

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 21-063

BY SENATOR(S) Sonnenberg and Fields, Buckner, Donovan, Ginal, Priola, Scott, Smallwood, Garcia;
also REPRESENTATIVE(S) Hooton and Pelton, Amabile, Bernett, Bird, Bockenfeld, Catlin, Exum, Gray, Lontine, McCormick, Ricks, Sandridge, Van Winkle, Will.

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

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

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

10-3-903.5. Jurisdiction over providers of health care benefits - rules. (7) (c) A multiple employer welfare arrangement is any arrangement ~~which~~ THAT complies with EITHER the following requirements OR SUBSECTION (7)(d) OF THIS SECTION:

(d) (I) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT MEETS

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE REQUIREMENTS SPECIFIED IN SUBSECTION (7)(c) OF THIS SECTION OTHER THAN SUBSECTION (7)(c)(I) OF THIS SECTION MAY FILE AN APPLICATION FOR A WAIVER WITH THE COMMISSIONER. A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT MEETS THE REQUIREMENTS SPECIFIED IN SUBSECTION (7)(c) OF THIS SECTION OTHER THAN THOSE SPECIFIED IN SUBSECTIONS (7)(c)(I) AND (7)(c)(V)(B) OF THIS SECTION MAY ALSO FILE AN APPLICATION FOR A WAIVER WITH THE COMMISSIONER. THE APPLICATION MUST INCLUDE:

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

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

(C) A LIST OF NAMES, ADDRESSES, AND OFFICIAL CAPACITIES WITH THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT OF THE INDIVIDUALS WHO WILL BE RESPONSIBLE FOR THE MANAGEMENT AND CONDUCT OF THE AFFAIRS OF THE ARRANGEMENT, INCLUDING ALL TRUSTEES, OFFICERS, AND DIRECTORS, ALONG WITH A FULL DISCLOSURE OF THE EXTENT AND NATURE OF ANY CONTRACTS BETWEEN THE INDIVIDUALS AND THE ARRANGEMENT, INCLUDING POSSIBLE CONFLICTS OF INTEREST;

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

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

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

(G) A COPY OF AUDITED FINANCIAL STATEMENTS OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT FOR THE PREVIOUS FIVE YEARS THAT WERE PREPARED BY A LICENSED CERTIFIED PUBLIC ACCOUNTANT, INCLUDING AN ACTUARIAL OPINION; AND

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

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

(A) MAINTAIN UNALLOCATED RESERVES OF NOT LESS THAN TWO MILLION DOLLARS OF MINIMUM SURPLUS; EXCEPT THAT THE COMMISSIONER MAY, BY RULE, INCREASE THE MINIMUM SURPLUS CONSISTENT WITH THE STANDARDS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS;

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

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

(D) MAINTAIN A COMPLAINT SYSTEM THAT COMPLIES WITH ARTICLE 11 OF THIS TITLE 10 AND MAKE THE SYSTEM AVAILABLE TO THE DIVISION UPON REQUEST;

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

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

(G) PROVIDE NONDISCRIMINATORY PLAN COVERAGE TO ITS MEMBERS THAT IS APPLIED EVENLY AND EQUITABLY TO ALL EMPLOYEES OF THE MEMBERS AND THAT MATCHES WHAT IS OTHERWISE REQUIRED OF HEALTH BENEFIT PLANS, INCLUDING: COVERAGE OF ESSENTIAL HEALTH BENEFIT PLANS AND COMPLIANCE WITH THE FEDERAL "PATIENT PROTECTION AND AFFORDABLE CARE ACT", PUB.L.111-148, AS AMENDED; COVERAGE OF STATE-MANDATED HEALTH BENEFITS AS REQUIRED BY SECTION 10-16-104; NETWORK PROVIDER REQUIREMENTS AND COMPLIANCE WITH NETWORK ADEQUACY STANDARDS AS REQUIRED BY SECTION 10-16-704; AND GUARANTEE ISSUE REQUIREMENTS, INCLUDING THAT ALL MULTIPLE EMPLOYER WELFARE ARRANGEMENT MEMBERS AND THEIR EMPLOYEES MUST BE ELIGIBLE TO PURCHASE INSURANCE;

(H) NOT CONDITION MEMBERSHIP ON HEALTH-STATUS-RELATED FACTORS RELATED TO AN INDIVIDUAL OR EXCLUDE AN EMPLOYER FROM MEMBERSHIP BECAUSE OF THE HEALTH STATUS OF THE EMPLOYEES OF THE EMPLOYER. HEALTH-STATUS-RELATED FACTORS INCLUDE: HEALTH STATUS; MEDICAL CONDITION, INCLUDING BOTH PHYSICAL AND MENTAL ILLNESS, AS DEFINED IN 45 CFR 144.103; AND EVIDENCE OF INSURABILITY OR DISABILITY.

(I) NOT CHARGE DIFFERENT PREMIUM RATES, ALTER COST SHARING, OR CHANGE BENEFIT LEVELS BASED ON HEALTH-STATUS-RELATED FACTORS OF A MULTIPLE EMPLOYER WELFARE ARRANGEMENT MEMBER GROUP OR INDIVIDUAL EMPLOYEE OF THAT GROUP;

(J) NOT MAKE HEALTH INSURANCE COVERAGE OFFERED THROUGH THE ARRANGEMENT AVAILABLE OTHER THAN IN CONNECTION WITH A MEMBER OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT; AND

(K) FILE ANNUAL RATE AND FORM FILINGS WITH THE DIVISION AS SPECIFIED BY THE COMMISSIONER BY RULE.

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

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

(B) POTENTIAL IMPACT ON THE FULLY INSURED MARKET;

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

(D) WHETHER THE ADMINISTRATOR OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT HAS DEMONSTRATED FINANCIAL SOUNDNESS SO AS TO NOT JEOPARDIZE THE VIABILITY OF THE ARRANGEMENT OR HARM ITS MEMBERS; AND

(E) THE LENGTH OF TIME THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT HAS BEEN IN EXISTENCE.

(IV) A WAIVER GRANTED PURSUANT TO THIS SUBSECTION (7)(d) SUBJECTS THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT TO THE DIVISION'S FULL ENFORCEMENT AUTHORITY AVAILABLE PURSUANT TO THIS TITLE 10 AND ALLOWS THE ARRANGEMENT TO OPERATE PURSUANT TO THIS SUBSECTION (7) FOR TWO YEARS. TO CONTINUE TO OPERATE PURSUANT TO THIS SUBSECTION (7), AN ARRANGEMENT MUST REAPPLY FOR A WAIVER; EXCEPT THAT, IF THE COMMISSIONER GRANTS FIVE CONSECUTIVE WAIVERS PURSUANT TO THIS SUBSECTION (7)(d), AN ARRANGEMENT MAY CONTINUE TO OPERATE PURSUANT TO THIS SUBSECTION (7) WITHOUT AGAIN APPLYING FOR A WAIVER. AN ARRANGEMENT OPERATING PURSUANT TO THIS SUBSECTION (7)(d) REMAINS SUBJECT TO THE DIVISION'S FULL ENFORCEMENT AUTHORITY UNDER THIS TITLE 10, AND THE DIVISION MAY APPLY ANY REQUIREMENT IN THIS TITLE 10 APPLICABLE TO HEALTH INSURANCE CARRIERS TO THE ARRANGEMENT AS LONG AS THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS OPERATING IN COLORADO.

(V) THE COMMISSIONER:

(A) SHALL ADOPT RULES FOR THE IMPLEMENTATION OF THIS SUBSECTION (7)(d); AND

(B) MAY WAIVE ANY OF THE REQUIREMENTS OF SUBSECTION (7)(d)(I)(B) OF THIS SECTION FOR WAIVER APPLICANTS THAT MEET THE REQUIREMENTS IN SUBSECTION (7)(c) OF THIS SECTION OTHER THAN THOSE SPECIFIED IN SUBSECTIONS (7)(c)(I) AND (7)(c)(V)(B) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 10-3-1102, **amend** (3) as follows:

10-3-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(3) "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, nonadmitted insurer, fraternal benefit society, and other legal entities engaged in the insurance business, including agents, limited insurance representatives, agencies, brokers, surplus line brokers, and adjusters. ~~Such~~ THE term ~~shall~~ also ~~include~~ INCLUDES medical service plans and hospital service plans regulated under parts 1 and 3 of article 16 of this ~~title~~ and TITLE 10, health maintenance organizations regulated under parts 1 and 4 of article 16 of this ~~title~~. ~~Such~~ TITLE 10, AND MULTIPLE EMPLOYER WELFARE ARRANGEMENTS OPERATING PURSUANT TO SECTION 10-3-903.5 (7)(d). THE plans, ARRANGEMENTS, and organizations shall be deemed to be engaged in the business of insurance for purposes of this part 11 only.

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

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the

general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO