

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 335*

Short Title: MEWA Regulation.

(Public)

Sponsors: Senator Johnson.

Referred to: Insurance.

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO REGULATE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS THAT ARE NOT SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 49 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"§ 58-49-35. Multiple employer welfare arrangements; license required; penalty.

(a) No person shall after October 1, 1991, operate, maintain, or establish a MEWA unless the MEWA has a valid license issued by the Commissioner. Any MEWA operating in this State without a valid license is an unauthorized insurer.

(b) G.S. 58-49-30 through 58-49-65 do not apply to a MEWA that offers or provides benefits that are fully insured by an authorized insurer or to a MEWA that is exempt from state insurance regulation in accordance with the Employee Retirement Income Security Act of 1974, Public Law Number 43-406.

(c) Any person who operates or maintains a MEWA without a license as required under this Article is guilty of a Class J felony and is subject to the provisions of G.S. 58-2-70.

"§ 58-49-40. Qualifications for licensure.

(a) To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA must be:

(1) Nonprofit;

(2) Established by a trade association, industry association, or professional association of employers or professionals that has a constitution or

1 bylaws and that has been organized and maintained in good faith for a
2 continuous period of five years for purposes other than that of
3 obtaining or providing insurance;

4 (3) Operated pursuant to a trust agreement by a board of trustees that has
5 complete fiscal control over the MEWA and that is responsible for all
6 operations of the MEWA. The trustees must be owners, partners,
7 officers, directors, or employees of one or more employers in the
8 MEWA. A trustee may not be an owner, officer or employee of the
9 administrator or service company of the MEWA. The trustees have
10 the authority to approve applications of association members for
11 participation in the MEWA and to contract with an authorized
12 administrator or service company to administer the operations of the
13 MEWA;

14 (4) Neither offered nor advertised to the public generally; and

15 (5) Operated in accordance with sound actuarial principles.

16 (b) The MEWA shall issue to each covered employee a policy, contract,
17 certificate, summary plan description, or other evidence of the benefits and coverages
18 provided. The evidence of benefits and coverages provided shall contain, in boldface
19 print in a conspicuous location, the following statement: 'THE BENEFITS AND
20 COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST
21 FUND ESTABLISHED BY A GROUP OF EMPLOYERS AND IS NOT AN
22 INSURANCE COMPANY, IS NOT UNDERWRITTEN BY AN INSURANCE
23 COMPANY, AND IS NOT PROTECTED BY ANY INSURANCE GUARANTY
24 FUND IF THE TRUST BECOMES INSOLVENT. [IF APPLICABLE;
25 PARTICIPATING EMPLOYERS ARE ASSESSABLE FOR ANY LOSSES
26 INCURRED BY THE TRUST.]'

27 (c) Each MEWA shall maintain excess insurance written by an insurer authorized
28 to do business in this State with a retention level determined in accordance with sound
29 actuarial principles. Such contracts must be filed with the Commissioner and contain
30 notification provisions requiring at least 60 days' notice to the Commissioner from the
31 insurer issuing such coverage prior to the termination or modification of such coverage.
32 The Commissioner may by rule prescribe net retentions levels for MEWAs in
33 accordance with the number of risks insured.

34 (d) Each MEWA shall establish and maintain appropriate loss reserves
35 determined in accordance with sound actuarial principles. A minimum reserve equal to
36 three times the average anticipated monthly incurred operating and claims expenses
37 shall be maintained at all times and deposited in a solvent bank domesticated in this
38 State. Foreign MEWAs shall make such bank deposits only to the extent commensurate
39 with their North Carolina risks.

40 (e) Each MEWA shall also exhibit to the satisfaction of the Commissioner, in
41 addition to the loss reserves required in subsection (d) of this section, further evidence
42 of its ability to meet its outstanding liabilities and maintain sufficient funds adequate to
43 its financial needs and obligations to its insureds. The Commissioner may consider,
44 among other things: deposits of securities with the Commissioner for the protection of

1 participants; a letter of credit making available additional funds for the continued
2 operation of the MEWA; insolvency insurance; a surety bond; the maintenance of loss
3 reserves in excess of the three months required by subsection (d) of this section; and the
4 ability of the MEWA to assess participating employers for its obligations to its insureds,
5 not covered by current contributions, reserves, excess or other insurance.

6 (f) The Commissioner shall not grant or continue a license to any MEWA if the
7 Commissioner deems any trustee, manager, or administrator to be incompetent,
8 untrustworthy, or so lacking in insurance expertise as to make the operations of the
9 MEWA hazardous to the potential and existing insureds; that any trustee, manager, or
10 administrator has been found guilty of or has pled guilty or no contest to a felony, a
11 crime involving moral turpitude, or a crime punishable by imprisonment of one year or
12 more under the law of any State or country, whether or not a judgment or conviction has
13 been entered; that any trustee, manager, or administrator has had any type of insurance
14 license revoked in this or any other state; or that the business operations of the MEWA
15 are or have been marked, to the detriment of the employers participating in the MEWA,
16 of persons receiving benefits from the MEWA, or of creditors or the public, by the
17 improper manipulation of assets, accounts, or excess insurance or by bad faith.

18 (g) To qualify for and retain approval to transact business, a MEWA shall file all
19 contracts with administrators or service companies with the Commissioner, and report
20 any changes to such contracts to the Commissioner in advance of their implementation.

21 (h) Failure to maintain compliance with the eligibility requirements established
22 by this section and the filing requirements of G.S. 58-49-30 are grounds for denial,
23 suspension, or revocation of the license of a MEWA.

24 **"§ 58-49-45. Certain words prohibited in name of MEWA.**

25 No licensed MEWA shall use in its name, contracts, literature, advertising in any
26 medium, or any other printed matter the words 'insurance', 'casualty', 'surety', 'mutual',
27 or any other words descriptive of the insurance business or deceptively similar to the
28 name or description of any insurer doing business in this State.

29 **"§ 58-49-50. Filing of application.**

30 An association sponsoring a MEWA shall file with the Commissioner an application
31 for a license on a form prescribed by the Commissioner and signed under oath by
32 officers of the association. The application shall include or have attached the following:

- 33 (1) A copy of the articles of incorporation, constitution, and bylaws of the
34 association;
- 35 (2) A list of the names, addresses, and official capacities with the MEWA
36 of the individuals who will be responsible for the management and
37 conduct of the affairs of the MEWA, including all trustees, officers,
38 and directors. Such individuals shall fully disclose the extent and
39 nature of any contracts or arrangements between them and the MEWA,
40 including possible conflicts of interest.
- 41 (3) A copy of the articles of incorporation, bylaws, or trust agreement that
42 governs the operation of the MEWA.
- 43 (4) A copy of the policy, contract, certificate, summary plan description,
44 or other evidence of the benefits and coverages provided to covered

1 employees, including a table of the rates charged or proposed to be
2 charged for each form of such contract. An actuary who is a member
3 of the American Academy of Actuaries or the Society of Actuaries and
4 has experience in establishing rates for a self-insured trust and health
5 services being provided, shall certify that:

6 a. The rates are neither inadequate, nor excessive, nor unfairly
7 discriminatory.

8 b. The rates are appropriate for the classes of risks for which they
9 have been computed.

10 c. An adequate description of the rating methodology has been
11 filed with the Commissioner and such methodology follows
12 consistent and equitable actuarial principles.

13 (5) A copy of a fidelity bond, in an amount equal to ten percent (10%) of
14 the funds handled annually, issued in the name of the MEWA and
15 covering its trustees, directors, officers, employees, administrator, or
16 other individuals managing or handling the funds or assets of the
17 MEWA. In no case may the bond be less than fifty thousand dollars
18 (\$50,000) or more than five hundred thousand dollars (\$500,000);
19 provided that the Commissioner, after due notice to all interested
20 parties and opportunity for hearing, may prescribe an amount in excess
21 of five hundred thousand dollars (\$500,000).

22 (6) A copy of the MEWA's excess insurance agreement.

23 (7) A feasibility study, made by an independent qualified actuary and an
24 independent certified public accountant with an opinion acceptable to
25 the Commissioner, that addresses market potential, market penetration,
26 market competition, operating expenses, gross revenues, net income,
27 total assets and liabilities, cash flow, and other items as the
28 Commissioner requires. The study shall be for the greater of three
29 years or until the MEWA has been projected to be profitable for 12
30 consecutive months. The study must show that the MEWA would not,
31 at any month end of the projection period, have less than the minimum
32 statutory reserves as required by G.S. 58-49-40(d). The feasibility
33 study shall reflect and support that the initial gross premiums for the
34 first year of operation shall be at least one hundred thousand dollars
35 (\$100,000).

36 (8) A copy of an audited financial statement of the MEWA reflecting the
37 minimum statutory reserve as required by G.S. 58-49-40(d).

38 (9) Evidence satisfactory to the Commissioner showing that the MEWA
39 will be operated in accordance with sound actuarial principles. The
40 Commissioner shall not approve the MEWA unless it is determined
41 that the MEWA is designed to provide sufficient revenues to pay
42 current and future liabilities, as determined in accordance with sound
43 actuarial principles.

1 (10) A copy of every contract between the MEWA and any administrator or
2 service company.

3 (11) Such additional information as the Commissioner may require.

4 **"§ 58-49-55. Examinations; deposits; solvency regulation.**

5 (a) The provisions of Articles 2, 5, and 30 of this Chapter regarding
6 examinations, deposits, and supervision and receivership respectively apply to MEWAs.
7 The provisions of Article 62 of this Chapter and of Article 8B of Chapter 105 of the
8 General Statutes do not apply to MEWAs.

9 (b) A MEWA or the Commissioner may contract, at reasonable fees for work
10 performed, with qualified, impartial, outside sources to perform, in whole or in part,
11 audits or examinations to determine the continued compliance with the requirements
12 applicable to MEWAs. Such contracts are not subject to Article 3C of Chapter 143 of
13 the General Statutes. Such audits or examinations shall be under the direct supervision
14 of the Commissioner. The results of such audits or examinations are subject to the
15 review and approval, disapproval, or modification by the Commissioner.

16 **"§ 58-49-60. Annual reports; actuarial certifications; quarterly reports.**

17 (a) Every MEWA shall, within three months after the end of each of its fiscal
18 years or within any such extension of time that the Commissioner for good cause grants,
19 file a report with the Commissioner, on forms prescribed by the Commissioner and
20 verified by the oath of a member of the board of trustees and by an administrative
21 executive appointed by the board, showing its financial condition on the last day of the
22 preceding fiscal year. The report shall contain an audited financial statement of the
23 MEWA prepared in accordance with statutory accounting principles, including its
24 balance sheet and a statement of the operations for the preceding fiscal year certified by
25 an independent certified public accountant. The report shall also include an analysis of
26 the adequacy of reserves and contributions or premiums charged, based on a review of
27 past and projected claims and expenses.

28 (b) In addition to the information called for and furnished in connection with the
29 annual report, if reasonable grounds exist, the Commissioner may request information
30 that summarizes paid and incurred expenses and contributions or premiums received;
31 and may request evidence satisfactory to him that the MEWA is actuarially sound.
32 Such information and evidence shall be furnished by the MEWA not later than 30 days
33 after such request, unless the Commissioner, for good cause, grants an extension.

34 (c) Annually, in conjunction with the annual report required in subsection (a) of
35 this section, the MEWA shall submit an actuarial certification prepared by an
36 independent qualified actuary that indicates:

37 (1) The MEWA is actuarially sound, which certification shall consider the
38 rates, benefits, and expenses of, and any other funds available for the
39 payment of obligations of, the MEWA;

40 (2) The rates being charged and to be charged for contracts are actuarially
41 adequate to the end of the period for which rates have been
42 guaranteed;

43 (3) Incurred but not reported claims and claims reported but not fully paid
44 have been adequately provided for; and

1 (4) Such other information relating to the performance of the MEWA that
2 is required by the Commissioner.

3 (d) Every MEWA shall file quarterly, within 45 days after the end of each of its
4 fiscal quarters, an unaudited financial statement on a form prescribed by the
5 Commissioner, verified by the oath of a member of the board of trustees and an
6 administrative executive appointed by the board, showing its financial condition on the
7 last day of the preceding quarter.

8 (e) Any MEWA that fails to file an annual financial report, actuarial report, or
9 quarterly financial report in the form and within the time required by this section is
10 subject to G.S. 58-2-70; and after notice and opportunity for hearing, the Commissioner
11 may suspend the MEWA's authority to enroll new insureds or to do business in this
12 State while such failure continues.

13 **"§ 58-49-65. Denial, suspension, or revocation of license.**

14 (a) The Commissioner shall deny, suspend, or revoke a MEWA's license if he
15 finds that the MEWA:

16 (1) Is insolvent;

17 (2) Is using such methods and practices in the conduct of its business as to
18 render its further transaction of business in this State hazardous or
19 injurious to its participating employers, covered employees and
20 dependents, or to the public;

21 (3) Has failed to pay any final judgment rendered against it in a court of
22 competent jurisdiction within 60 days after the judgment became final;

23 (4) Is or has been in violation of or threatens to violate applicable
24 provisions of this Chapter;

25 (5) Is no longer actuarially sound; or

26 (6) Is charging rates that are excessive, inadequate, or unfairly
27 discriminatory.

28 (b) The Commissioner may deny, suspend, or revoke the license of any MEWA
29 if he determines that the MEWA:

30 (1) Has violated any lawful order or rule of the Commissioner; or any
31 applicable provision of this Chapter; or

32 (2) Has refused to be examined or to produce its accounts, records, or files
33 for examination or if any of its officers have refused to give
34 information with respect to its affairs or to perform any other legal
35 obligation as to such examination, when required by the
36 Commissioner.

37 (c) Whenever the financial condition of the MEWA is such that, if not modified
38 or corrected, its continued operation would result in impairment or insolvency, in
39 addition to any provisions in Article 30 of this Chapter, the Commissioner may order
40 the MEWA to file with the Commissioner and implement a corrective action plan
41 designed to do one or more of the following:

42 (1) Reduce the total amount of present potential liability for benefits by
43 reinsurance or other means.

44 (2) Reduce the volume of new business being accepted.

- 1 (3) Reduce the expenses of the MEWA by specified methods.
 2 (4) Suspend or limit the writing of new business for a period of time.

3 If the MEWA fails to submit a plan within the time specified by the Commissioner or
 4 submits a plan that is insufficient to correct the MEWA's financial condition, the
 5 Commissioner may order the MEWA to implement one or more of the corrective
 6 actions listed in this subsection.

7 (d) The Commissioner shall, in the order suspending the authority of a MEWA to
 8 enroll new subscribers, specify the period during which the suspension is to be in effect
 9 and the conditions, if any, that must be met prior to reinstatement of its authority to
 10 enroll new subscribers. The order of suspension is subject to rescission or modification
 11 by further order of the Commissioner before the expiration of the suspension period.
 12 Reinstatement shall not be made unless requested by the MEWA; however, the
 13 Commissioner shall not grant reinstatement if it is found that the circumstances for
 14 which suspension occurred still exist."

15 Sec. 2. The title of Article 49 of Chapter 58 of the General Statutes reads as
 16 rewritten:

17 **"DETERMINATION OF JURISDICTION OVER PROVIDERS**
 18 **OF HEALTH CARE BENEFITS; REGULATION OF MULTIPLE**
 19 **EMPLOYER WELFARE ARRANGEMENTS."**

20 Sec. 3. G.S. 58-49-30 reads as rewritten:

21 **"§ 58-49-30. Multiple employer welfare arrangements; definition;**
 22 **administrators registration; reports to the Commissioner.**

23 (a) As used in this section, the term 'multiple employer welfare arrangement' or
 24 'MEWA' means that term as defined in Section 3 of the Employee Retirement Income
 25 Security Act of 1974, 29 U.S.C. § 1002(40)(A), as amended, that meets either or both of
 26 the following criteria:

- 27 (1) One or more of the employer members of the MEWA is either
 28 domiciled in this State or has its principal headquarters or principal
 29 administrative office in this State.
 30 (2) The MEWA solicits an employer that is domiciled in this State or that
 31 has its principal headquarters or principal administrative office in this
 32 State.

33 (b) ~~Every MEWA and every administrator of a MEWA shall register with the~~
 34 ~~Commissioner comply with Article 56 of this Chapter in order to do business in this~~
 35 ~~State. Such registration must be renewed each year thereafter on the anniversary date of~~
 36 ~~the initial registration.~~

37 (c) Each insurer licensed to do business in this State that administers a MEWA
 38 shall, ~~in lieu of registration,~~ at the request of the Commissioner, provide the
 39 Commissioner with such information regarding the insurer's administrative services
 40 contract or contracts with such MEWA or MEWAs that the Commissioner requires. No
 41 unlicensed insurer shall administer any MEWA.

42 (d) ~~All MEWAs shall, at the time they file report with the U.S. Department of~~
 43 ~~Labor pursuant to 29 U.S.C. §§1022 and 1023, file verified copies of such reports with~~
 44 ~~the Commissioner. The provisions of G.S. 58-2-180 apply to the making such reports.~~

1 (e) ~~The provisions of this section are in addition to all other statutory provisions~~
2 ~~of Articles 1 through 64 of this Chapter and do not supersede, amend, or repeal such~~
3 ~~provisions."~~

4 Sec. 4. This act is effective upon ratification.