

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 21-0308.01 Thomas Morris x4218

**SENATE BILL 21-063**

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**SENATE SPONSORSHIP**

**Sonnenberg and Fields,**

**HOUSE SPONSORSHIP**

**Hooton and Pelton,**

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**Senate Committees**  
Business, Labor, & Technology  
Appropriations

**House Committees**

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**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.**

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**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>.)*

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

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.*

SENATE  
Amended 2nd Reading  
April 30, 2021

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.

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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           (7) (c) A multiple employer welfare arrangement is any arrangement  
6           which THAT complies with EITHER the following requirements OR  
7           SUBSECTION (7)(d) OF THIS SECTION:

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

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

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

21           (C) A LIST OF NAMES, ADDRESSES, AND OFFICIAL CAPACITIES WITH  
22           THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT OF THE INDIVIDUALS  
23           WHO WILL BE RESPONSIBLE FOR THE MANAGEMENT AND CONDUCT OF THE  
24           AFFAIRS OF THE ARRANGEMENT, INCLUDING ALL TRUSTEES, OFFICERS, AND

1 DIRECTORS, ALONG WITH A FULL DISCLOSURE OF THE EXTENT AND NATURE  
2 OF ANY CONTRACTS BETWEEN THE INDIVIDUALS AND THE ARRANGEMENT,  
3 INCLUDING POSSIBLE CONFLICTS OF INTEREST;

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

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

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

26       (G) A COPY OF AUDITED FINANCIAL STATEMENTS OF THE MULTIPLE  
27       EMPLOYER WELFARE ARRANGEMENT FOR THE PREVIOUS FIVE YEARS THAT

1       WERE PREPARED BY A LICENSED CERTIFIED PUBLIC ACCOUNTANT,  
2       INCLUDING AN ACTUARIAL OPINION; AND

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

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

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

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

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

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

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

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

5                   (G) PROVIDE NONDISCRIMINATORY PLAN COVERAGE TO ITS  
6                   MEMBERS THAT IS APPLIED EVENLY AND EQUITABLY TO ALL EMPLOYEES  
7                   OF THE MEMBERS AND THAT MATCHES WHAT IS OTHERWISE REQUIRED OF  
8                   HEALTH BENEFIT PLANS, INCLUDING ELEMENTS COVERAGE OF ESSENTIAL  
9                   HEALTH BENEFITS AND COMPLIANCE WITH THE FEDERAL "PATIENT  
10                   PROTECTION AND AFFORDABLE CARE ACT", AS AMENDED, PUB.L.  
11                   111-148; NETWORK PROVIDER REQUIREMENTS AND COMPLIANCE WITH  
12                   NETWORK ADEQUACY STANDARDS; GUARANTEE ISSUE; AND ANNUAL RATE  
13                   AND FORM FILINGS WITH THE DIVISION.

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) OTHER FACTORS THAT DEMONSTRATE THE NEED FOR  
5       ADDITIONAL INSURANCE OPTIONS TO INCREASE COMPETITION OR LOWER  
6       HEALTH-CARE COSTS FOR CONSUMERS.

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

17       **SECTION 2. 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 3. 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.