

- SUBJECT:** Revising provisions relating to multiple employer welfare arrangements
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 5 ayes — Oliverson, Hull, Middleton, Paul, Sanford
- 3 nays — J. González, Israel, Romero
- 1 absent — Vo
- WITNESSES:** For — (*Registered, but did not testify*: Bill Hammond, Texas Employers for Insurance Reform; David Balat, Texas Public Policy Foundation)
- Against — Blake Hutson, AARP Texas; George Linial, LeadingAge Texas; (*Registered, but did not testify*: Stacey Pogue, Every Texan)
- On — Michael Nored, Texas Department of Insurance; Jocelyn Dabeau, Texas Professional Service Providers Benefits Trust; (*Registered, but did not testify*: Jenny Blakey, Office of the Public Insurance Counsel)
- BACKGROUND:** Insurance Code ch. 846 governs multiple employer welfare arrangements, defined by Section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA) as employee welfare benefit plans, or any other arrangements that provide certain health insurance benefits to employees of at least two employers.
- Under ch. 846, a multiple employer welfare arrangement is exempt from all of the state's insurance laws, except for certain applicable laws, and is only considered an insurer for those applicable laws. A person may not establish or maintain a multiple employer welfare arrangement in the state unless the arrangement obtains and receives a certificate of authority issued by the commissioner of the Texas Department of Insurance.
- Employers in the multiple employer welfare arrangement must be members of an association or group of five or more businesses that are in the same trade or industry, including closely related businesses that

provide support, services, or supplies to that trade or industry.

DIGEST: CSHB 3923 would revise certain provisions relating to multiple employer welfare arrangements.

Applicability. The bill would apply only to a multiple employer welfare arrangement that was issued an initial certificate of authority on or after January 1, 2022, or that elected to be bound in a manner prescribed by the commissioner of the Texas Department of Insurance.

Comprehensive health benefit plan. Under the bill, an arrangement that provided a comprehensive health benefit plan, as determined by the commissioner, would be subject to certain laws as if the arrangement were an insurer, individuals entitled to the plan's coverage were insureds, and the health benefits were provided through an insurance policy. These arrangements would be subject to the following laws under the Insurance Code:

- ch. 421, regarding required reserves;
- ch. 422, regarding the Asset Protection Act;
- certain subchapters under ch. 1451, regarding access to certain practitioners and facilities; and
- ch. 4201, regarding utilization review agents.

PPBP or EPBP plan. Under the bill, an arrangement that provided a comprehensive health benefit plan, as determined by the commissioner to be structured like a preferred provider benefit plan (PPBP) or an exclusive provider benefit plan (EPBP), would be subject to certain laws as if the arrangement were an insurer, individuals entitled to the plan's coverage were insureds, and the health benefits were provided through an insurance policy. These arrangements would be subject to the following laws under the Insurance Code:

- ch. 1301, regarding preferred provider benefit plans; and
- ch. 1467, regarding out-of-network claim dispute resolution.

Location of business. To be eligible for the initial certificate of authority, the bill would require a multiple employer welfare arrangement to have a principal place of business in the same region that did not exceed the boundaries of the state or the boundaries of a metropolitan statistical area designated by the U.S. Office of Management and Budget.

Working owner. To be eligible for the initial certificate of authority under current law, the bill would allow 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.

"Working owner" would mean an individual who:

- had an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner and other self-employed individual; and
- earned wages or self-employment income from the trade or business for providing personal services, among other specified provisions.

Other provisions. The bill would make certain conforming changes under current law.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 3923 would harmonize state law with new federal regulations while preserving existing safeguards for consumers who use association health plans. Multiple employer welfare arrangements enable small businesses and sole proprietors to band together and negotiate better deals when buying health insurance. The bill would make it easier for employers that share a common profession or geographic location to join together and form these arrangements.

**CRITICS
SAY:**

CSHB 3923 could decrease consumer protections and increase financial risk in the health insurance market by amending certain revisions relating to multiple employer welfare arrangements. The bill could produce

instability in the market, divide up the individual risk pool, and unnecessarily inflate the cost of insurance for Texans who rely on comprehensive coverage.