

SENATE BILL NO. 54

INTRODUCED BY F. THOMAS

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE LAWS RELATED TO  
6 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; ALLOWING A MULTIPLE EMPLOYER WELFARE  
7 ARRANGEMENT TO FORM UNDER A PATHWAY ESTABLISHED IN FEDERAL RULES; DELETING THE  
8 DEFINITION OF "BONA FIDE ASSOCIATION"; REVISING ELIGIBILITY FOR CERTIFICATE OF AUTHORITY  
9 LAWS; REVISING REPORTING REQUIREMENTS; REVISING INSURANCE CODE APPLICATION TO  
10 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AMENDING SECTIONS 33-35-102, 33-35-103,  
11 33-35-202, 33-35-301, AND 33-35-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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13 WHEREAS, federal regulatory guidance for multiple employer welfare arrangements was amended in  
14 83 Fed. Reg. 28912, effective August 20, 2018, and codified in 29 CFR 2510; and

15 WHEREAS, this act allows either pathway for establishing a multiple employer welfare arrangement  
16 under current federal law.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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20 **Section 1.** Section 33-35-102, MCA, is amended to read:

21 **"33-35-102. Purpose.** The purposes of this chapter are to:

22 (1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;

23 that:

24 (a) are formed under a pathway established in accordance with the applicable provisions of 29 CFR  
25 2510; or

26 (b) were previously established or are newly formed under federal regulatory guidance effective prior  
27 to August 20, 2018;

28 (2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity  
29 of the arrangements;

30 (3) provide reporting requirements for self-funded multiple employer welfare arrangements; and

1 (4) provide for sanctions against self-funded multiple employer welfare arrangements organized and  
 2 maintained in Montana that do not comply with this chapter."

3

4 **Section 2.** Section 33-35-103, MCA, is amended to read:

5 **"33-35-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
 6 definitions apply:

7 (1) "Allowable benefit" means a benefit relating to medical, surgical, or hospital care in the event of  
 8 sickness, accident, disability, or any combination of sickness, accident, or disability.

9 ~~(2)(a) "Bona fide association" means an association of employers that has been in existence for a period~~  
 10 ~~of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement, during which~~  
 11 ~~time the association has engaged in substantial activities relating to the common interests of member employers,~~  
 12 ~~and that continues to engage in substantial activities in addition to sponsoring an arrangement.~~

13 ~~——(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an~~  
 14 ~~arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for~~  
 15 ~~5 years prior to sponsoring an arrangement.~~

16 ~~(3)(2)~~ (2) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits under a  
 17 self-funded multiple employer welfare arrangement that are not reimbursed or reimbursable by excess of loss  
 18 insurance, subrogation, or other sources.

19 ~~(4)(3)~~ (3) (a) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as  
 20 defined by 29 U.S.C. 1002.

21 (b) The term does not include an arrangement, plan, program, or interlocal agreement of or between  
 22 political subdivisions of this state, including school districts, as provided in 33-1-102.

23 ~~(5)(4)~~ (4) "Reserves" means the excess of the assets of a self-funded multiple employer welfare  
 24 arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare  
 25 arrangement include the claims liability of the arrangement.

26 ~~(6)(5)~~ (5) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer  
 27 welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy  
 28 or policies of insurance issued by one or more insurance companies with a certificate of authority under this title."

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30 **Section 3.** Section 33-35-202, MCA, is amended to read:

1           **"33-35-202. Eligibility for certificate of authority.** The commissioner may not issue a certificate of  
 2 authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the  
 3 reasonable satisfaction of the commissioner that the following requirements have been satisfied by the  
 4 arrangement:

5           (1) ~~the employers participating in the self-funded multiple employer welfare arrangement~~ has a current  
 6 form M-1 filed with and accepted by the United States department of labor showing Montana as the state of  
 7 operation ~~are either engaged in the same trade, profession, or industry or the employers participating in the~~  
 8 ~~arrangement are members of a bona fide association;~~

9           (2) the employers participating in the arrangement exercise control over the arrangement, as follows:

10          (a) ~~Subject~~ subject to subsection (2)(b), control exists if the employers participating in the arrangement  
 11 have the right to elect at least 75% of the individuals designated in the arrangement's organizational documents  
 12 as having control over the operations of the arrangement and the individuals designated in the arrangement's  
 13 organizational documents in fact exercise control over the operation of the arrangement; and

14          (b) ~~The~~ the use of a third-party administrator to process claims and to assist in the administration of the  
 15 arrangement is not evidence of the lack of exercise of control over the operation of the arrangement; and

16          (3) the arrangement provides only allowable benefits. However, an arrangement may provide life  
 17 insurance coverage to its participants if the coverage is provided pursuant to contracts of insurance that comply  
 18 with Title 33, chapter 20, parts 10 through 12.

19          (4) the arrangement provides allowable benefits to not less than 2 employers and not less than 75  
 20 employees;

21          (5) the arrangement may not solicit participation in the arrangement from the general public. However,  
 22 the arrangement may employ or independently contract with a licensed insurance producer who may be paid a  
 23 commission or other remuneration to enroll employers in the arrangement, and employees of the arrangement,  
 24 employees of the association sponsoring the arrangement, or employees of affiliates of the association, other  
 25 than licensed insurance producers, may enroll employers in the arrangement if the employees do not receive a  
 26 commission or other remuneration in addition to their customary compensation for enrolling employers.

27          (6) the arrangement is not organized or maintained solely as a conduit for the collection of premiums and  
 28 the forwarding of premiums to an insurance company. However, it is permissible for a self-funded multiple  
 29 employer welfare arrangement to act as a conduit for the collection and forwarding of premiums for life insurance  
 30 coverage pursuant to subsection (3)."

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2           **Section 4.** Section 33-35-301, MCA, is amended to read:

3           **"33-35-301. Reporting.** (1) A self-funded multiple employer welfare arrangement shall comply with the  
4 reporting requirements of this section.

5           (2) Within 3 months following the close of the arrangement's year of operations, the arrangement shall  
6 file with the commissioner, on forms prescribed by the commissioner:

7           (a) a statement of financial condition;

8           (b) a statement of change in financial conditions accompanied by an actuarial opinion that the unpaid  
9 claim liability of the arrangement satisfies the standards of 33-2-514. The commissioner may, in the  
10 commissioner's discretion, waive the requirement of an actuarial opinion and require a report prepared by an  
11 actuarial firm and, upon a showing of good cause, may extend by 30 days the filing date for the report.

12           (c) a statement of its contribution rates for the ensuing year;

13           (d) a statement of operations for the previous year;

14           (e) if the total payments to the arrangement for participation during the prior year of operations exceeded  
15 the sum of \$2 million, an audit satisfying the requirements of the commissioner's rules governing annual audited  
16 reports, except that an arrangement audit may be prepared using generally accepted accounting principles. The  
17 audit must be certified by an independent certified public accountant. The filing date for the audit must be  
18 extended by the commissioner upon a showing of good cause.

19           (f) additional information as the commissioner reasonably determines to be necessary to determine the  
20 financial integrity of the ~~management arrangement~~.

21           (3) An arrangement shall file with the commissioner a copy of the arrangement's internal revenue service  
22 form 5500 together with all attachments to the form, at the time required for filing the form.

23           (4) An arrangement shall file with the commissioner a copy of the arrangement's annual form M-1 filed  
24 with and accepted by the United States department of labor, together with all attachments to the form, at the time  
25 required for filing the form with the United States department of labor.

26           ~~(5) An arrangement shall file quarterly financial statements with the commissioner no later than 45 days~~  
27 ~~after the end of each quarter, on a form and in a manner prescribed by the commissioner~~ AN ARRANGEMENT SHALL  
28 FILE WITH THE COMMISSIONER A LIMITED QUARTERLY FINANCIAL STATEMENT FOR EACH QUARTER ENDING MARCH 31, JUNE  
29 30, AND SEPTEMBER 30, ON A FORM AND IN A MANNER PRESCRIBED BY THE COMMISSIONER. THE STATEMENT MUST  
30 INDICATE THE ARRANGEMENT'S ASSETS AND LIABILITIES AND PROFITS AND LOSSES AND MUST BE FILED NO LATER THAN

1 45 DAYS AFTER THE END OF EACH QUARTER.

2 (6) An arrangement shall file annually with the commissioner for review and approval a copy of the  
 3 arrangement's summary plan description or descriptions at least 60 days prior to the beginning of the next plan  
 4 year, ON A FORM AND IN A MANNER ACCEPTABLE TO THE COMMISSIONER, VERIFICATION THAT THE ARRANGEMENT HAS  
 5 COMPLIED WITH THE PROVISIONS LISTED IN 33-35-306(1)(H) THROUGH (1)(J)."

6

7 **Section 5.** Section 33-35-306, MCA, is amended to read:

8 **"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter,  
 9 self-funded multiple employer welfare arrangements are subject to the following provisions:

10 (a) 33-1-111;

11 (b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare  
 12 arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

13 (c) Title 33, chapter 1, part 7;

14 (d) Title 33, chapter 2, part 23;

15 (e) 33-3-308 and 33-3-431;

16 ~~(f) Title 33, chapter 7;~~

17 ~~(g)~~(f) Title 33, chapter 18, except 33-18-242;

18 ~~(h)~~(g) Title 33, chapter 19;

19 ~~(i)~~(h) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-138, 33-22-139, 33-22-141, 33-22-142,  
 20 33-22-152, and 33-22-153; and

21 ~~(j)~~(i) 33-22-512, 33-22-515, 33-22-525, and 33-22-526; and

22 (j) Title 33, chapter 22, part 7.

23 (2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple  
 24 employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

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26 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
 27 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
 28 remains in effect in all valid applications that are severable from the invalid applications.

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30 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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