

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 433*
Committee Substitute Favorable 5/9/91

Short Title: MEWA Regulation.

(Public)

Sponsors:

Referred to:

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS
3 THAT ARE NOT SUBJECT TO THE EMPLOYEE RETIREMENT INCOME
4 SECURITY ACT.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 58-49-35. Multiple employer welfare arrangements; license required; penalty.**

9 (a) It is unlawful to operate, maintain, or establish a MEWA unless the MEWA
10 has a valid license issued by the Commissioner. Any MEWA operating in this State
11 without a valid license is an unauthorized insurer.

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

16 "**§ 58-49-40. Qualifications for licensure.**

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

19 (1) Nonprofit;

20 (2) Established by a trade association, industry association, or professional
21 association of employers or professionals that has a constitution or
22 bylaws and that has been organized and maintained in good faith for a

1 continuous period of five years for purposes other than that of
2 obtaining or providing insurance;

3 (3) Operated pursuant to a trust agreement by a board of trustees that has
4 complete fiscal control over the MEWA and that is responsible for all
5 operations of the MEWA. Except as provided in this subdivision, the
6 trustees must be owners, partners, officers, directors, or employees of
7 one or more employers in the MEWA. With the Commissioner's
8 approval, a person who is not such an owner, partner, officer, director,
9 or employee may serve as a trustee if that person possesses the
10 expertise required for such service. A trustee may not be an owner,
11 officer or employee of the administrator or service company of the
12 MEWA. The trustees have the authority to approve applications of
13 association members for participation in the MEWA and to contract
14 with an authorized administrator or service company to administer the
15 operations of the MEWA;

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

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

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

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

36 (d) Each MEWA shall establish and maintain appropriate loss reserves
37 determined in accordance with sound actuarial principles.

38 (e) The Commissioner shall not grant or continue a license to any MEWA if the
39 Commissioner deems that any trustee, manager, or administrator is incompetent,
40 untrustworthy, or so lacking in insurance expertise as to make the operations of the
41 MEWA hazardous to the potential and existing insureds; that any trustee, manager, or
42 administrator has been found guilty of or has pled guilty or no contest to a felony, a
43 crime involving moral turpitude, or a crime punishable by imprisonment of one year or
44 more under the law of any State or country, whether or not a judgment or conviction has

1 been entered; that any trustee, manager, or administrator has had any type of insurance
2 license revoked in this or any other state; or that the business operations of the MEWA
3 are or have been characterized, to the detriment of the employers participating in the
4 MEWA, of persons receiving benefits from the MEWA, or of creditors or the public, by
5 the improper manipulation of assets, accounts, or excess insurance or by bad faith.

6 (f) To qualify for and retain a license, a MEWA shall file all contracts with
7 administrators or service companies with the Commissioner, and report any changes to
8 such contracts to the Commissioner in advance of their implementation.

9 (g) Failure to maintain compliance with the eligibility requirements established
10 by this section is a ground for denial, suspension, or revocation of the license of a
11 MEWA.

12 **"§ 58-49-45. Certain words prohibited in name of MEWA.**

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

17 **"§ 58-49-50. Filing of application.**

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

- 21 (1) A copy of the articles of incorporation, constitution, and bylaws of the
22 association;
- 23 (2) A list of the names, addresses, and official capacities with the MEWA
24 of the individuals who will be responsible for the management and
25 conduct of the affairs of the MEWA, including all trustees, officers,
26 and directors. Such individuals shall fully disclose the extent and
27 nature of any contracts or arrangements between them and the MEWA,
28 including possible conflicts of interest.
- 29 (3) A copy of the articles of incorporation, bylaws, or trust agreement that
30 governs the operation of the MEWA.
- 31 (4) A copy of the policy, contract, certificate, summary plan description,
32 or other evidence of the benefits and coverages provided to covered
33 employees, including a table of the rates charged or proposed to be
34 charged for each form of such contract. An actuary who is a member
35 of the American Academy of Actuaries or the Society of Actuaries and
36 has experience in establishing rates for a self-insured trust and health
37 services being provided, shall certify that:
 - 38 a. The rates are neither inadequate, nor excessive, nor unfairly
39 discriminatory.
 - 40 b. The rates are appropriate for the classes of risks for which they
41 have been computed.
 - 42 c. An adequate description of the rating methodology has been
43 filed with the Commissioner and such methodology follows
44 consistent and equitable actuarial principles.

- 1 (5) A copy of a fidelity bond, in an amount determined by rules adopted
2 by the Commissioner, issued in the name of the MEWA and covering
3 any individuals managing or handling the funds or assets of the
4 MEWA. In no case may the bond be less than fifty thousand dollars
5 (\$50,000) or more than five hundred thousand dollars (\$500,000).
- 6 (6) A copy of the MEWA's excess insurance agreement.
- 7 (7) A feasibility study, made by an independent qualified actuary and an
8 independent certified public accountant with an opinion acceptable to
9 the Commissioner, that addresses market potential, market penetration,
10 market competition, operating expenses, gross revenues, net income,
11 total assets and liabilities, cash flow, and other items as the
12 Commissioner requires. The study shall be for the greater of three
13 years or until the MEWA has been projected to be profitable for 12
14 consecutive months. The study must show that the MEWA would not,
15 at any month end of the projection period, have less than the reserves
16 as required by G.S. 58-49-40(d).
- 17 (8) A copy of an audited financial statement of the MEWA reflecting the
18 minimum statutory reserve as required by G.S. 58-49-40(d).
- 19 (9) Evidence satisfactory to the Commissioner showing that the MEWA
20 will be operated in accordance with sound actuarial principles. The
21 Commissioner shall not approve the MEWA unless it is determined
22 that the MEWA is designed to provide sufficient revenues to pay
23 current and future liabilities, as determined in accordance with sound
24 actuarial principles.
- 25 (10) A copy of every contract between the MEWA and any administrator or
26 service company.
- 27 (11) Such additional information as the Commissioner may require.

28 **"§ 58-49-55. Examinations; deposits; solvency regulation.**

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

33 (b) An audit or examination of a MEWA shall be conducted only when there are
34 circumstances to support a reasonable belief of a MEWA's noncompliance with this
35 Article.

36 **"§ 58-49-60. Annual reports; actuarial certifications; quarterly reports.**

37 (a) Every MEWA shall, within 150 days after the end of each of its fiscal years
38 or within any such extension of time that the Commissioner for good cause grants, file a
39 report with the Commissioner, on forms prescribed by the Commissioner and verified
40 by the oath of a member of the board of trustees and by an administrative executive
41 appointed by the board, showing its financial condition on the last day of the preceding
42 fiscal year. The report shall contain an audited financial statement of the MEWA
43 prepared in accordance with statutory accounting principles, including its balance sheet
44 and a statement of the operations for the preceding fiscal year certified by an

1 independent certified public accountant. The report shall also include an analysis of the
2 adequacy of reserves and contributions or premiums charged, based on a review of past
3 and projected claims and expenses.

4 (b) In addition to the information called for and furnished in connection with the
5 annual report, if reasonable grounds exist, the Commissioner may request information
6 that summarizes paid and incurred expenses and contributions or premiums received;
7 and may request evidence satisfactory to the Commissioner that the MEWA is
8 actuarially sound. That information and evidence shall be furnished by the MEWA not
9 later than 30 days after the request, unless the Commissioner, for good cause, grants an
10 extension.

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

14 (1) The MEWA is actuarially sound, with the certification considering the
15 rates, benefits, and expenses of, and any other funds available for the
16 payment of obligations of, the MEWA;

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

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

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

24 (d) If reasonable grounds exist, the Commissioner may require a MEWA to file
25 quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited
26 financial statement on a form prescribed by the Commissioner, verified by the oath of a
27 member of the board of trustees and an administrative executive appointed by the board,
28 showing its financial condition on the last day of the preceding quarter.

29 (e) Any MEWA that fails to file a report as required by this section is subject to
30 G.S. 58-2-70; and after notice and opportunity for hearing, the Commissioner may
31 suspend the MEWA's authority to enroll new insureds or to do business in this State
32 while the failure continues.

33 **"§ 58-49-65. Denial, suspension, or revocation of license.**

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

36 (1) Is insolvent;

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

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

43 (4) Is or has been in violation of or threatens to violate any provision of
44 this Article;

- 1 (5) Is no longer actuarially sound; or
 2 (6) Is charging rates that are excessive, inadequate, or unfairly
 3 discriminatory.

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

- 6 (1) Has violated any lawful order or rule of the Commissioner; or any
 7 applicable provision of this Article; or
 8 (2) Has refused to produce its accounts, records, or files for examination
 9 under G.S. 58-49-55 or through any of its officers has refused to give
 10 information with respect to its affairs or to perform any other legal
 11 obligation as to an examination.

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

- 17 (1) Reduce the total amount of present potential liability for benefits by
 18 reinsurance or other means.
 19 (2) Reduce the volume of new business being accepted.
 20 (3) Reduce the expenses of the MEWA by specified methods.
 21 (4) Suspend or limit the writing of new business for a period of time.

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

26 (d) The Commissioner shall, in the order suspending the authority of a MEWA to
 27 enroll new insureds, specify the period during which the suspension is to be in effect
 28 and the conditions, if any, that must be met prior to reinstatement of its authority to
 29 enroll new insureds. The order of suspension is subject to rescission or modification by
 30 further order of the Commissioner before the expiration of the suspension period.
 31 Reinstatement shall not be made unless requested by the MEWA; however, the
 32 Commissioner shall not grant reinstatement if it is found that the circumstances for
 33 which suspension occurred still exist."

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

36 **"DETERMINATION OF JURISDICTION OVER PROVIDERS**
 37 **OF HEALTH CARE BENEFITS. BENEFITS; REGULATION OF MULTIPLE**
 38 **EMPLOYER WELFARE ARRANGEMENTS."**

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

40 **"§ 58-49-30. Multiple employer welfare arrangements; definition; administrators.**
 41 **registration; reports to the Commissioner.**

42 (a) As used in this section, the term 'multiple employer welfare arrangement' or
 43 'MEWA' means that term as defined in Section 3 of the Employee Retirement Income

1 Security Act of 1974, 29 U.S.C. § 1002(40)(A), as amended, that meets either or both of
2 the following criteria:

3 (1) One or more of the employer members of the MEWA is either
4 domiciled in this State or has its principal headquarters or principal
5 administrative office in this State.

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

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

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

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

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

24 Sec. 4. This act becomes effective January 1, 1992.