

HOUSE BILL REPORT

HB 2526

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to self-funded multiple employer welfare arrangements.

Brief Description: Regulating self-funded multiple employer welfare arrangements.

Sponsors: Representatives Schual-Berke, Benson, Simpson, G., McMorris, Moeller, Priest and Chase.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/28/04, 2/4/04 [DPS].

Brief Summary of Substitute Bill

- Creates a state regulatory framework for self-funded multiple employer welfare arrangements.
- Establishes solvency, operational, and reporting requirements.
- Authorizes sanctions for noncompliance with statutory requirements.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, G., Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Roach, Santos and Simpson, D..

Staff: Caroleen Dineen (786-7156).

Background:

The federal Employee Retirement Income Security Act (ERISA) establishes a regulatory structure for employee welfare benefit plans and pension benefit plans. An employee welfare benefit plan is defined in ERISA to include medical, surgical, or hospital care or benefits as well as sickness, accident, disability, and death benefits. ERISA specifies reporting and disclosure, claims procedure, bonding, and other requirements for defined employee welfare benefit plans. ERISA also prescribes fiduciary conduct standards applicable to persons responsible for benefit plan administration and management.

A multiple employer welfare arrangement (MEWA) is defined in ERISA as an employee welfare benefit plan or other arrangement established or maintained to offer or provide welfare plan benefits to employees of two or more employers or their beneficiaries. Certain exceptions are specified for plans and arrangements under this definition.

ERISA preempts all state laws relating to any employee benefit plan with certain exceptions. One exception allows the application of state insurance laws to ERISA-covered welfare plans that meet the MEWA definition.

The state Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of insurers in Washington. The Commissioner's authority includes regulating insurance business in Washington, certifying various types of insurers, approving rate and form contracts, licensing agents and brokers, and responding to consumer complaints. In addition to complying with statutory and regulatory requirements, insurers doing business in the state must pay to the Commissioner an annual premium tax equal to 2 percent of all premiums collected or received during the preceding calendar year for policies on risks or property resident, situated, or to be performed in this state.

Summary of Substitute Bill:

The Self-Funded Multiple Employer Welfare Arrangement Regulation Act is enacted as a new chapter in the state insurance code. Statutory purposes for establishing a regulatory framework for self-funded MEWAs and relevant definitions are specified.

A "self-funded MEWA" is defined for purposes of state law as a MEWA that does not provide for payment of benefits solely through a policy or policies of insurance issued by one or more licensed insurers. "MEWA" is defined in state statute as in federal ERISA law, except the state definition does not include any arrangement, plan, program, or interlocal agreement of or between political subdivisions in the state or of or between any federal agencies or federal agency contractors or subcontractors at a federal government facility in the state.

The MEWA regulatory provisions apply to MEWAs providing benefits to employers who are members of a bona fide association. "Bona fide association" is defined as an association of employers in existence for at least 10 years before sponsoring a self-funded MEWA. The bona fide association must have engaged in substantial activities relating to the member employers' common interests during the 10-year period and must continue to engage in those activities after sponsoring the MEWA.

Certificate of Authority

No person may establish, operate, provide benefits, or maintain a self-funded MEWA in Washington without obtaining a certificate of authority from the Commissioner. To obtain a certificate of authority, a MEWA must have been in existence and actively operated continuously for at least 10 years as of December 31, 2003. An exception is provided for any

MEWA in existence and actively operated since December 31, 2000, that is sponsored by an association in existence more than 25 years.

A MEWA must satisfy other requirements to obtain a certificate of authority. First, a MEWA must provide benefits to one or more participating employer members either domiciled in or maintaining a principal place of business in this state. Second, the participating employers must exercise control over the MEWA according to specified provisions. Third, a MEWA must provide benefits to employers who are members of a bona fide association. "Bona fide association" is defined as an association of employers that has been in existence for at least 10 years before sponsoring a self-funded MEWA. The bona fide association also must have during the 10-year period engaged in substantial activities relating to member employers' common interests and continue to do so after sponsoring the MEWA. Finally, to obtain a certificate of authority, a MEWA must:

- provide only health care services in this state;
- provide health care services to no fewer than 20 employers and no fewer than 75 employees;
- provide or arrange benefits for health care services in compliance with insurance code provisions mandating particular benefits or offerings and requiring access to particular types or categories of health care providers and facilities;
- not solicit participation from the general public (but may employ or contract for employer enrollment and renewal of employer enrollments); and
- not be organized or maintained solely as a conduit for collection of premiums forwarded to an insurer.

The application deadline for the certificate of authority is April 1, 2005 for a MEWA established, operated, providing benefits, or maintained in this state before December 31, 2003. An existing MEWA filing a substantially complete application by that deadline may continue to operate until the Commissioner makes a decision regarding the application.

Documentation requirements are specified. Required documentation to be filed with the certificate of authority application includes the MEWA's governing documents, summary plan description, evidence of coverage, financial statements, loss insurance coverage policies, biographical reports for officers and fiduciaries, background check information for certain employees, and an actuarial opinion stating the MEWA's unpaid claim liability satisfies state law standards. The MEWA also must submit proof that fidelity bonds required under federal law will be maintained. Finally, the MEWA must submit a statement certifying its compliance with certain state law and federal law requirements.

The Commissioner must either grant or deny the application within 180 days of receiving the application and required documentation. A denial is subject to appeal according to the Administrative Procedure Act. A certificate of authority is effective unless revoked by the Commissioner.

Solvency and Operational Requirements

Self-funded MEWAs must meet certain solvency requirements. These MEWAs must either deposit \$200,000 with the Commissioner for payment of claims if insolvency occurs and submit a written plan to ensure financial integrity or demonstrate to the Commissioner their ability to remain financially solvent.

Operational requirements also are specified. MEWAs must maintain a calendar year for operations and reporting purposes. The Commissioner may require information on pro rata assessments of MEWA members to be included in articles, bylaws, agreements, trusts, or other documents. In addition, MEWAs with fewer than 1,000 covered persons must have aggregate stop loss coverage under specified conditions. MEWAs must demonstrate continued compliance to receive and maintain a certificate of authority, unless this requirement is waived by the Commissioner.

Surplus and Contribution Rates

Requirements for surplus amounts and contribution rates are specified. Self-funded MEWAs must establish and maintain a surplus equal to the greater of 10 percent of the next 12 months of projected incurred claims or \$2 million. Contribution rates for participation must equal or exceed:

- the sum of projected incurred claims for the year and all projected operational costs plus any surplus deficiency amount or minus any excess surplus amount; or
- a funding level established by a qualified actuary's report.

Reporting and Notice Requirements

MEWAs must file certain reports and documents with the Commissioner. Before March 1st of each year, a MEWA must file a verified statement of its financial condition, transactions, and affairs for the preceding year. A MEWA also must file a copy of its Internal Revenue Service Form 5500. In addition, a MEWA must file its annual, financial, and other statements required of other insurers and comply with state insurance code assets and liabilities and investment provisions.

Each MEWA policy must contain a specific notice stating the policy is issued by a self-funded MEWA. The notice must state that the MEWA may not be subject to all state insurance law requirements. The notice also must specify that state insurance insolvency guaranty funds are not available for the MEWA.

Fees and Taxes

Premium tax payments are required from MEWAs only if these state statutory requirements are not preempted by federal law (ERISA). The MEWAs and the Commissioner must request an initial advisory opinion from the United States Department of Labor and obtain a declaratory ruling from a federal court regarding the legality of imposing the state premium taxes on MEWAs. The premium tax requirement becomes effective on March 1 following the issuance of a certificate of authority if not preempted by federal law. The premium tax

requirement may not be retroactively applied to any period before a MEWA receives a certificate of authority.

The MEWAs are required to pay fees to the Office of the Insurance Commissioner (OIC) regulatory account to cover their pro rata share of the OIC's operating costs.

Market Conduct Examinations

The Commissioner is authorized to conduct market examinations of MEWAs as often as deemed necessary. The OIC must conduct an examination upon initial admission; however, the Commissioner may accept an examination by the regulatory official in a foreign MEWA's state of domicile. In conducting these examinations, the Commissioner may rely on an independent certificated public accountant's audit reports and incorporate those reports into the examination report.

MEWAs are required to cooperate and provide information for the examination. MEWAs are not required to pay a specific examination fee.

Exemptions

The MEWA regulatory provisions do not apply to:

- single employer entities;
- Taft-Hartley plans;
- self-funded MEWAs that do not provide coverage for health care services; or
- plans that have received a United States Department of Labor advisory opinion stating they constitute a single employee welfare benefit plan.

Enforcement

The Commissioner may impose sanctions against a MEWA that does not comply with the statutory requirements. A maximum fine of \$10,000 per violation is authorized. In addition, the Commissioner may issue a notice of intent to revoke the MEWA's certificate of authority. The Commissioner may impose other sanctions for failure to maintain the required surplus.

Application of Other Statutory Requirements

MEWAs are subject to state risk-based capital requirements as well as insurer rehabilitation and managing general agent provisions. A self-funded MEWA is deemed an insurer for purposes of statutory merger, rehabilitation, and liquidation provisions.

Substitute Bill Compared to Original Bill:

The substitute revises the scope of MEWAs to which the regulatory provisions apply, including currently existing arrangements in operation for at least 10 years, minimum 20-employer requirement for provision of health services, and compliance with certain mandatory provisions of the insurance code. The substitute also requires employers participating in MEWAs to be members of a bona fide association. In addition, the substitute adds provisions authorizing market conduct examinations and payment of the regulatory fee. The substitute

also specifies exemptions from the MEWA regulatory provisions. Further, the substitute adds provisions related to imposition of the premium tax if not preempted by federal law. Finally, the substitute adds an emergency clause, revises some definitions, and includes technical revisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (Original bill) Washington is one of the few states that does not recognize MEWAs in state law, and MEWAs do not fit into any of the four categories specified in this state's insurance code. This bill would bring Washington into conformance with most other states that have a regulatory structure for MEWAs.

This bill also would ensure that established and prudently operated MEWAs can continue to offer cost-effective coverage. The Timber Products Manufacturers Association (TPM) trust was issued a cease and desist order by the Commissioner in August 2003. If this bill is not enacted, TPM will face the threat of an enforcement action and will be forced to drop its group medical benefits program for thousands of blue-collar timber workers. Action on this bill is needed now.

(With concerns) (Original bill) MEWAs should be carefully controlled to avoid the types of financial failures that have occurred in the past. MEWAs should have to operate under the same rules as the rest of the regulated community. MEWAs should be subject to minimum health benefits and to the premium tax. Applying this bill to the Hanford benefits program would put it out of business. MEWAs identified in Washington cover tens of thousands of participants, and we do not know the total number of MEWAs currently operating in the state. The best approach is to provide a one-year moratorium on enforcement against MEWAs to allow the proponents and the Commissioner to work on this issue through the 2004 interim.

Testimony Against: (Original bill) During the 1980s some thinly capitalized MEWAs failed. MEWAs are difficult to define, and the Commissioner wants a tighter definition. The Commissioner also is concerned about the qualifications, market examinations, and premium tax issues related to this bill. The state needs good regulation to ensure organizations have capital and are legitimate organizations.

Persons Testifying: (In support) Representative Schual-Berke, prime sponsor; Charles M. Fox and Lisa Thatcher, Timber Products Manufacturers Association; and Craig Nelson, Washington Employees Association.

(In support with concerns) Kevin Adamson, Hanford Employee Welfare Trust; Bob Cooper, Washington Citizen Action; Rick Wickman, Premera Blue Cross; Ken Bertrand, Group Health Cooperative; and Gary Smith, Independent Business Association.

(Opposed) Bill Daley, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.