

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2140

By: Hastings of the House

and

Smith of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2001, Section 634, which relates to multiple employer welfare arrangements; providing exemption for certain trade organizations; amending 36 O.S. 2001, Section 1106, which relates to unauthorized insurers; exempting certain insurance from provisions of section; repealing 36 O.S. 2001, Section 6702, which relates to certain workplace safety programs; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 634, is amended to read as follows:

Section 634. 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; or

6. A nonprofit professional trade association pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which has maintained either a self-funded plan or a fully insured plan of coverage for the payment of expenses to or for members of the association for a period of ten (10) or more consecutive years and which coverage is provided to at least five hundred covered participants to establish and maintain a self-funded plan.

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 2. AMENDATORY 36 O.S. 2001, Section 1106, is amended to read as follows:

Section 1106. A. If the amount of insurance required to protect the interest of the assured cannot be procured from

authorized insurers, such amount, hereinafter designated as "surplus line", may be procured from unauthorized insurers subject to the following conditions:

1. The unauthorized insurer must have a certificate of approval from the Commissioner, and meet all relevant statutory requirements, including the following:

- a. the insurer is financially stable, and
- b. the insurer is controlled by persons possessing competence, experience and integrity, and
- c. the insurer, if a foreign insurer, posts a special deposit in an amount to be determined by the Commissioner, or
- d. the insurer, if an alien insurer, is listed on the National Association of Insurance Commissioners Non-Admitted Insurers Quarterly Listing.

The Commissioner may withdraw a certificate of approval or refuse to renew a certificate upon finding that the insurer no longer meets the criteria for approval set out herein;

2. The insurance must be procured through a licensed surplus line broker, hereinafter in this article referred to as the "broker"; and

3. The amount of insurance required to protect the interest of the assured is not procurable, after diligent effort has been made to do so, from a majority of the insurers accessible to the broker which are authorized to transact that kind and class of insurance in this state, and the placing of insurance with an unauthorized insurer must not be for the purpose of securing advantages either as to premium rate or terms of the insurance contract.

B. This section shall not be applicable to the placement of medical professional liability, health care professional liability and physicians, surgeons and dentists liability, including general liability insurance associated with any of the foregoing, for the

purpose of insuring hospitals, nursing homes and related long-term care facilities and physicians, surgeons or dentists. Direct placement to unauthorized insurers meeting the criteria set forth in paragraph 1 of subsection A of this section shall qualify a broker to place medical professional liability, health care professional liability and physicians, surgeons and dentists liability, including general liability insurance associated with any of the foregoing, for the purpose of insuring hospitals, nursing homes and related long-term care facilities and physicians, surgeons or dentists with an unauthorized insurer.

SECTION 3. REPEALER 36 O.S. 2001, Section 6702, is hereby repealed.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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