

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0308.01 Thomas Morris x4218

SENATE BILL 21-063

SENATE SPONSORSHIP

Sonnenberg and Fields, Buckner, Donovan, Garcia, Ginal, Priola, Scott, Smallwood

HOUSE SPONSORSHIP

Hooton and Pelton,

Senate Committees
Business, Labor, & Technology
Appropriations

House Committees
Health & Insurance

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

SENATE
3rd Reading Unamended
May 3, 2021

Current law allows an existing association consisting of multiple employers, referred to as a "multiple employer welfare arrangement" (MEWA) to offer health care benefits to the association's members only

SENATE
Amended 2nd Reading
April 30, 2021

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

if, among other requirements, the MEWA has been in existence continuously since at least January 1, 1983. The bill changes that date to January 1, 2010.

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

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

4 **10-3-903.5. Jurisdiction over providers of health care benefits**

5 **- rules.** (7) (c) THE COMMISSIONER MAY WAIVE ANY OF THE
6 REQUIREMENTS OF THIS SUBSECTION (7)(c). A multiple employer welfare
7 arrangement is any arrangement which THAT complies with EITHER the
8 following requirements OR SUBSECTION (7)(d) OF THIS SECTION:

9 (d) (I) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT
10 MEETS THE REQUIREMENTS SPECIFIED IN SUBSECTION (7)(c) OF THIS
11 SECTION OTHER THAN SUBSECTION (7)(c)(I) OF THIS SECTION MAY FILE AN
12 APPLICATION FOR A WAIVER WITH THE COMMISSIONER. A MULTIPLE
13 EMPLOYER WELFARE ARRANGEMENT THAT MEETS THE REQUIREMENTS
14 SPECIFIED IN SUBSECTION (7)(c) OF THIS SECTION OTHER THAN THOSE
15 SPECIFIED IN SUBSECTIONS (7)(c)(I) AND (7)(c)(V)(B) OF THIS SECTION
16 MAY ALSO FILE AN APPLICATION FOR A WAIVER WITH THE COMMISSIONER.

17 THE APPLICATION MUST INCLUDE:

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

22 (B) A COPY OF MEMBERSHIP CRITERIA, A STATEMENT OF
23 OWNERSHIP OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT'S
24 MEMBERS, AND A SUMMARY OF THE ACTIVITIES AND BENEFITS, OTHER

1 THAN HEALTH PLAN COVERAGE, PROVIDED TO MEMBERS;

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

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

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

1 CHARGED;

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

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

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

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

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

19 (B) BE MANAGED BY AND PROVIDE BENEFITS THROUGH AN
20 ADMINISTRATOR OR SERVICE COMPANY THAT IS IN GOOD STANDING IN ALL
21 OTHER STATES IN WHICH THE ADMINISTRATOR OR SERVICE COMPANY
22 OPERATES, AND IF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT
23 PROVIDES COVERAGE THROUGH ONE OR MORE BROKERS, THE BROKERS
24 MUST BE LICENSED AS PRODUCERS PURSUANT TO ARTICLE 2 OF THIS TITLE
25 10;

26 (C) BE MANAGED BY AN ADMINISTRATOR OR SERVICE COMPANY
27 THAT IS A LICENSED THIRD-PARTY ADMINISTRATOR OR IS COVERED BY A

1 FIDELITY BOND IN THE AMOUNT OF TWO HUNDRED THOUSAND DOLLARS;

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

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

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

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

24 (H) NOT CONDITION MEMBERSHIP ON HEALTH-STATUS-RELATED
25 FACTORS RELATED TO AN INDIVIDUAL OR EXCLUDE AN EMPLOYER FROM
26 MEMBERSHIP BECAUSE OF THE HEALTH STATUS OF THE EMPLOYEES OF THE
27 EMPLOYER. HEALTH-STATUS-RELATED FACTORS INCLUDE: HEALTH

1 STATUS; MEDICAL CONDITION, INCLUDING BOTH PHYSICAL AND MENTAL
2 ILLNESS, AS DEFINED IN 45 CFR 144.103; AND EVIDENCE OF INSURABILITY
3 OR DISABILITY.

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

9 (J) NOT MAKE HEALTH INSURANCE COVERAGE OFFERED THROUGH
10 THE ARRANGEMENT AVAILABLE OTHER THAN IN CONNECTION WITH A
11 MEMBER OF THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT; AND
12 (K) FILE ANNUAL RATE AND FORM FILINGS WITH THE DIVISION AS
13 SPECIFIED BY THE COMMISSIONER BY RULE.

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

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

24 (B) POTENTIAL IMPACT ON THE FULLY INSURED MARKET;
25 (C) CONSUMER EXPERIENCE WITH ACCESSING COVERAGE AND THE
26 POTENTIAL FOR CONSUMER HARM;

27 (D) WHETHER THE ADMINISTRATOR OF THE MULTIPLE EMPLOYER

1 WELFARE ARRANGEMENT HAS DEMONSTRATED FINANCIAL SOUNDNESS SO
2 AS TO NOT JEOPARDIZE THE VIABILITY OF THE ARRANGEMENT OR HARM ITS
3 MEMBERS; AND

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

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

21 (V) THE COMMISSIONER:

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

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

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

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

5 (3) "Person" means any individual, corporation, association,
6 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
7 nonadmitted insurer, fraternal benefit society, and other legal entities
8 engaged in the insurance business, including agents, limited insurance
9 representatives, agencies, brokers, surplus line brokers, and adjusters.
10 Such THE term shall also include INCLUDES medical service plans and
11 hospital service plans regulated under parts 1 and 3 of article 16 of this
12 title and TITLE 10, health maintenance organizations regulated under parts
13 1 and 4 of article 16 of this title. Such TITLE 10, AND MULTIPLE EMPLOYER
14 WELFARE ARRANGEMENTS OPERATING PURSUANT TO SECTION 10-3-903.5
15 (7)(d). THE plans, ARRANGEMENTS, and organizations shall be deemed to
16 be engaged in the business of insurance for purposes of this part 11 only.

17 **SECTION 3. Appropriation.** For the 2021-22 state fiscal year,
18 \$13,352 is appropriated to the department of regulatory agencies for use
19 by the division of insurance. This appropriation is from the division of
20 insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
21 on an assumption that the division will require an additional 0.2 FTE. To
22 implement this act, the division may use this appropriation for personal
23 services.

24 **SECTION 4. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

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