

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1014

Introduced by Lindstrom, 18.

Read first time January 15, 2020

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to amend sections 44-7601,
2 44-7603, 44-7604, 44-7605, 44-7606, 44-7612, 44-7614, and 44-7617,
3 Reissue Revised Statutes of Nebraska; to change the Multiple
4 Employer Welfare Arrangement Act as prescribed; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-7601, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-7601 Sections 44-7601 to 44-7617 and section 8 of this act shall
4 be known and may be cited as the Multiple Employer Welfare Arrangement
5 Act.

6 Sec. 2. Section 44-7603, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 44-7603 For purposes of the Multiple Employer Welfare Arrangement
9 Act:

10 (1) Certificate of registration means a document issued by the
11 director authorizing a multiple employer welfare arrangement to offer a
12 health benefit plan that is not fully insured;

13 (2) Covered individual employee means (a) an employee who is covered
14 by a health benefit plan provided through a multiple employer welfare
15 arrangement in which the employer is participating or (b) a self-employed
16 individual who is covered by a health benefit plan provided through a
17 multiple employer welfare arrangement. Covered individual employee
18 includes a dependent of an employee or self-employed individual as
19 defined under the terms of the health benefit plan;

20 (3) Director means the Director of Insurance;

21 (4) Fully insured health benefit plan means a health benefit plan
22 which provides for health benefits, all of which are guaranteed under a
23 contract or policy of insurance issued by an insurance company licensed
24 to transact the business of insurance in this state;

25 (5) Health benefit plan means an employee welfare benefit plan to
26 the extent that it provides any hospital, surgical, or medical expense
27 benefits to covered individuals employees directly or through insurance,
28 reimbursement, or otherwise. Health benefit plan does not include (a)
29 accident-only, disability income, hospital confinement indemnity, dental,
30 or credit insurance, (b) coverage issued as a supplement to liability
31 insurance, (c) medicare or insurance provided as a supplement to

1 medicare, (d) insurance arising from workers' compensation provisions,
2 (e) automobile medical payment insurance, (f) any other specific limited
3 coverage, or (g) insurance under which benefits are payable with or
4 without regard to fault and which is statutorily required to be contained
5 in any liability insurance policy;

6 (6) Multiple employer welfare arrangement means a multiple employer
7 welfare arrangement as defined by 29 U.S.C. 1002, as such section existed
8 on January 1, 2002, if the multiple employer welfare arrangement is
9 sponsored by an association of employers that offers a health benefit
10 plan that is not fully insured. Such association of employers may include
11 self-employed individuals; and

12 (7) Participating employer means an employer or self-employed
13 individual that participates in a multiple employer welfare arrangement;
14 and -

15 (8) Self-employed individual means an individual who:

16 (a) Has an ownership interest in a trade or business in Nebraska,
17 regardless of whether the trade or business is incorporated or
18 unincorporated;

19 (b) Earns wages or self-employment income from the trade or
20 business; and

21 (c) Works at least twenty hours per week or eighty hours per month
22 providing personal services to the trade or business or earns annual
23 income from the trade or business in an amount that is no less than the
24 individual's and any covered dependent's annual cost for health benefit
25 plan coverage under the multiple employer welfare arrangement.

26 Sec. 3. Section 44-7604, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 44-7604 No multiple employer welfare arrangement may offer to a
29 self-employed individual or to an employer that is domiciled in this
30 state or that has its principal headquarters or principal administrative
31 offices in this state a health benefit plan unless the health benefit

1 plan is a fully insured health benefit plan or unless the multiple
2 employer welfare arrangement obtains and maintains a certificate of
3 registration pursuant to the Multiple Employer Welfare Arrangement Act.

4 Sec. 4. Section 44-7605, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 44-7605 (1) A multiple employer welfare arrangement seeking to offer
7 a health benefit plan that is not fully insured shall apply for a
8 certificate of registration in a form prescribed by the director. The
9 application shall be completed and submitted to the director together
10 with a one-thousand-dollar fee and the following:

11 (a) Copies of all articles, bylaws, agreements, and other documents
12 or instruments describing the organizational structure of the applicant;

13 (b) Copies of all materials and documents describing the rights and
14 obligations of participating employers and covered individuals employees
15 with respect to the applicant;

16 (c) A copy of the trust agreement of the applicant;

17 (d) A copy of the unaudited financial statement required by section
18 44-7613;

19 (e) A statement showing in full detail the plan for offering a
20 health benefit plan by the applicant;

21 (f) Copies of all contracts and other instruments proposed to be
22 made, offered, or sold by the applicant to its participating employers,
23 together with a copy of its summary plan description and the proposed
24 advertising matter to be used in the solicitation of participating
25 employers;

26 (g) A copy of the contract with the third-party administrator
27 retained, if any, to administer the health benefit plan;

28 (h) A copy of the stop-loss insurance policy required by section
29 44-7609; and

30 (i) Any other reasonable information requested by the director.

31 (2) The director shall deny a certificate of registration if the

1 applicant does not meet the requirements of the Multiple Employer Welfare
2 Arrangement Act. Notice of denial shall be in writing and shall set forth
3 the basis for the denial. If the applicant submits a written request for
4 reconsideration within thirty days after the notice was sent by the
5 director, the director shall conduct a hearing on the denial pursuant to
6 the Administrative Procedure Act.

7 Sec. 5. Section 44-7606, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 44-7606 A multiple employer welfare arrangement may only be
10 established and maintained by an association of participating employers
11 or covered individuals who are self-employed individuals. The association
12 shall not condition membership in the association, the amounts of dues or
13 other payments for membership, or coverage under a health benefit plan on
14 the basis of health-status-related factors with respect to the covered
15 individuals ~~employees~~ offered coverage under the health benefit plan. The
16 association shall:

17 (1) Have been in existence and engaged in substantive activity for
18 its members other than sponsorship of a health benefit plan for more than
19 three years prior to application for a certificate of registration;

20 (2) Be composed of two or more members, all of which are in the same
21 trade or industry; and

22 (3) Have, before application for a certificate of registration is
23 made, applications for participation (a) from two or more members who are
24 participating employers with an aggregate of two hundred or more covered
25 individuals or (b) from at least two hundred covered individuals who are
26 self-employed individuals ~~participating employees~~.

27 Sec. 6. Section 44-7612, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 44-7612 (1) A multiple employer welfare arrangement shall notify in
30 writing each participating employer and each covered individual ~~employee~~
31 applying for coverage by the multiple employer welfare arrangement that a

1 health benefit plan provided by the multiple employer welfare arrangement
2 is not:

3 (a) Insurance;

4 (b) Subject to state laws and requirements that apply to health
5 insurance offered by a licensed insurer; and

6 (c) Covered by the Nebraska Life and Health Insurance Guaranty
7 Association.

8 (2) The notice required by subsection (1) of this section shall, in
9 ten-point or greater type, disclose that the multiple employer welfare
10 arrangement is authorized under state law to assess participating
11 employers for claims under the health benefit plan in addition to other
12 remedies the multiple employer welfare arrangement may take if the
13 multiple employer welfare arrangement is unable to pay claims.

14 (3) If the multiple employer welfare arrangement provides coverage
15 to covered individuals who are self-employed individuals, the multiple
16 employer welfare arrangement shall include a statement in the summary
17 plan description and any claim or appeal denial notice that self-employed
18 covered individuals may contact the Director of Insurance. Such statement
19 shall include the mailing address and telephone number for the Department
20 of Insurance.

21 Sec. 7. Section 44-7614, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 44-7614 (1) After notice and a hearing conducted pursuant to the
24 Administrative Procedure Act, the director may suspend or revoke a
25 certificate of registration or may impose an administrative fine not to
26 exceed one thousand dollars per violation, or any combination of actions,
27 if the director finds the multiple employer welfare arrangement:

28 (a) Fails to maintain the stop-loss insurance policy as required by
29 section 44-7609;

30 (b) Engages in financial practices that make further transaction of
31 business in this state hazardous or injurious to its participating

1 employers, covered individuals ~~employees~~, or the public;

2 (c) Within fifteen business days, fails to respond or request a
3 reasonable amount of additional time to respond in which time a response
4 is made, to an inquiry of the director;

5 (d) Fails for an unreasonable period to pay any final judgment
6 rendered against it in this state on any contractual obligation;

7 (e) Conducts business fraudulently or has not met its contractual
8 obligations in good faith;

9 (f) Made, published, disseminated, circulated, or placed before the
10 public or caused, directly or indirectly, to be made, published,
11 disseminated, circulated, or placed before the public in a newspaper,
12 magazine, or other publication or in the form of a notice, circular,
13 pamphlet, letter, or poster or over any radio or television station, or
14 in any other way, an advertisement, announcement, or statement containing
15 any assertion, representation, or statement with respect to the health
16 benefit plan or with respect to any insurer in the conduct of his or her
17 business which is untrue, deceptive, or misleading; or

18 (g) Violates any provision of the Multiple Employer Welfare
19 Arrangement Act or section 44-106 or 44-114.

20 (2) Instead of or in addition to the penalties set forth in
21 subsection (1) of this section, the director may issue a cease and desist
22 order to a multiple employer welfare arrangement if such multiple
23 employer welfare arrangement engages in any of the activities set forth
24 in subsection (1) of this section.

25 Sec. 8. A multiple employer welfare arrangement that provides
26 health care coverage to self-employed individuals shall comply with
27 applicable provisions of the following protections for covered
28 individuals that would otherwise be required under the Employee
29 Retirement Income Security Act of 1974:

30 (a) Fiduciary duties in section 404 of the Employee Retirement
31 Income Security Act of 1974, 29 U.S.C. 1104;

1 (b) The prohibition on pre-existing condition exclusions in section
2 2704(a) of the Public Health Service Act, as amended by the Patient
3 Protection and Affordable Care Act, 42 U.S.C. 300gg-3;

4 (c) Claims and appeal procedures in section 503 of the Employee
5 Retirement Income Security Act of 1974, 29 U.S.C. 1133;

6 (d) The Paul Wellstone and Pete Domenici Mental Health Parity and
7 Addiction Equity Act of 2008, 29 U.S.C. 1185a;

8 (e) The Newborns' and Mothers' Health Protection Act of 1996, 29
9 U.S.C. 1185; and

10 (f) The Genetic Information Nondiscrimination Act of 2008, 29 U.S.C.
11 1182.

12 (2) A multiple employer welfare arrangement that provides health
13 care coverage to covered individuals who are self-employed individuals
14 shall establish and maintain a surplus in the trust established pursuant
15 to section 44-7607 in an amount at least equal to the greater of:

16 (a) Five hundred thousand dollars; or

17 (b) Such amount as may be determined by the director. Such amount
18 shall not exceed two million dollars and shall be determined after
19 considering the level of aggregate and specific stop-loss insurance
20 provided with respect to such multiple employer welfare arrangement and
21 other factors related to solvency risk, such as the multiple employer
22 welfare arrangement's projected levels of participation or claims, the
23 nature of the multiple employer welfare arrangement's liabilities, and
24 the types of assets available to assure that such liabilities are met.

25 Sec. 9. Section 44-7617, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 44-7617 (1) Except as provided in subsection (2) of this section,
28 the The Multiple Employer Welfare Arrangement Act shall apply to multiple
29 employer welfare arrangements offering health benefit plans on or after
30 July 20, 2002.

31 (2) The Multiple Employer Welfare Arrangement Act shall apply to

1 multiple employer welfare arrangements providing health care coverage to
2 self-employed individuals on or after January 1, 2020.

3 Sec. 10. Original sections 44-7601, 44-7603, 44-7604, 44-7605,
4 44-7606, 44-7612, 44-7614, and 44-7617, Reissue Revised Statutes of
5 Nebraska, are repealed.