

LEGISLATIVE BILL 1014

Approved by the Governor July 24, 2020

Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to insurance; to amend sections 44-7601, 44-7603, 44-7604, 44-7605, 44-7606, 44-7612, 44-7614, and 44-7617, Reissue Revised Statutes of Nebraska; to change the Multiple Employer Welfare Arrangement Act as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

(3) Director means the Director of Insurance;

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

(5) Health benefit plan means an employee welfare benefit plan to the extent that it provides any hospital, surgical, or medical expense benefits to covered individuals employees directly or through insurance, reimbursement, or otherwise. Health benefit plan does not include (a) accident-only, disability income, hospital confinement indemnity, dental, or credit insurance, (b) coverage issued as a supplement to liability insurance, (c) medicare or insurance provided as a supplement to medicare, (d) insurance arising from workers' compensation provisions, (e) automobile medical payment insurance, (f) any other specific limited coverage, or (g) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy;

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

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

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

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

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

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

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

44-7604 No multiple employer welfare arrangement may offer to a self-employed individual or to an employer that is domiciled in this state or that has its principal headquarters or principal administrative offices in this state a health benefit plan unless the health benefit plan is a fully insured health benefit plan or unless the multiple employer welfare arrangement obtains and maintains a certificate of registration pursuant to the Multiple Employer Welfare Arrangement Act.

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

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

(a) Copies of all articles, bylaws, agreements, and other documents or

instruments describing the organizational structure of the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44-7612 (1) A multiple employer welfare arrangement shall notify in writing each participating employer and each covered individual employee applying for coverage by the multiple employer welfare arrangement that a health benefit plan provided by the multiple employer welfare arrangement is not:

(a) Insurance;

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

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

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

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

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

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

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

(b) Engages in financial practices that make further transaction of business in this state hazardous or injurious to its participating employers, covered individuals employees, or the public;

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

(d) Fails for an unreasonable period to pay any final judgment rendered

against it in this state on any contractual obligation;

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

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

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

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

Sec. 8. A multiple employer welfare arrangement that provides health care coverage to self-employed individuals shall comply with the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as such acts existed on January 1, 2020, and the following protections for covered individuals that would otherwise be required under the Employee Retirement Income Security Act of 1974:

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

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

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

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

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

(2) A multiple employer welfare arrangement that provides health care coverage to covered individuals who are self-employed individuals shall establish and maintain a surplus in the trust established pursuant to section 44-7607 in an amount equal to at least seven hundred fifty thousand dollars. The director may increase the amount required to be deposited in the trust based on the director's determination that such an increase is necessary after considering the level of aggregate and specific stop-loss insurance provided with respect to such multiple employer welfare arrangement and other factors related to solvency risk, such as the multiple employer welfare arrangement's projected levels of participation or claims, the nature of the multiple employer welfare arrangement's liabilities, and the types of assets available to assure that such liabilities are met.

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

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

(2) The Multiple Employer Welfare Arrangement Act shall apply to multiple employer welfare arrangements providing health care coverage to self-employed individuals on or after January 1, 2020.

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