

SENATE, No. 2458

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 25, 2001

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Regulates self-funded multiple employer welfare arrangements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9
10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21
22 3. For purposes of this act:

23 "Commissioner" means the Commissioner of Banking and
24 Insurance.

25 "Employee welfare benefit plan" has the meaning set forth in
26 subsection (1) of 29 U.S.C. s.1002.

27 "Multiple employer welfare arrangement" has the meaning set forth
28 in subsection (40) of 29 U.S.C. s.1002.

29 "Self-funded multiple employer welfare arrangement" means a self-
30 funded or partially self-funded multiple employer welfare arrangement
31 that has two or more employers who each have two or more
32 employees and that has one or more of the employer members either
33 domiciled in this State or its principal headquarters or principal
34 administrative office located in this State.

35
36 4. A self-funded multiple employer welfare arrangement shall
37 register annually with the commissioner and pay a registration fee
38 established by the commissioner which shall not exceed \$1,000.

39
40 5. A self-funded multiple employer welfare arrangement shall
41 maintain a cash reserve for excess loss in an amount established by a
42 qualified actuary as being adequate to provide for any excess loss that
43 may reasonably be expected to occur, net of stop-loss coverage or
44 excess risk insurance, but in no event less than benefits anticipated to
45 be payable by the self-funded multiple employer welfare arrangement
46 within the following 75 days.

1 6. Each self-funded multiple employer welfare arrangement shall
2 file all of the following with the commissioner:

3 a. No later than May 15th of each calendar year or four months and
4 15 days after the end of each fiscal year of the self-funded multiple
5 employer welfare arrangement, financial statements audited by a
6 certified public accountant and on forms prescribed by the
7 commissioner, and an actuarial opinion rendered by a qualified
8 actuary. The opinion shall be based on standards adopted from time
9 to time by the Actuarial Standards Board and on any additional
10 standards that the commissioner may prescribe by regulation. For
11 purposes of this section and section 5 of this act, "qualified actuary"
12 means a member in good standing of the American Academy of
13 Actuaries who meets the requirements set forth in regulations of the
14 commissioner.

15 b. Within 60 days after the end of each fiscal quarter, unaudited
16 financial statements on forms prescribed by the commissioner, affirmed
17 by an appropriate officer or agent of the self-funded multiple employer
18 welfare arrangement.

19 c. Within 60 days after the end of each fiscal quarter, a report on
20 forms prescribed by the commissioner certifying that the self-funded
21 multiple employer welfare arrangement maintains cash or liquid assets
22 in a claim reserve account sufficient to meet the requirements of
23 section 5 of this act.

24

25 7. The following notice shall be provided to employers and
26 employees who obtain coverage from a self-funded multiple employer
27 welfare arrangement:

28

29

NOTICE

30

31 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
32 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
33 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
34 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
35 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
36 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
37 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
38 MAKE PAYMENTS AS PROMISED.

39 THE HEALTH CARE BENEFITS THAT YOU HAVE
40 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
41 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
42 WELFARE ARRANGEMENT THAT IS REGISTERED BY THE
43 NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

44 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
45 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
46 QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU

S2458 CARDINALE

1 MAY CONTACT THE NEW JERSEY DEPARTMENT OF
2 BANKING AND INSURANCE AT _____(this blank
3 should include the department's current "800" consumer service
4 telephone number).

5

6 8. Except as provided by this act, the insurance laws of this State
7 do not apply to the operation of self-funded multiple employer welfare
8 arrangements. A self-funded multiple employer welfare arrangement
9 is not an insurance company or insurer under the laws of this State.

10

11 9. a. The commissioner may, upon reasonable notice, conduct an
12 examination of the loss reserves of a self-funded multiple employer
13 welfare arrangement as often as the commissioner in his discretion may
14 deem necessary.

15 b. If the commissioner finds that the reserves are inadequate, he
16 shall notify the self-funded multiple employer welfare arrangement of
17 the inadequacy. Within 30 days the self-funded multiple employer
18 welfare arrangement shall file and implement a plan to correct the
19 inadequacy. The inadequacy shall be corrected within 90 days of the
20 implementation of the plan to correct the inadequacy.

21

22 10. a. The commissioner may revoke or suspend the certificate of
23 registration of any self-funded multiple employer welfare arrangement
24 that fails to correct any inadequacy pursuant to section 9 of this act or
25 violates any provision of this act.

26 b. Any person who violates any provision of this act or the rules
27 and regulations issued pursuant thereto shall be liable to a penalty of
28 not more than \$1,000 for a first offense and not more than \$5,000 for
29 each subsequent offense.

30

31 11. Any rehabilitation, liquidation, conservation or dissolution of
32 a self-funded multiple employer welfare arrangement shall be
33 conducted under the supervision of the commissioner, who shall have
34 all power with respect to it under the laws governing the rehabilitation,
35 liquidation, conservation or dissolution of insurers.

36

37 12. The commissioner, in accordance with the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt
39 rules and regulations necessary to effectuate the purposes of this act.

40

41 13. This act shall take effect on the 180th following enactment.

1 STATEMENT

2

3 This bill requires self-funded or partially self-funded multiple
4 employer welfare arrangements to register with the Commissioner of
5 Banking and Insurance.

6 A self-funded arrangement shall: (1) maintain a cash reserve for
7 excess loss of 75 days of benefits paid, net stop-loss coverage or
8 excess risk insurance; (2) file annually its audited financial statements
9 and an actuarial opinion by a qualified actuary, and file quarterly its
10 unaudited financial statements and the amount of its claim reserve; and
11 provide a written notice to employers and employees stating that a
12 self-funded multiple employer welfare arrangement is not an insurer
13 and does not participate in any guarantee funds created by New Jersey
14 law.

15 The commissioner may suspend or revoke the certificate of
16 registration of a self-funded multiple employer welfare arrangement
17 that does not comply with the provisions of this bill. Any person who
18 violates any provision of this bill would be subject to a fine of not
19 more than \$1,000 for a first offense and not more than \$5,000 for any
20 subsequent offense.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2458

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2001

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2458.

This bill, as amended by the committee, requires self-funded or partially self-funded multiple employer welfare arrangements to register with the Commissioner of Banking and Insurance.

A self-funded arrangement shall: (1) maintain a cash reserve for excess loss in an amount established by a qualified actuary as being adequate to provide for any excess loss that may reasonably be expected to occur, net of stop-loss coverage or reinsurance, but no less than anticipated benefits payable within 75 days; (2) file annually its audited financial statements and an actuarial opinion by a qualified actuary, and file quarterly its unaudited financial statements and the amount of its claim reserve; and (3) provide a written notice to employers and employees stating that a self-funded multiple employer welfare arrangement is not an insurer and does not participate in any guarantee funds created by New Jersey law.

The bill provides that a self-funded multiple employer welfare arrangement is not an insurer and that the insurance laws of this State do not apply to their operation. If the commissioner finds that the reserves of the self-funded multiple employer arrangement are inadequate, he must notify the arrangement of the inadequacy; the arrangement must file a plan to correct the inadequacy; and the inadequacy must be corrected within 90 days of the implementation of the plan.

The commissioner may suspend or revoke the certificate of registration of a self-funded multiple employer welfare arrangement that does not comply with the provisions of this bill. Any person who violates any provision of this bill would be subject to a fine of not more than \$1,000 for a first offense and not more than \$5,000 for any subsequent offense.

Finally, the bill provides that any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement must be conducted under the supervision of the commissioner.

The committee amended the bill to require a self-funded multiple

employer welfare arrangement: to maintain aggregate stop-loss coverage or reinsurance and specific stop-loss or reinsurance, with a retention level determined annually by a qualified actuary; and to provide coverage to employees, dependents or both of employer members without regard to an individual's health status-related factors.

[First Reprint]
SENATE, No. 2458

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 25, 2001

Sponsored by:
Senator GERALD CARDINALE
District 39 (Bergen)

SYNOPSIS

Regulates self-funded multiple employer welfare arrangements.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on November 19, 2001,
with amendments.



1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9

10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21

22 3. For purposes of this act:

23 "Commissioner" means the Commissioner of Banking and
24 Insurance.

25 "Employee welfare benefit plan" has the meaning set forth in
26 subsection (1) of 29 U.S.C. s.1002.

27 "Multiple employer welfare arrangement" has the meaning set forth
28 in subsection (40) of 29 U.S.C. s.1002.

29 "Self-funded multiple employer welfare arrangement" means a self-
30 funded or partially self-funded multiple employer welfare arrangement
31 that has two or more employers who each have two or more
32 employees and that has one or more of the employer members either
33 domiciled in this State or its principal headquarters or principal
34 administrative office located in this State.

35

36 4. A self-funded multiple employer welfare arrangement shall
37 register annually with the commissioner and pay a registration fee
38 established by the commissioner which shall not exceed \$1,000.

39

40 5. 1a¹ A self-funded multiple employer welfare arrangement shall
41 maintain a cash reserve for excess loss in an amount established by a
42 qualified actuary as being adequate to provide for any excess loss that

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 19, 2001.

1 may reasonably be expected to occur, net of stop-loss coverage or
2 ¹[excess risk insurance] reinsurance¹, but in no event less than
3 benefits anticipated to be payable by the self-funded multiple employer
4 welfare arrangement within the following 75 days.

5 ¹b. A self-funded multiple employer welfare arrangement shall
6 maintain aggregate stop-loss coverage or reinsurance, including
7 provisions to cover incurred, unpaid claim liability in the event of the
8 termination or liquidation of the self-funded multiple employer welfare
9 arrangement, and specific stop-loss coverage or reinsurance, with a
10 retention level determined annually by a qualified actuary based on
11 sound actuarial principles. Any stop-loss or reinsurance contract
12 pursuant to this subsection shall contain a provision that the stop-loss
13 insurer or reinsurer will give the self-funded multiple employer welfare
14 arrangement and the commissioner a minimum of 180 days' notice of
15 cancellation or nonrenewal. If the self-funded multiple employer
16 welfare arrangement fails to secure replacement coverage within 60
17 days after receipt of the notice of cancellation or nonrenewal, the
18 commissioner shall provide for the orderly liquidation of the self-
19 funded multiple employer welfare arrangement.¹

20
21 6. Each self-funded multiple employer welfare arrangement shall
22 file all of the following with the commissioner:

23 a. No later than May 15th of each calendar year or four months and
24 15 days after the end of each fiscal year of the self-funded multiple
25 employer welfare arrangement, financial statements audited by a
26 certified public accountant and on forms prescribed by the
27 commissioner, and an actuarial opinion rendered by a qualified
28 actuary. The opinion shall be based on standards adopted from time
29 to time by the Actuarial Standards Board and on any additional
30 standards that the commissioner may prescribe by regulation. For
31 purposes of this section and section 5 of this act, "qualified actuary"
32 means a member in good standing of the American Academy of
33 Actuaries who meets the requirements set forth in regulations of the
34 commissioner.

35 b. Within 60 days after the end of each fiscal quarter, unaudited
36 financial statements on forms prescribed by the commissioner, affirmed
37 by an appropriate officer or agent of the self-funded multiple employer
38 welfare arrangement.

39 c. Within 60 days after the end of each fiscal quarter, a report on
40 forms prescribed by the commissioner certifying that the self-funded
41 multiple employer welfare arrangement maintains cash or liquid assets
42 in a claim reserve account sufficient to meet the requirements of
43 section 5 of this act.

44
45 ¹7. a. A self-funded multiple employer welfare arrangement may
46 refuse to provide coverage to an employer in accordance with the self-

1 funded multiple employer welfare arrangement's underwriting
2 standards and criteria.

3 b. On issuance of coverage to an employer, a self-funded multiple
4 employer welfare arrangement shall provide coverage to the
5 employees, dependents or both of that employer without regard to an
6 individual's health status-related factors, and may exclude only those
7 employees or dependents who have declined coverage.

8 c. Participation in a self-funded multiple employer welfare
9 arrangement shall not be based on health status-related factors.¹

10

11 ¹[7.] 8.¹ The following notice shall be provided to employers and
12 employees who obtain coverage from a self-funded multiple employer
13 welfare arrangement:

14

15

NOTICE

16

17 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
18 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
19 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
20 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
21 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
22 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
23 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
24 MAKE PAYMENTS AS PROMISED.

25 THE HEALTH CARE BENEFITS THAT YOU HAVE
26 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
27 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
28 WELFARE ARRANGEMENT THAT IS REGISTERED BY THE
29 NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

30 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
31 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
32 QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU
33 MAY CONTACT THE NEW JERSEY DEPARTMENT OF
34 BANKING AND INSURANCE AT _____(this blank
35 should include the department's current "800" consumer service
36 telephone number).

37

38 ¹[8.] 9.¹ Except as provided by this act, the insurance laws of this
39 State do not apply to the operation of self-funded multiple employer
40 welfare arrangements. A self-funded multiple employer welfare
41 arrangement is not an insurance company or insurer under the laws of
42 this State.

43

44 ¹[9.] 10.¹ a. The commissioner may, upon reasonable notice,
45 conduct an examination of the loss reserves of a self-funded multiple
46 employer welfare arrangement as often as the commissioner in his

1 discretion may deem necessary.

2 b. If the commissioner finds that the reserves are inadequate, he
3 shall notify the self-funded multiple employer welfare arrangement of
4 the inadequacy. Within 30 days the self-funded multiple employer
5 welfare arrangement shall file and implement a plan to correct the
6 inadequacy. The inadequacy shall be corrected within 90 days of the
7 implementation of the plan to correct the inadequacy.

8

9 ¹[10.] 11.¹ a. The commissioner may revoke or suspend the
10 certificate of registration of any self-funded multiple employer welfare
11 arrangement that fails to correct any inadequacy pursuant to section
12 9 of this act or violates any provision of this act.

13 b. Any person who violates any provision of this act or the rules
14 and regulations issued pursuant thereto shall be liable to a penalty of
15 not more than \$1,000 for a first offense and not more than \$5,000 for
16 each subsequent offense.

17

18 ¹[11.] 12.¹ Any rehabilitation, liquidation, conservation or
19 dissolution of a self-funded multiple employer welfare arrangement
20 shall be conducted under the supervision of the commissioner, who
21 shall have all power with respect to it under the laws governing the
22 rehabilitation, liquidation, conservation or dissolution of insurers.

23

24 ¹[12.] 13.¹ The commissioner, in accordance with the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.), may adopt rules and regulations necessary to effectuate the
27 purposes of this act.

28

29 ¹[13.] 14.¹ This act shall take effect on the 180th following
30 enactment.

STATEMENT TO
[First Reprint]
SENATE, No. 2458

with Assembly Floor Amendments
(Proposed By Assemblywoman MYERS)

ADOPTED: DECEMBER 17, 2001

These floor amendments make extensive changes in the bill and this statement sets forth the provisions of the bill with these floor amendments.

The bill requires self-funded or partially self-funded multiple employer welfare arrangements to register with the Commissioner of Banking and Insurance.

A self-funded arrangement shall: (1) deposit and continuously maintain with a financial institution licensed in this State, cash or certain securities, having an admitted asset value of not less than \$200,000, which deposit shall be held for the benefit and protection of all covered members of the self-funded multiple employer welfare arrangement; (2) maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses, including unpaid claims; (3) file annually its audited financial statements, an actuarial opinion by a qualified actuary, a report of its Risk-Based Capital (RBC) as of the end of the immediately preceding calendar year and proof of the required deposit, and file quarterly its unaudited financial statements and the amount of its claim reserve; and (4) provide a written notice to employers and employees stating that a self-funded multiple employer welfare arrangement is not an insurer and does not participate in any guarantee funds created by New Jersey law.

The bill requires a self-funded multiple employer welfare arrangement to maintain aggregate stop-loss coverage, with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of the termination or liquidation of the self-funded multiple employer welfare arrangement, and specific stop-loss coverage, with a retention level determined annually by a qualified actuary. The stop-loss contract shall contain a provision requiring a minimum of 180 days' notice of cancellation or nonrenewal to the self-funded multiple employer welfare arrangement and the commissioner. If the self-funded multiple employer welfare arrangement is unable to secure replacement coverage within 90 days of that notice, the trustees shall provide for the orderly liquidation of the self-funded multiple employer welfare arrangement.

The bill provides that a self-funded multiple employer welfare

arrangement is not an insurer and that the insurance laws of this State do not apply to their operation.

The bill requires that a self-funded multiple employer welfare arrangement: (1) offer all products that it is actively marketing to any employer, and accept any employer and any employee of that employer that applies for any of those products; provided, however, that a self-funded multiple employer welfare arrangement may limit participation to members of an association, as that term is defined in the bill; and (2) provide health benefits equal to or greater than benefits required to be provided in the lowest benefit level standard plan promulgated by the New Jersey Small Employer Health Benefits Program.

The bill provides that the liability of each member for the obligations of the self-funded multiple employer welfare arrangement shall be individual, several and proportionate, but not joint, except in certain circumstances, and provides for proportionate assessments of members: (1) if its prior fiscal year statement of operations reflected a loss; (2) if a member fails to pay its assessment; or (3) in the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple welfare arrangement by the court.

In addition, the bill provides that assessments payable by small employer members of a self-funded multiple employer welfare arrangement, except for dental plans, shall, within two years of the effective date of the bill, be established in accordance with the modified-community rating criteria required by law.

Under the bill, if the commissioner finds that the reserves of the self-funded multiple employer welfare arrangement are inadequate, he must notify the arrangement of the inadequacy; the arrangement must file a plan to correct the inadequacy; and the inadequacy must be corrected within 90 days of the implementation of the plan. The bill establishes that capital and surplus shall be automatically considered inadequate if they do not meet or exceed certain RBC levels as determined in accordance with the RBC instructions adopted by the National Association of Insurance Commissioners (NAIC) for health insurers.

The commissioner may suspend or revoke the certificate of registration of a self-funded multiple employer welfare arrangement that does not comply with the provisions of this bill. Any person who violates any provision of this bill would be subject to a fine of not more than \$1,000 for a first offense and not more than \$5,000 for any subsequent offense.

Finally, the bill provides that any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement must be conducted under the supervision of the Superior Court.

[Second Reprint]

SENATE, No. 2458

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 25, 2001

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Co-Sponsored by:

Assemblywoman Myers and Assemblyman Bateman

SYNOPSIS

Regulates self-funded multiple employer welfare arrangements.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 17, 2001.



(Sponsorship Updated As Of: 12/18/2001)

1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9

10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21

22 3. For purposes of this act:

23 ²"Association" means a group of 100 or more persons organized
24 and maintained in good faith for purposes other than that of obtaining
25 insurance, in active existence for more than one year, having a
26 constitution and by-laws that provide that: the association holds
27 regular meetings not less than annually to further the purposes of the
28 members; except for credit unions, the association collects dues or
29 solicits contributions from members; and the members have voting
30 privileges and representation on the governing board and committees.²

31 "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 "Employee welfare benefit plan" has the meaning set forth in
34 subsection (1) of 29 U.S.C. s.1002.

35 "Multiple employer welfare arrangement" has the meaning set forth
36 in subsection (40) of 29 U.S.C. s.1002.

37 "Self-funded multiple employer welfare arrangement" means a self-
38 funded or partially self-funded multiple employer welfare arrangement
39 ²that provides for health benefits plans² that has two or more
40 employers who each have two or more employees and that has one or
41 more of the employer members either domiciled in this State or its

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 19, 2001.

² Assembly floor amendments adopted December 17, 2001.

1 principal headquarters or principal administrative office located in this
2 State.

3 ²"Small employer" means the same as defined in section 1 of
4 P.L.1992, c.162 (C.17B:27A-17).²

5

6 4. A self-funded multiple employer welfare arrangement shall
7 register annually with the commissioner and pay a registration fee
8 established by the commissioner which shall not exceed \$1,000.

9

10 5. ¹a.¹ A self-funded multiple employer welfare arrangement shall
11 ²deposit and continuously maintain with a financial institution licensed
12 in this State, cash or securities as defined in N.J.S. 17B:18-37, having
13 an admitted asset value of not less than \$200,000. The deposit shall
14 be held for the benefit and protection of all covered members of the
15 self-funded multiple employer welfare arrangement. The self-funded
16 multiple employer welfare arrangement shall further² maintain a cash
17 reserve for ²[excess]² loss in an amount established by a qualified
18 actuary as being adequate to provide for ²[any excess loss that may
19 reasonably be expected to occur, net of stop-loss coverage or]²
20 ¹[excess risk insurance] ²[reinsurance]¹, but in no event less than
21 benefits anticipated to be payable by the self-funded multiple employer
22 welfare arrangement within the following 75 days] all incurred losses
23 including unpaid claims².

24 ¹b. A self-funded multiple employer welfare arrangement shall
25 maintain aggregate stop-loss coverage ²[or reinsurance] , with a
26 retention level of 125 percent of expected claims per year², including
27 provisions to cover incurred, unpaid ²[claim] claims² liability in the
28 event of the termination or liquidation of the self-funded multiple
29 employer welfare arrangement, and specific stop-loss coverage ²[or
30 reinsurance]², with a retention level determined annually by a qualified
31 actuary based on sound actuarial principles. Any stop-loss ²[or
32 reinsurance]² contract ²maintained² pursuant to this subsection shall
33 contain a provision that the stop-loss insurer ²[or reinsurer will] shall²
34 give the self-funded multiple employer welfare arrangement and the
35 commissioner a minimum of 180 days' notice of cancellation or
36 nonrenewal. If the self-funded multiple employer welfare arrangement
37 fails to secure replacement coverage within ²[60] 90² days after
38 receipt of the notice of cancellation or nonrenewal, the
39 ²[commissioner] trustees of the self-funded multiple employer welfare
40 arrangement² shall provide for the orderly liquidation of the self-
41 funded multiple employer welfare arrangement.¹

42

43 6. Each self-funded multiple employer welfare arrangement shall
44 file all of the following with the commissioner:

45 a. No later than May 15th of each calendar year or four months and

1 15 days after the end of each fiscal year of the self-funded multiple
2 employer welfare arrangement, financial statements audited by a
3 certified public accountant and on forms prescribed by the
4 commissioner, ²[and]² an actuarial opinion rendered by a qualified
5 actuary ², a report of its Risk-Based Capital (RBC) as of the end of
6 the immediately preceding calendar year, in a form and containing such
7 information as is required by the instructions adopted by the National
8 Association of Insurance Commissioners for health insurers, as
9 amended from time to time and proof of the deposit required in
10 accordance with section 5 of this act². The opinion shall be based on
11 standards adopted from time to time by the Actuarial Standards Board
12 and on any additional standards that the commissioner may prescribe
13 by regulation. For purposes of this section and section 5 of this act,
14 "qualified actuary" means a member in good standing of the American
15 Academy of Actuaries who meets the requirements set forth in
16 regulations of the commissioner.

17 b. Within 60 days after the end of each fiscal quarter, unaudited
18 financial statements on forms prescribed by the commissioner, affirmed
19 by an appropriate officer or agent of the self-funded multiple employer
20 welfare arrangement.

21 c. Within 60 days after the end of each fiscal quarter, a report on
22 forms prescribed by the commissioner certifying that the self-funded
23 multiple employer welfare arrangement maintains cash or liquid assets
24 in a claim reserve account sufficient to meet the requirements of
25 section 5 of this act.

26
27 ¹⁷. a. ²[A self-funded multiple employer welfare arrangement may
28 refuse to provide coverage to an employer in accordance with the self-
29 funded multiple employer welfare arrangement's underwriting
30 standards and criteria.

31 b. On issuance of coverage to an employer, a self-funded multiple
32 employer welfare arrangement shall provide coverage to the
33 employees, dependents or both of that employer without regard to an
34 individual's health status-related factors, and may exclude only those
35 employees or dependents who have declined coverage.

36 c. Participation in a self-funded multiple employer welfare
37 arrangement shall not be based on health status-related factors.¹ The
38 liability of each member for the obligations of the self-funded multiple
39 employer welfare arrangement shall be individual, several and
40 proportionate, but not joint, except as provided in this section.

41 b. Each member shall have a contingent assessment liability
42 pursuant to subsection c. of this section. Each benefit plan issued by
43 a self-funded multiple employer welfare arrangement shall contain a
44 statement of the contingent liability. Both the application for benefits
45 and the benefit plan shall contain in contrasting color, not less than 10-
46 point type, the following statement: "This is a fully assessable benefit

1 plan. In the event that the self-funded multiple employer welfare
2 arrangement is unable to pay its obligations, members shall be required
3 to contribute on a pro rata earned premium basis the funds necessary
4 to meet any unfilled obligations."

5 c. All self-funded multiple employer welfare arrangements shall
6 provide that members are assessed in accordance with the provisions
7 of this section. Each self-funded multiple employer welfare
8 arrangement may assess all members if its prior fiscal year statement
9 of operations reflected a loss. Each self-funded multiple employer
10 welfare arrangement shall assess all members if the arrangement's fund
11 balance or reserve at the end of any accounting period is less than the
12 amount required by law. The minimum assessment shall be the amount
13 necessary to comply with the requirements of sections 5 and 9 of this
14 act. Each member's assessment shall be computed by applying the
15 earned premium for each employer's benefit plan during the prior fiscal
16 year as a percent of the amount of the total of all employers' earned
17 premium for the same year. Each member's assessment shall be that
18 members's percent times the total assessment levied. In the event a
19 member fails to pay an assessment, the other members shall be liable
20 on a proportionate basis for an additional assessment. The self-funded
21 multiple employer welfare arrangement, acting on behalf of all
22 members who paid the additional assessment, shall take appropriate
23 legal action to recover the assessment from any member who fails to
24 pay an assessment.

25 d. In the event of a rehabilitation, liquidation, conservation or
26 dissolution of a self-funded multiple employer welfare arrangement,
27 the court, pursuant to section 11 of this act, may assess the members
28 in the amounts needed to pay all incurred but unpaid claims and all
29 projected claims, together with the costs and expenses of collecting
30 the assessments, a reasonable loading factor for uncollected
31 assessments and the costs and expenses of the rehabilitation,
32 liquidation, conservation or dissolution.

33 e. The following notice shall be provided to employers and
34 employees who obtain coverage from a self-funded multiple employer
35 welfare arrangement:

36
37 NOTICE

38
39 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
40 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
41 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
42 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
43 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
44 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
45 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
46 MAKE PAYMENTS AS PROMISED.

1 THE HEALTH CARE BENEFITS THAT YOU HAVE
2 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
3 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
4 WELFARE ARRANGEMENT.

5 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
6 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
7 QUESTIONS OF YOUR TRUST ADMINISTRATOR AT
8 _____ (this blank should include the "800" consumer
9 service telephone number).²

10
11 ¹[7.] ²[8.¹ The following notice shall be provided to employers and
12 employees who obtain coverage from a self-funded multiple employer
13 welfare arrangement:

14
15 NOTICE
16

17 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
18 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
19 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
20 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
21 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
22 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
23 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
24 MAKE PAYMENTS AS PROMISED.

25 THE HEALTH CARE BENEFITS THAT YOU HAVE
26 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
27 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
28 WELFARE ARRANGEMENT THAT IS REGISTERED BY THE
29 NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

30 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
31 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
32 QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU
33 MAY CONTACT THE NEW JERSEY DEPARTMENT OF
34 BANKING AND INSURANCE AT _____(this blank
35 should include the department's current "800" consumer service
36 telephone number).]²

37
38 ¹[8.] ²[9.¹] §. a.² Except as provided by this act, the insurance
39 laws of this State do not apply to the operation of self-funded multiple
40 employer welfare arrangements. A self-funded multiple employer
41 welfare arrangement is not an insurance company or insurer under the
42 laws of this State.

43 ²b. Any self-funded multiple employer welfare arrangement shall
44 offer all products that it is actively marketing to any employer, and
45 accept any employer and any employee of that employer who applies
46 for any of those products; provided, however that a self-funded

1 multiple employer welfare arrangement may limit participation to
2 members of the association.

3 c. Assessments payable by small employer members, except for
4 dental plans, shall be established in accordance with the rating
5 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
6 regulations promulgated thereunder; provided, however, that for the
7 first year after the effective date of this act, a self-funded multiple
8 employer welfare arrangement providing benefits in this State prior to
9 the effective date of this act shall: (1) not charge a small employer
10 member an assessment greater than 300 percent of the assessment
11 charged to the lowest rated small employer member of the self-funded
12 multiple employer welfare arrangement; (2) for the second year after
13 the effective date of this act, not charge a small employer member an
14 assessment greater than 250 percent of the assessment charged to the
15 lowest rated small employer member of the self-funded multiple
16 employer welfare arrangement; and (3) for each year thereafter,
17 comply with the rating requirements of section 9 of P.L.1992, c.162
18 (C.17B:27A-25) and regulations promulgated thereunder.

19 d. The health benefits to be provided by the self-funded multiple
20 employer welfare arrangement shall at all times be equal to or greater
21 than benefits required to be provided in the lowest benefit level
22 standard plan promulgated by the New Jersey Small Employer Health
23 Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et
24 seq.).²

25
26 ¹[9.] ²[10.1] 9.² a. The commissioner may, upon reasonable
27 notice, conduct an examination of the loss reserves of a self-funded
28 multiple employer welfare arrangement as often as the commissioner
29 in his discretion may deem necessary. ²The expenses of the
30 examination shall be paid by the self-funded multiple employer welfare
31 arrangement so examined. The commissioner shall also annually
32 review the RBC report of the self-funded multiple employer welfare
33 arrangement.²

34 b. If the commissioner finds that the reserves are inadequate, he
35 shall notify the self-funded multiple employer welfare arrangement of
36 the inadequacy. ²Capital and surplus shall be automatically considered
37 inadequate if they do not meet or exceed the following: (1) for the
38 calendar year ending December 31, 2002, 80 percent of the regulatory
39 action level RBC determined in accordance with the RBC instructions;
40 (2) for the calendar year ending December 31, 2003, 90 percent of the
41 regulatory action level RBC determined in accordance with the RBC
42 instructions; (3) for the calendar year ending December 31, 2004, 95
43 percent of the regulatory action level RBC determined in accordance
44 with the RBC instructions; and (4) for the calendar years ending on or
45 after December 31, 2005, the regulatory action level RBC determined
46 in accordance with the RBC instructions.² Within 30 days the self-

1 funded multiple employer welfare arrangement shall file and implement
2 a plan to correct the inadequacy. The inadequacy shall be corrected
3 within 90 days of the implementation of the plan to correct the
4 inadequacy.

5

6 ¹[10.] ²[11.1] 10.² a. The commissioner may revoke or suspend
7 the certificate of registration of any self-funded multiple employer
8 welfare arrangement that fails to correct any inadequacy pursuant to
9 section 9 of this act or violates any provision of this act.

10 b. Any person who violates any provision of this act or the rules
11 and regulations issued pursuant thereto shall be liable to a penalty of
12 not more than \$1,000 for a first offense and not more than \$5,000 for
13 each subsequent offense.

14

15 ¹[11.] ²[12.1] 11.² Any rehabilitation, liquidation, conservation or
16 dissolution of a self-funded multiple employer welfare arrangement
17 shall be conducted under the supervision of the ²[commissioner, who
18 shall have all power with respect to it under the laws governing the
19 rehabilitation, liquidation, conservation or dissolution of insurers]
20 State Superior Court in the county in which the self-funded multiple
21 employer welfare arrangement has its principal office².

22

23 ¹[12.] ²[13.1] 12.² The commissioner, in accordance with the
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.), may adopt rules and regulations necessary to effectuate the
26 purposes of this act.

27

28 ¹[13.] ²[14.1] 13.² This act shall take effect on the ²[180th]
29 90th² following enactment.

ASSEMBLY, No. 3943

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED NOVEMBER 19, 2001

Sponsored by:

**Assemblywoman CONNIE MYERS
District 23 (Warren, Hunterdon and Mercer)**

Co-Sponsored by:

Assemblyman Bateman

SYNOPSIS

Regulates self-funded multiple employer welfare arrangements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2001)

1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9
10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21
22 3. For purposes of this act:

23 "Commissioner" means the Commissioner of Banking and
24 Insurance.

25 "Employee welfare benefit plan" has the meaning set forth in
26 subsection (1) of 29 U.S.C. s.1002.

27 "Multiple employer welfare arrangement" has the meaning set forth
28 in subsection (40) of 29 U.S.C. s.1002.

29 "Self-funded multiple employer welfare arrangement" means a self-
30 funded or partially self-funded multiple employer welfare arrangement
31 that has two or more employers who each have two or more
32 employees and that has one or more of the employer members either
33 domiciled in this State or its principal headquarters or principal
34 administrative office located in this State.

35
36 4. A self-funded multiple employer welfare arrangement shall
37 register annually with the commissioner and pay a registration fee
38 established by the commissioner which shall not exceed \$1,000.

39
40 5. A self-funded multiple employer welfare arrangement shall
41 maintain a cash reserve for excess loss in an amount established by a
42 qualified actuary as being adequate to provide for any excess loss that
43 may reasonably be expected to occur, net of stop-loss coverage or
44 excess risk insurance, but in no event less than benefits anticipated to
45 be payable by the self-funded multiple employer welfare arrangement
46 within the following 75 days.

1 6. Each self-funded multiple employer welfare arrangement shall
2 file all of the following with the commissioner:

3 a. No later than May 15th of each calendar year or four months and
4 15 days after the end of each fiscal year of the self-funded multiple
5 employer welfare arrangement, financial statements audited by a
6 certified public accountant and on forms prescribed by the
7 commissioner, and an actuarial opinion rendered by a qualified
8 actuary. The opinion shall be based on standards adopted from time
9 to time by the Actuarial Standards Board and on any additional
10 standards that the commissioner may prescribe by regulation. For
11 purposes of this section and section 5 of this act, "qualified actuary"
12 means a member in good standing of the American Academy of
13 Actuaries who meets the requirements set forth in regulations of the
14 commissioner.

15 b. Within 60 days after the end of each fiscal quarter, unaudited
16 financial statements on forms prescribed by the commissioner, affirmed
17 by an appropriate officer or agent of the self-funded multiple employer
18 welfare arrangement.

19 c. Within 60 days after the end of each fiscal quarter, a report on
20 forms prescribed by the commissioner certifying that the self-funded
21 multiple employer welfare arrangement maintains cash or liquid assets
22 in a claim reserve account sufficient to meet the requirements of
23 section 5 of this act.

24

25 7. The following notice shall be provided to employers and
26 employees who obtain coverage from a self-funded multiple employer
27 welfare arrangement:

28

29

NOTICE

30

31 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
32 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
33 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
34 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
35 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
36 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
37 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
38 MAKE PAYMENTS AS PROMISED.

39 THE HEALTH CARE BENEFITS THAT YOU HAVE
40 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
41 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
42 WELFARE ARRANGEMENT THAT IS REGISTERED BY THE
43 NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

44 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
45 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
46 QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU

1 MAY CONTACT THE NEW JERSEY DEPARTMENT OF
2 BANKING AND INSURANCE AT _____(this blank
3 should include the department's current "800" consumer service
4 telephone number).

5
6 8. Except as provided by this act, the insurance laws of this State
7 do not apply to the operation of self-funded multiple employer welfare
8 arrangements. A self-funded multiple employer welfare arrangement
9 is not an insurance company or insurer under the laws of this State.

10
11 9. a. The commissioner may, upon reasonable notice, conduct an
12 examination of the loss reserves of a self-funded multiple employer
13 welfare arrangement as often as the commissioner in his discretion may
14 deem necessary.

15 b. If the commissioner finds that the reserves are inadequate, he
16 shall notify the self-funded multiple employer welfare arrangement of
17 the inadequacy. Within 30 days the self-funded multiple employer
18 welfare arrangement shall file and implement a plan to correct the
19 inadequacy. The inadequacy shall be corrected within 90 days of the
20 implementation of the plan to correct the inadequacy.

21
22 10. a. The commissioner may revoke or suspend the certificate of
23 registration of any self-funded multiple employer welfare arrangement
24 that fails to correct any inadequacy pursuant to section 9 of this act or
25 violates any provision of this act.

26 b. Any person who violates any provision of this act or the rules
27 and regulations issued pursuant thereto shall be liable to a penalty of
28 not more than \$1,000 for a first offense and not more than \$5,000 for
29 each subsequent offense.

30
31 11. Any rehabilitation, liquidation, conservation or dissolution of
32 a self-funded multiple employer welfare arrangement shall be
33 conducted under the supervision of the commissioner, who shall have
34 all power with respect to it under the laws governing the rehabilitation,
35 liquidation, conservation or dissolution of insurers.

36
37 12. The commissioner, in accordance with the "Administrative
38 Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), may adopt
39 rules and regulations necessary to effectuate the purposes of this act.

40
41 13. This act shall take effect on the 180th following enactment.

42
43 STATEMENT

44
45 This bill requires self-funded or partially self-funded multiple
46 employer welfare arrangements to register with the Commissioner of

1 Banking and Insurance.

2 A self-funded arrangement shall: (1) maintain a cash reserve for
3 excess loss of 75 days of benefits paid, net stop-loss coverage or
4 excess risk insurance; (2) file annually its audited financial statements
5 and an actuarial opinion by a qualified actuary, and file quarterly its
6 unaudited financial statements and the amount of its claim reserve; and
7 provide a written notice to employers and employees stating that a
8 self-funded multiple employer welfare arrangement is not an insurer
9 and does not participate in any guarantee funds created by New Jersey
10 law.

11 The commissioner may suspend or revoke the certificate of
12 registration of a self-funded multiple employer welfare arrangement
13 that does not comply with the provisions of this bill. Any person who
14 violates any provision of this bill would be subject to a fine of not
15 more than \$1,000 for a first offense and not more than \$5,000 for any
16 subsequent offense.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3943

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Assembly Banking and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 3943.

This bill, as amended by the committee, requires self-funded or partially self-funded multiple employer welfare arrangements to register with the Commissioner of Banking and Insurance.

A self-funded arrangement shall: (1) deposit and continuously maintain with a financial institution licensed in this State, cash or certain securities, having an admitted asset value of not less than \$200,000, which deposit shall be held for the benefit and protection of all covered members of the self-funded multiple employer welfare arrangement; (2) maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses including unpaid claims; (3) file annually its audited financial statements, an actuarial opinion by a qualified actuary, a report of its Risk-Based Capital (RBC) as of the end of the immediately preceding calendar year and proof of the required deposit, and file quarterly its unaudited financial statements and the amount of its claim reserve; and (4) provide a written notice to employers and employees stating that a self-funded multiple employer welfare arrangement is not an insurer and does not participate in any guarantee funds created by New Jersey law.

In addition, the bill requires a self-funded multiple employer welfare arrangement to maintain aggregate stop-loss coverage, with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of the termination or liquidation of the self-funded multiple employer welfare arrangement, and specific stop-loss coverage, with a retention level determined annually by a qualified actuary. The stop-loss contract shall contain a provision requiring a minimum of 180 days' notice of cancellation or nonrenewal to the self-funded multiple employer welfare arrangement and the commissioner. If the self-funded multiple employer welfare arrangement is unable to secure replacement coverage within 90 days of that notice, the trustees shall provide for the orderly liquidation of the self-funded multiple employer welfare arrangement.

The bill provides that a self-funded multiple employer welfare arrangement is not an insurer and that the insurance laws of this State do not apply to their operation.

The bill requires that a self-funded multiple employer welfare arrangement: (1) offer all products that it is actively marketing to any employer, and accept any employer and any employee of that employer that applies for any of those products; provided, however, that a self-funded multiple employer welfare arrangement may limit participation to members of an association, as that term is defined in the bill; and (2) provide health benefits equal to or greater than benefits required to be provided in the lowest benefit level standard plan promulgated by the New Jersey Small Employer Health Benefits Program.

The bill provides that the liability of each member for the obligations of the self-funded multiple employer welfare arrangement shall be individual, several and proportionate, but not joint, except in certain circumstances, and provides for proportionate assessments of members: (1) if its prior fiscal year statement of operations reflected a loss; (2) if a member fails to pay its assessment; or (3) in the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple welfare arrangement by the court.

In addition, the bill provides that assessments payable by small employer members of a self-funded multiple employer welfare arrangement, except for dental plans, shall, within two years of the effective date of the bill, be established in accordance with the modified-community rating criteria required by law.

Under the bill, if the commissioner finds that the reserves of the self-funded multiple employer welfare arrangement are inadequate, he must notify the arrangement of the inadequacy; the arrangement must file a plan to correct the inadequacy; and the inadequacy must be corrected within 90 days of the implementation of the plan. The bill establishes that capital and surplus shall be automatically considered inadequate if they do not meet or exceed certain RBC levels as determined in accordance with the RBC instructions adopted by the National Association of Insurance Commissioners (NAIC) for health insurers.

The commissioner may suspend or revoke the certificate of registration of a self-funded multiple employer welfare arrangement that does not comply with the provisions of this bill. Any person who violates any provision of this bill would be subject to a fine of not more than \$1,000 for a first offense and not more than \$5,000 for any subsequent offense.

Finally, the bill provides that any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement must be conducted under the supervision of the Superior Court.

[First Reprint]

ASSEMBLY, No. 3943

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 19, 2001

Sponsored by:

Assemblywoman CONNIE MYERS
District 23 (Warren, Hunterdon and Mercer)

Co-Sponsored by:

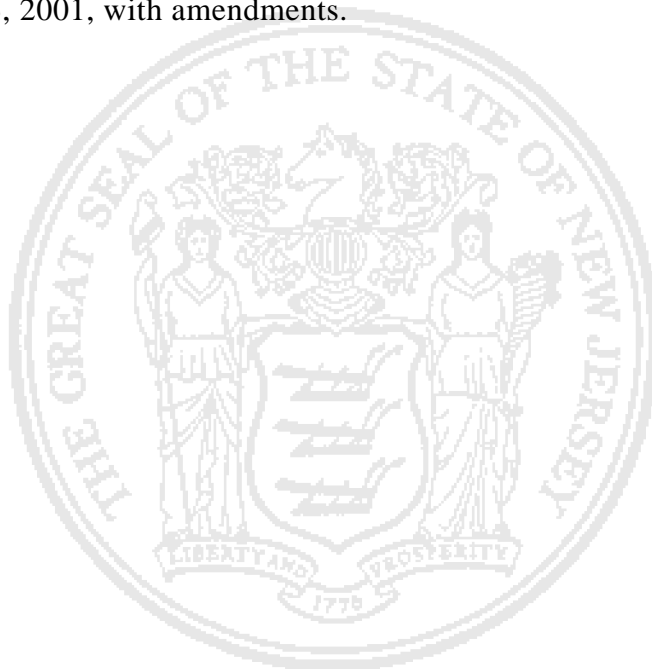
Assemblyman Bateman

SYNOPSIS

Regulates self-funded multiple employer welfare arrangements.

CURRENT VERSION OF TEXT

As reported by the Assembly Banking and Insurance Committee on December 13, 2001, with amendments.



(Sponsorship Updated As Of: 12/14/2001)

1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9
10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21
22 3. For purposes of this act:

23 ¹"Association" means a group of 100 or more persons organized
24 and maintained in good faith for purposes other than that of obtaining
25 insurance, in active existence for more than one year, having a
26 constitution and by-laws that provide that: the association holds
27 regular meetings not less than annually to further the purposes of the
28 members; except for credit unions, the association collects dues or
29 solicits contributions from members; and the members have voting
30 privileges and representation on the governing board and committees.¹

31 "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 "Employee welfare benefit plan" has the meaning set forth in
34 subsection (1) of 29 U.S.C. s.1002.

35 "Multiple employer welfare arrangement" has the meaning set forth
36 in subsection (40) of 29 U.S.C. s.1002.

37 "Self-funded multiple employer welfare arrangement" means a self-
38 funded or partially self-funded multiple employer welfare arrangement
39 ¹that provides for health benefits plans¹ that has two or more
40 employers who each have two or more employees and that has one or
41 more of the employer members either domiciled in this State or its
42 principal headquarters or principal administrative office located in this

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ABI committee amendments adopted December 13, 2001

1 State.

2 ¹"Small employer" means the same as defined in section 1 of
3 P.L.1992, c.162 (C.17B:27A-17).¹

4
5 4. A self-funded multiple employer welfare arrangement shall
6 register annually with the commissioner and pay a registration fee
7 established by the commissioner which shall not exceed \$1,000.

8
9 5. ¹a.¹ A self-funded multiple employer welfare arrangement shall
10 ¹deposit and continuously maintain with a financial institution licensed
11 in this State, cash or securities as defined in N.J.S.17B:18-37, having
12 an admitted asset value of not less than \$200,000. The deposit shall
13 be held for the benefit and protection of all covered members of the
14 self-funded multiple employer welfare arrangement. The self-funded
15 multiple employer welfare arrangement shall further¹ maintain a cash
16 reserve for ¹[excess]¹ loss in an amount established by a qualified
17 actuary as being adequate to provide for ¹[any excess loss that may
18 reasonably be expected to occur, net of stop-loss coverage or excess
19 risk insurance, but in no event less than benefits anticipated to be
20 payable by the self-funded multiple employer welfare arrangement
21 within the following 75 days] all incurred losses including unpaid
22 claims¹.

23 ¹b. A self-funded multiple employer welfare arrangement shall
24 maintain aggregate stop-loss coverage, with a retention level of 125
25 percent of expected claims per year, including provisions to cover
26 incurred, unpaid claims liability in the event of the termination or
27 liquidation of the self-funded multiple employer welfare arrangement,
28 and specific stop-loss coverage, with a retention level determined
29 annually by a qualified actuary based on sound actuarial principles.
30 Any stop-loss contract maintained pursuant to this subsection shall
31 contain a provision that the stop-loss insurer shall give the self-funded
32 multiple employer welfare arrangement and the commissioner a
33 minimum of 180 days' notice of cancellation or nonrenewal. If the
34 self-funded multiple employer welfare arrangement fails to secure
35 replacement coverage within 90 days after receipt of the notice of
36 cancellation or nonrenewal, the trustees of the self-funded multiple
37 employer welfare arrangement shall provide for the orderly liquidation
38 of the self-funded multiple employer welfare arrangement.¹

39
40 6. Each self-funded multiple employer welfare arrangement shall
41 file all of the following with the commissioner:

42 a. No later than May 15th of each calendar year or four months and
43 15 days after the end of each fiscal year of the self-funded multiple
44 employer welfare arrangement, financial statements audited by a
45 certified public accountant and on forms prescribed by the
46 commissioner, ¹[and]¹ an actuarial opinion rendered by a qualified

1 actuary ¹, a report of its Risk-Based Capital (RBC) as of the end of
2 the immediately preceding calendar year, in a form and containing such
3 information as is required by the instructions adopted by the National
4 Association of Insurance Commissioners for health insurers, as
5 amended from time to time and proof of the deposit required in
6 accordance with section 5 of this act¹. The opinion shall be based on
7 standards adopted from time to time by the Actuarial Standards Board
8 and on any additional standards that the commissioner may prescribe
9 by regulation. For purposes of this section and section 5 of this act,
10 "qualified actuary" means a member in good standing of the American
11 Academy of Actuaries who meets the requirements set forth in
12 regulations of the commissioner.

13 b. Within 60 days after the end of each fiscal quarter, unaudited
14 financial statements on forms prescribed by the commissioner, affirmed
15 by an appropriate officer or agent of the self-funded multiple employer
16 welfare arrangement.

17 c. Within 60 days after the end of each fiscal quarter, a report on
18 forms prescribed by the commissioner certifying that the self-funded
19 multiple employer welfare arrangement maintains cash or liquid assets
20 in a claim reserve account sufficient to meet the requirements of
21 section 5 of this act.

22

23 7. ¹a. The liability of each member for the obligations of the self-
24 funded multiple employer welfare arrangement shall be individual,
25 several and proportionate, but not joint, except as provided in this
26 section.

27 b. Each member shall have a contingent assessment liability
28 pursuant to subsection c. of this section. Each benefit plan issued by
29 a self-funded multiple employer welfare arrangement shall contain a
30 statement of the contingent liability. Both the application for benefits
31 and the benefit plan shall contain in contrasting color, not less than 10-
32 point type, the following statement: "This is a fully assessable benefit
33 plan. In the event that the self-funded multiple employer welfare
34 arrangement is unable to pay its obligations, members shall be required
35 to contribute on a pro rata earned premium basis the funds necessary
36 to meet any unfilled obligations."

37 c. All self-funded multiple employer welfare arrangements shall
38 provide that members are assessed in accordance with the provisions
39 of this section. Each self-funded multiple employer welfare
40 arrangement may assess all members if its prior fiscal year statement
41 of operations reflected a loss. Each self-funded multiple employer
42 welfare arrangement shall assess all members if the arrangement's fund
43 balance or reserve at the end of any accounting period is less than the
44 amount required by law. The minimum assessment shall be the amount
45 necessary to comply with the requirements of sections 5 and 9 of this
46 act. Each member's assessment shall be computed by applying the

1 earned premium for each employer's benefit plan during the prior fiscal
2 year as a percent of the amount of the total of all employers' earned
3 premium for the same year. Each member's assessment shall be that
4 members's percent times the total assessment levied. In the event a
5 member fails to pay an assessment, the other members shall be liable
6 on a proportionate basis for an additional assessment. The self-funded
7 multiple employer welfare arrangement, acting on behalf of all
8 members who paid the additional assessment, shall take appropriate
9 legal action to recover the assessment from any member who fails to
10 pay an assessment.

11 d. In the event of a rehabilitation, liquidation, conservation or
12 dissolution of a self-funded multiple employer welfare arrangement,
13 the court, pursuant to section 11 of this act, may assess the members
14 in the amounts needed to pay all incurred but unpaid claims and all
15 projected claims, together with the costs and expenses of collecting
16 the assessments, a reasonable loading factor for uncollected
17 assessments and the costs and expenses of the rehabilitation,
18 liquidation, conservation or dissolution.

19 e.¹ The following notice shall be provided to employers and
20 employees who obtain coverage from a self-funded multiple employer
21 welfare arrangement:

22

23

NOTICE

24

25 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
26 ARRANGEMENT IS NOT AN INSURANCE COMPANY AND
27 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE
28 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
29 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
30 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
31 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO
32 MAKE PAYMENTS AS PROMISED.

33 THE HEALTH CARE BENEFITS THAT YOU HAVE
34 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
35 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
36 WELFARE ARRANGEMENT ¹[THAT IS REGISTERED BY THE
37 NEW JERSEY DEPARTMENT OF BANKING AND
38 INSURANCE]¹.

39 FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE
40 EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK
41 QUESTIONS OF YOUR TRUST ADMINISTRATOR ¹[OR YOU
42 MAY CONTACT THE NEW JERSEY DEPARTMENT OF
43 BANKING AND INSURANCE]¹ AT _____(this blank
44 should include the ¹[department's current]¹ "800" consumer service
45 telephone number).

1 8. ¹a.¹ Except as provided by this act, the insurance laws of this
2 State do not apply to the operation of self-funded multiple employer
3 welfare arrangements. A self-funded multiple employer welfare
4 arrangement is not an insurance company or insurer under the laws of
5 this State.

6 ¹b. Any self-funded multiple employer welfare arrangement shall
7 offer all products that it is actively marketing to any employer, and
8 accept any employer and any employee of that employer who applies
9 for any of those products; provided, however that a self-funded
10 multiple employer welfare arrangement may limit participation to
11 members of the association.

12 c. Assessments payable by small employer members, except for
13 dental plans, shall be established in accordance with the rating
14 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
15 regulations promulgated thereunder; provided, however, that for the
16 first year after the effective date of this act, a self-funded multiple
17 employer welfare arrangement providing benefits in this State prior to
18 the effective date of this act shall: (1) not charge a small employer
19 member an assessment greater than 300 percent of the assessment
20 charged to the lowest rated small employer member of the self-funded
21 multiple employer welfare arrangement; (2) for the second year after
22 the effective date of this act, not charge a small employer member an
23 assessment greater than 250 percent of the assessment charged to the
24 lowest rated small employer member of the self-funded multiple
25 employer welfare arrangement; and (3) for each year thereafter,
26 comply with the rating requirements of section 9 of P.L.1992, c.162
27 (C.17B:27A-25) and regulations promulgated thereunder.

28 d. The health benefits to be provided by the self-funded multiple
29 employer welfare arrangement shall at all times be equal to or greater
30 than benefits required to be provided in the lowest benefit level
31 standard plan promulgated by the New Jersey Small Employer Health
32 Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et
33 seq.).¹

34
35 9. a. The commissioner may, upon reasonable notice, conduct an
36 examination of the loss reserves of a self-funded multiple employer
37 welfare arrangement as often as the commissioner in his discretion may
38 deem necessary. ¹The expenses of the examination shall be paid by the
39 self-funded multiple employer welfare arrangement so examined. The
40 commissioner shall also annually review the RBC report of the self-
41 funded multiple employer welfare arrangement.¹

42 b. If the commissioner finds that the reserves are inadequate, he
43 shall notify the self-funded multiple employer welfare arrangement of
44 the inadequacy. ¹Capital and surplus shall be automatically considered
45 inadequate if they do not meet or exceed the following: (1) for the
46 calendar year ending December 31, 2002, 80 percent of the regulatory

1 action level RBC determined in accordance with the RBC instructions;
2 (2) for the calendar year ending December 31, 2003, 90 percent of the
3 regulatory action level RBC determined in accordance with the RBC
4 instructions; (3) for the calendar year ending December 31, 2004, 95
5 percent of the regulatory action level RBC determined in accordance
6 with the RBC instructions; and (4) for the calendar years ending on or
7 after December 31, 2005, the regulatory action level RBC determined
8 in accordance with the RBC instructions.¹ Within 30 days the self-
9 funded multiple employer welfare arrangement shall file and implement
10 a plan to correct the inadequacy. The inadequacy shall be corrected
11 within 90 days of the implementation of the plan to correct the
12 inadequacy.

13

14 10. a. The commissioner may revoke or suspend the certificate of
15 registration of any self-funded multiple employer welfare arrangement
16 that fails to correct any inadequacy pursuant to section 9 of this act or
17 violates any provision of this act.

18 b. Any person who violates any provision of this act or the rules
19 and regulations issued pursuant thereto shall be liable to a penalty of
20 not more than \$1,000 for a first offense and not more than \$5,000 for
21 each subsequent offense.

22

23 11. Any rehabilitation, liquidation, conservation or dissolution of
24 a self-funded multiple employer welfare arrangement shall be
25 conducted under the supervision of the ¹[commissioner, who shall
26 have all power with respect to it under the laws governing the
27 rehabilitation, liquidation, conservation or dissolution of insurers]
28 State Superior Court in the county in which the self-funded multiple
29 employer welfare arrangement has its principal office¹.

30

31 12. The commissioner, in accordance with the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt
33 rules and regulations necessary to effectuate the purposes of this act.

34

35 13. This act shall take effect on the ¹[180th] 90th¹ following
36 enactment.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3943

STATE OF NEW JERSEY

209th LEGISLATURE

DATED: JANUARY 10, 2002

SUMMARY

Synopsis: Regulates self-funded multiple employer welfare arrangements.
Type of Impact: Potential increased administrative costs and State revenue
Agencies Affected: Department of Banking and Insurance

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Costs	Indeterminate	Indeterminate	Indeterminate
State Revenue	Indeterminate	Indeterminate	Indeterminate

- ! The Department of Banking and Insurance informally indicates that it is unknown at this time what the administrative costs would be in order to regulate self-funded multiple employer welfare arrangements.
- ! This bill establishes that a self-funded multiple employer welfare arrangement shall register annually with the Commissioner of Banking and Insurance and pay a registration fee established by the commissioner which shall not exceed \$1,000.
- ! There are no firm estimates available from the Department of Banking and Insurance or the U.S. Department of Labor determining how many self-funded multiple employer welfare arrangements are in existence and operate in this State.

BILL DESCRIPTION

Assembly Bill No. 3943 (1R) of 2001 requires self-funded or partially self-funded multiple employer welfare arrangements to register with the Commissioner of Banking and Insurance. This bill provides: (1) registration of self-funded or partially self-funded multiple employer welfare arrangements; (2) regulation of self-funded or partially self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements; (3) reporting

requirements for self-funded or partially self-funded multiple employer welfare arrangements; and (4) sanctions against self-funded or partially self-funded multiple employer welfare arrangements that do not comply with the provisions of the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) estimates that State expenditures and State revenues for the Department of Banking and Insurance have the potential to increase under the provisions of the bill. The extent of that increase is unknown because of the lack of data concerning the number of self-funded multiple employer welfare arrangements operating in the State. No system is in place which accounts for the number of these arrangements in the State or Nationwide. Currently, the largest self-funded multiple employer welfare arrangement in the State is the Association Master Trust, which covers 6,500 employees. The Department of Banking and Insurance informally indicates that the personnel and administrative costs of regulating self-funded multiple employee welfare arrangements are unknown to them at this time. However, the Department of Banking and Insurance currently regulates and performs examinations on insurance agencies which are similar to the oversight which will be performed on the regulation of self-funded multiple employer welfare arrangements. Therefore, the regulation of self-funded multiple employer welfare arrangements may be able to be absorbed by the department.

Therefore additional administrative personnel may be unnecessary and the cost to regulate the self-funded multiple employer welfare arrangements may be absorbed by the department.

Section: *Commerce, Labor and Industry*

Analyst: *Sonya Hough*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

Title 17B.
Chapter 27C. (New)
Multiple Employer
Welfare
Arrangements.
§§1-12 -
C.17B:27C-1
to 17B:27C-12
§13 - Note to §§1-12

P.L. 2001, CHAPTER 352, *approved January 6, 2002*
Senate, No. 2458 (*Second Reprint*)

1 AN ACT concerning self-funded multiple employer welfare
2 arrangements.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Self-Funded
8 Multiple Welfare Arrangement Regulation Act."

9

10 2. The purposes of this act are to:

11 a. provide for the registration of self-funded or partially self-funded
12 multiple employer welfare arrangements;

13 b. regulate self-funded or partially self-funded multiple employer
14 welfare arrangements in order to ensure the financial integrity of the
15 arrangements;

16 c. provide reporting requirements for self-funded or partially self-
17 funded multiple employer welfare arrangements; and

18 d. provide for sanctions against self-funded or partially self-funded
19 multiple employer welfare arrangements that do not comply with the
20 provisions of this act.

21

22 3. For purposes of this act:

23 ²"Association" means a group of 100 or more persons organized
24 and maintained in good faith for purposes other than that of obtaining
25 insurance, in active existence for more than one year, having a
26 constitution and by-laws that provide that: the association holds
27 regular meetings not less than annually to further the purposes of the
28 members; except for credit unions, the association collects dues or
29 solicits contributions from members; and the members have voting
30 privileges and representation on the governing board and committees.²

31 "Commissioner" means the Commissioner of Banking and
32 Insurance.

33 "Employee welfare benefit plan" has the meaning set forth in

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 19, 2001.

² Assembly floor amendments adopted December 17, 2001.

1 subsection (1) of 29 U.S.C. s.1002.

2 "Multiple employer welfare arrangement" has the meaning set forth
3 in subsection (40) of 29 U.S.C. s.1002.

4 "Self-funded multiple employer welfare arrangement" means a self-
5 funded or partially self-funded multiple employer welfare arrangement
6 that provides for health benefits plans² that has two or more
7 employers who each have two or more employees and that has one or
8 more of the employer members either domiciled in this State or its
9 principal headquarters or principal administrative office located in this
10 State.

11 "Small employer" means the same as defined in section 1 of
12 P.L.1992, c.162 (C.17B:27A-17).²

13

14 4. A self-funded multiple employer welfare arrangement shall
15 register annually with the commissioner and pay a registration fee
16 established by the commissioner which shall not exceed \$1,000.

17

18 5. ¹a. ¹A self-funded multiple employer welfare arrangement shall
19 deposit and continuously maintain with a financial institution licensed
20 in this State, cash or securities as defined in N.J.S. 17B:18-37, having
21 an admitted asset value of not less than \$200,000. The deposit shall
22 be held for the benefit and protection of all covered members of the
23 self-funded multiple employer welfare arrangement. The self-funded
24 multiple employer welfare arrangement shall further² maintain a cash
25 reserve for ²[excess]² loss in an amount established by a qualified
26 actuary as being adequate to provide for ²[any excess loss that may
27 reasonably be expected to occur, net of stop-loss coverage or]²
28 ¹[excess risk insurance] ²[reinsurance]¹, but in no event less than
29 benefits anticipated to be payable by the self-funded multiple employer
30 welfare arrangement within the following 75 days] all incurred losses
31 including unpaid claims².

32 ¹b. A self-funded multiple employer welfare arrangement shall
33 maintain aggregate stop-loss coverage ²[or reinsurance] , with a
34 retention level of 125 percent of expected claims per year², including
35 provisions to cover incurred, unpaid ²[claim] claims² liability in the
36 event of the termination or liquidation of the self-funded multiple
37 employer welfare arrangement, and specific stop-loss coverage ²[or
38 reinsurance]², with a retention level determined annually by a qualified
39 actuary based on sound actuarial principles. Any stop-loss ²[or
40 reinsurance]² contract ²maintained² pursuant to this subsection shall
41 contain a provision that the stop-loss insurer ²[or reinsurer will] shall²
42 give the self-funded multiple employer welfare arrangement and the
43 commissioner a minimum of 180 days' notice of cancellation or
44 nonrenewal. If the self-funded multiple employer welfare arrangement
45 fails to secure replacement coverage within ²[60] 90² days after

1 receipt of the notice of cancellation or nonrenewal, the
2 ²[commissioner] trustees of the self-funded multiple employer welfare
3 arrangement² shall provide for the orderly liquidation of the self-
4 funded multiple employer welfare arrangement.¹

5
6 6. Each self-funded multiple employer welfare arrangement shall
7 file all of the following with the commissioner:

8 a. No later than May 15th of each calendar year or four months and
9 15 days after the end of each fiscal year of the self-funded multiple
10 employer welfare arrangement, financial statements audited by a
11 certified public accountant and on forms prescribed by the
12 commissioner, ²[and]² an actuarial opinion rendered by a qualified
13 actuary ², a report of its Risk-Based Capital (RBC) as of the end of
14 the immediately preceding calendar year, in a form and containing such
15 information as is required by the instructions adopted by the National
16 Association of Insurance Commissioners for health insurers, as
17 amended from time to time and proof of the deposit required in
18 accordance with section 5 of this act². The opinion shall be based on
19 standards adopted from time to time by the Actuarial Standards Board
20 and on any additional standards that the commissioner may prescribe
21 by regulation. For purposes of this section and section 5 of this act,
22 "qualified actuary" means a member in good standing of the American
23 Academy of Actuaries who meets the requirements set forth in
24 regulations of the commissioner.

25 b. Within 60 days after the end of each fiscal quarter, unaudited
26 financial statements on forms prescribed by the commissioner, affirmed
27 by an appropriate officer or agent of the self-funded multiple employer
28 welfare arrangement.

29 c. Within 60 days after the end of each fiscal quarter, a report on
30 forms prescribed by the commissioner certifying that the self-funded
31 multiple employer welfare arrangement maintains cash or liquid assets
32 in a claim reserve account sufficient to meet the requirements of
33 section 5 of this act.

34
35 ¹7. a. ²[A self-funded multiple employer welfare arrangement may
36 refuse to provide coverage to an employer in accordance with the self-
37 funded multiple employer welfare arrangement's underwriting
38 standards and criteria.

39 b. On issuance of coverage to an employer, a self-funded multiple
40 employer welfare arrangement shall provide coverage to the
41 employees, dependents or both of that employer without regard to an
42 individual's health status-related factors, and may exclude only those
43 employees or dependents who have declined coverage.

44 c. Participation in a self-funded multiple employer welfare
45 arrangement shall not be based on health status-related factors.¹] The
46 liability of each member for the obligations of the self-funded multiple

1 employer welfare arrangement shall be individual, several and
2 proportionate, but not joint, except as provided in this section.

3 b. Each member shall have a contingent assessment liability
4 pursuant to subsection c. of this section. Each benefit plan issued by
5 a self-funded multiple employer welfare arrangement shall contain a
6 statement of the contingent liability. Both the application for benefits
7 and the benefit plan shall contain in contrasting color, not less than 10-
8 point type, the following statement: "This is a fully assessable benefit
9 plan. In the event that the self-funded multiple employer welfare
10 arrangement is unable to pay its obligations, members shall be required
11 to contribute on a pro rata earned premium basis the funds necessary
12 to meet any unfilled obligations."

13 c. All self-funded multiple employer welfare arrangements shall
14 provide that members are assessed in accordance with the provisions
15 of this section. Each self-funded multiple employer welfare
16 arrangement may assess all members if its prior fiscal year statement
17 of operations reflected a loss. Each self-funded multiple employer
18 welfare arrangement shall assess all members if the arrangement's fund
19 balance or reserve at the end of any accounting period is less than the
20 amount required by law. The minimum assessment shall be the amount
21 necessary to comply with the requirements of sections 5 and 9 of this
22 act. Each member's assessment shall be computed by applying the
23 earned premium for each employer's benefit plan during the prior fiscal
24 year as a percent of the amount of the total of all employers' earned
25 premium for the same year. Each member's assessment shall be that
26 members's percent times the total assessment levied. In the event a
27 member fails to pay an assessment, the other members shall be liable
28 on a proportionate basis for an additional assessment. The self-funded
29 multiple employer welfare arrangement, acting on behalf of all
30 members who paid the additional assessment, shall take appropriate
31 legal action to recover the assessment from any member who fails to
32 pay an assessment.

33 d. In the event of a rehabilitation, liquidation, conservation or
34 dissolution of a self-funded multiple employer welfare arrangement,
35 the court, pursuant to section 11 of this act, may assess the members
36 in the amounts needed to pay all incurred but unpaid claims and all
37 projected claims, together with the costs and expenses of collecting
38 the assessments, a reasonable loading factor for uncollected
39 assessments and the costs and expenses of the rehabilitation,
40 liquidation, conservation or dissolution.

41 e. The following notice shall be provided to employers and
42 employees who obtain coverage from a self-funded multiple employer
43 welfare arrangement:]

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NOTICE

THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT.

FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR AT _____ (this blank should include the "800" consumer service telephone number).²

¹[7.] ²[8.¹ The following notice shall be provided to employers and employees who obtain coverage from a self-funded multiple employer welfare arrangement:

NOTICE

THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT IS REGISTERED BY THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU MAY CONTACT THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE AT _____ (this blank should include the department's current "800" consumer service telephone number).]²

1 ¹[8.] ²[9.¹] 8. a.² Except as provided by this act, the insurance
2 laws of this State do not apply to the operation of self-funded multiple
3 employer welfare arrangements. A self-funded multiple employer
4 welfare arrangement is not an insurance company or insurer under the
5 laws of this State.

6 ²b. Any self-funded multiple employer welfare arrangement shall
7 offer all products that it is actively marketing to any employer, and
8 accept any employer and any employee of that employer who applies
9 for any of those products; provided, however that a self-funded
10 multiple employer welfare arrangement may limit participation to
11 members of the association.

12 c. Assessments payable by small employer members, except for
13 dental plans, shall be established in accordance with the rating
14 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
15 regulations promulgated thereunder; provided, however, that for the
16 first year after the effective date of this act, a self-funded multiple
17 employer welfare arrangement providing benefits in this State prior to
18 the effective date of this act shall: (1) not charge a small employer
19 member an assessment greater than 300 percent of the assessment
20 charged to the lowest rated small employer member of the self-funded
21 multiple employer welfare arrangement; (2) for the second year after
22 the effective date of this act, not charge a small employer member an
23 assessment greater than 250 percent of the assessment charged to the
24 lowest rated small employer member of the self-funded multiple
25 employer welfare arrangement; and (3) for each year thereafter,
26 comply with the rating requirements of section 9 of P.L.1992, c.162
27 (C.17B:27A-25) and regulations promulgated thereunder.

28 d. The health benefits to be provided by the self-funded multiple
29 employer welfare arrangement shall at all times be equal to or greater
30 than benefits required to be provided in the lowest benefit level
31 standard plan promulgated by the New Jersey Small Employer Health
32 Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et
33 seq.).²

34
35 ¹[9.] ²[10.¹] 9.² a. The commissioner may, upon reasonable
36 notice, conduct an examination of the loss reserves of a self-funded
37 multiple employer welfare arrangement as often as the commissioner
38 in his discretion may deem necessary. ²The expenses of the
39 examination shall be paid by the self-funded multiple employer welfare
40 arrangement so examined. The commissioner shall also annually
41 review the RBC report of the self-funded multiple employer welfare
42 arrangement.²

43 b. If the commissioner finds that the reserves are inadequate, he
44 shall notify the self-funded multiple employer welfare arrangement of
45 the inadequacy. ²Capital and surplus shall be automatically considered
46 inadequate if they do not meet or exceed the following: (1) for the

1 calendar year ending December 31, 2002, 80 percent of the regulatory
 2 action level RBC determined in accordance with the RBC instructions;
 3 (2) for the calendar year ending December 31, 2003, 90 percent of the
 4 regulatory action level RBC determined in accordance with the RBC
 5 instructions; (3) for the calendar year ending December 31, 2004, 95
 6 percent of the regulatory action level RBC determined in accordance
 7 with the RBC instructions; and (4) for the calendar years ending on or
 8 after December 31, 2005, the regulatory action level RBC determined
 9 in accordance with the RBC instructions.² Within 30 days the self-
 10 funded multiple employer welfare arrangement shall file and implement
 11 a plan to correct the inadequacy. The inadequacy shall be corrected
 12 within 90 days of the implementation of the plan to correct the
 13 inadequacy.

14

15 ¹[10.] ²[11.1] 10.² a. The commissioner may revoke or suspend
 16 the certificate of registration of any self-funded multiple employer
 17 welfare arrangement that fails to correct any inadequacy pursuant to
 18 section 9 of this act or violates any provision of this act.

19 b. Any person who violates any provision of this act or the rules
 20 and regulations issued pursuant thereto shall be liable to a penalty of
 21 not more than \$1,000 for a first offense and not more than \$5,000 for
 22 each subsequent offense.

23

24 ¹[11.] ²[12.1] 11.² Any rehabilitation, liquidation, conservation or
 25 dissolution of a self-funded multiple employer welfare arrangement
 26 shall be conducted under the supervision of the ²[commissioner, who
 27 shall have all power with respect to it under the laws governing the
 28 rehabilitation, liquidation, conservation or dissolution of insurers]
 29 State Superior Court in the county in which the self-funded multiple
 30 employer welfare arrangement has its principal office².

31

32 ¹[12.] ²[13.1] 12.² The commissioner, in accordance with the
 33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 34 seq.), may adopt rules and regulations necessary to effectuate the
 35 purposes of this act.

36

37 ¹[13.] ²[14.1] 13.² This act shall take effect on the ²[180th]
 38 90th² following enactment.

39

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43 _____
 Regulates self-funded multiple employer welfare arrangements.

CHAPTER 352

AN ACT concerning self-funded multiple employer welfare arrangements.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.17B:27C-1 Short title.

1. This act shall be known and may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act."

C.17B:27C-2 Purposes of act.

2. The purposes of this act are to:
- a. provide for the registration of self-funded or partially self-funded multiple employer welfare arrangements;
 - b. regulate self-funded or partially self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
 - c. provide reporting requirements for self-funded or partially self-funded multiple employer welfare arrangements; and
 - d. provide for sanctions against self-funded or partially self-funded multiple employer welfare arrangements that do not comply with the provisions of this act.

C.17B:27C-3 Definitions relative to self-funded multiple employer welfare arrangements.

3. For purposes of this act:

"Association" means a group of 100 or more persons organized and maintained in good faith for purposes other than that of obtaining insurance, in active existence for more than one year, having a constitution and bylaws that provide that: the association holds regular meetings not less than annually to further the purposes of the members; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

"Commissioner" means the Commissioner of Banking and Insurance.

"Employee welfare benefit plan" has the meaning set forth in subsection (1) of 29 U.S.C. s.1002.

"Multiple employer welfare arrangement" has the meaning set forth in subsection (40) of 29 U.S.C. s.1002.

"Self-funded multiple employer welfare arrangement" means a self-funded or partially self-funded multiple employer welfare arrangement that provides for health benefits plans that has two or more employers who each have two or more employees and that has one or more of the employer members either domiciled in this State or its principal headquarters or principal administrative office located in this State.

"Small employer" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).

C.17B:27C-4 Annual registration fee.

4. A self-funded multiple employer welfare arrangement shall register annually with the commissioner and pay a registration fee established by the commissioner which shall not exceed \$1,000.

C.17B:27C-5 Deposit, maintenance of cash, securities.

5. a. A self-funded multiple employer welfare arrangement shall deposit and continuously maintain with a financial institution licensed in this State, cash or securities as defined in N.J.S. 17B:18-37, having an admitted asset value of not less than \$200,000. The deposit shall be held for the benefit and protection of all covered members of the self-funded multiple employer welfare arrangement. The self-funded multiple employer welfare arrangement shall further maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses including unpaid claims.

b. A self-funded multiple employer welfare arrangement shall maintain aggregate stop-loss coverage, with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of the termination or liquidation of the self-funded multiple employer welfare arrangement, and specific stop-loss coverage, with a retention level determined annually by a qualified actuary based on sound actuarial principles. Any stop-

loss contract maintained pursuant to this subsection shall contain a provision that the stop-loss insurer shall give the self-funded multiple employer welfare arrangement and the commissioner a minimum of 180 days' notice of cancellation or nonrenewal. If the self-funded multiple employer welfare arrangement fails to secure replacement coverage within 90 days after receipt of the notice of cancellation or nonrenewal, the trustees of the self-funded multiple employer welfare arrangement shall provide for the orderly liquidation of the self-funded multiple employer welfare arrangement.

C.17B:27C-6 Required filings.

6. Each self-funded multiple employer welfare arrangement shall file all of the following with the commissioner:

a. No later than May 15th of each calendar year or four months and 15 days after the end of each fiscal year of the self-funded multiple employer welfare arrangement, financial statements audited by a certified public accountant and on forms prescribed by the commissioner, an actuarial opinion rendered by a qualified actuary, a report of its Risk-Based Capital (RBC) as of the end of the immediately preceding calendar year, in a form and containing such information as is required by the instructions adopted by the National Association of Insurance Commissioners for health insurers, as amended from time to time and proof of the deposit required in accordance with section 5 of this act. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may prescribe by regulation. For purposes of this section and section 5 of this act, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner.

b. Within 60 days after the end of each fiscal quarter, unaudited financial statements on forms prescribed by the commissioner, affirmed by an appropriate officer or agent of the self-funded multiple employer welfare arrangement.

c. Within 60 days after the end of each fiscal quarter, a report on forms prescribed by the commissioner certifying that the self-funded multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet the requirements of section 5 of this act.

C.17B:27C-7 Liability of members.

7. a. The liability of each member for the obligations of the self-funded multiple employer welfare arrangement shall be individual, several and proportionate, but not joint, except as provided in this section.

b. Each member shall have a contingent assessment liability pursuant to subsection c. of this section. Each benefit plan issued by a self-funded multiple employer welfare arrangement shall contain a statement of the contingent liability. Both the application for benefits and the benefit plan shall contain in contrasting color, not less than 10-point type, the following statement: "This is a fully assessable benefit plan. In the event that the self-funded multiple employer welfare arrangement is unable to pay its obligations, members shall be required to contribute on a pro rata earned premium basis the funds necessary to meet any unfilled obligations."

c. All self-funded multiple employer welfare arrangements shall provide that members are assessed in accordance with the provisions of this section. Each self-funded multiple employer welfare arrangement may assess all members if its prior fiscal year statement of operations reflected a loss. Each self-funded multiple employer welfare arrangement shall assess all members if the arrangement's fund balance or reserve at the end of any accounting period is less than the amount required by law. The minimum assessment shall be the amount necessary to comply with the requirements of sections 5 and 9 of this act. Each member's assessment shall be computed by applying the earned premium for each employer's benefit plan during the prior fiscal year as a percent of the amount of the total of all employers' earned premium for the same year. Each member's assessment shall be that member's percent times the total assessment levied. In the event a member fails to pay an assessment, the other members shall be liable on a proportionate basis for an additional assessment. The self-funded multiple employer welfare arrangement, acting on behalf of all members who paid the additional assessment, shall take

appropriate legal action to recover the assessment from any member who fails to pay an assessment.

d. In the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement, the court, pursuant to section 11 of this act, may assess the members in the amounts needed to pay all incurred but unpaid claims and all projected claims, together with the costs and expenses of collecting the assessments, a reasonable loading factor for uncollected assessments and the costs and expenses of the rehabilitation, liquidation, conservation or dissolution.

e. The following notice shall be provided to employers and employees who obtain coverage from a self-funded multiple employer welfare arrangement:

NOTICE

THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT.

FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR AT _____(this blank should include the "800" consumer service telephone number).

C.17B:27C-8 Inapplicability of insurance laws.

8. a. Except as provided by this act, the insurance laws of this State do not apply to the operation of self-funded multiple employer welfare arrangements. A self-funded multiple employer welfare arrangement is not an insurance company or insurer under the laws of this State.

b. Any self-funded multiple employer welfare arrangement shall offer all products that it is actively marketing to any employer, and accept any employer and any employee of that employer who applies for any of those products; provided, however that a self-funded multiple employer welfare arrangement may limit participation to members of the association.

c. Assessments payable by small employer members, except for dental plans, shall be established in accordance with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder; provided, however, that for the first year after the effective date of this act, a self-funded multiple employer welfare arrangement providing benefits in this State prior to the effective date of this act shall: (1) not charge a small employer member an assessment greater than 300 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; (2) for the second year after the effective date of this act, not charge a small employer member an assessment greater than 250 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; and (3) for each year thereafter, comply with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder.

d. The health benefits to be provided by the self-funded multiple employer welfare arrangement shall at all times be equal to or greater than benefits required to be provided in the lowest benefit level standard plan promulgated by the New Jersey Small Employer Health Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.).

C.17B:27C-9 Examination of loss reserves.

9. a. The commissioner may, upon reasonable notice, conduct an examination of the loss reserves of a self-funded multiple employer welfare arrangement as often as the commissioner

in his discretion may deem necessary. The expenses of the examination shall be paid by the self-funded multiple employer welfare arrangement so examined. The commissioner shall also annually review the RBC report of the self-funded multiple employer welfare arrangement.

b. If the commissioner finds that the reserves are inadequate, he shall notify the self-funded multiple employer welfare arrangement of the inadequacy. Capital and surplus shall be automatically considered inadequate if they do not meet or exceed the following: (1) for the calendar year ending December 31, 2002, 80 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (2) for the calendar year ending December 31, 2003, 90 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (3) for the calendar year ending December 31, 2004, 95 percent of the regulatory action level RBC determined in accordance with the RBC instructions; and (4) for the calendar years ending on or after December 31, 2005, the regulatory action level RBC determined in accordance with the RBC instructions. Within 30 days the self-funded multiple employer welfare arrangement shall file and implement a plan to correct the inadequacy. The inadequacy shall be corrected within 90 days of the implementation of the plan to correct the inadequacy.

C.17B:27C-10 Revocation, suspension of certificate of registration; violations, penalties.

10. a. The commissioner may revoke or suspend the certificate of registration of any self-funded multiple employer welfare arrangement that fails to correct any inadequacy pursuant to section 9 of this act or violates any provision of this act.

b. Any person who violates any provision of this act or the rules and regulations issued pursuant thereto shall be liable to a penalty of not more than \$1,000 for a first offense and not more than \$5,000 for each subsequent offense.

C.17B:27C-11 Rehabilitation, liquidation, conservation, dissolution.

11. Any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement shall be conducted under the supervision of the State Superior Court in the county in which the self-funded multiple employer welfare arrangement has its principal office.

C.17B:27C-12 Rules, regulations.

12. The commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations necessary to effectuate the purposes of this act.

13. This act shall take effect on the 90th following enactment.

Approved January 6, 2002.