

SENATE COMMITTEE OF REFERENCE REPORT

April 7, 2021

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Chair of Committee

Date

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB21-063 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 2, line 3, strike everything after "introductory"  
2 and substitute "portion; and **add** (7)(d) as follows:".

3 Page 2, strike lines 6 through 11 and substitute "~~which~~ THAT complies  
4 with EITHER the following requirements OR SUBSECTION (7)(d) OF THIS  
5 SECTION:

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

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

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

19 (C) A LIST OF NAMES, ADDRESSES, AND OFFICIAL CAPACITIES WITH  
20 THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT OF THE INDIVIDUALS  
21 WHO WILL BE RESPONSIBLE FOR THE MANAGEMENT AND CONDUCT OF THE  
22 AFFAIRS OF THE ARRANGEMENT, INCLUDING ALL TRUSTEES, OFFICERS, AND  
23 DIRECTORS, ALONG WITH A FULL DISCLOSURE OF THE EXTENT AND NATURE



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1 OF ANY CONTRACTS BETWEEN THE INDIVIDUALS AND THE ARRANGEMENT,  
2 INCLUDING POSSIBLE CONFLICTS OF INTEREST;

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

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

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

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

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

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

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

39 (B) BE MANAGED BY AND PROVIDE BENEFITS THROUGH AN  
40 ADMINISTRATOR OR SERVICE COMPANY THAT IS IN GOOD STANDING IN ALL  
41 OTHER STATES IN WHICH THE ADMINISTRATOR OR SERVICE COMPANY



1 OPERATES, AND IF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT  
2 PROVIDES COVERAGE THROUGH ONE OR MORE BROKERS, THE BROKERS  
3 MUST BE LICENSED AS PRODUCERS PURSUANT TO ARTICLE 2 OF THIS TITLE  
4 10;

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

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

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

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

17 (G) PROVIDE NONDISCRIMINATORY PLAN COVERAGE TO ITS  
18 MEMBERS THAT IS APPLIED EVENLY AND EQUITABLY TO ALL EMPLOYEES  
19 OF THE MEMBERS AND THAT MATCHES WHAT IS OTHERWISE REQUIRED OF  
20 HEALTH BENEFIT PLANS, INCLUDING ELEMENTS COVERAGE OF ESSENTIAL  
21 HEALTH BENEFITS AND COMPLIANCE WITH THE FEDERAL "PATIENT  
22 PROTECTION AND AFFORDABLE CARE ACT", AS AMENDED, PUB.L.  
23 111-148; NETWORK PROVIDER REQUIREMENTS AND COMPLIANCE WITH  
24 NETWORK ADEQUACY STANDARDS; GUARANTEE ISSUE; AND ANNUAL RATE  
25 AND FORM FILINGS WITH THE DIVISION.

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

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

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

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

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



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1 MEMBERS; AND

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

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

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