

HOUSE BILL 2097

By Casada

AN ACT to amend Tennessee Code Annotated, Title 56,
relative to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-7-2203(4) and (9)(A), is amended
by deleting the subdivisions and substituting instead the following:

(4) "Carrier" means any person that provides one (1) or more health benefit
plans in this state, including a licensed insurance company, a prepaid hospital or
medical service plan, or a health maintenance organization (HMO);

(9)

(A) "Health benefit plan" means:

- (i) Accident and health insurance policy or certificate;
- (ii) Nonprofit hospital or medical service corporation contract;
- (iii) Health, hospital, or medical service corporation plan contract;
- (iv) HMO subscriber contract; or
- (v) Plan provided by another benefit arrangement, to the extent
permitted by the Employee Retirement Income Security Act (ERISA),
compiled in 29 U.S.C. 1001 et seq., subject to § 56-7-2206.

SECTION 2. Tennessee Code Annotated, Section 56-7-2203(9)(B), is amended by
adding the following new subdivision:

() Plan provided by a MEWA;

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 7, is amended by adding a
new part:

56-7-3501.

As used in this part:

(1) "Base contribution rate" means, as to any health benefit plan that is issued by a multiple employer welfare arrangement and that covers at least one (1) but no more than fifty (50) employees of a small employer, the lowest contribution rate for a new or existing business prescribed by the MEWA for the same or similar coverage under a plan or arrangement covering any small employer with similar case characteristics;

(2) "Case characteristics" means, with respect to a small employer, the geographic area in which the employees work, the age and sex of the individual employees and their dependents, the appropriate industry classification as determined by the carrier, the number of employees and dependents, and such other objective criteria as may be established by the MEWA;

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee;

(5) "Eligible employee" means an employee who works a normal work week of thirty (30) or more hours. "Eligible employee" does not include a temporary or substitute employee, or a seasonal employee who works only part of the calendar year on the basis of natural or suitable times or circumstances;

(6) "Health benefit plan" means any hospital or medical expense coverage or any health plan provided by a MEWA that is delivered, issued for delivery, renewed, or used in this state. "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, or vision care; coverage under a one-time-limited-duration policy that is less than twelve (12) months; coverage issued as a supplement to liability insurance; insurance arising

out of a workers' compensation or similar law; automobile medical-payment insurance; or insurance under which benefits are payable with or without regard to fault and that is required to be contained in any liability insurance policy or equivalent self-insurance pursuant to applicable law;

(7) "Midpoint rate" means, for small employers with similar case characteristics and plan designs and as determined by the applicable MEWA for a rating period, the average of the applicable base contribution rate and the corresponding highest contribution rate;

(8) "Multiple employer welfare arrangement" or "MEWA" has the same meaning as defined in 29 U.S.C. § 1002, except for any arrangement that is fully insured; and

(9) "Small employer" means, in connection with a group health benefit plan and with respect to a calendar year and a plan year, an employer who employed an average of at least one (1) but no more than fifty (50) eligible employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year.

56-7-3502.

(a) It is unlawful for any MEWA to transact business in this state without a license issued by the commissioner. Any of the acts described as a contract of insurance in § 56-7-101, effected by mail or otherwise, by or on behalf of a MEWA constitutes the transaction of business in this state. Any MEWA that transacts business in this state without the license required by this part shall be considered to be an unauthorized insurer within the meaning of this title and all remedies and penalties prescribed in this title shall be fully applicable.

(b) This part does not apply to any plan or arrangement established or maintained by municipalities, counties, or other political subdivisions of this state; any MEWA that is not subject to the application of state insurance laws under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and any other nonprofit organization exempt from federal taxation whose primary purpose is providing access to primary healthcare services for indigent citizens of this state.

56-7-3503.

(a) Application for a license pursuant to this part shall be made on forms prescribed by the commissioner.

(b) Every MEWA shall pay to the commissioner an annual license fee, as established by rule.

56-7-3504.

At the time application for a license is made, the MEWA shall file with the commissioner a copy of the plan's bylaws, all schedules of benefits, and all management, administration, and trust agreements that the plan had made or proposes to make for the conduct of its business and affairs. Any proposed changes or amendments to the documents referred to in this section must also be filed with the commissioner.

56-7-3505.

(a) No MEWA shall be licensed unless it possesses and maintains a minimum surplus of at least equal to the greater of the following:

(1) Thirty percent (30%) of the unpaid claims liability of the arrangement;

or

(2) The amount recommended and certified by a qualified actuary.

(b) Every MEWA shall maintain a safekeeping receipt with the commissioner.

The amount of the safekeeping receipt must be one hundred thousand dollars (\$100,000) and must be in the form of securities eligible for the investment of capital funds of domestic insurers.

(c) Every MEWA shall annually obtain an opinion from a qualified actuary as to the adequacy of its loss reserves. The actuary's opinion shall be prepared and issued based on standards adopted from time to time by the Actuarial Standards Board and in accordance with instruction prescribed by the National Association of Insurance Commissioners.

(d) Every MEWA licensed pursuant to this part shall have an annual audit by an independent certified public accountant in accordance with the instructions prescribed by the National Association of Insurance Commissioners.

(e) Every MEWA shall file financial statements with the commissioner in accordance with the instructions prescribed by the National Association of Insurance Commissioners.

(f)

(1) Every MEWA shall obtain and thereafter maintain aggregate excess stop-loss coverage and individual excess stop-loss coverage.

(2) Excess stop-loss coverage required by this section must be issued by an insurer licensed by the state.

(3) The retention limits for both the aggregate excess stop-loss coverage and individual excess stop-loss coverage must be determined annually by a qualified actuary based on sound actuarial principles.

(4) Any stop-loss contract maintained pursuant to this section shall contain a provision that the stop-loss insurer shall give the MEWA and the

commissioner a minimum of one-hundred-and-eight-day-notice of cancellation or nonrenewal.

(5) If the MEWA fails to obtain replacement coverage within ninety (90) days after receipt of the notice of cancellation or nonrenewal, the trustees of the plan shall provide for the orderly liquidation of the multiple employer welfare arrangement.

(g)

(1) Each participating employer shall be jointly and severally liable for all legal obligations of the MEWA.

(2) If the assets of the MEWA are at any time insufficient to enable the plan to discharge its legal liabilities and other obligations and to maintain the surplus required under this section, the MEWA shall make up the deficiency or levy an assessment upon its participating employers for the amount needed to make up the deficiency.

(3) If the MEWA fails to make up the deficiency or make the required assessment within thirty (30) days after the commissioner orders it to do so or if the deficiency is not fully made up within sixty (60) days after the date on which any such assessment is made or within such longer period as may be specified by the commissioner, the plan shall be deemed to be insolvent.

(4) If the liquidation of a MEWA is ordered, an assessment shall be levied upon its participating employers for such an amount as the commissioner determines to be necessary to discharge all liabilities of the plan, including the reasonable costs of liquidation.

56-7-3506.

Funds collected from the participating employers under multiple employer welfare arrangements shall be held in trust subject to the following requirements:

(1) A board of trustees elected by participating employers shall serve as fund managers on behalf of participants. No employer shall be represented by more than one (1) trustee. A minimum of three (3) and a maximum of seven (7) trustees may be elected. Trustees shall not receive remuneration but they may be reimbursed for actual and reasonable expenses incurred in connection with duties as trustee;

(2) Trustees shall be bonded in an amount not less than one hundred fifty thousand dollars (\$150,000) from a licensed surety company or covered under a directors and officers liability policy issued to the multiple employer welfare arrangement; and

(3) Investment of plan funds shall be subject to the same restrictions that are applicable to insurers as provided by the department of commerce and insurance.

56-7-3507.

(a) With respect to any multiple employer welfare arrangement, the contribution rates charged or offered for a rating period for the same or similar coverage under a MEWA covering any small employer with similar case characteristics shall not vary from the applicable midpoint rate by more than fifty percent (50%) of the midpoint rate.

(b) A MEWA may apply a low claims discount not to exceed ten percent (10%) of the midpoint rate to small employers with favorable claims experience. A contribution rate for a rating period may fall outside the range set forth in subdivision (a) as the result of a low claims discount.

(c) If the contribution rates charged or offered for the same or similar coverage under a health benefit plan covering any small employer with similar case characteristics, as determined by the MEWA, exceeds the contribution rate limitations described in subdivisions (a) and (b), any increase in contribution rates for a new rating period shall not exceed the sum of both of the following:

- (1) Any percentage change in the base contribution rate measured from the first day of the prior rating period to the first day of the new rating period; and
- (2) Any adjustment due to change in case characteristics or plan design of the small employer, as determined by a MEWA.

(d) For purposes of this section, a MEWA shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(e) If a MEWA utilizes industry as a case characteristic in establishing contribution rates, the rate factor associated with any industry classification shall not vary by more than fifteen percent (15%) from the average of the rate factors associated with all industry classifications.

56-7-3508.

Every application for benefits and every benefit plan issued by a MEWA shall contain in contrasting color, in not less than ten-point type, the following statements:

- (1) The health coverage is issued by a self-funded qualified multiple employer welfare arrangement;
- (2) Coverage and benefits provided under a self-funded qualified multiple employer welfare arrangement are not protected by the Tennessee Life and Health Insurance Guaranty Association; and
- (3) If the self-funded qualified multiple employer welfare arrangement does not pay expenses that are eligible for payment under the plan for any

reason, the employer or employee covered by the plan will be responsible for the payment of those expenses.

56-7-3509.

Every MEWA shall be subject to examination in accordance with this title.

56-7-3510.

(a) A plan that desires to cease existence shall apply to the commissioner for authority to dissolve. Applications to dissolve must be on forms prescribed by the commissioner and must be approved or disapproved by the commissioner within sixty (60) days of receipt. Dissolution without authorization is prohibited and does not absolve a plan or its participants from fulfilling the plan's continuing obligations. An application to dissolve must be granted if either of the following conditions is met:

(1) The plan demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

(2) The plan has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the plan provided coverage.

(b) Upon dissolution, after payment of all outstanding liabilities and indebtedness, the assets of the plan must be distributed to all employers participating in the plan during the last five (5) years immediately preceding dissolution. The distributive share of each employer must be in the proportion that all contributions made by the employer during such five-year period bear to the total contributions made by all participating employers during such five-year period.

56-7-3511.

The commissioner may promulgate rules that are necessary to implement this part and to ensure the safe and proper operation of multiple employer welfare arrangements in this state.

56-7-3512.

(a) If the commissioner is of the opinion that a MEWA is in an unsound condition, that it has failed to comply with the law or any applicable rule or orders issued by the commissioner, or that it is in a condition that renders its proceedings hazardous to the public or to persons covered under the plan, the commissioner may, after a hearing, revoke or suspend the license of the plan or, in lieu of revocation, impose a monetary penalty in accordance with this title.

(b) If the commissioner is of the opinion that any of the grounds set forth in subsection (a) exist, the commissioner may commence delinquency proceedings against the plan and supervise, rehabilitate, or liquidate the plan in accordance with the procedures set forth in this title.

56-7-3513.

It is the intent of the legislature that a MEWA be created and maintained by and for the benefit of participating employers and operated under their exclusive management and control. This part is not intended to permit third-party administrators or other entrepreneurial promoters to establish a trust or plan and then proceed to solicit employers as participants. It is specifically intended that the impetus for the creation of the plan must come from the employers themselves, and the employers must at all times exercise absolute control over the management and conduct of the plan's business and affairs.

56-7-3514.

A multiple employer welfare arrangement that covers lives in other states may cover lives in this state only if the commissioner deems the plan to be in compliance with the requirements of this part.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.