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end

P.L. 2015, CHAPTER 172, *approved December 9, 2015*
Assembly, No. 3421 (*Third Reprint*)

1 AN ACT concerning certain multiple employer welfare
2 arrangements and amending P.L.2001, c.352.

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

6
7 ²1. Section 3 of P.L.2001, c.352 (C.17B:27C-3) is amended to
8 read as follows:

9 3. For purposes of this act:

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

19 "Commissioner" means the Commissioner of Banking and
20 Insurance.

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

23 "Large employer" means a member employer with more than
24 ³**[100]** ⁵⁰³ eligible employees, as defined by section 1 of P.L.1992,
25 c.162 (C.17B:27A-17).

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

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

35 "Small employer" means the same as defined in section 1 of
36 P.L.1992, c.162 (C.17B:27A-17) ³**[, and on or after the effective**
37 **date of P.L. , c. (pending before the Legislature as this bill), the**
38 **term "small employer" shall mean member employers with not**

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is 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 AAP committee amendments adopted June 23, 2014.**

²**Senate floor amendments adopted March 16, 2015.**

³**Assembly amendments adopted in accordance with Governor's recommendations November 9, 2015.**

1 more than 100 eligible employees, as defined by section 1 of
2 P.L.1992, c.162 (C.17B:27A-17)]³ .²

3 (cf: P.L.2001, c.352, s.3)

4

5 ²[1.] 2.² Section 5 of P.L.2001, c.352 (C.17B:27C-5) is
6 amended

7 to read as follows:

8 5. a. A self-funded multiple employer welfare arrangement
9 shall deposit ¹[, or obtain on its behalf a deposit from an
10 appropriate capital funding source,]¹ and continuously maintain
11 with a financial institution licensed in this State, cash or securities
12 as defined in N.J.S. 17B:18-37, having an admitted asset value of
13 not less than ~~[\$200,000]~~ ¹[\$300,000] \$200,000¹. The deposit
14 shall be held for the benefit and protection of all covered members
15 of the self-funded multiple employer welfare arrangement¹[,
16 provided, however, that any permitted underwriting gains may be
17 shared with any entity acting as a source of deposit funds to the
18 extent otherwise consistent with P.L.2001, c.352 (C.17B:27C-1 et
19 seq.)]¹. The self-funded multiple employer welfare arrangement
20 shall further maintain a cash reserve for loss in an amount
21 established by a qualified actuary as being adequate to provide for
22 all incurred losses including unpaid claims.

23 b. ²[¹A self-funded multiple employer welfare arrangement
24 may obtain on its behalf the deposit of cash or securities required by
25 subsection a. of this section from an appropriate capital funding
26 source. Permitted underwriting gains may be shared with an entity
27 acting as a source of deposit funds to the extent otherwise
28 consistent with P.L.2001, c.352 (C.17B:27C-1 et seq.). A
29 distribution of underwriting gains shall not take place unless the
30 self-funded multiple employer welfare arrangement has first
31 demonstrated two consecutive years of positive operating results,
32 and thereafter a distribution of underwriting gains shall only include
33 the underwriting gains of the immediately preceding year. A
34 distribution of underwriting gains shall not take place if the self-
35 funded multiple employer welfare arrangement incurred an
36 operating loss in the immediately preceding year.

37 c.¹² A self-funded multiple employer welfare arrangement shall
38 maintain aggregate stop-loss coverage, with a retention level of 125
39 percent of expected claims per year, including provisions to cover
40 incurred, unpaid claims liability in the event of the termination or
41 liquidation of the self-funded multiple employer welfare
42 arrangement, and specific stop-loss coverage, with a retention level
43 determined annually by a qualified actuary based on sound actuarial
44 principles. Any stop-loss contract maintained pursuant to this
45 subsection shall contain a provision that the stop-loss insurer shall
46 give the self-funded multiple employer welfare arrangement and the

1 commissioner a minimum of 180 days' notice of cancellation or
2 nonrenewal. If the self-funded multiple employer welfare
3 arrangement fails to secure replacement coverage within 90 days
4 after receipt of the notice of cancellation or nonrenewal, the trustees
5 of the self-funded multiple employer welfare arrangement shall
6 provide for the orderly liquidation of the self-funded multiple
7 employer welfare arrangement.

8 (cf: P.L.2001, c.352, s.5)

9

10 ²[2.] 3.² Section 6 of P.L.2001, c.352 (C.17B:27C-6) is
11 amended to read as follows:

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

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

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

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

41 d. The information required to be filed pursuant to subsections
42 a., b., and c. of this section shall be ¹[separately]¹ certified by ¹[a
43 board of trustees] an officer¹ of the self-funded multiple employer
44 welfare arrangement. ¹[The board of trustees shall consist of one
45 designee selected by each member employer, in addition to at least
46 one independent trustee chosen by majority vote of the members.
47 The board of trustees shall meet at least quarterly.]¹

1 e. ²A majority of the board of trustees of a self-funded multiple
2 employer welfare arrangement shall represent participating
3 employer members, and at least one trustee shall be a non-
4 participating independent trustee chosen by a majority vote of the
5 trustees.

6 f.² The self-funded multiple employer welfare arrangement
7 shall ²['¹, during its first five years,']² establish and maintain a
8 website upon which all of the filings required pursuant to this
9 section and information concerning its governance and financial
10 performance shall be publicly available for a period of at least five
11 years ¹after the reporting period¹. ²This website shall also, at all
12 times, indicate the status of the deposit required to be continuously
13 maintained with a financial institution licensed in this State,
14 pursuant to subsection a. of section 5 of P.L.2001,
15 c.352 (C.17B:27C-5) and the name of that institution.²

16 (cf: P.L.2001, c.352, s.6)

17

18 ²[3.]⁴ Section 7 of P.L.2001, c.352 (C.17B:27C-7) is
19 amended to read as follows:

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

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

35 c. All self-funded multiple employer welfare arrangements
36 shall provide that members are assessed in accordance with the
37 provisions of this section. Each self-funded multiple employer
38 welfare arrangement may assess all members [if its prior fiscal year
39 statement of operations reflected a loss] ²[to the extent deemed
40 necessary by sound actuarial standards and as certified by an
41 appropriate actuarial opinion] if its prior fiscal year statement of
42 operations reflected a loss². Each self-funded multiple employer
43 welfare arrangement shall assess all members if the arrangement's
44 fund balance or reserve at the end of any accounting period is less
45 than the amount required by law. The minimum assessment shall
46 be the amount necessary to comply with the requirements of

1 sections 5 and 9 of this act. Each member's assessment shall be
 2 computed by applying the earned premium for each employer's
 3 benefit plan during the prior fiscal year as a percent of the amount
 4 of the total of all employers' earned premium for the same year.
 5 Each member's assessment shall be that ~~members's~~ member's
 6 percent times the total assessment levied. ~~Assessments shall be~~
 7 ~~paid by each member within~~² ~~45~~² ~~60~~¹ days of being levied.²
 8 In the event a member fails to pay an assessment, the ~~self-funded~~
 9 ~~multiple employer welfare arrangement shall have the option to~~
 10 ~~terminate the member's participation in the plan within 30 days~~
 11 ~~after the expiration of the period covered by any earned premiums~~
 12 ~~actually paid to date, subject to adequate reserves being set aside~~
 13 ~~for the due payment of any terminal liabilities or incurred but not~~²
 14 ~~yet revealed~~² ~~reported~~¹ claims for that member's plan
 15 participants, as certified by an appropriate actuarial opinion.
 16 Alternatively, the² other members shall ~~be liable~~² ~~, if in~~
 17 ~~accordance with the plan design, assume liability~~ be liable² on a
 18 proportionate basis for an additional assessment~~. The~~² ~~, in~~
 19 ~~which case, the~~ . The² self-funded multiple employer welfare
 20 arrangement, acting on behalf of all members who paid the
 21 additional assessment, shall take appropriate legal action to recover
 22 the assessment from any member who fails to pay an assessment.

23 d. ~~In~~² ~~The members shall deposit reserves, as certified by a~~
 24 ~~qualified actuarial opinion, sufficient to provide for the payment,~~
 25 ~~in~~² ~~In~~² 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~~
 28 ~~members in~~² ~~of~~² ~~the court, pursuant to section 11 of this act, may~~
 29 ~~assess the members in~~² the amounts needed to pay all incurred but
 30 unpaid claims and all ~~projected claims,~~² ~~terminal liabilities as of~~
 31 ~~the date of that event. If any such member has not complied with~~
 32 ~~the foregoing, the court, pursuant to section 11 of P.L.2001,~~
 33 ~~c.352 (C.17B:27C-11), may assess that member for those amounts,~~
 34 ~~projected claims,~~² together with the costs and expenses of collecting
 35 the assessments, a reasonable loading factor for uncollected
 36 assessments and the costs and expenses of the rehabilitation,
 37 liquidation, conservation or dissolution.

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

41

42

NOTICE

43 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
 44 ARRANGEMENT IS NOT AN INSURANCE COMPANY ¹~~AND~~
 45 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE

1 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
 2 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
 3 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
 4 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE
 5 TO MAKE PAYMENTS AS PROMISED¹ ²AND DOES NOT
 6 PARTICIPATE IN ANY OF THE GUARANTEE FUNDS
 7 CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT
 8 PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-
 9 FUNDED MULTIPLE EMPLOYER WELFARE
 10 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE
 11 TO MAKE PAYMENTS AS PROMISED².

12 THE HEALTH CARE BENEFITS THAT YOU HAVE
 13 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
 14 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
 15 WELFARE ARRANGEMENT. ²THE SELF-FUNDED
 16 MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS
 17 REQUIRED TO MAINTAIN SUFFICIENT RESERVES TO PAY
 18 FOR ALL INCURRED LOSSES INCLUDING UNPAID CLAIMS.

19 IT IS IMPORTANT THAT YOU CHECK WITH YOUR
 20 EMPLOYER TO DETERMINE WHICH, IF ANY, STATE
 21 MANDATED HEALTH CARE BENEFITS MAY BE COVERED
 22 BY YOUR ARRANGEMENT.²

23 FOR ADDITIONAL INFORMATION ABOUT THE
 24 MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU
 25 SHOULD ASK QUESTIONS OF YOUR TRUST
 26 ADMINISTRATOR AT _____(this blank should
 27 include the "800" consumer service telephone number).
 28 (cf: P.L.2001, c.352, s.7)

29

30 ²**[4.] 5.**² Section 8 of P.L.2001, c.352 (C.17B:27C-8) is
 31 amended to read as follows:

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

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

43 c. Assessments payable by small employer members, except
 44 for dental plans, shall be established in accordance with the rating
 45 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
 46 regulations promulgated thereunder ²**[**; provided, however,² **]** ²**[**that
 47 for the first year after the effective date of this act, a self-funded

1 multiple employer welfare arrangement providing benefits in this
2 State prior to the effective date of this act shall: (1) not charge a
3 small employer member an assessment greater than 300 percent of
4 the assessment charged to the lowest rated small employer member
5 of the self-funded multiple employer welfare arrangement; (2) for
6 the second year after the effective date of this act, not charge a
7 small employer member an assessment greater than 250 percent of
8 the assessment charged to the lowest rated small employer member
9 of the self-funded multiple employer welfare arrangement; and (3)
10 for each year thereafter, comply with the rating requirements of
11 section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations
12 promulgated thereunder] ²[a self-funded multiple employer welfare
13 arrangement may employ an assessment methodology that results in
14 assessments for the highest rated small employer member which are
15 greater than 200 percent of the assessments produced for the lowest
16 rated small employer member for each plan and option]².

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

24 e. ²A large employer participating in a multiple employer
25 welfare arrangement shall not be required to adhere to the plan or
26 design elements, or any required coverage offerings applicable to
27 small employers, including but not limited to deductibles, co-pays,
28 and co-insurance amounts. After the effective date of P.L. _____,
29 c. (now pending before the Legislature as this bill), large
30 employer members of a multiple employer welfare arrangement
31 shall continue to offer all health benefits mandated by State law and
32 in effect on October 1, 2014. Any new or additional health benefits
33 mandated by State law required to be offered after October 1, 2014
34 shall not be required to be offered by large employers participating
35 in a multiple employer welfare arrangement. Except as provided in
36 P.L. 2001, c. 352 (C. 17B:27C-1 et seq.) as amended by P.L. _____,
37 c. (now pending before the Legislature as this bill), multiple
38 employer welfare arrangements with large employers shall be
39 otherwise subject to the requirements of State and federal law.

40 f. ² ¹【If】 Notwithstanding any other provision to the contrary, if¹
41 the member is ²[not]² a ²[small] large² employer, the rate manual
42 used to calculate program rates may include appropriate
43 classification factors such as claims experience and utilization, age,
44 gender ², tobacco use,² and geography, and such specific
45 underwriting adjustments as may be certified in accordance with
46 subsection d. of section 6 of P.L.2001, c.352 (C.17B:27C-6).

1 ²[f.] g.² The self-funded multiple employer welfare
2 arrangement may provide to its members a health and wellness
3 program consistent with the United States Department of Labor's
4 requirements ²[, which shall be filed with the commissioner on an
5 annual basis]² .

6 ²[g.] h.² The self-funded multiple employer welfare
7 arrangement may provide to its members an internet-based system
8 for the administration, billing and claims processing of its benefits.
9 (cf: P.L.2001, c.352, s.8)

10
11 ²[5.] 6.² This act shall take effect on ²[the]² ¹[first] ²[60th]¹
12 day]² ¹[of the sixth month]¹ ²[next following enactment] January
13 1, 2016, except that the Department of Banking and Insurance may
14 take such appropriate anticipatory administrative action, including
15 the promulgation of any regulations, necessary to ensure the
16 implementation of this act on its effective date ².

17

18

19

20

21 Revises the "Self-Funded Multiple Employer Welfare
22 Arrangement Regulation Act."

ASSEMBLY, No. 3421

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 16, 2014

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

Assemblywoman Lampitt

SYNOPSIS

Revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2014)

1 AN ACT concerning certain multiple employer welfare
2 arrangements and amending P.L.2001, c.352.

3

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

6

7 1. Section 5 of P.L.2001, c.352 (C.17B:27C-5) is amended to
8 read as follows:

9 5. a. A self-funded multiple employer welfare arrangement
10 shall deposit, or obtain on its behalf a deposit from an appropriate
11 capital funding source, and continuously maintain with a financial
12 institution licensed in this State, cash or securities as defined in
13 N.J.S. 17B:18-37, having an admitted asset value of not less than
14 ~~[\$200,000]~~ \$300,000. The deposit shall be held for the benefit and
15 protection of all covered members of the self-funded multiple
16 employer welfare arrangement, provided, however, that any
17 permitted underwriting gains may be shared with any entity acting
18 as a source of deposit funds to the extent otherwise consistent with
19 P.L.2001, c.352 (C.17B:27C-1 et seq.). The self-funded multiple
20 employer welfare arrangement shall further maintain a cash reserve
21 for loss in an amount established by a qualified actuary as being
22 adequate to provide for all incurred losses including unpaid claims.

23 b. 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
28 arrangement, and specific stop-loss coverage, with a retention level
29 determined annually by a qualified actuary based on sound actuarial
30 principles. Any stop-loss contract maintained pursuant to this
31 subsection shall contain a provision that the stop-loss insurer shall
32 give the self-funded multiple employer welfare arrangement and the
33 commissioner a minimum of 180 days' notice of cancellation or
34 nonrenewal. If the self-funded multiple employer welfare
35 arrangement fails to secure replacement coverage within 90 days
36 after receipt of the notice of cancellation or nonrenewal, the trustees
37 of the self-funded multiple employer welfare arrangement shall
38 provide for the orderly liquidation of the self-funded multiple
39 employer welfare arrangement.

40 (cf: P.L.2001, c.352, s.5)

41

42 2. Section 6 of P.L.2001, c.352 (C.17B:27C-6) is amended to
43 read as follows:

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

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

Matter underlined thus is new matter.

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

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

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

28 d. The information required to be filed pursuant to subsections
29 a., b., and c. of this section shall be separately certified by a board
30 of trustees of the self-funded multiple employer welfare
31 arrangement. The board of trustees shall consist of one designee
32 selected by each member employer, in addition to at least one
33 independent trustee chosen by majority vote of the members. The
34 board of trustees shall meet at least quarterly.

35 e. The self-funded multiple employer welfare arrangement
36 shall establish and maintain a website upon which all of the filings
37 required pursuant to this section and information concerning its
38 governance and financial performance shall be publicly available
39 for a period of at least five years.

40 (cf: P.L.2001, c.352, s.6)

41

42 3. Section 7 of P.L.2001, c.352 (C.17B:27C-7) is amended to
43 read as follows:

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

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

12 c. All self-funded multiple employer welfare arrangements
13 shall provide that members are assessed in accordance with the
14 provisions of this section. Each self-funded multiple employer
15 welfare arrangement may assess all members **[if its prior fiscal year**
16 **statement of operations reflected a loss]** to the extent deemed
17 necessary by sound actuarial standards and as certified by an
18 appropriate actuarial opinion. Each self-funded multiple employer
19 welfare arrangement shall assess all members if the arrangement's
20 fund balance or reserve at the end of any accounting period is less
21 than the amount required by law. The minimum assessment shall
22 be the amount necessary to comply with the requirements of
23 sections 5 and 9 of this act. Each member's assessment shall be
24 computed by applying the earned premium for each employer's
25 benefit plan during the prior fiscal year as a percent of the amount
26 of the total of all employers' earned premium for the same year.
27 Each member's assessment shall be that **[members's]** member's
28 percent times the total assessment levied. Assessments shall be
29 paid by each member within 45 days of being levied. In the event a
30 member fails to pay an assessment, the self-funded multiple
31 employer welfare arrangement shall have the option to terminate the
32 member's participation in the plan within 30 days after the
33 expiration of the period covered by any earned premiums actually
34 paid to date, subject to adequate reserves being set aside for the due
35 payment of any terminal liabilities or incurred but not yet revealed
36 claims for that member's plan participants, as certified by an
37 appropriate actuarial opinion. Alternatively, the other members
38 shall **[be liable]** , if in accordance with the plan design, assume
39 liability on a proportionate basis for an additional assessment **[.**
40 The] , in which case, the self-funded multiple employer welfare
41 arrangement, acting on behalf of all members who paid the
42 additional assessment, shall take appropriate legal action to recover
43 the assessment from any member who fails to pay an assessment.

44 d. **[In]** The members shall deposit reserves, as certified by a
45 qualified actuarial opinion, sufficient to provide for the payment, in
46 the event of a rehabilitation, liquidation, conservation or dissolution
47 of a self-funded multiple employer welfare arrangement, **[the court,**

1 pursuant to section 11 of this act, may assess the members in] of
2 the amounts needed to pay all incurred but unpaid claims and all
3 [projected claims,] terminal liabilities as of the date of that event.
4 If any such member has not complied with the foregoing, the court,
5 pursuant to section 11 of P.L.2001, c.352 (C.17B:27C-11), may
6 assess that member for those amounts, together with the costs and
7 expenses of collecting the assessments, a reasonable loading factor
8 for uncollected assessments and the costs and expenses of the
9 rehabilitation, liquidation, conservation or dissolution.

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

13

14

NOTICE

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

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

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

32 (cf: P.L.2001, c.352, s.7)

33

34 4. Section 8 of P.L.2001, c.352 (C.17B:27C-8) is amended to
35 read as follows:

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

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

47 c. Assessments payable by small employer members, except
48 for dental plans, shall be established in accordance with the rating

1 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
2 regulations promulgated thereunder; provided, however, [that for
3 the first year after the effective date of this act, a self-funded
4 multiple employer welfare arrangement providing benefits in this
5 State prior to the effective date of this act shall: (1) not charge a
6 small employer member an assessment greater than 300 percent of
7 the assessment charged to the lowest rated small employer member
8 of the self-funded multiple employer welfare arrangement; (2) for
9 the second year after the effective date of this act, not charge a
10 small employer member an assessment greater than 250 percent of
11 the assessment charged to the lowest rated small employer member
12 of the self-funded multiple employer welfare arrangement ; and (3)
13 for each year thereafter, comply with the rating requirements of
14 section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations
15 promulgated thereunder] a self-funded multiple employer welfare
16 arrangement may employ an assessment methodology that results in
17 assessments for the highest rated small employer member which are
18 greater than 200 percent of the assessments produced for the lowest
19 rated small employer member for each plan and option.

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

26 e. If the member is not a small employer, the rate manual used
27 to calculate program rates may include appropriate classification
28 factors such as claims experience and utilization, age, gender and
29 geography, and such specific underwriting adjustments as may be
30 certified in accordance with subsection d. of section 6 of P.L.2001,
31 c.352 (C.17B:27C-6).

32 f. The self-funded multiple employer welfare arrangement may
33 provide to its members a health and wellness program consistent
34 with the United States Department of Labor's requirements, which
35 shall be filed with the commissioner on an annual basis.

36 g. The self-funded multiple employer welfare arrangement may
37 provide to its members an internet-based system for the
38 administration, billing and claims processing of its benefits.

39 (cf: P.L.2001, c.352, s.8)

40

41 5. This act shall take effect on the first day of the sixth month
42 next following enactment.

43

44

45

STATEMENT

46

47 This bill revises the "Self-Funded Multiple Employer Welfare
48 Arrangement Regulation Act," which was enacted in 2002 to

1 regulate self-funded multiple employer welfare arrangements
2 (MEWAs). A MEWA is a self-funded or partially self-funded
3 multiple employer welfare arrangement that provides for health
4 benefits plans that has two or more employers who each have two
5 or more employees and that has one or more of the employer
6 members either domiciled in New Jersey or its principal
7 headquarters or principal administrative office located in the State.
8 The act includes regulation and reporting requirements and
9 penalties for noncompliance for self-funded and partially self-
10 funded MEWAs.

11 The purpose of a MEWA is to provide a self-insured pooled risk
12 mechanism so that associations of small and mid-sized employers
13 may provide employee health benefits at costs that are comparable
14 to the discounted rates available to large corporations. MEWAs, if
15 properly structured, provide an economical means for small and
16 mid-sized employers to provide employee health benefits and are an
17 alternative to purchasing commercial insurance. Presently, because
18 of the economic barriers presented by existing law, there are only
19 three registered MEWAs in the State. This bill would modernize
20 and enhance the existing law to encourage and promote competition
21 in this marketplace, and provide additional options for small and
22 mid-sized businesses to offer affordable employee health benefits.

23 Specifically, the bill increases the amount of funds that must be
24 deposited on reserve from \$200,000 to \$300,000, but allows for the
25 provision of those funds from a third-party source, such as a
26 financial institution or investor, and allows for the sharing of any
27 underwriting gains. The bill also modernizes the governance of
28 MEWAs by requiring the public posting of all regulatory filings,
29 governance documents and financial data on a website for a period
30 of at least five years. Each of the disclosure documents must be
31 separately certified by a board of trustees consisting of one designee
32 selected by each member employer, in addition to one independent
33 trustee. The board of trustees shall meet at least quarterly.

34 The bill also provides that annual assessments shall be levied to
35 the extent deemed necessary by sound actuarial standards, as
36 certified by an appropriate actuarial opinion. Members shall pay all
37 assessments within 45 days of being levied. If the member fails to
38 pay the assessment, the MEWA may terminate the member's
39 participation within 30 days after the expiration of the period
40 covered by any earned premiums actually paid to date, subject to
41 adequate reserves being set aside for the due payment of any
42 terminal liabilities or incurred but not yet revealed claims for that
43 member's plan participants, as certified by an appropriate actuarial
44 opinion.

45 Notwithstanding the provision in the act that requires
46 assessments payable by small employer members, except for dental
47 plans, to be established in accordance with the rating requirements
48 of the New Jersey Small Employer Health Benefits Program, the

1 bill allows annual assessment methodology to result in assessments
2 for the highest rated small employer which are greater than 200
3 percent of the assessments produced for the lowest rated small
4 employer for each plan and option. The bill also provides that
5 health benefits provided by a MEWA to a small employer must be
6 consistent with the benefits standards existing under the New Jersey
7 Small Employer Health Benefits Program, but not to members that
8 are not small employers. In addition, as to members that are not
9 small employers, the rate manual used to calculate program rates
10 may include appropriate classification factors such as claims
11 experience and utilization, age, gender and geography, or such other
12 underwriting adjustments as may be certified by a qualified actuary.
13 Finally, the bill provides that a MEWA may provide its members
14 with a health and wellness program, and an internet-based system
15 for the administration, billing and claims processing of its benefits.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3421

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 2014

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3421, with committee amendments.

As amended, this bill revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act," which was enacted in 2002 to regulate self-funded multiple employer welfare arrangements (MEWAs). A MEWA is 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 New Jersey or its principal headquarters or principal administrative office located in the State. The act includes regulation and reporting requirements and penalties for noncompliance for self-funded and partially self-funded MEWAs.

The purpose of a MEWA is to provide a self-insured pooled risk mechanism so that associations of small and mid-sized employers may provide employee health benefits at costs that are comparable to the discounted rates available to large corporations. MEWAs, if properly structured, provide an economical means for small and mid-sized employers to provide employee health benefits and are an alternative to purchasing commercial insurance. Presently, because of the economic barriers presented by existing law, there are only three registered MEWAs in the State. This bill modernizes and enhances the existing law to encourage and promote competition in this marketplace, and provide additional options for small and mid-sized businesses to offer affordable employee health benefits.

Specifically, the bill allows MEWAs to obtain the reserve funds (\$200,000) that are required by law to be deposited with a financial institution in the State for the benefit and protection of covered members from a third-party source, such as a financial institution or investor, and permits MEWAs to share underwriting gains. The bill stipulates, however, that the sharing of these gains is allowable only if the MEWA has first demonstrated two consecutive years of positive operating results, and provides that a distribution of gains cannot take place, in any event, if the MEWA incurred an operating loss in the immediately preceding year. The bill also modernizes the governance

of MEWAs by requiring each MEWA, during its first five years, to publicly post all regulatory filings, governance documents, and financial data on a website for a period of at least five years after the reporting period. The bill requires each of the disclosure documents to be certified by an officer of the MEWA.

The bill also provides that annual assessments will be levied to the extent deemed necessary by sound actuarial standards, as certified by an appropriate actuarial opinion. Members are required to pay all assessments within 60 days of being levied. If the member fails to pay the assessment, the MEWA may terminate the member's participation within 30 days after the expiration of the period covered by any earned premiums actually paid to date, subject to adequate reserves being set aside for the due payment of any terminal liabilities or incurred but not yet revealed claims for that member's plan participants, as certified by an appropriate actuarial opinion.

Notwithstanding the provision in the act that requires assessments payable by small employer members, except for dental plans, to be established in accordance with the rating requirements of the New Jersey Small Employer Health Benefits Program, the bill allows annual assessment methodology to result in assessments for the highest rated small employer which are greater than 200 percent of the assessments produced for the lowest rated small employer for each plan and option. The bill also provides that health benefits provided by a MEWA to a small employer must be consistent with the benefits standards existing under the New Jersey Small Employer Health Benefits Program, but not to members that are not small employers. In addition, as to members that are not small employers, the rate manual used to calculate program rates may include appropriate classification factors such as claims experience and utilization, age, gender and geography, or such other underwriting adjustments as may be certified by a qualified actuary.

The bill provides that a MEWA may provide its members with a health and wellness program, and an internet-based system for the administration, billing and claims processing of its benefits.

The bill takes effect on the 60th day next following enactment.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments decrease, from \$300,000 to \$200,000, the amount of funds that are required to be deposited on reserve by MEWAs.

The amendments stipulate the conditions under which underwriting gains may be shared by MEWAs.

The amendments remove a provision from the bill that requires a MEWA to have a board of trustees consisting of one designee selected by each member employer that would certify certain information

required to be filed by the MEWA. Instead, the information required to be filed under the MEWA law will be required to be certified by an officer of the MEWA.

The amendments provide that MEWA member assessments are to be paid within 60 days of being levied, instead of within 45 days as currently provided in the bill.

The amendments delete language from the notice that a self-funded MEWA is required to provide to its covered employers and employees that provides that the MEWA does not participate in any guarantee funds to pay claims or protect assets in the event of insolvency.

The amendments provide for the bill to take effect on the 60th day next following enactment, instead of the first day of the sixth month next following enactment as previously required by the bill.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3421

with Senate Floor Amendments
(Proposed by Senator SINGER)

ADOPTED: MARCH 16, 2015

These amendments make several additional changes to this bill, which revises the “Self-Funded Multiple Employer Welfare Arrangement Regulation Act,” P.L. 2001, c. 352 (C. 17B:27C-1 et seq.) to expand the definition of “small employer” and to provide for increased transparency for multiple employer welfare arrangements or MEWAs.

The amendments clarify that the bill’s provisions, and the act generally, will be applied in such a way that “small employer” means member employers with not more than 100 eligible employees, rather than the current limit of 50 employees, in recognition of the changes to the small employer health insurance market precipitated by the federal “Affordable Care Act,” or “ACA,” and which are due to take effect in this regard on January 1, 2016. Unless expressly stated, nothing in this bill is intended to otherwise affect the existing administrative treatment or practices with respect to small employers.

These amendments remove language from the bill that allows self-funded MEWAs to obtain deposits of cash or securities from appropriate capital funding sources and to share underwriting gains with the entity acting as the source of deposit funds.

The amendments provide that a majority of the board of trustees of a MEWA must be participating members, and at least one trustee must be a non-participating independent trustee chosen by a majority vote of the trustees.

The amendments restore the language of the notice which MEWAs are required to provide to employers and employees that obtain coverage through the MEWA to inform them that the MEWA does not participate in any guarantee funds created by the State. Additionally, this notice must contain language providing that the MEWA is required to maintain sufficient reserves to pay for all incurred losses, including unpaid claims. The amendments also add new language to this notice advising employees that it is important that they check with their employer to determine which, if any, State mandated health benefits are covered by the arrangement.

The amendments remove the stipulation from the bill’s requirement that the health benefits provided by a MEWA to a small employer member must at all times be “actuarially” 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 amendments also provide that if a member is not a small employer, the rate manual used to calculate rates may include tobacco use as a classification factor.

The amendments also add an additional requirement to the provision in the bill that a website be maintained to publicly post all filings and information concerning governance and financial performance required by the act, and that the site and information shall be available for at least five years after the reporting period. The website must now also, at all times, indicate the status of the \$200,000 deposit required to be continuously maintained with a financial institution licensed in this State, pursuant to the act.

The bill also provides that large employers in a MEWA arrangement on January 1, 2016 and thereafter shall not be subject to any new health benefits mandates which go into effect at the State level after October 1, 2014. The amendments further provide that large employers in a MEWA are free from the offerings and plan design elements imposed on small employers in a MEWA.

SENATE, No. 2220

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 16, 2014

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/27/2014)

1 AN ACT concerning certain multiple employer welfare
2 arrangements and amending P.L.2001, c.352.

3

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

6

7 1. Section 5 of P.L.2001, c.352 (C.17B:27C-5) is amended to
8 read as follows:

9 5. a. A self-funded multiple employer welfare arrangement shall
10 deposit, or obtain on its behalf a deposit from an appropriate capital
11 funding source, and continuously maintain with a financial
12 institution licensed in this State, cash or securities as defined in
13 N.J.S. 17B:18-37, having an admitted asset value of not less than
14 ~~[\$200,000]~~ \$300,000. The deposit shall be held for the benefit and
15 protection of all covered members of the self-funded multiple
16 employer welfare arrangement, provided, however, that any
17 permitted underwriting gains may be shared with any entity acting
18 as a source of deposit funds to the extent otherwise consistent with
19 P.L.2001, c.352 (C.17B:27C-1 et seq.). The self-funded multiple
20 employer welfare arrangement shall further maintain a cash reserve
21 for loss in an amount established by a qualified actuary as being
22 adequate to provide for all incurred losses including unpaid claims.

23 b. 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
28 arrangement, and specific stop-loss coverage, with a retention level
29 determined annually by a qualified actuary based on sound actuarial
30 principles. Any stop-loss contract maintained pursuant to this
31 subsection shall contain a provision that the stop-loss insurer shall
32 give the self-funded multiple employer welfare arrangement and the
33 commissioner a minimum of 180 days' notice of cancellation or
34 nonrenewal. If the self-funded multiple employer welfare
35 arrangement fails to secure replacement coverage within 90 days
36 after receipt of the notice of cancellation or nonrenewal, the trustees
37 of the self-funded multiple employer welfare arrangement shall
38 provide for the orderly liquidation of the self-funded multiple
39 employer welfare arrangement.

40 (cf: P.L.2001, c.352, s.5)

41

42 2. Section 6 of P.L.2001, c.352 (C.17B:27C-6) is amended to
43 read as follows:

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

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

Matter underlined thus is new matter.

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

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

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

28 d. The information required to be filed pursuant to subsections
29 a., b., and c. of this section shall be separately certified by a board
30 of trustees of the self-funded multiple employer welfare
31 arrangement. The board of trustees shall consist of one designee
32 selected by each member employer, in addition to at least one
33 independent trustee chosen by majority vote of the members. The
34 board of trustees shall meet at least quarterly.

35 e. The self-funded multiple employer welfare arrangement
36 shall establish and maintain a website upon which all of the filings
37 required pursuant to this section and information concerning its
38 governance and financial performance shall be publicly available
39 for a period of at least five years.

40 (cf: P.L.2001, c.352, s.6)

41

42 3. Section 7 of P.L.2001, c.352 (C.17B:27C-7) is amended to
43 read as follows:

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

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

12 c. All self-funded multiple employer welfare arrangements
13 shall provide that members are assessed in accordance with the
14 provisions of this section. Each self-funded multiple employer
15 welfare arrangement may assess all members **[if its prior fiscal year**
16 **statement of operations reflected a loss]** to the extent deemed
17 necessary by sound actuarial standards and as certified by an
18 appropriate actuarial opinion. Each self-funded multiple employer
19 welfare arrangement shall assess all members if the arrangement's
20 fund balance or reserve at the end of any accounting period is less
21 than the amount required by law. The minimum assessment shall
22 be the amount necessary to comply with the requirements of
23 sections 5 and 9 of this act. Each member's assessment shall be
24 computed by applying the earned premium for each employer's
25 benefit plan during the prior fiscal year as a percent of the amount
26 of the total of all employers' earned premium for the same year.
27 Each member's assessment shall be that **[members's]** member's
28 percent times the total assessment levied. Assessments shall be
29 paid by each member within 45 days of being levied. In the event a
30 member fails to pay an assessment, the self-funded multiple
31 employer welfare arrangement shall have the option to terminate the
32 member's participation in the plan within 30 days after the
33 expiration of the period covered by any earned premiums actually
34 paid to date, subject to adequate reserves being set aside for the due
35 payment of any terminal liabilities or incurred but not yet revealed
36 claims for that member's plan participants, as certified by an
37 appropriate actuarial opinion. Alternatively, the other members
38 shall **[be liable]** , if in accordance with the plan design, assume
39 liability on a proportionate basis for an additional assessment **[.**
40 The**]** , in which case, the self-funded multiple employer welfare
41 arrangement, acting on behalf of all members who paid the
42 additional assessment, shall take appropriate legal action to recover
43 the assessment from any member who fails to pay an assessment.

44 d. **[In]** The members shall deposit reserves, as certified by a
45 qualified actuarial opinion, sufficient to provide for the payment, in
46 the event of a rehabilitation, liquidation, conservation or dissolution
47 of a self-funded multiple employer welfare arrangement, **[the court,**

1 pursuant to section 11 of this act, may assess the members in] of
2 the amounts needed to pay all incurred but unpaid claims and all
3 【projected claims,】 terminal liabilities as of the date of that event.
4 If any such member has not complied with the foregoing, the court,
5 pursuant to section 11 of P.L.2001, c.352 (C.17B:27C-11), may
6 assess that member for those amounts, together with the costs and
7 expenses of collecting the assessments, a reasonable loading factor
8 for uncollected assessments and the costs and expenses of the
9 rehabilitation, liquidation, conservation or dissolution.

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

13

14

NOTICE

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

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

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

32 (cf: P.L.2001, c.352, s.7)

33

34 4. Section 8 of P.L.2001, c.352 (C.17B:27C-8) is amended to
35 read as follows:

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

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

47 c. Assessments payable by small employer members, except
48 for dental plans, shall be established in accordance with the rating

1 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
2 regulations promulgated thereunder; provided, however, [that for
3 the first year after the effective date of this act, a self-funded
4 multiple employer welfare arrangement providing benefits in this
5 State prior to the effective date of this act shall: (1) not charge a
6 small employer member an assessment greater than 300 percent of
7 the assessment charged to the lowest rated small employer member
8 of the self-funded multiple employer welfare arrangement; (2) for
9 the second year after the effective date of this act, not charge a
10 small employer member an assessment greater than 250 percent of
11 the assessment charged to the lowest rated small employer member
12 of the self-funded multiple employer welfare arrangement ; and (3)
13 for each year thereafter, comply with the rating requirements of
14 section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations
15 promulgated thereunder] a self-funded multiple employer welfare
16 arrangement may employ an assessment methodology that results in
17 assessments for the highest rated small employer member which are
18 greater than 200 percent of the assessments produced for the lowest
19 rated small employer member for each plan and option.

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

26 e. If the member is not a small employer, the rate manual used
27 to calculate program rates may include appropriate classification
28 factors such as claims experience and utilization, age, gender and
29 geography, and such specific underwriting adjustments as may be
30 certified in accordance with subsection d. of section 6 of P.L.2001,
31 c.352 (C.17B:27C-6).

32 f. The self-funded multiple employer welfare arrangement may
33 provide to its members a health and wellness program consistent
34 with the United States Department of Labor's requirements, which
35 shall be filed with the commissioner on an annual basis.

36 g. The self-funded multiple employer welfare arrangement may
37 provide to its members an internet-based system for the
38 administration, billing and claims processing of its benefits.

39 (cf: P.L.2001, c.352, s.8)

40

41 5. This act shall take effect on the first day of the sixth month
42 next following enactment.

43

44

45

STATEMENT

46

47 This bill revises the "Self-Funded Multiple Employer Welfare
48 Arrangement Regulation Act," which was enacted in 2002 to

1 regulate self-funded multiple employer welfare arrangements
2 (MEWAs). A MEWA is a self-funded or partially self-funded
3 multiple employer welfare arrangement that provides for health
4 benefits plans that has two or more employers who each have two
5 or more employees and that has one or more of the employer
6 members either domiciled in New Jersey or its principal
7 headquarters or principal administrative office located in the State.
8 The act includes regulation and reporting requirements and
9 penalties for noncompliance for self-funded and partially self-
10 funded MEWAs.

11 The purpose of a MEWA is to provide a self-insured pooled risk
12 mechanism so that associations of small and mid-sized employers
13 may provide employee health benefits at costs that are comparable
14 to the discounted rates available to large corporations. MEWAs, if
15 properly structured, provide an economical means for small and
16 mid-sized employers to provide employee health benefits and are an
17 alternative to purchasing commercial insurance. Presently, because
18 of the economic barriers presented by existing law, there are only
19 three registered MEWAs in the State. This bill would modernize
20 and enhance the existing law to encourage and promote competition
21 in this marketplace, and provide additional options for small and
22 mid-sized businesses to offer affordable employee health benefits.

23 Specifically, the bill increases the amount of funds that must be
24 deposited on reserve from \$200,000 to \$300,000, but allows for the
25 provision of those funds from a third-party source, such as a
26 financial institution or investor, and allows for the sharing of any
27 underwriting gains. The bill also modernizes the governance of
28 MEWAs by requiring the public posting of all regulatory filings,
29 governance documents and financial data on a website for a period
30 of at least five years. Each of the disclosure documents must be
31 separately certified by a board of trustees consisting of one designee
32 selected by each member employer, in addition to one independent
33 trustee. The board of trustees shall meet at least quarterly.

34 The bill also provides that annual assessments shall be levied to
35 the extent deemed necessary by sound actuarial standards, as
36 certified by an appropriate actuarial opinion. Members shall pay all
37 assessments within 45 days of being levied. If the member fails to
38 pay the assessment, the MEWA may terminate the member's
39 participation within 30 days after the expiration of the period
40 covered by any earned premiums actually paid to date, subject to
41 adequate reserves being set aside for the due payment of any
42 terminal liabilities or incurred but not yet revealed claims for that
43 member's plan participants, as certified by an appropriate actuarial
44 opinion.

45 Notwithstanding the provision in the act that requires
46 assessments payable by small employer members, except for dental
47 plans, to be established in accordance with the rating requirements
48 of the New Jersey Small Employer Health Benefits Program, the

1 bill allows annual assessment methodology to result in assessments
2 for the highest rated small employer which are greater than 200
3 percent of the assessments produced for the lowest rated small
4 employer for each plan and option. The bill also provides that
5 health benefits provided by a MEWA to a small employer must be
6 consistent with the benefits standards existing under the New Jersey
7 Small Employer Health Benefits Program, but not to members that
8 are not small employers. In addition, as to members that are not
9 small employers, the rate manual used to calculate program rates
10 may include appropriate classification factors such as claims
11 experience and utilization, age, gender and geography, or such other
12 underwriting adjustments as may be certified by a qualified actuary.
13 Finally, the bill provides that a MEWA may provide its members
14 with a health and wellness program, and an internet-based system
15 for the administration, billing and claims processing of its benefits.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2220

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2014

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2220.

As amended, this bill revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act," which was enacted in 2002 to regulate self-funded multiple employer welfare arrangements (MEWAs). A MEWA is 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 New Jersey or its principal headquarters or principal administrative office located in the State. The act includes regulation and reporting requirements and penalties for noncompliance for self-funded and partially self-funded MEWAs.

The purpose of a MEWA is to provide a self-insured pooled risk mechanism so that associations of small and mid-sized employers may provide employee health benefits at costs that are comparable to the discounted rates available to large corporations. MEWAs, if properly structured, provide an economical means for small and mid-sized employers to provide employee health benefits and are an alternative to purchasing commercial insurance. Presently, because of the economic barriers presented by existing law, there are only three registered MEWAs in the State. This bill modernizes and enhances the existing law to encourage and promote competition in this marketplace, and provide additional options for small and mid-sized businesses to offer affordable employee health benefits.

Specifically, the bill allows MEWAs to obtain the reserve funds (\$200,000) that are required by law to be deposited with a financial institution in the State for the benefit and protection of covered members from a third-party source, such as a financial institution or investor, and permits MEWAs to share underwriting gains. The bill stipulates, however, that the sharing of these gains is allowable only if the MEWA has first demonstrated two consecutive years of positive operating results, and provides that a distribution of gains cannot take place, in any event, if the MEWA incurred an operating loss in the immediately preceding year. The bill also modernizes the governance

of MEWAs by requiring each MEWA, during its first five years, to publicly post all regulatory filings, governance documents, and financial data on a website for a period of at least five years after the reporting period. The bill requires each of the disclosure documents to be certified by an officer of the MEWA.

The bill also provides that annual assessments will be levied to the extent deemed necessary by sound actuarial standards, as certified by an appropriate actuarial opinion. Members are required to pay all assessments within 60 days of being levied. If the member fails to pay the assessment, the MEWA may terminate the member's participation within 30 days after the expiration of the period covered by any earned premiums actually paid to date, subject to adequate reserves being set aside for the due payment of any terminal liabilities or incurred but not yet revealed claims for that member's plan participants, as certified by an appropriate actuarial opinion.

Notwithstanding the provision in the act that requires assessments payable by small employer members, except for dental plans, to be established in accordance with the rating requirements of the New Jersey Small Employer Health Benefits Program, the bill allows annual assessment methodology to result in assessments for the highest rated small employer which are greater than 200 percent of the assessments produced for the lowest rated small employer for each plan and option. The bill also provides that health benefits provided by a MEWA to a small employer must be consistent with the benefits standards existing under the New Jersey Small Employer Health Benefits Program, but not to members that are not small employers. In addition, as to members that are not small employers, the rate manual used to calculate program rates may include appropriate classification factors such as claims experience and utilization, age, gender and geography, or such other underwriting adjustments as may be certified by a qualified actuary.

The bill provides that a MEWA may provide its members with a health and wellness program, and an internet-based system for the administration, billing and claims processing of its benefits.

The bill takes effect on the 60th day next following enactment.

Committee Amendments:

The committee amended the bill to:

- 1) Decrease, from \$300,000 to \$200,000, the amount of funds that are required to be deposited on reserve by MEWAs.
- 2) Stipulate the conditions under which underwriting gains may be shared by MEWAs.
- 3) Remove a provision from the bill that requires a MEWA to have a board of trustees consisting of one designee selected by each member employer that would certify certain information required to be filed by the MEWA. Instead, the information required to be filed

under the MEWA law will be required to be certified by an officer of the MEWA.

4) Provide that MEWA member assessments are to be paid within 60 days of being levied, instead of within 45 days as currently provided in the bill.

5) Delete language from the notice that a self-funded MEWA is required to provide to its covered employers and employees, that provides that the MEWA does not participate in any guarantee funds to pay claims or protect assets in the event of insolvency.

6) Provide that the effective date of the bill is the 60th day next following enactment, instead of the first day of the sixth month next following enactment.

STATEMENT TO
[First Reprint]
SENATE, No. 2220

with Senate Floor Amendments
(Proposed by Senator SINGER)

ADOPTED: MARCH 16, 2015

These amendments make several additional changes to this bill, which revises the “Self-Funded Multiple Employer Welfare Arrangement Regulation Act,” P.L. 2001, c. 352 (C. 17B:27C-1 et seq.) to expand the definition of “small employer” and to provide for increased transparency for multiple employer welfare arrangements or MEWAs.

The amendments clarify that the bill’s provisions, and the act generally, will be applied in such a way that “small employer” means member employers with not more than 100 eligible employees, rather than the current limit of 50 employees, in recognition of the changes to the small employer health insurance market precipitated by the federal “Affordable Care Act,” or “ACA,” and which are due to take effect in this regard on January 1, 2016. Unless expressly stated, nothing in this bill is intended to otherwise affect the existing administrative treatment or practices with respect to small employers.

These amendments remove language from the bill that allows self-funded MEWAs to obtain deposits of cash or securities from appropriate capital funding sources and to share underwriting gains with the entity acting as the source of deposit funds.

The amendments provide that a majority of the board of trustees of a MEWA must be participating members, and at least one trustee must be a non-participating independent trustee chosen by a majority vote of the trustees.

The amendments restore the language of the notice which MEWAs are required to provide to employers and employees that obtain coverage through the MEWA to inform them that the MEWA does not participate in any guarantee funds created by the State. Additionally, this notice must contain language providing that the MEWA is required to maintain sufficient reserves to pay for all incurred losses, including unpaid claims. The amendments also add new language to this notice advising employees that it is important that they check with their employer to determine which, if any, State mandated health benefits are covered by the arrangement.

The amendments remove the stipulation from the bill’s requirement that the health benefits provided by a MEWA to a small employer member must at all times be “actuarially” 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 amendments also provide that if a member is not a small employer, the rate manual used to calculate rates may include tobacco use as a classification factor.

The amendments also add an additional requirement to the provision in the bill that a website be maintained to publicly post all filings and information concerning governance and financial performance required by the act, and that the site and information shall be available for at least five years after the reporting period. The website must now also, at all times, indicate the status of the \$200,000 deposit required to be continuously maintained with a financial institution licensed in this State, pursuant to the act.

The bill also provides that large employers in a MEWA arrangement on January 1, 2016 and thereafter shall not be subject to any new health benefits mandates which go into effect at the State level after October 1, 2014. The amendments further provide that large employers in a MEWA are free from the offerings and plan design elements imposed on small employers in a MEWA.

ASSEMBLY BILL NO. 3421
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3421 (Second Reprint) with my recommendations for reconsideration.

This bill seeks to update state law governing multiple employer welfare arrangements ("MEWAs") in order to incentivize more businesses to enter into MEWAs as an option to provide health insurance benefits to their employees. While I support the underlying intent of the bill, I offer a technical amendment to preserve the state's longstanding definition of what constitutes a "small employer" for purposes of purchasing health insurance coverage.

New Jersey, like many other states, has historically defined the small employer health insurance market to include businesses with up to 50 employees. However, at the time the Legislature passed this bill, states were required to conform their definitions for the small employer market to the federal Affordable Care Act ("ACA"), which expanded the definition of small employer to include businesses with up to 100 employees, beginning in 2016. Mindful of this upcoming federal requirement, the Legislature revised the definition of small employer in this bill to match the federal law, as explained by the Senate Floor Statement which reads, in part, ". . . in recognition of the changes to the small employer health insurance market precipitated by the federal 'Affordable Care Act,' or 'ACA' and which are due to take effect in this regard on January 1, 2016."

Employees of businesses set to be impacted by this harmful policy would not be able to keep their current health plans, and employers would be subject to more of the onerous and costly requirements of the ACA that already burden small businesses. However, amidst pressure from the business community, state

governments, and other interested stakeholders, the President finally acknowledged one of the many harmful consequences of the ACA and on October 7, 2015 signed legislation to strike this misguided policy from law and allow states to continue to define the small employer health insurance marketplace in a manner that best suits the needs of individual states.

As such, this change to our state law to expand the definition of small employers to those with between 51-100 employees is neither necessary, nor prudent. There is no justifiable reason to subject these mid-sized businesses to the more onerous State and federal requirements of the small employer health insurance market. My recommendations would maintain the current definition of small employer and provide clear and predictable guidance to businesses and the health insurance industry, while preserving the overall substance of the bill. I hope that the Legislature swiftly concurs with this minor change so that employers may be afforded the benefit of an updated MEWA market to provide health insurance benefits to their employees.

Accordingly, I herewith return Assembly Bill No. 3421 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 24:</u>	Delete "100" and insert "50"
<u>Page 2, Section 1, Line 36:</u>	Delete ",and on or after the effective date" and insert "."
<u>Page 2, Section 1, Lines 37-40:</u>	Delete in their entirety

[seal]

Respectfully,
/s/ Chris Christie
Governor

Attest:

/s/ Thomas P. Scrivo
Chief Counsel to the Governor

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Trenton, NJ - Governor Chris Christie announced action that has been taken on the following legislation:

BILL SIGNINGS:

S-854/A-1341 (Vitale, Greenstein/Quijano, Sumter, Pinkin, Wimberly) - Requires that certain health care facilities be generator ready; allows health care facilities to qualify for NJEDA loans for cost of generators

S-2234/A-3397 (Thompson, Van Drew/Giblin, Clifton, O'Donnell) - Abolishes Landscape Irrigation Contractors Examining Board in the Department of Environmental Protection and transfers regulation of landscape irrigation contractors to Department of Community Affairs

S-2784/A-3856 (Van Drew, Whelan/Andrzejczak, Johnson) - Provides partial exemption and maximum sales and use tax imposition amount for sales and uses of boats and vessels; establishes grace period for use tax imposition on certain boats and vessels used by resident purchasers

A-3393/S-2167 (Spencer, Pintor Marin, Caputo, Tucker/Rice, Ruiz) - Permits Newark to use rental car tax proceeds over three-year period to help reduce its "cash deficit for preceding year" appropriation and operational deficit

A-3421/S-2220 (Dancer, Mukheriji/Singer) - Revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act"

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Press Contact:
Brian Murray
Nicole Sizemore
609-777-2600



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Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000