specified information to be included; authorizing the Insurance Commissioner to promulgate rules regarding multiple employer welfare arrangements; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 635, is amended to read as follows:

Section 635. 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~~ federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the Commissioner may authorize by rule 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, is operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA, is responsible for all operations of the MEWA, and which has as one of its trustees a financial institution which is independent of the entity which established the MEWA. Except as provided in this paragraph, the board of trustees must have 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 shall not be an owner, shareholder, partner,

officer, director or employee of the administrator or service company of 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~~ federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the Commissioner may authorize by rule 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 policy, contract, certificate, summary plan description, or other evidence of the benefits, coverages provided, premium rates to be charged and any contracts between the MEWA and any administrator or service company, including any changes to those documents, must be filed with the Oklahoma Insurance Department.~~ The evidence of benefits and coverages provided shall contain, in boldface type ~~in a conspicuous location~~ on the face page of the policy and the certificate, 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. THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND COVERAGES."~~

~~3. 2.~~ If applicable, the same documents shall contain in boldface type ~~in a conspicuous location~~ on the face page of the policy and the certificate: "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.~~ 3. 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 2. AMENDATORY 36 O.S. 2001, Section 637, is amended to read as follows:

Section 637. 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,~~ A qualified actuary 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.

For purposes of this section and Section 639 of this title, a qualified actuary is an actuary who is a Fellow of the Society of Actuaries (FSA), a member of the American Academy of Actuaries, or an Enrolled Actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C., Section 1001 et seq.) and has experience in establishing rates for a self-insured trust and health services being provided;

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)~~ The MEWA must provide proof of a fidelity bond which shall protect against acts of fraud or dishonesty in servicing the MEWA, covering each person responsible for servicing the MEWA, in an amount equal to the greater of ten percent (10%) of the contributions received by the MEWA or ten percent (10%) of the benefits paid, during the preceding calendar year, with a minimum amount requirement of Twenty Thousand Dollars (\$20,000.00) and a maximum amount requirement of Five Hundred Thousand Dollars (\$500,000.00);

6. A copy of the MEWA's ~~excess insurance stop-loss agreement, if any.~~ The stop-loss insurance agreement must be issued by an insurer authorized to do business in this state and must provide both specific and aggregate coverage with an aggregate retention of no more than one hundred twenty-five percent (125%) of the expected claims for the next plan year and a specific retention amount as annually indicated in the actuarial opinion. The Insurance Commissioner shall have the authority to waive the requirements for aggregate stop-loss coverage if deemed appropriate;

7. ~~In the case of a MEWA which has not been in operation for at least three (3) years on January 1, 1993, In the initial application, a feasibility study, made by a Fellow of the Society of Actuaries (FSA) qualified actuary 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) a qualified actuary;~~

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 3. AMENDATORY 36 O.S. 2001, Section 639, is amended to read as follows:

Section 639. A. Every MEWA shall, within ~~one hundred twenty (120) ninety (90) 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~~ 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) qualified actuary~~ 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~~ The recommended amount

of cash reserves the MEWA should maintain, which shall not be less than the greater of twenty percent (20%) of the total contributions in the preceding plan year or twenty percent (20%) of the total estimated contributions for the current plan year. The cash reserves shall be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, a trend factor, and a margin for error. Cash reserves required by this section shall be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the Commissioner may authorize by rule;

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. The recommended level of specific and aggregate stop-loss insurance that the MEWA should maintain and whether the MEWA is funding at the aggregate retention plus all other costs of the MEWA; and

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

C. The MEWA shall send an annual report to all of the employers, describing the financial condition of the MEWA as of the end of the last fiscal year. The report must be sent at the same time as the filing of the annual statement of the MEWA.

~~If reasonable grounds exist, the~~ D. 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 and the statement of a qualified actuary setting forth the actuary's opinion relating to the level of cash reserves in accordance with paragraphs 3 and 4 of subsection B of this section.

~~D.~~ E. 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~~ this title; 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 641 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may promulgate rules to implement the provisions of Sections 633 through 640 of Title 36 of the Oklahoma Statutes relating to multiple employer welfare arrangements.

SECTION 5. This act shall become effective November 1, 2002.

Passed the House of Representatives the 18th day of April, 2002.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 11th day of April, 2002.

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Presiding Officer of the Senate