

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

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

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>.)

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.

HOUSE
Amended 2nd Reading
May 27, 2021

SENATE
3rd Reading Unamended
May 3, 2021

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.

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) A multiple employer welfare arrangement is any
6 arrangement which THAT complies with EITHER the following
7 requirements OR 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. A MULTIPLE
12 EMPLOYER WELFARE ARRANGEMENT THAT MEETS THE REQUIREMENTS
13 SPECIFIED IN SUBSECTION (7)(c) OF THIS SECTION OTHER THAN THOSE
14 SPECIFIED IN SUBSECTIONS (7)(c)(I) AND (7)(c)(V)(B) OF THIS SECTION
15 MAY ALSO FILE AN APPLICATION FOR A WAIVER WITH THE COMMISSIONER.
16 THE APPLICATION MUST INCLUDE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (H) NOT CONDITION MEMBERSHIP ON HEALTH-STATUS-RELATED
24 FACTORS RELATED TO AN INDIVIDUAL OR EXCLUDE AN EMPLOYER FROM
25 MEMBERSHIP BECAUSE OF THE HEALTH STATUS OF THE EMPLOYEES OF THE
26 EMPLOYER. HEALTH-STATUS-RELATED FACTORS INCLUDE: HEALTH
27 STATUS; MEDICAL CONDITION, INCLUDING BOTH PHYSICAL AND MENTAL

1 ILLNESS, AS DEFINED IN 45 CFR 144.103; AND EVIDENCE OF INSURABILITY
2 OR DISABILITY.

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

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

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

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

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

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

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

26 (D) WHETHER THE ADMINISTRATOR OF THE MULTIPLE EMPLOYER
27 WELFARE ARRANGEMENT HAS DEMONSTRATED FINANCIAL SOUNDNESS SO

1 AS TO NOT JEOPARDIZE THE VIABILITY OF THE ARRANGEMENT OR HARM ITS
2 MEMBERS; AND

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

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. AN ARRANGEMENT OPERATING PURSUANT TO
15 THIS SUBSECTION (7)(d) REMAINS SUBJECT TO THE DIVISION'S FULL
16 ENFORCEMENT AUTHORITY UNDER THIS TITLE 10, AND THE DIVISION MAY
17 APPLY ANY REQUIREMENT IN THIS TITLE 10 APPLICABLE TO HEALTH
18 INSURANCE CARRIERS TO THE ARRANGEMENT AS LONG AS THE MULTIPLE
19 EMPLOYER WELFARE ARRANGEMENT IS OPERATING IN COLORADO.

20 (V) THE COMMISSIONER:

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

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

27 **SECTION 2.** In Colorado Revised Statutes, 10-3-1102, **amend**

1 (3) as follows:

2 **10-3-1102. Definitions.** As used in this part 11, unless the context
3 otherwise requires:

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

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

23 **SECTION 4. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

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

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