

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 972

Introduced by Senator McClintock

February 23, 2007

An act to amend ~~Section 742.24~~ *Sections 742.20, 742.24, and 742.29* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 972, as amended, McClintock. Insurance: multiple employer welfare arrangements.

Existing law provides for the regulation of insurers by the Department of Insurance. Under existing law, a multiple employer welfare arrangement (MEWA), *as defined*, that ~~satisfies specified requirements applied to the department before December 1, 1995~~, for a certificate of compliance ~~issued by the department~~ is not considered an unauthorized insurer and may continue providing benefits to its members.

This bill would ~~make nonsubstantive changes to the provision setting forth the criteria~~ *allow* a MEWA ~~is required to satisfy to be eligible to apply to the department on and after January 1, 2008~~, for a certificate of compliance.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 742.20 of the Insurance Code is amended*
- 2 *to read:*
- 3 742.20. The Legislature finds and declares the following:

1 (a) An alternative to insurance programs, health care
2 maintenance organizations, and panel provider organizations was
3 established by Congress in 1974 through the Employee Retirement
4 Income Security Act (ERISA). Among the various employee
5 benefit programs established and governed by ERISA are multiple
6 employer welfare arrangements (MEWA), which are subject as
7 well to state ~~regulatory~~ and fiscal standards not inconsistent with
8 ERISA. MEWAs permit ~~employer members~~ of trade associations
9 to create trust funds for the purpose of offering and providing
10 health care benefits to *employer members* for their employees.
11 MEWAs can be created as fully insured or self-funded or partially
12 self-funded benefit programs.

13 (b) The Legislature recognizes that some MEWAs provide an
14 alternative mechanism to traditional health insurance for small
15 employers. It is the intent of the Legislature to ensure the financial
16 integrity of those MEWA programs ~~that are already in existence~~
17 by requiring self-funded or partially self-funded MEWAs to obtain
18 a certificate of compliance from the Department of Insurance. In
19 order for the Department of Insurance to grant a certificate of
20 compliance, the MEWA must adhere to standards set forth in this
21 ~~act~~ *which article* that are not inconsistent with the provisions of
22 ERISA. Further, it is the intent of the Legislature to provide the
23 Department of Insurance with the authority to levy monetary
24 penalties and to revoke certificates of compliance from MEWAs
25 that violate the provisions of this ~~act~~ *article*.

26 (c) The Legislature has passed significant reforms in the area
27 of small group health insurance. This article, in no manner,
28 circumvents these reforms nor is it intended to be a precedent to
29 do so. Therefore, the small group reform legislation applies to
30 MEWAs to the extent it is not inconsistent with ERISA.

31 (d) The provisions of this article are consistent with and
32 authorized by ERISA, which confers upon the states limited
33 authority to regulate MEWAs.

34 ~~SECTION 1.~~

35 *SEC. 2.* Section 742.24 of the Insurance Code is amended to
36 read:

37 742.24. To be eligible for a certificate of compliance, a
38 self-funded or partially self-funded multiple employer welfare
39 arrangement shall meet all of the following requirements:

40 (a) Be nonprofit.

1 (b) Be established and maintained by a trade association,
2 industry association, professional association, or by any other
3 business group or association of any kind that has a constitution
4 or bylaws specifically stating its purpose, and have been organized
5 and maintained in good faith with at least 200 paid members and
6 operated actively for a continuous period of five years, for purposes
7 other than that of obtaining or providing health care coverage
8 benefits to its members. An association is a California mutual
9 benefit corporation comprised of a group of individuals or
10 employers who associate based solely on participation in a
11 specified profession or industry, accepting for membership any
12 individual or employer meeting its membership criteria, which do
13 not condition membership directly or indirectly on the health or
14 claims history of any person, and which uses membership dues
15 solely for and in consideration of the membership and membership
16 benefits.

17 (c) Be organized and maintained in good faith with at least 2,000
18 employees and 50 paid employer members and operated actively
19 for a continuous period of five years.

20 (d) Have been operating in compliance with ERISA on a
21 self-funded or partially self-funded basis for a continuous period
22 of five years pursuant to a trust agreement by a board of trustees
23 that shall have complete fiscal control over the multiple employer
24 welfare arrangement, and that shall be responsible for all operations
25 of the multiple employer welfare arrangement. The trustees shall
26 be selected by vote of the participating employers and shall be
27 owners, partners, officers, directors, or employees of one or more
28 employers participating in the multiple employer welfare
29 arrangement. A trustee may not be an owner, officer, or employee
30 of the insurer, administrator, or service company providing
31 insurance or insurance-related services to the association. The
32 trustees shall have authority to approve applications of association
33 members for participation in the multiple employer welfare
34 arrangement and to contract with an authorized administrator or
35 service company to administer the day-to-day affairs of the multiple
36 employer welfare arrangement.

37 (e) Benefits shall be offered only to association members.

38 (f) Benefits may be offered only through life agents, as defined
39 in Section 1622, licensed in the state whose names, addresses, and

1 telephone numbers have been filed with the commissioner as
2 licensed life agents for the multiple employer welfare arrangement.

3 (g) Be operated in accordance with sound actuarial principles
4 and conform to the requirements of Section 742.31.

5 (h) File an application with the department for a certificate of
6 ~~compliance no later than November 30, 1995.~~ *compliance.*

7 (i) The multiple employer welfare arrangement shall at all times
8 maintain aggregate stop loss insurance providing the arrangement
9 with coverage with an attachment point that is not greater than 125
10 percent of annual expected claims. The commissioner may, by
11 regulation, define “expected claims” for purposes of this
12 subdivision and provide for adjustments in the amount of the
13 percentage in specified circumstances in which the arrangement
14 specifically provides for and maintains reserves in accordance with
15 sound actuarial principles as provided in Section 742.31.

16 (j) The multiple employer welfare arrangement shall establish
17 and maintain specific stop loss insurance providing the arrangement
18 with coverage with an attachment point that is not greater than 5
19 percent of annual expected claims. The commissioner may, by
20 regulation, define “expected claims” for purposes of this
21 subdivision and provide for adjustments in the amount of that
22 percentage as may be necessary to carry out the purposes of this
23 subdivision determined by sound actuarial principles as provided
24 in Section 742.31.

25 (k) The multiple employer welfare arrangement shall establish
26 and maintain appropriate loss and loss adjustment reserves
27 determined by sound actuarial principles as provided in Section
28 742.31.

29 (l) The association has within its own organization adequate
30 facilities and competent personnel to serve the multiple employer
31 welfare arrangement, or has contracted with a licensed third-party
32 administrator to provide those services.

33 (m) The association has established a procedure for handling
34 claims for benefits in the event of the dissolution of the multiple
35 employer welfare arrangement.

36 (n) On and after January 1, 2003, in addition to the requirements
37 of this article, maintain a surplus of not less than one million dollars
38 (\$1,000,000), and that this amount be increased as follows: one
39 million seven hundred fifty thousand dollars (\$1,750,000) by
40 January 1, 2004; two million five hundred thousand dollars

1 (\$2,500,000) by January 1, 2005; three million two hundred fifty
2 thousand dollars (\$3,250,000) by January 1, 2006; and four million
3 dollars (\$4,000,000) by January 1, 2007. *A self-funded or partially*
4 *self-funded multiple employer welfare arrangement that applies*
5 *to the department on or after January 1, 2008, for a certificate of*
6 *compliance shall, in addition to the requirements of this article,*
7 *maintain a surplus of not less than four million dollars*
8 *(\$4,000,000).*

9 (o) Submit all proposed rate levels to the department for
10 informational purposes no later than 45 days prior to their
11 implementation. The proposed rates shall contain an aggregate
12 benefit structure that has a loss ratio experience of not less than
13 80 percent. The loss ratio experience shall be calculated as claims
14 paid during the contract period plus a reasonable estimate of claims
15 liability for the contract period at the end of the current year divided
16 by contributions paid or collected for the contract period minus
17 unearned contributions at the end of the current year.

18 (p) Comply with the investment requirements of Section
19 724.245.

20 *SEC. 3. Section 742.29 of the Insurance Code is amended to*
21 *read:*

22 742.29. An association seeking to establish an employee
23 welfare benefit plan by the use of a self-funded or partially
24 self-funded multiple employer welfare arrangement shall apply
25 for a certificate of compliance on a form prescribed by the
26 commissioner. The application shall be completed and submitted
27 to the commissioner along with all of the following:

28 (a) Copies of all articles, bylaws, agreements, or other
29 documents or instruments describing the rights and obligations of
30 the employers, employees, and beneficiaries of the association
31 with respect to the multiple employer welfare arrangement.

32 (b) Current audited financial statements of the association and
33 the multiple employer welfare arrangement, and Internal Revenue
34 Service Form number 5500 for the last five years.

35 (c) Proof of a fidelity bond in an amount equal to 10 percent of
36 the funds handled annually by the multiple employer welfare
37 arrangement. In no case may the amount of the bond be less than
38 fifty thousand dollars (\$50,000) nor more than five hundred
39 thousand dollars (\$500,000).

- 1 (d) A fiduciary liability policy with limits of not less than five
2 hundred thousand dollars (\$500,000).
- 3 (e) A statement showing in full detail the benefit plan upon
4 which the association has established and maintained the multiple
5 employer welfare arrangement.
- 6 (f) A copy of all contracts or other instruments that it makes
7 with or issues to the association members, together with a copy of
8 its plan description and the printed material ~~which was used in~~
9 enrolling members ~~during 1993 and 1994~~ *during the two years*
10 *preceding the date of application.*
- 11 (g) Proof of aggregate and specific stop loss insurance with an
12 insurer licensed to do business in this state.
- 13 (h) A copy of all contracts or other instruments that were used
14 with administrators and producers ~~during 1993 and 1994~~ *during*
15 *the two years preceding the date of application.*
- 16 (i) Biographical affidavits for the trustees, plan administrators
17 of the multiple employer welfare arrangement, officers and
18 directors of the association, other persons acting in a fiduciary
19 capacity and any third-party administrators performing services
20 on behalf of the multiple employer welfare arrangement.