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SENATE BILL NO. 376

INTRODUCED BY Christina Wolf

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; AND AMENDING SECTION 33-1-1111, MCA."

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

NEW SECTION. Section 1. Short Title. [Sections 1 through 14] may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

NEW SECTION. Section 2. Purpose. The purposes of [sections 1 through 14] are to:

- (1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;
- (2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
- (3) provide reporting requirements for self-funded multiple employer welfare arrangements; and
- (4) provide for sanctions against self-funded multiple employer welfare arrangements organized and maintained in Montana that do not comply with [sections 1 through 14].

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 14], unless a contrary intent appears, the following definitions apply:

- (1) "Allowable benefits" means a benefits relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.
- (2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement,

1 during which time the association has engaged in substantial activities relating to the common interests of
2 member employers, and that continues to engage in substantial activities in addition to sponsoring an
3 arrangement.

4 (b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an
5 arrangement prior to [the effective date of sections 1 through 14] is not subject to the requirement that the
6 association be in existence for 5 years prior to sponsoring an arrangement.

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

10 (4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as
11 defined by 29 U.S.C. 1002.

12 (5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare
13 arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer
14 welfare arrangement include the claims liability of the arrangement.

15 (6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple
16 employer welfare arrangement that does not provide for payment of benefits under the arrangement solely
17 through a policy or policies of insurance issued by one or more insurance companies licensed under this
18 title.

19

20 **NEW SECTION. Section 4. Certificate of authority.** (1) Except as provided in subsection (3), a
21 person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana
22 unless the arrangement first obtains a certificate of authority from the commissioner.

23 (2) A self-funded multiple employer welfare arrangement is considered to be established or
24 maintained in Montana if one or more of the employer members participating in the arrangement is either
25 domiciled in or maintains its principal place of business in Montana.

26 (3) A self-funded multiple employer welfare arrangement established and maintained in Montana
27 prior to January 1, 1995, has until [6 months following the effective date of sections 1 through 14] to file
28 an application for a certificate of authority. An arrangement that files an application for a certificate of
29 authority by that date is considered to have been issued a certificate of authority unless the commissioner
30 finally denies the arrangement's application for a certificate of authority.

1 **NEW SECTION. Section 5. Eligibility for certificate of authority.** The commissioner may not issue
2 a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement
3 establishes to the reasonable satisfaction of the commissioner that the following requirements have been
4 satisfied by the arrangement:

5 (1) the employers participating in the self-funded multiple employer welfare arrangement are either
6 engaged in the same trade, profession, or industry or the employers participating in the arrangement are
7 members of a bona fide association;

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

10 (a) 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
12 documents as having control over the operations of the arrangement and the individuals designated in the
13 arrangement's organizational documents in fact exercise control over the operation of the arrangement.

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

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

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

1 premiums for life insurance coverage pursuant to subsection (3).

2

3 **NEW SECTION. Section 6. Requirements applicable only to arrangements organized after [the**
4 **effective date of sections 1 through 14].** (1) In addition to the requirements of [section 5], self-funded
5 multiple employer welfare arrangements formed after [the effective date of sections 1 through 14] are
6 subject to the following requirements:

7 (a) arrangements shall maintain a calendar year for operations and reporting purposes unless the
8 commissioner consents to a fiscal year;

9 (b) arrangements shall satisfy one of the following requirements:

10 (i) (A) the arrangement shall deposit \$200,000 with the commissioner pursuant to Title 33, chapter
11 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and

12 (B) the arrangement shall submit to the commissioner a written plan of operation that, in the
13 reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

14 (ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability
15 of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

16 (A) the financial condition of the employers intending to participate in the arrangement;

17 (B) the pro forma financial statements of the self-funded multiple employer welfare arrangement;

18 (C) the types and levels of excess loss insurance coverage, including the attachment points of the
19 coverage and whether the points are reflected as annual or monthly levels;

20 (D) whether a deposit is required for each employee covered under the arrangement equal to at least
21 one month's cost of providing benefits under the arrangement;

22 (E) the experience of the individuals who will be involved in the management of the arrangement,
23 including employees, independent contractors, and consultants; and

24 (F) other factors as reasonably determined by the commissioner to be relevant to a determination
25 of whether the arrangement is able to operate in a financially solvent manner.

26 (2) Financial information relating to the employers is subject to the confidentiality provisions of
27 33-1-409(6).

28 (3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents
29 or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the
30 arrangement provide that employers participating in the arrangement are subject to pro rata assessment for

1 all liabilities of the arrangement.

2 (4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess
3 of the designated attachment point. The commissioner may waive the requirement of excess loss insurance
4 coverage.

5 (5) An arrangement shall submit its base contribution rates for participation under the arrangement
6 for its initial year of operations for review and approval by the commissioner.

7 (6) The commissioner may require continued compliance with respect to the conditions set forth
8 in this section as a condition of granting a certificate of authority to an arrangement. The commissioner
9 may waive continued compliance with respect to the conditions in this section at any time after the
10 commissioner has granted a certificate of authority to an arrangement.

11
12 **NEW SECTION. Section 7. Application for certificate of authority.** A self-funded multiple employer
13 welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and
14 shall submit the application, together with the following documents, to the commissioner:

15 (1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing
16 the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

17 (2) a copy of the summary plan description of the arrangement filed or required to be filed with the
18 United States department of labor, together with any amendments to the description;

19 (3) evidence of coverage of or letters of intent to participate executed by at least 2 employers
20 providing allowable benefits to at least 75 employees;

21 (4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has
22 been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a
23 balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion
24 that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

25 (5) proof that the arrangement maintains or will maintain fidelity bonds required by the United
26 States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C.
27 1001, et seq.;

28 (6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained
29 by the arrangement;

30 (7) biographical reports on forms prescribed by the national association of insurance commissioners

1 evidencing the general trustworthiness and competence of each individual who is serving or who will serve
2 as an employee or fiduciary of the arrangement; and

3 (8) a statement executed by a representative of the arrangement certifying, to the best knowledge
4 and belief of the representative, that:

5 (a) the arrangement is in compliance with requirements of [section 5];

6 (b) the arrangement is in compliance with the requirements of the Employee Retirement Income
7 Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the
8 arrangement is not in compliance and a statement of proposed corrective actions; and

9 (c) the arrangement is in compliance with requirements of [sections 8 and 9].

10

11 **NEW SECTION. Section 8. Minimum reserve requirements.** Self-funded multiple employer welfare
12 arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain
13 as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the
14 arrangement.

15

16 **NEW SECTION. Section 9. Minimum funding levels.** A self-funded multiple employer welfare
17 arrangement shall establish and maintain contribution rates for participation under the arrangement that
18 satisfy either of the following requirements:

19 (1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus
20 all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in
21 the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the
22 arrangement in excess of the minimum required level of reserves; or

23 (2) contribution rates must equal or exceed a funding level established by a certified actuarial report
24 obtained by the arrangement.

25

26 **NEW SECTION. Section 10. Issuance of certificate of authority.** (1) The commissioner shall grant
27 or deny an application for a certificate of authority within 180 days of the date that a completed
28 application, together with the items designated in [section 7], is submitted to the commissioner.

29 (2) The commissioner shall grant the application of an arrangement that satisfies the applicable
30 requirements of [sections 5 through 9].

1 (3) The commissioner shall deny the application of an arrangement that does not satisfy the
2 applicable requirements of [sections 5 through 9]. Denial of an application for a certificate of authority is
3 considered a contested case under the Montana Administrative Procedure Act.

4 (4) A certificate of authority granted to an arrangement is effective unless revoked by the
5 commissioner under [section 12].
6

7 **NEW SECTION. Section 11. Reporting.** (1) A self-funded multiple employer welfare arrangement
8 shall comply with the reporting requirements of this section.

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

11 (a) a statement of financial condition;

12 (b) a statement of change in financial conditions accompanied by an actuarial opinion that the
13 unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

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

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

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

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

22 (3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue
23 Service form 5500 together with all attachments to the form, at the time required for filing the form.
24

25 **NEW SECTION. Section 12. Failure to comply.** (1) Pursuant to 33-1-317 and 33-1-318, the
26 commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails
27 to comply with the provisions of [sections 1 through 14]. The maximum fine may not exceed \$5,000 for
28 each violation.

29 (2) The commissioner may issue a notice of intent to revoke the certificate of authority of a
30 self-funded multiple employer welfare arrangement that fails to comply with the provisions of [section 8,

1 9, or 11]. If, within 60 days of receiving notice under this subsection, the arrangement fails to file with
2 the commissioner a plan to bring the arrangement into compliance with [section 8, 9, or 11], the
3 commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of
4 authority is a contested case under the Montana Administrative Procedure Act.

5 (3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails to
6 maintain the level of reserves required by [section 8]. The rules must be consistent with the provisions of
7 Title 33, chapter 2, part 13.

8
9 **NEW SECTION. Section 13. Violation by arrangement failing to obtain or maintain certificate of**
10 **authority.** A self-funded multiple employer welfare arrangement organized or maintained in Montana
11 without a certificate of authority is in violation of 33-2-101.

12
13 **NEW SECTION. Section 14. Application of insurance code to arrangements.** (1) In addition to
14 [sections 1 through 14], self-funded multiple employer welfare arrangements are subject to the following
15 provisions of Title 33:

16 (a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare
17 arrangement is limited to those matters to which the arrangement is subject to regulation under [sections
18 1 through 14];

19 (b) Title 33, chapter 1, part 7;

20 (c) 33-3-308; and

21 (d) Title 33, chapter 18, except 33-18-242.

22 (2) Except as provided in [sections 1 through 14], other provisions of Title 33 do not apply to a
23 self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has
24 not been revoked.

25
26 **Section 15.** Section 33-1-1111, MCA, is amended to read:

27 **"33-1-1111. How to show jurisdiction.** A person or entity may show that it is subject to the
28 jurisdiction of another agency of this or another state or any subdivision ~~thereof~~ of this state or another
29 state or the federal government by providing the commissioner with the appropriate certificate, license, or
30 other document issued by the other governmental agency that permits or qualifies it to provide those

1 services. If it is not the practice of the governmental agency to issue a certificate, license, or other
2 document establishing that the agency permits the person or entity to provide those services, the person
3 or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the
4 circumstances."

5
6 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 14] are intended to be
7 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 14].

8 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0376, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

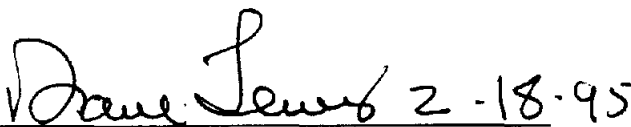
An act providing for the regulation of self-funded multiple employer welfare arrangements (SMEWA), and authorizing the commissioner of insurance to issue and revoke certificates of authority.

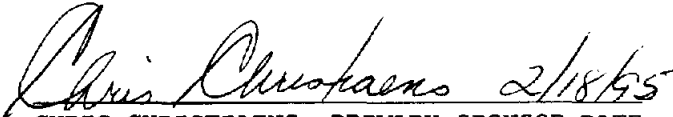
ASSUMPTIONS:

1. Currently five SMEWAs operate in Montana. All five will apply for a certificate of authority in FY96. Existing staff will handle the applications.
2. There are 12,000 individuals currently being served by the five existing SMEWAs. The State Auditor's Office (SAO) does not accept complaints from those individuals. Once the certificate of authority is granted the SAO will begin accepting complaints. Complaints will be accepted beginning in FY97. When fully implemented in FY98, an additional .50 FTE will be necessary to handle complaints.
3. One new SMEWA will apply for a certificate of authority each biennium. Existing staff will review the application.
4. The office will conduct financial solvency exams of each SMEWA every three years. Two exams will be conducted in FY97, two exams per year will be conducted in FY98 and FY99. Existing language will be sufficient to have a private contractor conduct the exam, with the SMEWA paying the contractor.
5. There are no fees with the certification process, nor are SMEWAs subject to the premium tax. Thus no revenue is associated with this bill.

FISCAL IMPACT:

Passage of SB376 will have no fiscal impact on state government.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


CHRIS CHRISTIAENS, PRIMARY SPONSOR DATE

Fiscal Note for SB0376, as introduced

SB 376

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SENATE BILL NO. 376

INTRODUCED BY

Christensen

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; AND AMENDING SECTION 33-1-1111, MCA."

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

NEW SECTION. Section 1. Short Title. [Sections 1 through 14] may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

NEW SECTION. Section 2. Purpose. The purposes of [sections 1 through 14] are to:

- (1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;
- (2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
- (3) provide reporting requirements for self-funded multiple employer welfare arrangements; and
- (4) provide for sanctions against self-funded multiple employer welfare arrangements organized and maintained in Montana that do not comply with [sections 1 through 14].

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 14], unless a contrary intent appears, the following definitions apply:

- (1) "Allowable benefits" means a benefits relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.
- (2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement,

1 during which time the association has engaged in substantial activities relating to the common interests of
2 member employers, and that continues to engage in substantial activities in addition to sponsoring an
3 arrangement.

4 (b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an
5 arrangement prior to [the effective date of sections 1 through 14] is not subject to the requirement that the
6 association be in existence for 5 years prior to sponsoring an arrangement.

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

10 (4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as
11 defined by 29 U.S.C. 1002.

12 (5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare
13 arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer
14 welfare arrangement include the claims liability of the arrangement.

15 (6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple
16 employer welfare arrangement that does not provide for payment of benefits under the arrangement solely
17 through a policy or policies of insurance issued by one or more insurance companies licensed under this
18 title.

19

20 **NEW SECTION. Section 4. Certificate of authority.** (1) Except as provided in subsection (3), a
21 person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana
22 unless the arrangement first obtains a certificate of authority from the commissioner.

23 (2) A self-funded multiple employer welfare arrangement is considered to be established or
24 maintained in Montana if one or more of the employer members participating in the arrangement is either
25 domiciled in or maintains its principal place of business in Montana.

26 (3) A self-funded multiple employer welfare arrangement established and maintained in Montana
27 prior to January 1, 1995, has until [6 months following the effective date of sections 1 through 14] to file
28 an application for a certificate of authority. An arrangement that files an application for a certificate of
29 authority by that date is considered to have been issued a certificate of authority unless the commissioner
30 finally denies the arrangement's application for a certificate of authority.

1 **NEW SECTION. Section 5. Eligibility for certificate of authority.** The commissioner may not issue

2 a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement
3 establishes to the reasonable satisfaction of the commissioner that the following requirements have been
4 satisfied by the arrangement:

5 (1) the employers participating in the self-funded multiple employer welfare arrangement are either
6 engaged in the same trade, profession, or industry or the employers participating in the arrangement are
7 members of a bona fide association;

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

10 (a) 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
12 documents as having control over the operations of the arrangement and the individuals designated in the
13 arrangement's organizational documents in fact exercise control over the operation of the arrangement.

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

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

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

1 premiums for life insurance coverage pursuant to subsection (3).

2
3 **NEW SECTION. Section 6. Requirements applicable only to arrangements organized after [the**
4 **effective date of sections 1 through 14].** (1) In addition to the requirements of [section 5], self-funded
5 multiple employer welfare arrangements formed after [the effective date of sections 1 through 14] are
6 subject to the following requirements:

7 (a) arrangements shall maintain a calendar year for operations and reporting purposes unless the
8 commissioner consents to a fiscal year;

9 (b) arrangements shall satisfy one of the following requirements:

10 (i) (A) the arrangement shall deposit \$200,000 with the commissioner pursuant to Title 33, chapter
11 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and

12 (B) the arrangement shall submit to the commissioner a written plan of operation that, in the
13 reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

14 (ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability
15 of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

16 (A) the financial condition of the employers intending to participate in the arrangement;

17 (B) the pro forma financial statements of the self-funded multiple employer welfare arrangement;

18 (C) the types and levels of excess loss insurance coverage, including the attachment points of the
19 coverage and whether the points are reflected as annual or monthly levels;

20 (D) whether a deposit is required for each employee covered under the arrangement equal to at least
21 one month's cost of providing benefits under the arrangement;

22 (E) the experience of the individuals who will be involved in the management of the arrangement,
23 including employees, independent contractors, and consultants; and

24 (F) other factors as reasonably determined by the commissioner to be relevant to a determination
25 of whether the arrangement is able to operate in a financially solvent manner.

26 (2) Financial information relating to the employers is subject to the confidentiality provisions of
27 33-1-409(6).

28 (3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents
29 or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the
30 arrangement provide that employers participating in the arrangement are subject to pro rata assessment for

1 all liabilities of the arrangement.

2 (4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess
3 of the designated attachment point. The commissioner may waive the requirement of excess loss insurance
4 coverage.

5 (5) An arrangement shall submit its base contribution rates for participation under the arrangement
6 for its initial year of operations for review and approval by the commissioner.

7 (6) The commissioner may require continued compliance with respect to the conditions set forth
8 in this section as a condition of granting a certificate of authority to an arrangement. The commissioner
9 may waive continued compliance with respect to the conditions in this section at any time after the
10 commissioner has granted a certificate of authority to an arrangement.

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12 **NEW SECTION. Section 7. Application for certificate of authority.** A self-funded multiple employer
13 welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and
14 shall submit the application, together with the following documents, to the commissioner:

15 (1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing
16 the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

17 (2) a copy of the summary plan description of the arrangement filed or required to be filed with the
18 United States department of labor, together with any amendments to the description;

19 (3) evidence of coverage of or letters of intent to participate executed by at least 2 employers
20 providing allowable benefits to at least 75 employees;

21 (4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has
22 been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a
23 balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion
24 that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

25 (5) proof that the arrangement maintains or will maintain fidelity bonds required by the United
26 States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C.
27 1001, et seq.;

28 (6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained
29 by the arrangement;

30 (7) biographical reports on forms prescribed by the national association of insurance commissioners

1 evidencing the general trustworthiness and competence of each individual who is serving or who will serve
2 as an employee or fiduciary of the arrangement; and

3 (8) a statement executed by a representative of the arrangement certifying, to the best knowledge
4 and belief of the representative, that:

5 (a) the arrangement is in compliance with requirements of [section 5];

6 (b) the arrangement is in compliance with the requirements of the Employee Retirement Income
7 Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the
8 arrangement is not in compliance and a statement of proposed corrective actions; and

9 (c) the arrangement is in compliance with requirements of [sections 8 and 9].

10
11 **NEW SECTION. Section 8. Minimum reserve requirements.** Self-funded multiple employer welfare
12 arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain
13 as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the
14 arrangement.

15
16 **NEW SECTION. Section 9. Minimum funding levels.** A self-funded multiple employer welfare
17 arrangement shall establish and maintain contribution rates for participation under the arrangement that
18 satisfy either of the following requirements:

19 (1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus
20 all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in
21 the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the
22 arrangement in excess of the minimum required level of reserves; or

23 (2) contribution rates must equal or exceed a funding level established by a certified actuarial report
24 obtained by the arrangement.

25
26 **NEW SECTION. Section 10. Issuance of certificate of authority.** (1) The commissioner shall grant
27 or deny an application for a certificate of authority within 180 days of the date that a completed
28 application, together with the items designated in [section 7], is submitted to the commissioner.

29 (2) The commissioner shall grant the application of an arrangement that satisfies the applicable
30 requirements of [sections 5 through 9].

1 (3) The commissioner shall deny the application of an arrangement that does not satisfy the
2 applicable requirements of [sections 5 through 9]. Denial of an application for a certificate of authority is
3 considered a contested case under the Montana Administrative Procedure Act.

4 (4) A certificate of authority granted to an arrangement is effective unless revoked by the
5 commissioner under [section 12].

6
7 **NEW SECTION. Section 11. Reporting.** (1) A self-funded multiple employer welfare arrangement
8 shall comply with the reporting requirements of this section.

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

11 (a) a statement of financial condition;

12 (b) a statement of change in financial conditions accompanied by an actuarial opinion that the
13 unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

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

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

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

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

22 (3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue
23 Service form 5500 together with all attachments to the form, at the time required for filing the form.

24
25 **NEW SECTION. Section 12. Failure to comply.** (1) Pursuant to 33-1-317 and 33-1-318, the
26 commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails
27 to comply with the provisions of [sections 1 through 14]. The maximum fine may not exceed \$5,000 for
28 each violation.

29 (2) The commissioner may issue a notice of intent to revoke the certificate of authority of a
30 self-funded multiple employer welfare arrangement that fails to comply with the provisions of [section 8,

1 9, or 11]. If, within 60 days of receiving notice under this subsection, the arrangement fails to file with
 2 the commissioner a plan to bring the arrangement into compliance with [section 8, 9, or 11], the
 3 commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of
 4 authority is a contested case under the Montana Administrative Procedure Act.

5 (3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails to
 6 maintain the level of reserves required by [section 8]. The rules must be consistent with the provisions of
 7 Title 33, chapter 2, part 13.

8
 9 **NEW SECTION. Section 13. Violation by arrangement failing to obtain or maintain certificate of**
 10 **authority.** A self-funded multiple employer welfare arrangement organized or maintained in Montana
 11 without a certificate of authority is in violation of 33-2-101.

12
 13 **NEW SECTION. Section 14. Application of insurance code to arrangements.** (1) In addition to
 14 [sections 1 through 14], self-funded multiple employer welfare arrangements are subject to the following
 15 provisions of Title 33:

16 (a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare
 17 arrangement is limited to those matters to which the arrangement is subject to regulation under [sections
 18 1 through 14];

19 (b) Title 33, chapter 1, part 7;

20 (c) 33-3-308; and

21 (d) Title 33, chapter 18, except 33-18-242.

22 (2) Except as provided in [sections 1 through 14], other provisions of Title 33 do not apply to a
 23 self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has
 24 not been revoked.

25
 26 **Section 15.** Section 33-1-1111, MCA, is amended to read:

27 **"33-1-1111. How to show jurisdiction.** A person or entity may show that it is subject to the
 28 jurisdiction of another agency of this or another state or any subdivision ~~thereof~~ of this state or another
 29 state or the federal government by providing the commissioner with the appropriate certificate, license, or
 30 other document issued by the other governmental agency that permits or qualifies it to provide those

1 services. If it is not the practice of the governmental agency to issue a certificate, license, or other
2 document establishing that the agency permits the person or entity to provide those services, the person
3 or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the
4 circumstances."

5
6 NEW SECTION. Section 16. Codification instruction. [Sections 1 through 14] are intended to be
7 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 14].

8 -END-

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SENATE BILL NO. 376

INTRODUCED BY Christensen

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; AND AMENDING SECTION 33-1-1111, MCA."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 20, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Joint Select Committee on Health Care report that Senate Bill 376 (third reading copy -- blue) be concurred in as amended.

Signed: 
Steve Benedict, Chair

Carried by: Rep. Orr

And, that such amendments read:

1. Page 1.

Following: line 9

Insert:

"STATEMENT OF INTENT

A statement of intent is provided for this bill because [section 8] requires the commissioner of insurance to adopt rules regarding supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to meet the minimum level of reserves required by [section 8]. The rules adopted by the commissioner to implement [section 8] should be consistent with Title 33, chapter 2, part 13, and should change the application of those provisions only to the extent necessary to be consistent with the purposes of this bill."

2. Page 4, line 16.

Strike: subsection (A) in its entirety

Renumber: subsequent subsections

3. Page 5, line 17.

Following: "description"

Insert: "or summary plan descriptions"

4. Page 5, line 24.

Following: "33-2-514"

Committee Vote:

Yes 9, No 1.

SB 376

HOUSE

Strike: ";"

Insert: ". The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report by an actuarial firm."

5. Page 6, line 14.

Following: "arrangement."

Insert: "The commissioner may adopt rules regarding the supervision, rehabilitation, and liquidation of self-funded multiple employer welfare arrangements that fail to maintain the level of reserves required by this section."

6. Page 6, lines 23 and 24.

Strike: "certified actuarial report obtained by the arrangement"

Insert: "report prepared by an actuarial firm"

7. Page 7, line 13.

Following: "33-2-514"

Strike: ";"

Insert: ". The commissioner may, in the commissioner's discretion, waive the requirement of an actuarial opinion and require a report prepared by an actuarial firm and, upon a showing of good cause, may extend by 30 days the filing date for the report."

-END-

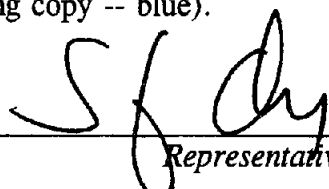


HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 376
Representative Orr

March 24, 1995 12:46 pm
Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 376 (third reading copy -- blue).

Signed: 
Representative Orr

And, that such amendments to Senate Bill 376 read as follows:

1. Title, line 5.

Following: "ARRANGEMENTS;"

Insert: "PROVIDING FOR EXCEPTIONS FROM REGULATION;"

2. Title, line 9.

Following: "CODE;"

Insert: "REQUIRING CERTAIN DISCLOSURES IN INSURANCE POLICIES
ISSUED BY SELF-FUNDED MULTIPLE EMPLOYER WELFARE
ARRANGEMENTS;"

3. Page 1, lines 13, 16, 23, and 25

Strike: "14"

Insert: "15"

4. Page 2, lines 5 and 27.

Strike: "14"

Insert: "15"

5. Page 2, line 11.

Following: "."

Insert: "The term does not include an arrangement, plan, program,
or interlocal agreement of or between political subdivisions
of this state, including school districts, as provided in
33-1-102."

6. Page 4, lines 4 and 5.

Strike: "14"

Insert: "15"

ADOPT

98-0

REJECT

SB 376
HOUSE
AC ___

681246CW.Hbk

7. Page 7, line 27.

Strike: "14"

Insert: "15"

8. Page 8, lines 14, 18, and 22.

Strike: "14"

Insert: "15"

9. Page 8.

Following: line 24

Insert: "NEW SECTION. **Section 15. Disclosure.** Each policy issued by a self-funded multiple employer welfare arrangement must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement."

Renumber: subsequent sections

10. Page 9, lines 6 and 7.

Strike: "14"

Insert: "15"

-END-

1 SENATE BILL NO. 376

2 INTRODUCED BY CHRISTIAENS, MOHL

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE
 5 EMPLOYER WELFARE ARRANGEMENTS; PROVIDING FOR EXCEPTIONS FROM REGULATION;
 6 AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF
 7 AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING
 8 MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING
 9 PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; REQUIRING
 10 CERTAIN DISCLOSURES IN INSURANCE POLICIES ISSUED BY SELF-FUNDED MULTIPLE EMPLOYER
 11 WELFARE ARRANGEMENTS; AND AMENDING SECTION 33-1-1111, MCA."

12
13 STATEMENT OF INTENT

14 A STATEMENT OF INTENT IS PROVIDED FOR THIS BILL BECAUSE [SECTION 8] REQUIRES THE
 15 COMMISSIONER OF INSURANCE TO ADOPT RULES REGARDING SUPERVISION, REHABILITATION, AND
 16 LIQUIDATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS THAT FAIL TO MEET
 17 THE MINIMUM LEVEL OF RESERVES REQUIRED BY [SECTION 8]. THE RULES ADOPTED BY THE
 18 COMMISSIONER TO IMPLEMENT [SECTION 8] SHOULD BE CONSISTENT WITH TITLE 33, CHAPTER 2,
 19 PART 13, AND SHOULD CHANGE THE APPLICATION OF THOSE PROVISIONS ONLY TO THE EXTENT
 20 NECESSARY TO BE CONSISTENT WITH THE PURPOSES OF THIS BILL.

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
 24 NEW SECTION. Section 1. Short Title. [Sections 1 through ~~44~~ 15] may be cited as the
 25 "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

26
 27 NEW SECTION. Section 2. Purpose. The purposes of [sections 1 through ~~44~~ 15] are to:

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

30 (2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial

1 integrity of the arrangements;

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

3 (4) provide for sanctions against self-funded multiple employer welfare arrangements organized and
4 maintained in Montana that do not comply with [sections 1 through 44 15].

5

6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 44 15], unless a contrary
7 intent appears, the following definitions apply:

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

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

15 (b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an
16 arrangement prior to [the effective date of sections 1 through 44 15] is not subject to the requirement that
17 the association be in existence for 5 years prior to sponsoring an arrangement.

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

21 (4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as
22 defined by 29 U.S.C. 1002. THE TERM DOES NOT INCLUDE AN ARRANGEMENT, PLAN, PROGRAM, OR
23 INTERLOCAL AGREEMENT OF OR BETWEEN POLITICAL SUBDIVISIONS OF THIS STATE, INCLUDING
24 SCHOOL DISTRICTS, AS PROVIDED IN 33-1-102.

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

28 (6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple
29 employer welfare arrangement that does not provide for payment of benefits under the arrangement solely
30 through a policy or policies of insurance issued by one or more insurance companies licensed under this

1 title.

2

3 **NEW SECTION. Section 4. Certificate of authority.** (1) Except as provided in subsection (3), a
4 person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana
5 unless the arrangement first obtains a certificate of authority from the commissioner.

6 (2) A self-funded multiple employer welfare arrangement is considered to be established or
7 maintained in Montana if one or more of the employer members participating in the arrangement is either
8 domiciled in or maintains its principal place of business in Montana.

9 (3) A self-funded multiple employer welfare arrangement established and maintained in Montana
10 prior to January 1, 1995, has until [6 months following the effective date of sections 1 through 44 15] to
11 file an application for a certificate of authority. An arrangement that files an application for a certificate
12 of authority by that date is considered to have been issued a certificate of authority unless the
13 commissioner finally denies the arrangement's application for a certificate of authority.

14

15 **NEW SECTION. Section 5. Eligibility for certificate of authority.** The commissioner may not issue
16 a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement
17 establishes to the reasonable satisfaction of the commissioner that the following requirements have been
18 satisfied by the arrangement:

19 (1) the employers participating in the self-funded multiple employer welfare arrangement are either
20 engaged in the same trade, profession, or industry or the employers participating in the arrangement are
21 members of a bona fide association;

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

24 (a) Subject to subsection (2)(b), control exists if the employers participating in the arrangement
25 have the right to elect at least 75% of the individuals designated in the arrangement's organizational
26 documents as having control over the operations of the arrangement and the individuals designated in the
27 arrangement's organizational documents in fact exercise control over the operation of the arrangement.

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

30 (3) the arrangement provides only allowable benefits. However, an arrangement may provide life

1 insurance coverage to its participants if the coverage is provided pursuant to contracts of insurance that
2 comply with Title 33, chapter 20, parts 10 through 12.

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

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

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

16

17 **NEW SECTION. Section 6. Requirements applicable only to arrangements organized after [the**
18 **effective date of sections 1 through 14 15].** (1) In addition to the requirements of [section 5], self-funded
19 multiple employer welfare arrangements formed after [the effective date of sections 1 through 14 15] are
20 subject to the following requirements:

21 (a) arrangements shall maintain a calendar year for operations and reporting purposes unless the
22 commissioner consents to a fiscal year;

23 (b) arrangements shall satisfy one of the following requirements:

24 (i) (A) the arrangement shall deposit \$200,000 with the commissioner pursuant to Title 33, chapter
25 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and

26 (B) the arrangement shall submit to the commissioner a written plan of operation that, in the
27 reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

28 (ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of
29 the arrangement to remain financially solvent, for which purpose the commissioner may consider:

30 ~~(A) the financial condition of the employers intending to participate in the arrangement;~~

- 1 ~~(B)~~(A) the pro forma financial statements of the self-funded multiple employer welfare arrangement;
- 2 ~~(G)~~(B) the types and levels of excess loss insurance coverage, including the attachment points of
- 3 the coverage and whether the points are reflected as annual or monthly levels;
- 4 ~~(D)~~(C) whether a deposit is required for each employee covered under the arrangement equal to
- 5 at least one month's cost of providing benefits under the arrangement;
- 6 ~~(E)~~(D) the experience of the individuals who will be involved in the management of the
- 7 arrangement, including employees, independent contractors, and consultants; and
- 8 ~~(F)~~(E) other factors as reasonably determined by the commissioner to be relevant to a determination
- 9 of whether the arrangement is able to operate in a financially solvent manner.

10 (2) Financial information relating to the employers is subject to the confidentiality provisions of

11 33-1-409(6).

12 (3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents

13 or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the

14 arrangement provide that employers participating in the arrangement are subject to pro rata assessment for

15 all liabilities of the arrangement.

16 (4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess

17 of the designated attachment point. The commissioner may waive the requirement of excess loss insurance

18 coverage.

19 (5) An arrangement shall submit its base contribution rates for participation under the arrangement

20 for its initial year of operations for review and approval by the commissioner.

21 (6) The commissioner may require continued compliance with respect to the conditions set forth

22 in this section as a condition of granting a certificate of authority to an arrangement. The commissioner

23 may waive continued compliance with respect to the conditions in this section at any time after the

24 commissioner has granted a certificate of authority to an arrangement.

25

26 NEW SECTION. **Section 7. Application for certificate of authority.** A self-funded multiple employer

27 welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and

28 shall submit the application, together with the following documents, to the commissioner:

29 (1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing

30 the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

1 (2) a copy of the summary plan description OR SUMMARY PLAN DESCRIPTIONS of the
2 arrangement filed or required to be filed with the United States department of labor, together with any
3 amendments to the description;

4 (3) evidence of coverage of or letters of intent to participate executed by at least 2 employers
5 providing allowable benefits to at least 75 employees;

6 (4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has
7 been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a
8 balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion
9 that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514~~7~~. THE COMMISSIONER
10 MAY, IN THE COMMISSIONER'S DISCRETION, WAIVE THE REQUIREMENT OF AN ACTUARIAL OPINION
11 AND REQUIRE A REPORT BY AN ACTUARIAL FIRM.

12 (5) proof that the arrangement maintains or will maintain fidelity bonds required by the United
13 States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C.
14 1001, et seq.;

15 (6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained
16 by the arrangement;

17 (7) biographical reports on forms prescribed by the national association of insurance commissioners
18 evidencing the general trustworthiness and competence of each individual who is serving or who will serve
19 as an employee or fiduciary of the arrangement; and

20 (8) a statement executed by a representative of the arrangement certifying, to the best knowledge
21 and belief of the representative, that:

22 (a) the arrangement is in compliance with requirements of [section 5];

23 (b) the arrangement is in compliance with the requirements of the Employee Retirement Income
24 Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the
25 arrangement is not in compliance and a statement of proposed corrective actions; and

26 (c) the arrangement is in compliance with requirements of [sections 8 and 9].

27
28 NEW SECTION. Section 8. Minimum reserve requirements. Self-funded multiple employer welfare
29 arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain
30 as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the

1 arrangement. THE COMMISSIONER MAY ADOPT RULES REGARDING THE SUPERVISION,
 2 REHABILITATION, AND LIQUIDATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE
 3 ARRANGEMENTS THAT FAIL TO MAINTAIN THE LEVEL OF RESERVES REQUIRED BY THIS SECTION.
 4

5 NEW SECTION. Section 9. Minimum funding levels. A self-funded multiple employer welfare
 6 arrangement shall establish and maintain contribution rates for participation under the arrangement that
 7 satisfy either of the following requirements:

8 (1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus
 9 all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in
 10 the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the
 11 arrangement in excess of the minimum required level of reserves; or

12 (2) contribution rates must equal or exceed a funding level established by a ~~certified actuarial report~~
 13 ~~obtained by the arrangement~~ REPORT PREPARED BY AN ACTUARIAL FIRM.
 14

15 NEW SECTION. Section 10. Issuance of certificate of authority. (1) The commissioner shall grant
 16 or deny an application for a certificate of authority within 180 days of the date that a completed
 17 application, together with the items designated in [section 7], is submitted to the commissioner.

18 (2) The commissioner shall grant the application of an arrangement that satisfies the applicable
 19 requirements of [sections 5 through 9].

20 (3) The commissioner shall deny the application of an arrangement that does not satisfy the
 21 applicable requirements of [sections 5 through 9]. Denial of an application for a certificate of authority is
 22 considered a contested case under the Montana Administrative Procedure Act.

23 (4) A certificate of authority granted to an arrangement is effective unless revoked by the
 24 commissioner under [section 12].
 25

26 NEW SECTION. Section 11. Reporting. (1) A self-funded multiple employer welfare arrangement
 27 shall comply with the reporting requirements of this section.

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

30 (a) a statement of financial condition;

1 (b) a statement of change in financial conditions accompanied by an actuarial opinion that the
2 unpaid claim liability of the arrangement satisfies the standards of 33-2-514~~7~~. THE COMMISSIONER MAY,
3 IN THE COMMISSIONER'S DISCRETION, WAIVE THE REQUIREMENT OF AN ACTUARIAL OPINION AND
4 REQUIRE A REPORT PREPARED BY AN ACTUARIAL FIRM AND, UPON A SHOWING OF GOOD CAUSE,
5 MAY EXTEND BY 30 DAYS THE FILING DATE FOR THE REPORT.

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

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

8 (e) if the total payments to the arrangement for participation during the prior year of operations
9 exceeded the sum of \$2 million, an audit satisfying the requirements of the commissioner's rules governing
10 annual audited reports, certified by an independent certified public accountant. The filing date for the audit
11 must be extended by the commissioner upon a showing of good cause.

12 (f) additional information as the commissioner reasonably determines to be necessary to determine
13 the financial integrity of the management.

14 (3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue
15 Service form 5500 together with all attachments to the form, at the time required for filing the form.

16
17 NEW SECTION. Section 12. Failure to comply. (1) Pursuant to 33-1-317 and 33-1-318, the
18 commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails
19 to comply with the provisions of [sections 1 through ~~14~~ 15]. The maximum fine may not exceed \$5,000
20 for each violation.

21 (2) The commissioner may issue a notice of intent to revoke the certificate of authority of a
22 self-funded multiple employer welfare arrangement that fails to comply with the provisions of [section 8,
23 9, or 11]. If, within 60 days of receiving notice under this subsection, the arrangement fails to file with
24 the commissioner a plan to bring the arrangement into compliance with [section 8, 9, or 11], the
25 commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of
26 authority is a contested case under the Montana Administrative Procedure Act.

27 (3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails to
28 maintain the level of reserves required by [section 8]. The rules must be consistent with the provisions of
29 Title 33, chapter 2, part 13.

30

1 other document issued by the other governmental agency that permits or qualifies it to provide those
2 services. If it is not the practice of the governmental agency to issue a certificate, license, or other
3 document establishing that the agency permits the person or entity to provide those services, the person
4 or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the
5 circumstances."

6

7 **NEW SECTION. Section 17. Codification instruction.** [Sections 1 through ~~14~~ 15] are intended to
8 be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through ~~14~~
9 15].

10

-END-