

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 1412

Short Title: MEWA Fees, Regulation.

(Public)

Sponsors: Senator Johnson of Cabarrus.

Referred to: Insurance.

May 30, 1990

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR LICENSING FEES AND LICENSING AND REGULATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAs) ON A RECEIPT-SUPPORTED BASIS AND IN ACCORDANCE WITH THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AS ENACTED AND AMENDED BY CONGRESS; AND TO CHANGE THE REGISTRATION FEE AND FINANCIAL RESPONSIBILITY REQUIREMENTS FOR HEALTH PLAN ADMINISTRATORS.

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 to read:

"§ 58-49-30. Rules for the regulation of multiple employer welfare arrangements.

(a) As used in this section and in G.S. 58-49-35 and G.S. 58-49-40, the term 'multiple employer welfare arrangement' or 'MEWA' means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002(40)(A), as amended, that meets either or both of the following criteria:

(1) One or more of the employer members of the MEWAs either domiciled in this State or has its principal headquarters or principal administrative office in this State.

(2) The MEWA solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.

(b) The Commissioner shall adopt administrative rules governing multiple employer welfare arrangements and persons that administer MEWAs, to carry out the

1 provisions of this section and G.S. 58-49-35 and G.S. 58-49-40. In addition to
2 provisions that customarily apply to insurance companies under this Chapter that are
3 deemed to be necessary by the Commissioner for the proper regulation of MEWA's and
4 their administrators, such rules shall provide standards requiring the maintenance of
5 specified levels of reserves and specified levels of contributions that each MEWA must
6 meet.

7 **"§ 58-49-35. Certificate of authority; fees; examinations and sanctions.**

8 (a) Every MEWA and every administrator of a MEWA shall, within 90 days
9 after the effective date of this section, apply for a certificate of authority from the
10 Commissioner in order to do business in this State. Such certificate must be renewed
11 each year thereafter on the anniversary date of the initial certificate.

12 (b) The fees imposed for such certificate shall be five hundred dollars (\$500.00)
13 for each MEWA and three hundred dollars (\$300.00) for each administrator, which are
14 due and payable upon the application for the initial certificate and each renewal.

15 (c) The Commissioner may conduct an examination of any MEWA or its
16 administrator, or both, to determine whether the MEWA or its administrator is
17 complying with the Commissioner's rules. The cost of the examination shall be borne
18 by the party examined in accordance with G.S. 58-6-5(3). If the Commissioner
19 determines the MEWA or its administrator is not complying with the Commissioner's
20 rules, he may order the MEWA or its administrator to comply. The failure or refusal of
21 a MEWA or its administrator to comply with the order of the Commissioner shall
22 constitute grounds for the suspension, revocation, or nonrenewal of its certificate of
23 authority or grounds for sanctions under G.S. 58-2-70, or both.

24 **"§ 58-49-40. Regulatory fees and costs; funding additional staff and overhead.**

25 (a) It is the policy of the State of North Carolina to provide fair regulation of
26 MEWAs in the interest of the public, as provided in this Chapter. The cost of regulating
27 MEWAs is a burden incident to the privilege of operating a MEWA. Therefore, for the
28 purpose of defraying the cost of regulating MEWAs, including the employment of
29 additional Department staff and the necessary associated working monies, every
30 MEWA and MEWA administrator subject to the jurisdiction of the Commissioner shall
31 pay to the Commissioner the regulatory fee required by this section, in addition to all
32 other fees and taxes. The fees collected shall be used only to pay the expenses of the
33 Department in regulating MEWAs in the interest of the public.

34 (b) For the fiscal years beginning on July 1, 1990, and July 1, 1991, the
35 regulatory fee shall be one percent (1%) of each MEWA's annual self-funded
36 contributions.

37 (c) When the Commissioner prepares his budget request for the fiscal years
38 beginning on and after July 1, 1992, he shall propose a percentage rate for the
39 regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate
40 shall be included in the budget message the Governor submits to the General Assembly
41 pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that
42 proposed rate shall be included in a special budget message the Governor shall submit
43 to the General Assembly. The General Assembly shall set the percentage rate of the
44 regulatory fee by law.

1 (d) The percentage rate may not exceed the amount necessary to generate funds
2 sufficient to defray the estimated cost of the Department for the upcoming fiscal year in
3 the regulation of MEWAs, including a reasonable margin for a reserve fund. The
4 amount of the reserve may not exceed the estimated cost of the Department in the
5 regulation of MEWAs for the upcoming fiscal year. In calculating the amount of the
6 reserve, the General Assembly shall consider all relevant factors that may affect the cost
7 of the Department in the regulation of MEWAs or a possible unanticipated increase or
8 decrease in self-funded contributions of MEWAs.

9 (e) If the Department experiences a revenue shortfall, the Commissioner shall
10 implement a temporary regulatory fee surcharge to avert the deficiency that would
11 otherwise occur. In no event may the total percentage rate of the regulatory fee plus any
12 surcharge established by the Commissioner exceed one percent of annual self-funded
13 contributions of MEWAs.

14 (f) The regulatory fee imposed under this section is due and payable to the
15 Commissioner on or before the 15th day of the second month following the end of each
16 quarter. Every MEWA and administrator subject to the regulatory fee shall, on or before
17 the date the fee is due for each quarter, prepare and render a report on a form prescribed
18 by the Commissioner. The report shall state the MEWA's total self-funded contributions
19 for the preceding quarter and shall be accompanied by any supporting documentation
20 that the Commissioner may by rule require. Receipts shall be reported on an accrual
21 basis.

22 (g) A special fund is created in the office of the State Treasurer, to be known as
23 the Department of Insurance MEWA Fund. The fees collected pursuant to this section
24 shall be deposited in the Fund. The Fund shall be placed in an interest bearing account
25 and any interest or other income derived from the Fund shall be credited to the Fund.
26 Moneys in the Fund shall only be spent pursuant to appropriation by the General
27 Assembly. The Fund shall be subject to the provisions of the Executive Budget Act;
28 except that no unexpended surplus of the Fund shall revert to the General Fund. All
29 funds credited to the Fund shall be used only to pay the expenses of the Department in
30 regulating MEWAs in the interest of the public as provided by this Chapter."

31 Sec. 2. G.S. 58-50-40(a) reads as rewritten:

32 "(a) As used in this section and in G.S. 58-50-45, the term 'group health
33 insurance' means: (1) any policy described in G.S. 58-51-75, 58-51-80, or 58-51-90; (2)
34 any group insurance certificate or group subscriber contract issued by a hospital service
35 corporation pursuant to Articles 65 and 66 of this Chapter; or (3) any health care plan
36 provided or arranged by a health maintenance organization pursuant to Article 67 of this
37 Chapter; or (4) any multiple employer welfare arrangement as defined in G.S. 58-49-
38 30(a). As used in this section and in G.S. 58-50-45, the term 'insurance fiduciary' means
39 any person, employer, principal, agent, trustee, or third party administrator, who is
40 responsible for the payment of group health or group life insurance premiums. As used
41 in this section and in G.S. 58-50-45, 'premiums' includes contributions to a multiple
42 employer welfare arrangement."

43 Sec. 3. G.S. 58-50-45(b) reads as rewritten:

1 "(b) The notice required by subsection (a) of this section shall be printed in 10
2 point type and shall read as follows:

3 "UNDER NORTH CAROLINA GENERAL STATUTE SECTION 58-50-40, NO
4 PERSON, EMPLOYER, PRINCIPAL, AGENT, TRUSTEE, OR THIRD PARTY
5 ADMINISTRATOR, WHO IS RESPONSIBLE FOR THE PAYMENT OF GROUP
6 HEALTH OR LIFE INSURANCE OR HEALTH CARE PLAN PREMIUMS, FOR
7 WHICH PAYMENT WAGES OR OTHER FUNDS ARE WITHHELD FROM THE
8 PERSONS INSURED, SHALL: (1) CAUSE THE CANCELLATION OR
9 NONRENEWAL OF GROUP HEALTH OR LIFE INSURANCE, HOSPITAL,
10 MEDICAL, OR DENTAL SERVICE PLAN, MULTIPLE EMPLOYER WELFARE
11 ARRANGEMENT, OR HEALTH CARE PLAN COVERAGES AND THE
12 CONSEQUENTIAL LOSS OF THE COVERAGES OF THE PERSONS INSURED,
13 BY WILLFULLY FAILING TO PAY SUCH PREMIUMS IN ACCORDANCE WITH
14 THE TERMS OF THE INSURANCE OR PLAN CONTRACT, AND (2) WILLFULLY
15 FAIL TO DELIVER, AT LEAST 30 DAYS PRIOR TO THE TERMINATION OF
16 SUCH COVERAGES, TO EACH NAMED INSURED A WRITTEN NOTICE OF
17 THE PERSON'S INTENTION TO STOP PAYMENT OF PREMIUMS. THIS
18 WRITTEN NOTICE MUST ALSO CONTAIN A NOTICE TO THE NAMED
19 INSUREDS OF THEIR RIGHTS TO HEALTH INSURANCE CONVERSION
20 POLICIES UNDER ARTICLE 53 OF GENERAL STATUTES CHAPTER 58 AND
21 THEIR RIGHTS UNDER THE FEDERAL CONSOLIDATED OMNIBUS BUDGET
22 RECONCILIATION (COBRA). VIOLATION OF THIS LAW IS A FELONY IF THE
23 INSURANCE IS, IN WHOLE OR IN PART, PAID FOR OUT OF WAGES
24 WITHHELD OR OTHER FUNDS COLLECTED FROM THE PERSONS INSURED.
25 ANY PERSON VIOLATING THIS LAW IS ALSO SUBJECT TO A COURT ORDER
26 REQUIRING THE PERSON TO COMPENSATE PERSONS INSURED FOR
27 EXPENSES OR LOSSES INCURRED AS A RESULT OF THE TERMINATION OF
28 THE INSURANCE."

29 Sec. 4. G.S. 58-56-60(b) reads as rewritten:

30 "(b) Each application for the issuance or renewal of a certificate shall be
31 accompanied by a filing fee of ~~twenty dollars (\$20.00)~~ one hundred dollars (\$100.00) and
32 evidence of maintenance of a ~~surety bond, errors and omissions liability insurance, or~~
33 both, of a type and in an amount to be determined by rules adopted by the
34 Commissioner. The fee prescribed by this subsection applies only to administrators
35 who do not administer multiple employer welfare arrangements, as defined in G.S. 58-
36 49-30(a)."

37 Sec. 5. In the event any provision of this act is held to be invalid by any court
38 of competent jurisdiction, the court's holding as to that provision shall not affect the
39 validity or operation of other provisions of this act; and to that end the provisions of this
40 act are severable.

41 Sec. 6. This act is effective upon ratification.