

## **BILL ANALYSIS**

H.B. 290  
By: Oliverson  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Multiple employer welfare agreements (MEWAs) offer a way for small businesses to collectively negotiate for better deals when purchasing health insurance, which allows them to secure coverage for their employees that is comparable in some instances to the coverage offered under large employer group plans. The U.S. Department of Labor adopted rules under the Trump Administration that established flexible criteria for these arrangements under the federal Employer Retirement Income Security Act, but the rules were invalidated by a court in 2019. The MEWAs that were in effect under the federal expansion are now null and void, and MEWA restrictions in state law leave Texans without affordable insurance options and may create unfair burdens on small businesses. H.B. 290 seeks to provide employers in Texas with more flexibility in pursuing affordable health insurance options while offering safeguards in state law for consumers who utilize MEWAs by removing certain restrictions applicable to MEWAs.

### **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**

H.B. 290 amends the Insurance Code to make certain changes to state law governing multiple employer welfare arrangements that apply to an arrangement that is issued an initial certificate of authority on or after January 1, 2024, or that elects to be bound by the bill's provisions in the manner prescribed by the commissioner of insurance.

H.B. 290 subjects an applicable multiple employer welfare arrangement that provides a comprehensive health benefit plan, as determined by the commissioner, 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 relating to the selection of practitioners by insureds, 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 such plans and out-of-network claim dispute resolution.

The bill 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 all applicable provisions of the federal Employee Retirement Income Security Act of 1974 with a requirement for the applicant instead to include with the form a demonstration that the arrangement is in compliance with all applicable federal and state laws.

H.B. 290 adds the option for the employers in an arrangement to which the bill applies 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.

For an arrangement to which the bill applies, H.B. 290 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. 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.

H.B. 290 exempts an arrangement to which the bill applies from the requirement for an association whose members are employers in a multiple employer welfare 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.

**EFFECTIVE DATE**

September 1, 2023.