

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1856

 Session of 1993

INTRODUCED BY COLAFELLA, COLAIZZO, VEON, BUXTON, CLARK, NICKOL, OLASZ, LAUB, DeLUCA, LAUGHLIN, BATTISTO, KASUNIC, JOSEPHS, SATHER, JAROLIN, GEIST, MELIO, PETRONE, TRELLO, PRESTON, PISTELLA, ROONEY, ADOLPH AND TANGRETTI, JUNE 22, 1993

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 27, 1993

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," ~~providing~~ <—
13 ~~for cease and desist authority and for regulations of~~
14 ~~insurance administrators and multiple employer welfare~~
15 ~~arrangements.~~ FURTHER PROVIDING FOR PENALTIES FOR ACTING <—
16 WITHOUT CERTIFICATE OF AUTHORITY; PROVIDING FOR THE LICENSING
17 OF INSURANCE ADMINISTRATORS; AND FURTHER PROVIDING FOR
18 ISSUANCE OF CERTIFICATE OF QUALIFICATION AND FOR CERTAIN
19 PENALTIES.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 ~~Section 1. The act of May 17, 1921 (P.L.789, No.285), known~~ <—
23 ~~as The Insurance Department Act of 1921, is amended by adding a~~
24 ~~section to read:-~~

25 ~~Section 107. Cease and Desist Authority. (a) In addition~~

~~to the penalties provided for in this act and upon reasonable belief that any person, insurance company, association or exchange has violated any provision of this act or any order or requirement of the Insurance Commissioner issued or promulgated pursuant to authority expressly granted the Insurance Commissioner by any provision of this act or law, or is about to violate any such provision, order or requirement, the Insurance Commissioner may issue a cease and desist order. Notice of the cease and desist order and notice of hearing shall be served by first class mail.~~

~~(b) Unless mutually agreed upon by the Insurance Department and the insurance company, association, exchange or person, the hearing shall be held not more than fifteen days after issuance of the order. Any adjudication of the Insurance Commissioner under this subsection shall be in accordance with and subject to review and appeal in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).~~

~~(c) Upon satisfactory evidence that any person, insurance company, association or exchange has willfully violated a cease and desist order issued under this subsection, the Insurance Commissioner may, in his discretion, impose a civil penalty of not more than five thousand dollars (\$5,000) for each and every act in violation of the cease and desist order.~~

~~Section 2. The act is amended by adding articles to read:~~

SECTION 1. SECTION 209 OF THE ACT OF MAY 17, 1921 (P.L.789, NO.285), KNOWN AS THE INSURANCE DEPARTMENT ACT OF 1921, AMENDED JUNE 23, 1976 (P.L.414, NO.95), IS AMENDED TO READ:

SECTION 209. PENALTY FOR ACTING WITHOUT CERTIFICATE OF

1 AUTHORITY.--(A) ANY INSURANCE COMPANY, ASSOCIATION, OR EXCHANGE
2 DOING AN INSURANCE BUSINESS WITHIN THIS COMMONWEALTH WITHOUT A
3 CERTIFICATE OF AUTHORITY AS REQUIRED BY THIS ACT SHALL BE
4 REQUIRED TO PAY A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND
5 DOLLARS (\$1,000) NOR MORE THAN TEN THOUSAND DOLLARS (\$10,000)
6 FOR EACH OFFENSE, TO BE RECOVERED ON BEHALF OF THE COMMONWEALTH.

7 (B) ANY PERSON NEGOTIATING OR SOLICITING ANY POLICY OF
8 INSURANCE OR SURETYSHIP IN THIS COMMONWEALTH, COLLECTING OR
9 FORWARDING PREMIUMS OR DELIVERING POLICIES FOR ANY COMPANY,
10 ASSOCIATION, OR EXCHANGE TO WHICH A CERTIFICATE OF AUTHORITY HAS
11 NOT BEEN GRANTED, SHALL BE DEEMED TO BE THE AGENT OF THE
12 COMPANY, ASSOCIATION, OR EXCHANGE, IN ANY LEGAL PROCEEDINGS
13 BROUGHT AGAINST IT. SUCH PERSON SHALL BE REQUIRED TO PAY A CIVIL
14 PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000) NOR MORE
15 THAN TEN THOUSAND DOLLARS (\$10,000) FOR EACH OFFENSE TO BE
16 RECOVERED ON BEHALF OF THE COMMONWEALTH.

17 [BEFORE THE INSURANCE COMMISSIONER SHALL TAKE ANY ACTION, AS
18 ABOVE SET FORTH, HE SHALL GIVE WRITTEN NOTICE TO THE COMPANY,
19 ASSOCIATION OR EXCHANGE OR PERSON ACCUSED OF VIOLATING THE LAW,
20 STATING THE NATURE OF SUCH ALLEGED VIOLATION, AND FIXING A TIME
21 AND PLACE, AT LEAST TEN DAYS THEREAFTER, WHEN A HEARING OF THE
22 MATTER SHALL BE HELD. AFTER SUCH HEARING OR FAILURE OF THE
23 ACCUSED TO APPEAR AT SUCH HEARING, THE INSURANCE COMMISSIONER
24 SHALL IMPOSE SUCH PENALTY AS HE DEEMS ADVISABLE.]

25 (C) UPON REASONABLE BELIEF THAT ANY PERSON, INSURANCE
26 COMPANY, ASSOCIATION OR EXCHANGE HAS OR IS DOING AN INSURANCE
27 BUSINESS WITHIN THIS COMMONWEALTH WITHOUT A CERTIFICATE OF
28 AUTHORITY AS REQUIRED BY THIS ACT, OR HAS OR IS VIOLATING ANY
29 ORDER OR REQUIREMENT OF THE INSURANCE COMMISSIONER ISSUED OR
30 PROMULGATED PURSUANT TO AUTHORITY EXPRESSLY GRANTED THE

1 INSURANCE COMMISSIONER BY THIS SECTION, THE INSURANCE
2 COMMISSIONER MAY ISSUE A CEASE AND DESIST ORDER. NOTICE OF THE
3 CEASE AND DESIST ORDER AND NOTICE OF HEARING SHALL BE SERVED BY
4 FIRST CLASS MAIL.

5 (D) UNLESS MUTUALLY AGREED UPON BY THE INSURANCE DEPARTMENT
6 AND THE INSURANCE COMPANY, ASSOCIATION, EXCHANGE OR PERSON, THE
7 HEARING SHALL BE HELD NOT MORE THAN FIFTEEN DAYS AFTER ISSUANCE
8 OF THE ORDER. ANY ADJUDICATION OF THE INSURANCE COMMISSIONER
9 UNDER THIS SUBSECTION SHALL BE IN ACCORDANCE WITH AND SUBJECT TO
10 REVIEW AND APPEAL IN ACCORDANCE WITH 2 PA.C.S. CH. 5 SUBCH. A
11 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES)
12 AND CH. 7 SUBCH. A (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH
13 AGENCY ACTION).

14 (E) UPON SATISFACTORY EVIDENCE THAT ANY PERSON, INSURANCE
15 COMPANY, ASSOCIATION OR EXCHANGE HAS WILLFULLY VIOLATED A CEASE
16 AND DESIST ORDER ISSUED UNDER SUBSECTION (C), THE INSURANCE
17 COMMISSIONER MAY, IN HIS DISCRETION, IMPOSE A CIVIL PENALTY OF
18 NOT MORE THAN FIVE THOUSAND DOLLARS (\$5,000) FOR EACH AND EVERY
19 ACT IN VIOLATION OF THE CEASE AND DESIST ORDER.

20 SECTION 2. SECTIONS 604(A) AND 639(A) OF THE ACT, AMENDED
21 JULY 11, 1992 (P.L.284, NO.48), ARE AMENDED TO READ:

22 SECTION 604. ISSUANCE OF CERTIFICATE OF QUALIFICATION.--(A)
23 WHEN THE INSURANCE DEPARTMENT IS SATISFIED THAT THE APPLICANT IS
24 WORTHY OF A CERTIFICATE OF QUALIFICATION AND HAS SUCCESSFULLY
25 PASSED AN EXAMINATION AND OTHERWISE COMPLIED WITH THIS ARTICLE,
26 IT SHALL ISSUE A CERTIFICATE. THE CERTIFICATE SHALL STATE THAT
27 THE AGENT HAS COMPLIED WITH THIS ARTICLE AND HAS BEEN AUTHORIZED
28 BY THE INSURANCE DEPARTMENT TO TRANSACT BUSINESS IN SPECIFIC
29 LINES OF AUTHORITY IN THIS COMMONWEALTH. ONCE A CERTIFICATE IS
30 ISSUED, THE CERTIFICATE HOLDER IS PRESUMED WORTHY TO SECURE

1 ADDITIONAL SPECIFIC LINES OF AUTHORITY UNDER THE CERTIFICATE
2 UNLESS THE DEPARTMENT FILES AN ACTION TO SUSPEND OR REVOKE OR
3 REFUSE TO RENEW THE CERTIFICATE PURSUANT TO SECTION 639 OF THIS
4 ACT.

5 * * *

6 SECTION 639. PENALTIES IMPOSED BY INSURANCE DEPARTMENT.--(A)
7 UPON SATISFACTORY EVIDENCE OF THE VIOLATION OF SECTIONS 602,
8 605, 606, 608, 609, 622 AND 631 THROUGH 638 BY ANY AGENT OF ANY
9 INSURANCE ENTITY OR BY ANY INSURANCE BROKER OR UPON SATISFACTORY
10 EVIDENCE OF SUCH CONDUCT THAT WOULD DISQUALIFY THE AGENT OR
11 BROKER FROM INITIAL ISSUANCE OF A CERTIFICATE OF QUALIFICATION
12 UNDER SECTION 604 OR 622, THE DEPARTMENT MAY PURSUE ANY ONE OR
13 MORE OF THE FOLLOWING COURSES OF ACTION REGARDLESS OF WHETHER
14 THE AGENT OR BROKER WAS SO AUTHORIZED BY THE DEPARTMENT:

15 (1) SUSPEND OR REVOKE OR REFUSE TO [ISSUE] RENEW THE
16 CERTIFICATE OF QUALIFICATION OR LICENSE OF THE OFFENDING PARTY
17 OR PARTIES.

18 (2) IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND
19 DOLLARS (\$1,000.00) FOR EACH ACT IN VIOLATION OF ANY OF THE
20 PROVISIONS LISTED IN THIS SUBSECTION.

21 * * *

22 SECTION 3. THE ACT IS AMENDED BY ADDING AN ARTICLE TO READ:

23 ARTICLE X

24 INSURANCE ADMINISTRATOR LICENSURE

25 Section 1001. Short Title.--This article shall be known and
26 may be cited as the "Insurance Administrator Licensure Act."

27 Section 1002. Definitions.--The following words and phrases
28 when used in this article shall have the meanings given to them
29 in this section unless the context clearly indicates otherwise:

30 "Administrator" means any person who collects charges or

1 premiums from or who adjusts or settles claims for residents of
2 this Commonwealth in connection with life or health coverage or
3 annuities. The term shall specifically include any person who
4 collects charges or premiums from or who adjusts or settles
5 claims for residents of this Commonwealth in connection with
6 life or health coverages or annuities provided by or through an
7 employe benefit plan, including, but not limited to, multiple
8 employer welfare arrangements and self-insured municipalities or
9 other political subdivisions. The term shall not include any of
10 the following:

11 (1) An employer on behalf of its employes or the employes of
12 one or more subsidiary or affiliated corporations of such
13 employer.

14 (2) A union on behalf of its members.

15 (3) An insurance company which is either licensed in this
16 Commonwealth or acting as an insurer with respect to a policy
17 lawfully issued and delivered by it and pursuant to the laws of
18 a state in which the insurer was authorized to do an insurance
19 business.

20 (4) Professional health services plan corporations organized
21 under 40 Pa.C.S. Ch. 63 (relating to professional health
22 services plan corporations) or hospital plan corporations
23 organized under Ch. 61 (relating to hospital plan corporations),
24 OR THE SUBSIDIARIES OF EITHER subject to any limitations imposed <—
25 by Chs. 61 and 63.

26 (5) A life or health agent or broker licensed in this
27 Commonwealth, whose activities are limited exclusively to the
28 sale of insurance.

29 (6) A creditor on behalf of its debtors with respect to
30 insurance covering a debt between the creditor and its debtors.

1 (7) A trust, its trustees and employes acting thereunder
2 established in conformity with section 302 of the Labor
3 Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C. 186).

4 (8) A trust exempt from taxation under section 501(a) of the
5 Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C.), its
6 trustees, and employes acting thereunder, or a custodian, its
7 agents and employes acting pursuant to a custodian account which
8 meets the requirements of section 401(f) of the Internal Revenue
9 Code of 1954.

10 (9) A bank, credit union or other financial institution
11 which is subject to supervision or examination by Federal or
12 State banking authorities.

13 (10) A credit card issuing company which advances for its
14 credit cardholders and collects premiums or charges from its
15 credit cardholders who have authorized it to do so, provided
16 such company does not adjust or settle claims.

17 (11) A person who adjusts or settles claims in the normal
18 course of his practice or employment as an attorney-at-law and
19 who does not collect charges or premiums in connection with life
20 and health insurance coverage or annuities.

21 (12) A person licensed AS AN INSURANCE AGENT AND WHO HAS
22 BEEN APPOINTED BY AN INSURER TO ACT as a managing general agent
23 in this Commonwealth, whose activities are limited exclusively
24 to the scope of activities conveyed under that license.

25 "Benefit plan" means an insured or wholly or partially self-
26 funded coverage plan which, by means of direct payment,
27 reimbursement or other arrangement, provides partial or complete
28 coverage for services, including, but not limited to, medical,
29 surgical, chiropractic, physical therapy, speech pathology,
30 audiology, professional mental health, dental, hospital or

<—

1 vision care or for drugs or other items reasonably related
2 thereto.

3 "Commissioner" means the Insurance Commissioner of the
4 Commonwealth.

5 "Department" means the Insurance Department of the
6 Commonwealth.

7 Section 1003. License Required; Application; Unlicensed
8 Activity.--On and after the effective date of this act, no
9 person shall act as or hold himself out to be an administrator
10 in this Commonwealth, other than an adjuster licensed in this
11 Commonwealth for the kinds of business for which he is acting as
12 an administrator, unless he shall hold a license as an
13 administrator issued by the department. The license shall be
14 renewable biennially. The license shall be issued by the
15 department to an administrator unless the department determines
16 that the administrator is not competent, trustworthy,
17 financially responsible or of good personal and business
18 reputation or has had a previous application for an insurance
19 license denied for cause within five years. All applications
20 shall be accompanied by a filing fee of one hundred dollars
21 (\$100). An applicant whose license is denied may request a
22 hearing pursuant to 2 Pa.C.S. (relating to administrative law
23 and procedure).

24 Section 1004. Financial Responsibility and Security
25 Requirements.--All administrators shall be required to maintain
26 an errors and omissions insurance policy and also to maintain
27 financial responsibility in the form of a fidelity bond or a
28 clean irrevocable and unconditional and ever-green letter of
29 credit or, as established by regulation, other form of security
30 acceptable to the department. Financial responsibility shall be

1 established and maintained each year in an amount equal to fifty
2 per centum of the average amount of funds entrusted to the
3 administrator by benefit plans for the preceding twelve months,
4 but not to exceed five hundred thousand dollars (\$500,000) for
5 any plans other than multiple employer welfare arrangements.

6 Section 1005. Written Agreement Necessary.--An administrator
7 must have a written agreement between the administrator and the
8 entity providing the benefit plan. The written agreement shall
9 be retained as part of the official records of the administrator
10 for the duration of the agreement and five years thereafter. The
11 written agreement shall comply with the requirements of this
12 act. Where an insurance policy is issued to a trustee or
13 trustees, a copy of the trust agreement and any amendments
14 thereto shall be furnished to the insurer by the administrator
15 and shall be retained as part of the official records of both
16 the benefit plan and the administrator for the duration of the
17 contract and five years thereafter.

18 Section 1006. Payment to Administrator.--The payment to the
19 administrator of any premiums or charges for benefit coverage by
20 or on behalf of those persons covered by the benefit plan shall
21 be deemed to have been received by the benefit plan, and the
22 payment of return premiums, charges or claims by the benefit
23 plan to the administrator shall not be deemed payment to the
24 person or claimant until the payments are received by the person
25 or claimant. Nothing in this section shall limit any right of a
26 benefit plan against the administrator resulting from its
27 failure to make payments to the benefit plan, those persons
28 covered by the benefit plan or claimants.

29 Section 1007. Maintenance of Information; Examination.--
30 Every administrator shall maintain, at its principal

1 administrative office for the duration of the written agreement
2 referred to in section 1005 and five years thereafter, adequate
3 books of all transactions and records of all transactions
4 between it, the benefit plan and persons covered under the
5 benefit plan. The commissioner shall have access to all books
6 and records which are the property of administrators required to
7 be maintained by this act for the purpose of examination, audit,
8 inspection and investigation. Books and records, the property of
9 bona fide employe benefit plans established by an employer or
10 employe organization, or both, may be available to the
11 department for audit, inspection, examination or investigation
12 at the option of the employer or employe organization. Nothing
13 in this subsection is intended to abridge or interfere with the
14 department's authority to review all records necessary to
15 determine jurisdiction over any entity that may be subject to
16 this or other insurance laws generally. Expenses incurred by the
17 department in examination of administrators shall be paid by the
18 administrator in the same manner, and in the same amounts,
19 pursuant to the examination provisions of this act and
20 applicable regulations. Trade secrets, including the identity
21 and addresses of policyholders and certificate holders, will be
22 treated as confidential by the department, except the department
23 may use that information in proceedings instituted against the
24 administrator. The entity providing the benefit plan shall
25 retain the right to continuing access to the books and records
26 of the administrator sufficient to permit the benefit plan to
27 fulfill all of its contractual obligations to the persons
28 covered under the benefit plan, subject to any restrictions in
29 the written agreement between the entity providing the benefit
30 plan and the administrator on the proprietary rights of the

1 parties in the books and records.

2 Section 1008. Approval of Advertising.--The administrator
3 may use only advertising or solicitation materials of persons
4 covered by a benefit plan as has been approved in advance by the
5 entity providing the benefit plan.

6 Section 1009. Premium Collection.--All charges or premiums
7 collected by an administrator on behalf of or for a benefit plan
8 and return charges or premiums received from a benefit plan
9 shall be held by the administrator in a fiduciary capacity. The
10 funds shall be immediately remitted to the person or persons
11 entitled thereto or shall be deposited promptly in one or more
12 appropriately identified bank accounts in banks that are members
13 of the Federal Reserve System. If charges or premiums so
14 deposited have been collected on behalf of or for more than one
15 benefit plan, the administrator shall maintain the accounts to
16 clearly record the deposits in and withdrawals from the account
17 on behalf of each benefit plan. The administrator shall promptly
18 obtain and keep copies of all such records and, upon request of
19 an entity providing a benefit plan, shall furnish the entity
20 providing a benefit plan with copies of records pertaining to
21 deposits and withdrawals on behalf of or for the benefit plan.
22 The administrator shall not pay any claim by withdrawals from
23 the fiduciary account. Withdrawals from the fiduciary account
24 shall be made, as provided in the written agreement between the
25 administrator and the entity providing a benefit plan, for:

26 (1) Remittance to a benefit plan entitled thereto.

27 (2) Deposit in an account maintained in the name of the
28 benefit plan.

29 (3) Transfer to and deposit in a claims-paying account.

30 (4) Payment to a benefit plan for remittance to an insurer

1 entitled thereto.

2 (5) Payment to the administrator of its commission, fees or
3 charges.

4 (6) Remittance of return premiums or charges to the person
5 or persons entitled thereto.

6 Section 1010. Claim Adjustment and Settlement.--With respect
7 to any contracts where an administrator adjusts or settles
8 claims, the compensation to the administrator with regard to the
9 contracts shall in no way be contingent upon claim experience.
10 This section shall not prevent the compensation of an
11 administrator from being based upon premiums or charges
12 collected or number of claims paid or processed.

13 Section 1011. Notification Required.--Where services of an
14 administrator are utilized, the administrator shall provide a
15 written notice approved by the entity providing the benefit plan
16 to persons covered by the benefit plan advising them of the
17 identity of and relationship among the administrator, the entity
18 providing the benefit plan and the insurer, if any. Where an
19 administrator collects funds, it must identify and state
20 separately in writing to the person paying any charge or premium
21 to the administrator for coverage the amount of any such charge
22 or premium specified by the benefit plan for the coverage.

23 Section 1012. Regulations; Applicability of Laws.--The
24 commissioner may promulgate rules and regulations to implement
25 and enforce the provisions of this article. The provisions of
26 the act of July 22, 1974 (P.L.589, No.205), known as the "Unfair
27 Insurance Practices Act," shall apply to administrators subject
28 to this article.

29 Section 1013. Penalties; Suspension and Revocation.--(a)
30 Failure to hold a license shall subject the administrator to a

1 civil penalty of not less than one thousand dollars (\$1,000) nor
2 more than five thousand dollars (\$5,000) for each instance of
3 unlicensed activity.

4 (b) After notice and hearing, the commissioner may do any
5 one or more of the following:

6 (1) Suspend, revoke or refuse to renew the license of an
7 administrator.

8 (2) Impose a civil penalty on an administrator of not more
9 than five thousand dollars (\$5,000) for each violation.

10 (3) Order restitution upon finding that the administrator
11 violated any of the requirements of this act or regulations or
12 the administrator is not competent, trustworthy, financially
13 responsible or of good personal and business reputation. All
14 proceedings shall be pursuant to 2 Pa.C.S. (relating to
15 administrative law and procedure).

16 ARTICLE XI

17 MULTIPLE EMPLOYER

18 WELFARE ARRANGEMENTS

19 Section 1101. Short Title. This article shall be known and
20 may be cited as the "Multiple Employer Welfare Arrangement Act."

21 Section 1102. Definitions. The following words and phrases
22 when used in this article shall have the meanings given to them
23 in this section unless the context clearly indicates otherwise:

24 "Commissioner" means the Insurance Commissioner of the
25 Commonwealth.

26 "Department" means the Insurance Department of the
27 Commonwealth.

28 "Fully insured" means a policy or certificate approved for
29 use by the Insurance Department completely underwritten by an
30 insurance company licensed to do business in this Commonwealth

~~and does not refer to stop loss coverage, partial coverage or reinsurance.~~

~~"Multiple Employer Welfare Arrangement" or "MEWA" means the term as defined in section 3 of the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93 406, 88 Stat. 829) and which meets either or both of the following criteria:~~

~~(1) One or more of the employer members of the MEWA is either domiciled in this Commonwealth or has its principal headquarters or principal administrative office in this Commonwealth.~~

~~(2) The MEWA solicits one or more employers that are domiciled in this Commonwealth or have their principal headquarters or principal administrative office in this Commonwealth.~~

~~"Net worth" means the excess of total admitted assets over liabilities, but not including fully subordinated debt.~~

~~"Person" means any natural individual or individuals, association, exchange, copartnership, corporation, partnership, agent, company, insurer, organization, society, reciprocal or interinsurance exchange, syndicate, business trust, Lloyd's association, entity, group or department of underwriters.~~

~~Section 1103. Certificate of Authority. (a) No MEWA shall operate in this Commonwealth without first obtaining a certificate of authority or an exemption from the department.~~

~~(b) Any MEWA desiring to provide coverage in this Commonwealth shall apply to the department for a certificate of authority on forms prescribed by the department, and the application shall be verified by an officer, director or authorized representative of the applicant. Each application for a certificate of authority and all accompanying documents shall~~

~~be submitted in triplicate. Each application shall set forth or
be accompanied by the following information:~~

~~(1) A complete description of the plan, including
eligibility requirements for members, procedures for membership
withdrawal and expulsion, any employee contributions, benefits
provided and limitations and exclusions.~~

~~(2) A copy of the constitution, articles of association or
bylaws of the trade association, industry association or
professional association of employers or professionals which has
established the multiple employer health care plan.~~

~~(3) A copy of any trust agreement under which a trust fund
is to exist and operate.~~

~~(4) The names, addresses and biographical summaries of the
plan's trustees, officers, directors or any other member of the
governing body of the plan.~~

~~(5) The names of persons who will solicit, negotiate,
procure or affect applications for coverage under the plan.~~

~~(6) A listing of the names and addresses of the employers
participating in the plan, including those employers whose
principal office or headquarters is located outside of this
Commonwealth.~~

~~(7) A copy of the service contract or written agreement made
with a third party administrator. A copy of any service contract
or written agreement to provide administrative services made
with an insurer, health maintenance organization, nonstock
health services plan or nonstock dental or optometric services
plan.~~

~~(8) The names, addresses and professional qualifications of
the individuals who are responsible for the conduct of the
affairs of the plan's third party administrator.~~

~~(9) Financial statements showing the applicant's assets, liabilities and sources of financial support and a copy of the applicant's most recent audited financial statement prepared by a certified public accountant, unless the department directs that additional or more recent financial information is required. The department may require that additional reports, exhibits or statements be filed to furnish full information concerning the condition, solvency, experience, transactions or affairs of the plan. The department may also require the plan to provide pro forma financial statements showing the plan's projection of anticipated operating results for the following year or years.~~

~~(10) A copy of the policy, contract, certificate, plan description, schedule of benefits or other evidence of coverage provided to covered employees which shall contain a statement of the coverage provided, an explanation of the plan, including the rights and benefits afforded the employee and his beneficiaries, any limitations and exclusions and a provision respecting the rights to the continuance of the same or similar coverage upon termination of an individual's coverage or termination of the plan. If the plan makes no provision for such rights to continue, the statement of coverage shall contain a specific declaration to that effect.~~

~~(11) A copy of fidelity bond or officers and directors liability insurance policy equal to an amount determined by the department and issued in the name of the MEWA covering its trustees, employees, administrator or other individuals handling funds or assets. In no case shall the bond or insurance policy be less than fifty thousand dollars (\$50,000).~~

~~(12) The total amount of each member's annual contribution~~

~~and the basis for establishing the annual contribution of the plan's members. The contributions shall be based on reasonable assumptions and certified as to the sufficiency of such contributions by an actuary or other person satisfactory to the department.~~

~~(13) Any other information the department requires pertaining to the business of the MEWA.~~

~~(14) Restrictions that employers in the MEWA are members of an association or group of five or more businesses which are in the same trade or industry, including closely related businesses which provide support, services or supplies primarily to that trade or industry, and that the association or group of employers in the MEWA is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan.~~

~~(15) Verification that the association or group of employers in the MEWA has been in existence for a period of not less than one year.~~

~~(16) Evidence that employee welfare benefit plan of the association or group is controlled by or sponsored directly by participating employers or employees, members or both.~~

~~(17) Evidence that the MEWA has applications from not less than five employers and will provide similar benefits for not less than two hundred separate participating employees. The annual gross premiums of or contributions to the plan will be not less than twenty thousand dollars (\$20,000) for a plan that provides only vision benefits, seventy five thousand dollars (\$75,000) for a plan that provides only dental benefits and two hundred thousand dollars (\$200,000) for all other plans.~~

~~(18) Each application must be accompanied by an application~~

~~fee of one thousand two hundred dollars (\$1,200) payable to the Commonwealth of Pennsylvania.~~

~~(c) The department shall issue a certificate of authority to a MEWA after the receipt of a complete application and payment of the application fee required by subsection (b) if the department is satisfied that the persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations, the MEWA is financially responsible and may reasonably be expected to meet its obligations to its members and their employees and the MEWA is organized and operating in accordance with ERISA. The department shall refuse to grant a certificate of authority to an applicant who fails to meet the requirements outlined in this article. Notice of refusal shall be in writing and shall set forth the basis for refusal.~~

~~(d) Each MEWA licensed in this Commonwealth shall obtain from the department annually a renewal of its certificate of authority on the first day of March of each year. The fee for a renewal shall be one hundred twenty five dollars (\$125).~~

~~Section 1104. Annual Report. (a) Every MEWA shall annually, on or before the first day of March, file the following with the department on a form prescribed by the department:~~

~~(1) An annual financial statement of the plan, including its balance sheet, statement of income, receipts and expenses for the preceding year, with a fee of one hundred twenty five dollars (\$125).~~

~~(2) An actuarial certification as to the adequacy of loss reserves prepared by an actuary acceptable to the department.~~

~~(3) An audited statement of the MEWA's financial condition~~

~~prepared by a certified public accountant acceptable to the
department.~~

~~(4) Any other information the department requires, including
additional reports, exhibits or statements concerning the
condition, solvency, experience, transactions or affairs of the
plan.~~

~~(b) The department may require a financial statement to be
filed on a quarterly basis if it finds that the financial
condition of a MEWA has changed significantly and that the
filing of such quarterly statement would be in the best
interests of the plan's participants, members and creditors.~~

~~Section 1105. Financial Condition Requirements. Each MEWA
shall maintain at all times a minimum unimpaired net worth equal
to the greater of one million dollars (\$1,000,000) or three
months uncovered health care expenditures. The department may
require that such net worth amount be based upon the anticipated
operating and claims expenses for a reasonable period in excess
of thirty days. The method of calculation shall be determined by
the department.~~

~~Section 1106. Examinations; Form Filing Requirements. (a)
Any MEWA issued a certificate of authority by the department
shall be subject to the examination provisions pursuant to this
act, including a requirement to reimburse the department for all
costs of the examination.~~

~~(b) No contract, certificate, policy, schedule of benefits,
evidence of coverage, application or enrollment form, or any
amendment thereto, shall be delivered, issued for delivery or
put into effect by or on behalf of any MEWA operating in this
Commonwealth until a copy of the form or amendment thereto has
been filed with and approved by the department pursuant to the~~

~~filing requirements specified by this act.~~

~~Section 1107. Penalties; Injunctive Relief; Suspension and Revocation. (a) Any person, including any licensed or unlicensed insurer, agent, broker or administrator, who violates any provision of this article shall be guilty of a felony of the third degree and subject to a minimum fine of five thousand dollars (\$5,000) and a maximum fine of ten thousand dollars (\$10,000) per violation. Additionally, any violation of this article shall constitute a basis for suspension or revocation of that person's agent's, broker's or administrator's license or certificate of authority in accordance with the applicable Rules of Administrative Procedure for notice and hearing.~~

~~(b) Failure to hold a current certificate of authority or failure to file an application with true, correct and complete information as required by this article shall constitute prima facie evidence of irreparable harm to the interests of the MEWA, its policy or certificate holders, creditors and the public and shall form a basis on which the commissioner may exercise summary powers under section 510 of this act and under this article.~~

~~(c) (1) The commissioner may suspend or revoke the license of any MEWA whenever the commissioner finds that the plan has violated any provision of this article or finds that the MEWA:~~

~~(i) Has refused to submit its books, papers, accounts or other documentation required under this article or requested by the commissioner.~~

~~(ii) Has refused or its agents, officers or trustees have refused to furnish satisfactory evidence of its financial soundness and solvency.~~

~~(iii) Is insolvent or is in such a condition that any~~

~~further transaction of business may be hazardous to the plan,
its policy or certificate holders, creditors or the public.~~

~~(iv) Has had its certificate of authority revoked in the
state in which it is organized.~~

~~(v) Has been found insolvent by a court of any other state
or by the commissioner or other appropriate officer or agency of
any other state and has been prohibited from doing business in
that state.~~

~~(vi) No longer meets the criteria as a MEWA as defined under
ERISA.~~

~~(vii) No longer operates as a MEWA in compliance with ERISA.~~

~~(2) The commissioner shall not revoke or suspend the license
of a MEWA under this subsection until the commissioner has given
the plan ten days' notice of the proposed revocation or
suspension and the grounds for it and has given the plan an
opportunity to introduce evidence and be heard, except that the
commissioner may immediately suspend the license on the grounds
specified in paragraph (1)(iv) and (v) without prior notice. The
suspension shall remain in force until an administrative hearing
is held and a determination is made by the commissioner.~~

~~(3) When the license of a MEWA is revoked, the commissioner
may make any orders necessary to ensure the orderly winding up
of its affairs and to protect the interests of the participants.
The plan shall conduct no further business except as authorized
by the commissioner.~~

~~Section 1108. Nonapplicability of Article. This article
shall not be applicable to a MEWA fully insured by a licensed
Pennsylvania insurer, any plan established and maintained
pursuant to a collective bargaining agreement or any plan
established or maintained by a rural electric cooperative. Any~~

1 ~~plan which claims exemption under this provision must register~~
2 ~~with the Commonwealth, providing clear and convincing proof of~~
3 ~~qualification. Any person who fails to comply with the~~
4 ~~registration requirements of this section shall be subject to~~
5 ~~the penalties outlined in this article.~~

6 ~~Section 1109. Regulations. The commissioner shall~~
7 ~~promulgate rules and regulations to enforce the provisions of~~
8 ~~this article.~~

9 Section 3 4. This act shall take effect in 60 days.

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