

BILL ANALYSIS

C.S.H.B. 3923
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Multiple employer welfare agreements offer a way for small businesses and sole proprietorships to join together and negotiate better rates when buying health insurance coverage, thus allowing them to secure coverage for their employees that is comparable to that offered under large employer group plans. The U.S. Department of Labor has finalized new rules establishing more flexible criteria for these arrangements under the federal Employee Retirement Income Security Act of 1974 that make it easier for employers that share a common profession or geographic location to form an arrangement together. C.S.H.B. 3923 seeks to bring state law more in line with these new federal regulations so as to provide this flexibility to employers in Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3923 amends the Insurance Code to subject a multiple employer welfare arrangement that provides a comprehensive health benefit plan, as determined by the commissioner of insurance, to the following laws as if the arrangement were an insurer, individuals entitled to coverage under the plan were insureds, and the health benefits were provided through an insurance policy:

- statutory provisions establishing required levels of reserves for insurers;
- the Asset Protection Act;
- statutory provisions governing the selection of certain practitioners and facilities, access to obstetrical or gynecological care, and health care provider directories;
- statutory provisions relating to utilization review agents; and
- if the arrangement is also determined by the commissioner to be structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan, statutory provisions governing preferred provider benefit plans and out-of-network claim dispute resolution.

These provisions apply to an arrangement that was issued an initial certificate of authority on or after January 1, 2022, or an arrangement that elects to be bound by these provisions in the manner prescribed by the commissioner.

C.S.H.B. 3923 adds the option for the employers in a multiple employer welfare arrangement to which the preceding provisions apply to each have a principal place of business in the same region that does not exceed the boundaries of Texas or the boundaries of a metropolitan

statistical area designated by the U.S. Office of Management and Budget as an alternative to being members of an association or group of five or more businesses that are in the same trade or industry. With respect to such an agreement, the bill authorizes a working owner of a trade or business without employees to qualify as both an employer and as an employee of the trade or industry for the purposes of eligibility requirements for an initial certificate of authority as a multiple employer welfare arrangement. The bill defines "working owner" as an individual who:

- has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner and other self-employed individual;
- earns wages or self-employment income from the trade or business for providing personal services to the trade or business; and
- either:
 - works on average at least 20 hours per week or at least 80 hours per month providing personal services to the working owner's trade or business; or
 - has wages or self-employment income from the individual's trade or business that at least equals the individual's cost of coverage for participation by the individual and any covered beneficiaries in the group health plan sponsored by the group or association in which the individual is participating.

The bill exempts an arrangement to which these provisions apply from the requirement for an association to have been in existence for at least two years before engaging in any activities relating to providing employee health benefits to its members.

C.S.H.B. 3923 replaces the requirement for an applicant for an initial certificate of authority for a multiple employer welfare arrangement to include with the applicant's application form a statement certifying that the arrangement is in compliance with provisions of the federal Employee Retirement Income Security Act of 1974 with a requirement for the applicant instead to include with that form a demonstration that the arrangement is in compliance with all applicable federal and state laws.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3923 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the applicability of the bill's provisions subjecting a multiple employer welfare arrangement that provides a comprehensive health benefit plan to certain state laws as if the arrangement were an insurer, individuals entitled to coverage under the plan were insureds, and the health benefits were provided through an insurance policy applicable to an arrangement. Whereas in the original the provisions applied only to a health benefit plan provided under an agreement entered into or renewed on or after January 1, 2022, the substitute makes the provisions applicable instead to an arrangement that was issued an initial certificate of authority on or after that date or that elects to be bound by the provisions.

The substitute limits the applicability of the original's provisions regarding the location of a principal place of business of employers in an agreement and the original's provisions regarding a working owner of a trade or business without employees qualifying as both an employer and as an employee for purposes of qualifying for initial certification of authority as an agreement. The substitute makes those provisions applicable only to the same agreements to which the above-referenced provisions apply.

The original removed the statutory requirement for an arrangement to have been in existence for at least two years before engaging in any activities relating to providing employee health benefits to its members. The substitute retains this provision in law but limits its applicability.

The substitute includes provisions not in the original that change the information an applicant for an initial certificate of authority, with respect to compliance with certain law, must submit along with the applicant's application form.