

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES  
SUBTITLE C. LIFE, HEALTH, AND ACCIDENT INSURERS AND RELATED  
ENTITIES

CHAPTER 846. MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 846.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees or directors, as applicable, of a multiple employer welfare arrangement.

(2) "Employee welfare benefit plan" has the meaning assigned by Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).

(3) "Health benefit plan" includes any plan that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed

trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U. S.C. Section 157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;

(P) coverage issued as a supplement to liability insurance coverage;

(Q) automobile medical payment insurance coverage;

(R) coverage for on-site medical clinics;

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described by this subdivision under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) specified in federal regulations.

(4) "Health status related factor" means:

(A) health status;

(B) medical condition, including both physical and mental illness;

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability, including conditions arising out of acts of family violence; and

(H) disability.

(5) "Multiple employer welfare arrangement" has the

meaning assigned by Section 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(40)).

(6) "Organizational document" means the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to a multiple employer welfare arrangement.

(7) "Participation criteria" means any criteria or rules established by an employer to determine the employees who are eligible for enrollment or continued enrollment under the terms of a health benefit plan.

(8) "Preexisting condition provision" means a provision that excludes or limits coverage for a disease or condition for a specified period after the effective date of coverage.

(9) "Waiting period" means a period established by a multiple employer welfare arrangement that must elapse before an individual who is a potential participating employee in a health benefit plan is eligible to be covered for benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.002. APPLICABILITY OF CHAPTER. (a) In this section, "fully insured multiple employer welfare arrangement" means an arrangement that provides to its participating employees and beneficiaries benefits for which 100 percent of the liability has been assumed by an insurance company authorized to do business in this state.

(b) This chapter applies only to a multiple employer welfare arrangement that meets either or both of the following criteria:

(1) one or more of the employer members in the arrangement:

(A) is domiciled in this state; or

(B) has its principal headquarters or principal administrative office in this state; or

(2) the arrangement solicits an employer that:

(A) is domiciled in this state; or

(B) has its principal headquarters or principal

administrative office in this state.

(c) This chapter does not apply to a fully insured multiple employer welfare arrangement during the period in which the arrangement is fully insured. The commissioner periodically may require proof that the arrangement is fully insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A multiple employer welfare arrangement is exempt from the operation of all insurance laws of this state, except laws that are made applicable by their specific terms or as specified in this section or chapter.

(b) A multiple employer welfare arrangement is subject to the following laws:

- (1) Subchapters C and D, Chapter 36;
- (2) Section 38.001;
- (3) Section 81.002;
- (4) Chapter 82;
- (5) Chapter 83;
- (6) Chapter 86;
- (7) Section 201.003;
- (8) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156;
- (9) Chapter 441;
- (10) Chapter 443;
- (11) Chapter 461;
- (12) Section 521.005;
- (13) Chapter 541;
- (14) Chapter 701;
- (15) Chapter 801;
- (16) Chapter 803;
- (17) Chapter 804;
- (18) Subchapter A, Chapter 805; and
- (19) Sections 841.259, 841.701-841.702, and 841.704-841.705.

(c) A multiple employer welfare arrangement is only considered an insurer for purposes of the laws described by this

section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.056, eff. April 1, 2009.

Sec. 846.004. LATE-PARTICIPATING EMPLOYEE OR DEPENDENT.

(a) For purposes of this chapter, an employee or dependent eligible for enrollment in a participating employer's health benefit plan is a late-participating employee or dependent if the individual requests enrollment after the expiration of:

(1) the initial enrollment period established under the terms of the first health benefit plan for which that employee or dependent was eligible through the participating employer; or

(2) an open enrollment period under Section 846.257.

(b) An employee or dependent is not a late-participating employee or dependent if the individual:

(1) was covered under another health benefit plan or self-funded employer health benefit plan at the time the individual was eligible to enroll;

(2) declined enrollment in writing, at the time of the initial eligibility for enrollment, stating that coverage under another health benefit plan or self-funded employer health benefit plan was the reason for declining enrollment;

(3) has lost coverage under the other health benefit plan or self-funded employer health benefit plan as a result of:

(A) the termination of employment;

(B) a reduction in the number of hours of employment;

(C) the termination of the other plan's coverage;

(D) the termination of contributions toward the premium made by the employer; or

(E) the death of a spouse or divorce; and

(4) requests enrollment not later than the 31st day after the date coverage under the other health benefit plan or self-funded employer health benefit plan terminates.

(c) An employee or dependent is also not a

late-participating employee or dependent if the individual is:

(1) employed by an employer that offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period under Section [846.257](#);

(2) a spouse for whom a court has ordered coverage under a covered employee's plan and the request for enrollment of the spouse is made not later than the 31st day after the date the court order is issued; or

(3) a child for whom a court has ordered coverage under a covered employee's plan and the request for enrollment is made not later than the 31st day after the date the employer receives the court order.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.005. RULES; ORDERS. (a) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement this chapter.

(b) The commissioner shall adopt rules necessary to meet the minimum requirements of federal law and regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.006. APPEAL OF ORDERS. A person affected by an order of the commissioner issued under this chapter may appeal that order by filing suit in a district court in Travis County under Subchapter D, Chapter [36](#).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.007. PREMIUM RATES; ADJUSTMENTS. (a) A multiple employer welfare arrangement may charge premiums in accordance with this section to the group of employees or dependents who meet the participation criteria and who do not decline coverage.

(b) A multiple employer welfare arrangement may not charge an adjustment to premium rates for individual employees or dependents for health status related factors or duration of coverage. Any adjustment must be applied uniformly to the rates

charged for all participating employees and dependents of participating employees of the employer.

(c) Subsection (b) does not restrict the amount that an employer may be charged for coverage.

(d) A multiple employer welfare arrangement may establish premium discounts, rebates, or a reduction in otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention. A discount, rebate, or reduction established under this subsection does not violate Section 541.056(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.057, eff. April 1, 2009.

#### SUBCHAPTER B. FORMATION AND STRUCTURE OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Sec. 846.051. CERTIFICATE OF AUTHORITY REQUIRED. A person may not establish or maintain an employee welfare benefit plan that is a multiple employer welfare arrangement in this state unless the arrangement obtains and maintains a certificate of authority issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.052. APPLICATION FOR INITIAL CERTIFICATE OF AUTHORITY. (a) A person who wants to establish an employee welfare benefit plan that is a multiple employer welfare arrangement must apply for an initial certificate of authority on an application form prescribed by the commissioner.

(b) The application form must be completed and submitted along with all information required by the commissioner, including:

- (1) a copy of each organizational document;
- (2) current financial statements of the arrangement;
- (3) a fully detailed statement indicating the plan under which the arrangement proposes to transact business;
- (4) an initial actuarial opinion in compliance with

the requirements of Section 846.153(a)(2) and subject to Section 846.157(b); and

(5) a statement by the applicant certifying that the arrangement is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) The application must be accompanied by proof of a fidelity bond that:

(1) protects against acts of fraud or dishonesty in servicing the multiple employer welfare arrangement;

(2) covers each person responsible for servicing the employee welfare benefit plan; and

(3) is in an amount equal to the greater of 10 percent of the premiums and contributions received by the arrangement or 10 percent of the benefits paid, during the preceding calendar year, with a minimum of \$10,000 and a maximum of \$500,000.

(d) A third-party administrator licensed to engage in business in this state is not required to submit a fidelity bond under Subsection (c).

(e) The commissioner shall promptly examine the application and documents submitted by the applicant and may:

(1) conduct any investigation that the commissioner considers necessary; and

(2) examine under oath any person interested in or connected with the multiple employer welfare arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.053. ELIGIBILITY REQUIREMENTS FOR INITIAL CERTIFICATE OF AUTHORITY. (a) An applicant for an initial certificate of authority as a multiple employer welfare arrangement must meet the requirements of this section.

(b) The 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 primarily to that trade or industry.

(c) If the employers in the multiple employer welfare

arrangement are members of an association, the association must:

(1) be engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan; and

(2) have been in existence for at least two years before engaging in any activities relating to providing employee health benefits to its members.

(d) The employee welfare plan of the association or group in the multiple employer welfare arrangement must be controlled and sponsored directly by participating employers, participating employees, or both.

(e) The association or group of employers in the multiple employer welfare arrangement must be a not-for-profit organization.

(f) The multiple employer welfare arrangement must:

(1) have within its own organization adequate facilities and competent personnel, as determined by the commissioner, to administer the employee benefit plan; or

(2) have contracted with a third-party administrator licensed to engage in business in this state.

(g) The multiple employer welfare arrangement:

(1) must have applications from not fewer than five employers and must provide similar benefits for not fewer than 200 separate participating employees; and

(2) will have annual gross premiums of or contributions to the plan of not less than:

(A) \$20,000 for a plan that provides only vision benefits;

(B) \$75,000 for a plan that provides only dental benefits; and

(C) \$200,000 for all other plans.

(h) The multiple employer welfare arrangement must possess a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides:

(1) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage; and

(2) both specific and aggregate coverage with an

aggregate retention of not more than 125 percent of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial opinion required by Section 846.153(a)(2).

(i) Both the specific and aggregate coverage required by Subsection (h)(2) must require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year.

(j) The contributions must be established to fund at least 100 percent of the aggregate retention plus all other costs of the multiple employer welfare arrangements.

(k) The multiple employer welfare arrangement must establish a procedure for handling claims for benefits on dissolution of the arrangement.

(l) The multiple employer welfare arrangement must obtain the required bond.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.054. ISSUANCE OF INITIAL CERTIFICATE OF AUTHORITY.

(a) The commissioner shall approve, deny, or disapprove an application for an initial certificate of authority that meets the requirements of Section 846.053 not later than the 60th day after the date on which the application is filed.

(a-1) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

(b) An initial certificate of authority is a temporary certificate issued for a one-year term.

(c) On receipt of the initial certificate of authority, the multiple employer welfare arrangement shall begin business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 11, eff. June 19, 2009.

Sec. 846.055. EXTENSION OF TERM OF INITIAL CERTIFICATE OF AUTHORITY. The commissioner may extend the term of an initial certificate of authority for a period not to exceed one year if the commissioner determines that the multiple employer welfare arrangement is likely to meet the requirements of this chapter for a final certificate of authority within that period. The commissioner may not grant more than one extension of the initial certificate of authority regardless of the length of time for which an extension was granted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.056. FINAL CERTIFICATE OF AUTHORITY. (a) A multiple employer welfare arrangement that holds an initial certificate of authority must apply for a final certificate of authority not later than the first anniversary of the date of issuance of the initial certificate.

(b) The multiple employer welfare arrangement must file an application for a final certificate of authority on a form prescribed by the commissioner and furnish the information required by the commissioner. The application for a final certificate of authority must include only:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the arrangement;

(B) the board members of the arrangement; and

(C) if the employers in the arrangement are not an association, at least five employers;

(2) proof of compliance with the bonding requirements;

(3) a copy of each plan document and each agreement with service providers; and

(4) a funding report containing:

(A) a statement certified by the board and an actuarial opinion that all applicable requirements of Section [846.153](#) have been met;

(B) an actuarial opinion describing the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and  
(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus by the arrangement;

(C) a statement of the current value of the assets and liabilities accumulated by the arrangement and a projection of the assets, liabilities, income, and expenses of the arrangement for the next 12-month period; and

(D) a statement of the costs to be charged for coverage, including an itemization of amounts for:

(i) administrative expenses;  
(ii) reserves; and  
(iii) other expenses associated with operation of the arrangement.

(c) The reserves described in Section 846.154(a) must have been established or be established before the final certificate of authority is issued.

(d) If, after examination and investigation, the commissioner is satisfied that the multiple employer welfare arrangement meets the requirements of this chapter, the commissioner shall issue a final certificate of authority to the arrangement.

(e) The commissioner shall maintain the information required under Subsection (b)(1)(C) and Subsection (b)(3) as confidential information.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.057. DENIAL OF FINAL CERTIFICATE OF AUTHORITY.

(a) The commissioner shall deny a final certificate of authority to an applicant that does not comply with this chapter.

(b) If the commissioner denies a final certificate of authority, the commissioner shall issue a written notice of refusal to the applicant. The notice of refusal must state the basis for the denial. The notice of refusal constitutes 30 days' advance notice of the revocation of the initial certificate of authority.

(c) If the applicant submits a written request for a hearing not later than the 30th day after the date of mailing of the notice

of refusal, revocation of the initial certificate of authority is temporarily stayed, and the commissioner shall promptly conduct a hearing at which the applicant is given an opportunity to show compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.058. DISQUALIFICATION. (a) A multiple employer welfare arrangement, each board member and officer of the arrangement, and any agent or other person associated with the arrangement shall be subject to disqualification for eligibility for a certificate of authority if the person:

(1) makes a material misstatement or omission in an application for a certificate of authority under this chapter;

(2) obtains or attempts to obtain at any time a certificate of authority or license for an insurance entity through intentional misrepresentation or fraud;

(3) misappropriates or converts to the person's own use or improperly withholds money under an employee welfare benefit plan or multiple employer welfare arrangement;

(4) is prohibited from serving in any capacity with the arrangement under Section 411, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1111);

(5) without reasonable cause or excuse, fails to appear in response to a subpoena, examination, warrant, or any other order lawfully issued by the commissioner; or

(6) has previously been subject to a determination by the commissioner resulting in:

(A) suspension or revocation of a certificate of authority or license; or

(B) denial of a certificate of authority or license on grounds that would be sufficient for suspension or revocation.

(b) This section does not apply to a participating employer in its capacity as a participating employer and the employer's participating employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.059. FEES; SERVICE OF PROCESS. (a) Each multiple employer welfare arrangement shall pay to the department in the amount set by the commissioner:

(1) an application fee for an initial certificate of authority;

(2) an application fee for a final certificate of authority; and

(3) a filing fee for submission of the arrangement's annual statement.

(b) The commissioner shall set the fees described by Subsection (a) in amounts reasonable and necessary to defray the costs of administering this chapter.

(c) Each multiple employer welfare arrangement shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is \$50, payable at the time of appointment.

(d) Fees paid under this section shall be deposited to the credit of the Texas Department of Insurance operating fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.060. SUSPENSION, REVOCATION, OR LIMITATION OF CERTIFICATE OF AUTHORITY. In addition to any requirement or remedy under a law cited under Section [846.003](#), the commissioner may suspend, revoke, or limit the certificate of authority of a multiple employer welfare arrangement if the commissioner determines, after notice and hearing, that the agreement does not comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.061. ACTION BY ATTORNEY GENERAL. (a) The commissioner may notify the attorney general of a violation of this chapter, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(b) The attorney general may seek and the court may order:

(1) restitution for victims of an act declared to be unlawful under this chapter;

(2) assessment of a fine under this code; and

(3) recovery of reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER C. BOARD MEMBERS; OTHER OFFICERS AND PERSONNEL

Sec. 846.101. BOARD MEMBERS; NOTICE OF ELECTIONS. (a) Except as otherwise provided, the powers of a multiple employer welfare arrangement shall be exercised by a board elected to carry out the purposes established by the organizational documents of the arrangement.

(b) The member employers shall elect at least 75 percent of the board members. At least 75 percent of the board members must be individuals who are covered under the arrangement.

(c) An owner, officer, or employee of a third-party administrator who provides services to the multiple employer welfare arrangement or any other person who has received compensation from the arrangement may not serve as a board member.

(d) Each board member shall be elected for a term of at least two years.

(e) Each member employer of a multiple employer welfare arrangement shall be given notice of each election of board members and is entitled to an equal vote, either in person or by a written proxy signed by the member employer. An owner, officer, or employee of a third-party administrator who provides services to the arrangement or any other person who has received compensation from the arrangement may not serve as proxy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.102. DUTIES OF BOARD MEMBERS. (a) The board members of a multiple employer welfare arrangement are responsible for all operations of the arrangement and shall take all necessary precautions to safeguard the assets of the arrangement.

(b) A board member shall give the attention and exercise the vigilance, diligence, care, and skill that a prudent person would use in like or similar circumstances.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.103. LIMITATION ON ACTION AGAINST BOARD MEMBER. A board member may not be held liable in a private cause of action for any delinquency under Section 846.102 after the expiration of the earlier of:

(1) six years from the date of delinquency; or

(2) two years from the time when the delinquency is discovered by a person complaining of the delinquency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.104. COMPENSATION OF BOARD MEMBERS. A board member serves without compensation from the multiple employer welfare arrangement except for actual and necessary expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.105. OFFICERS; AGENTS. (a) The board shall select officers for the multiple employer welfare arrangement as designated in the organizational documents and may appoint agents as necessary for the arrangement to engage in business. Each officer and agent may exercise the authority and perform the duties required in the management of the property and affairs of the arrangement as delegated by the board.

(b) The board may remove an officer or agent if the board determines that the business interests of the multiple employer welfare arrangement are served by the removal.

(c) The board shall secure the fidelity of any or all of the officers or agents who handle the funds of the multiple employer welfare arrangement by bond or otherwise.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.106. COMPENSATION OF OFFICERS, AGENTS, AND EMPLOYEES. (a) A multiple employer welfare arrangement may pay the officers and agents of the arrangement suitable compensation. An officer, employee, or agent of an arrangement may not be compensated unreasonably.

(b) The compensation of any officer or employee of a multiple employer welfare arrangement may not be computed directly

or indirectly as a percentage of money or premium collected.

(c) The compensation of an agent may not exceed five percent of the money or premium collected.

(d) A multiple employer welfare arrangement may pay compensation or make an emolument to an officer of the arrangement only if the compensation or emolument is first authorized by a majority vote of the board of the arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.107. RECEIPT OF THING OF VALUE; CRIMINAL PENALTY.

(a) A board member, officer, or employee of a multiple employer welfare arrangement may not, knowingly and intentionally, directly or indirectly:

(1) receive money or another valuable thing for negotiating, procuring, recommending, or aiding in:

(A) a purchase by or sale to the arrangement of property; or

(B) a loan from the arrangement; or

(2) be pecuniarily interested as a principal, coprincipal, agent, or beneficiary in a purchase, sale, or loan described by Subdivision (1).

(b) A person commits an offense if the person violates this section. An offense under this subsection is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POWERS AND DUTIES OF MULTIPLE EMPLOYER WELFARE  
ARRANGEMENTS

Sec. 846.151. GENERAL POWERS. (a) Unless otherwise provided by or inconsistent with this chapter, each multiple employer welfare arrangement may exercise the powers provided by this section.

(b) A multiple employer welfare arrangement may have succession, by its name, for the term stated in its trust agreement.

(c) A multiple employer welfare arrangement may sue and be sued. An arrangement may:

(1) complain and defend in any court;

(2) be a party to any proceedings before a public body of this state or of any other state or government; and

(3) sue a participating employer, an employee, or a beneficiary for any cause relating to the business of the arrangement.

(d) A multiple employer welfare arrangement may have a seal that may be used by having the seal or a facsimile of the seal impressed, affixed, or otherwise reproduced. The arrangement may alter the seal at will.

(e) A multiple employer welfare arrangement may appoint officers and agents as the business of the arrangement requires.

(f) A multiple employer welfare arrangement may adopt, amend, and repeal bylaws as necessary for the government of its affairs.

(g) A multiple employer welfare arrangement may conduct its business in this state, other states, and foreign countries and their territories and colonies.

(h) A multiple employer welfare arrangement may have offices outside this state.

(i) A multiple employer welfare arrangement may acquire, hold, mortgage, pledge, assign, and transfer real and personal property subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.152. FILING OF ORGANIZATIONAL DOCUMENTS. A multiple employer welfare arrangement shall file with the commissioner its organizational documents and all appurtenant amendments before those documents take effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.153. REQUIRED FILINGS. (a) A multiple employer welfare arrangement engaging in business in this state shall file the following with the commissioner on forms approved by the commissioner:

(1) a financial statement audited by a certified public accountant;

(2) an actuarial opinion prepared and certified by an actuary who is:

(A) not an employee of the arrangement; and

(B) a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and

(3) any modified terms of a plan document together with a certification from the trustees that the changes are in compliance with the minimum requirements of this chapter.

(b) A multiple employer welfare arrangement shall file the financial statement and the actuarial opinion required by Subsection (a) within 90 days of the end of the fiscal year.

(c) The actuarial opinion required under Subsection (a) must include:

(1) a description of the actuarial soundness of the multiple employer welfare arrangement, including any actions recommended to improve the actuarial soundness of the arrangement;

(2) the amount of cash reserves recommended to be maintained by the arrangement; and

(3) the level of specific and aggregate stop-loss insurance recommended to be maintained by the arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.154. CASH RESERVE REQUIREMENTS. (a) The amount of cash reserves recommended under Section [846.153\(c\)\(2\)](#) may not be less than the greater of:

(1) 20 percent of the total contributions in the preceding plan year; or

(2) 20 percent of the total estimated contributions for the current plan year.

(b) Cash reserves required by this section must be:

(1) computed with proper actuarial regard for:

(A) known claims, paid and outstanding;

(B) a history of incurred but not reported claims;

(C) claims handling expenses;

- (D) unearned premium;
- (E) an estimate for bad debts;
- (F) a trend factor; and
- (G) a margin for error; and

(2) maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or in other investments as the commissioner may authorize by rule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.155. ADJUSTMENT OF CONTRIBUTIONS. If the recommended cash reserves required by Section 846.154(a) exceed the greater of 40 percent of the total contributions for the preceding plan year or 40 percent of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100 percent of the aggregate retention plus all other costs of the multiple employer welfare arrangement, but not less than the level of contributions necessary to fund the minimum reserves required under Section 846.154(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.156. WAIVER OR REDUCTION OF REQUIRED STOP-LOSS INSURANCE OR CASH RESERVES. On the application of a multiple employer welfare arrangement, the commissioner may waive or reduce the requirement for aggregate stop-loss insurance coverage and the amount of recommended cash reserves required by Section 846.154(a) on a determination that the interests of the participating employers and employees are adequately protected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.157. RENEWAL OF CERTIFICATE; ADDITIONAL ACTUARIAL REVIEW. (a) The commissioner shall review the forms required by Section 846.153 and shall renew a multiple employer welfare arrangement's certificate of authority unless the commissioner determines that the arrangement does not comply with this chapter.

(b) On a finding of good cause, the commissioner may order an actuarial review of a multiple employer welfare arrangement in

addition to the actuarial opinion required by Section 846.153(a). The arrangement shall pay the cost of the additional actuarial review.

(c) If the commissioner determines that a multiple employer welfare arrangement does not comply with this chapter, the commissioner may order the arrangement to correct the deficiencies. The commissioner may take any action against the multiple employer welfare arrangement authorized by this code if the arrangement does not initiate immediate corrective action.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.158. EXAMINATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS. (a) The commissioner or the commissioner's appointee may examine the affairs of any multiple employer welfare arrangement.

(b) For the purposes of this section the commissioner:

(1) shall have free access to all the books, records, and documents that relate to the business of the plan; and

(2) may examine under oath a board member, officer, agent, or employee of the multiple employer welfare arrangement in relation to the affairs, transactions, and conditions of the arrangement.

(c) Each multiple employer welfare arrangement shall pay the expenses of the examination as provided by Sections 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.058, eff. April 1, 2009.

Sec. 846.159. NAME OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT. (a) A multiple employer welfare arrangement shall transact business under the arrangement's own name and may not adopt any assumed name. An arrangement may not use a name that is the same as or closely resembles the name of any other arrangement that:

(1) possesses a certificate of authority; and

(2) is engaged in business in this state.

(b) A multiple employer welfare arrangement may change its name by:

(1) amending the articles of the arrangement; or

(2) taking a new name with the approval of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.160. EVIDENCE OF EXISTENCE. A certified copy of the multiple employer welfare arrangement's certificate of authority is prima facie evidence of the existence of the arrangement in a legal proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER E. PROVISION OF COVERAGE

Sec. 846.201. BENEFITS ALLOWED. (a) A multiple employer welfare arrangement may only provide one or more of the following:

(1) medical, dental, vision, surgical, or hospital care;

(2) benefits in the event of sickness, accident, disability, or death;

(3) another benefit authorized to be provided by health insurers in this state; and

(4) prepaid legal services.

(b) Except as otherwise limited by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a multiple employer welfare arrangement may only provide benefits to:

(1) active or retired owners, officers, directors, or employees of or partners in participating employers; and

(2) the beneficiaries of a person described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.202. PREEXISTING CONDITION PROVISION. (a) In this section, "creditable coverage" has the meaning assigned by Section [1205.004](#).

(b) A preexisting condition provision in a multiple employer welfare arrangement's plan document may apply only to coverage for a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months before the earlier of:

- (1) the effective date of coverage; or
- (2) the first day of the waiting period.

(c) A preexisting condition provision in a multiple employer welfare arrangement's plan document may not apply to expenses incurred on or after the expiration of the 12 months following the initial effective date of coverage of the participating employee, dependent, or late-participating employee or dependent.

(d) A preexisting condition provision in a multiple employer welfare arrangement's plan document may not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect until a date not more than 63 days before the effective date of coverage under the health benefit plan, excluding any waiting period.

(e) In determining whether a preexisting condition provision applies to an individual covered by a multiple employer welfare arrangement's plan document, the arrangement shall credit the time the individual was covered under previous creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under the arrangement. If the previous coverage was issued under a health benefit plan, any waiting period that applied before that coverage became effective must also be credited against the preexisting condition provision period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. [2636](#)), Sec. 2E.059, eff. April 1, 2009.

Sec. 846.203. TREATMENT OF CERTAIN CONDITIONS AS PREEXISTING PROHIBITED. (a) A multiple employer welfare arrangement may not treat genetic information as a preexisting

condition described by Section 846.202 in the absence of a diagnosis of the condition related to the information.

(b) A multiple employer welfare arrangement may not treat pregnancy as a preexisting condition described by Section 846.202. Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.204. WAITING PERIOD PERMITTED. Sections 846.202 and 846.203 do not preclude application of a waiting period that applies to all new participating employees under the health benefit plan in accordance with the terms of the multiple employer welfare arrangement's plan document.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.205. CERTAIN LIMITATIONS OR EXCLUSIONS OF COVERAGE PROHIBITED. (a) A multiple employer welfare arrangement's plan document may not limit or exclude, by use of a rider or amendment applicable to a specific individual, coverage by type of illness, treatment, medical condition, or accident.

(b) This section does not preclude a multiple employer welfare arrangement from limiting or excluding coverage for a preexisting condition in accordance with Section 846.202.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.206. RENEWABILITY OF COVERAGE; CANCELLATION. (a) Except as provided by Section 846.207, a multiple employer welfare arrangement shall renew the health benefit plan, at the employer's option, unless:

(1) a contribution has not been paid as required by the terms of the plan;

(2) the employer has committed fraud or has intentionally misrepresented a material fact;

(3) the employer has not complied with the terms of the health benefit plan document;

(4) the health benefit plan is ceasing to offer any coverage in a geographic area; or

(5) there has been a failure to meet the terms of an applicable collective bargaining agreement or other agreement

requiring or authorizing contributions to the health benefit plan, including a failure to renew the agreement or to employ employees covered by the agreement.

(b) A multiple employer welfare arrangement may refuse to renew the coverage of a participating employee or dependent for fraud or intentional misrepresentation of a material fact by that person.

(c) A multiple employer welfare arrangement may not cancel a health benefit plan except for a reason specified for refusal to renew under Subsection (a). An arrangement may not cancel the coverage of a participating employee or dependent except for a reason specified for refusal to renew under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.207. REFUSAL TO RENEW. (a) A multiple employer welfare arrangement may elect to refuse to renew all health benefit plans delivered or issued for delivery by the arrangement in this state. The arrangement shall notify:

(1) the commissioner of the election not later than the 180th day before the date coverage under the first health benefit plan terminates under this subsection; and

(2) each affected employer not later than the 180th day before the date on which coverage terminates for that employer.

(b) A multiple employer welfare arrangement that elects under this section to refuse to renew all health benefit plans may not write a health benefit plan in this state before the fifth anniversary of the date notice is delivered to the commissioner under Subsection (a).

(c) A multiple employer welfare arrangement may elect to discontinue a health benefit plan only if the arrangement:

(1) provides notice to each employer of the discontinuation before the 90th day preceding the date of the discontinuation of the plan;

(2) offers to each employer the option to purchase coverage under another health benefit plan offered by the arrangement; and

(3) acts uniformly without regard to the claims

experience of the employer or any health status related factor of participating employees or dependents or new employees or dependents who may become eligible for the coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.208. NOTICE TO COVERED PERSONS. (a) A multiple employer welfare arrangement that cancels or refuses to renew coverage under a health benefit plan under Section 846.206 or Section 846.207 shall notify the employer of the cancellation of or refusal to renew coverage not later than the 30th day before the date termination of coverage is effective. The employer is responsible for notifying participating employees of the cancellation of or refusal to renew coverage.

(b) The notice provided under this section is in addition to any other notice required by Section 846.206 or Section 846.207.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.209. WRITTEN STATEMENT OF DENIAL, CANCELLATION, OR REFUSAL TO RENEW. Denial by a multiple employer welfare arrangement of an application for coverage from an employer or cancellation of or refusal to renew must:

(1) be in writing; and

(2) state the reason or reasons for the denial, cancellation, or refusal to renew.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER F. PARTICIPATION IN COVERAGE

Sec. 846.251. PARTICIPATION CRITERIA. Participation criteria may not be based on health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.252. COVERAGE REQUIREMENTS. (a) A multiple employer welfare arrangement:

(1) may refuse to provide coverage to an employer in accordance with the arrangement's underwriting standards and criteria;

(2) shall accept or reject the entire group of individuals who meet the participation criteria and who choose coverage; and

(3) may exclude only those employees or dependents who have declined coverage.

(b) On issuance of coverage to an employer, each multiple employer welfare arrangement shall provide coverage to the employees who meet the participation criteria without regard to an individual's health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.253. PROHIBITION ON EXCLUSION OF ELIGIBLE EMPLOYEE OR DEPENDENT. A multiple employer welfare arrangement may not exclude an employee who meets the participation criteria or an eligible dependent, including a late-participating employee or dependent, who would otherwise be covered.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.254. WRITTEN NOTICE TO EMPLOYEES COVERED. A multiple employer welfare arrangement, in connection with an employee welfare benefit plan, shall provide to each participating employee covered by the plan a written notice at the time the employee's coverage becomes effective that states that:

(1) individuals covered by the plan are only partially insured; and

(2) if the plan or the arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.255. DECLINING COVERAGE. (a) A multiple employer welfare arrangement shall obtain a written waiver from each employee who meets the participation criteria and declines coverage under a health plan offered to an employer. The waiver must ensure that the employee was not induced or pressured to decline coverage because of the employee's health status related factors.

(b) A multiple employer welfare arrangement may not provide coverage to an employer or the employees of an employer if the arrangement or an agent for the arrangement knows that the employer has induced or pressured an employee who meets the participation criteria or a dependent of the employee to decline coverage because of that individual's health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.256. MINIMUM CONTRIBUTION OR PARTICIPATION REQUIREMENTS. (a) A multiple employer welfare arrangement may require an employer to meet minimum contribution or participation requirements as a condition of issuance and renewal of coverage in accordance with the terms of the arrangement's plan document.

(b) The minimum contribution and participation requirements must be stated in the plan document and must be applied uniformly to each employer offered or issued coverage by the multiple employer welfare arrangement in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.257. ENROLLMENT; WAITING PERIOD. (a) The initial enrollment period for employees meeting the participation criteria must be at least 31 days, with a 31-day annual open enrollment period. The enrollment period must consist of an entire calendar month, beginning on the first day of the month and ending on the last day of the month. If the month is February, the period must last through March 2.

(b) A multiple employer welfare arrangement may establish a waiting period.

(c) A new employee who meets the participation criteria may not be denied coverage if the application for coverage is received by the multiple employer welfare arrangement not later than the 31st day after the later of:

(1) the date on which the employment begins; or

(2) the date on which the waiting period established under Subsection (b) expires.

(d) If dependent coverage is offered to participating employees under the terms of a multiple employer welfare

arrangement's plan document:

(1) the initial enrollment period for the dependents must be at least 31 days, with a 31-day annual open enrollment period; and

(2) a dependent of a new employee meeting the participation criteria established by the arrangement may not be denied coverage if the application for coverage is received by the arrangement not later than the 31st day after the later of:

(A) the date on which the employment begins;

(B) the date on which the waiting period established under Subsection (b) expires; or

(C) the date on which the dependent becomes eligible for enrollment.

(e) A late-participating employee or dependent may be excluded from coverage until the next annual open enrollment period and may be subject to a one-year preexisting condition provision as described by Section 846.202. The period during which a preexisting condition provision applies may not exceed 18 months after the date of the initial application.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.258. COVERAGE FOR NEWBORN CHILDREN. (a) A multiple employer welfare arrangement's plan document may not limit or exclude initial coverage of a newborn child of a participating employee.

(b) Coverage of a newborn child of a participating employee under this section ends on the 32nd day after the date of the child's birth unless:

(1) children are eligible for coverage under the multiple employer welfare arrangement's plan document; and

(2) not later than the 31st day after the date of birth, the arrangement receives:

(A) notice of the birth; and

(B) any required additional premium.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(a), eff. Sept. 1, 2003.

Sec. 846.259. COVERAGE FOR ADOPTED CHILDREN. (a) This section applies only if children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document.

(b) A multiple employer welfare arrangement plan document may not limit or exclude initial coverage of an adopted child of a participating employee. A child is considered to be the child of a participating employee if the participating employee is a party to a suit in which the employee seeks to adopt the child.

(c) An adopted child of a participating employee may be enrolled, at the employee's option, not later than the 31st day after:

(1) the date the employee becomes a party to a suit in which the employee seeks to adopt the child; or

(2) the date the adoption becomes final.

(d) Coverage of an adopted child of a participating employee under this section ends unless the multiple employer welfare arrangement receives notice of the adoption and any required additional premiums not later than the 31st day after:

(1) the date the participating employee becomes a party to a suit in which the employee seeks to adopt the child; or

(2) the date the adoption becomes final.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(b), eff. Sept. 1, 2003.

Sec. 846.260. LIMITING AGE APPLICABLE TO UNMARRIED CHILD. If children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document, any limiting age applicable to an unmarried child of an enrollee is 25 years of age.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(c), eff. Sept. 1, 2003.

#### SUBCHAPTER G. MARKETING

Sec. 846.301. MARKETING REQUIREMENTS. On request, each

employer purchasing a health benefit plan shall be given a summary of the plans for which the employer is eligible.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.302. ADDITIONAL REPORTING REQUIREMENTS. The department may require periodic reports by multiple employer welfare arrangements and agents regarding the health benefit plans issued by the arrangements. The reporting requirements must comply with federal law and regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.303. APPLICABILITY TO THIRD-PARTY ADMINISTRATOR. If a multiple employer welfare arrangement enters into an agreement with a third-party administrator to provide administrative, marketing, or other services related to offering health benefit plans to employers in this state, the third-party administrator is subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.