

SUBJECT: Notice requirements and authorizing MEWAs for staff leasing services

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Smithee, T. Smith, Taylor, Eiland, Hancock, Vo, Woolley
0 nays
2 absent — Martinez, Thompson

WITNESSES: For — George Gersemo, Texas Council of Professional Employers;
(*Registered, but did not testify:* Curtis Fuelberg, Texas Council of Professional Employers)

Against — Rick Levy, Texas AFL-CIO

On — Kevin Brady, Texas Department of Insurance; Brian Francis, William H. Kuntz, Jr., Texas Department of Licensing and Regulation

BACKGROUND: Labor Code, sec. 91.031, requires staff leasing companies to establish terms of a staff leasing services agreement in written contract between the license holder and the client company. The leasing company also must give written notice of the agreement as it affects employees assigned to each client company worksite. The written notice must be given to each assigned employee no later than the first payday after the date on which the individual becomes an assigned employee.

Insurance Code, ch. 846, governs the operation of multiple employer welfare arrangements, or MEWAs, which provide health insurance benefits to employees of two or more unrelated employers. To qualify as a MEWA, employers must be members of a trade association or group of five or more businesses that are in the same trade or industry. MEWAs are subject to federal regulation under the Employee Retirement Income Security Act of 1974 (ERISA).

DIGEST: CSHB 1351 would allow a leasing company to give employees notice of an agreement with a client company in writing or in an electronic document with a proof of delivery receipt.

The bill would allow client companies of a staff leasing company to establish a MEWA to provide a health benefit plan for their assigned employees to the extent authorized by ERISA.

The bill would take effect September 1, 2007, and would apply to staff leasing contracts entered into on or after that date.

**SUPPORTERS
SAY:**

CSHB 1351 would modernize regulations governing staff leasing companies to allow employees to be notified by e-mail of a contract with a client company as an alternative to paper notification. This would be much more practical for the leasing company and would serve the same purpose as paper notification. Unlike the original version of the bill, which would have allowed face-to-face notification, the e-mail notification authorized by the committee substitute would ensure that this notification was documented in writing. This important protection needs to be retained in any alternative to written communication.

The bill would create a third class of MEWA by allowing leasing companies to provide health insurance for their employees as part of a self-funded plan. Current regulations require that participants in a MEWA be a homogeneous group, such as a trade association for roofers or dentists. CSHB 1351 would provide clear authority under state law for leasing companies, which are made up of heterogeneous employers, to establish MEWAs, as they are authorized to do under federal law.

If state oversight of MEWAs is insufficient to protect policyholders, regulations should be strengthened to provide this protection. Leasing companies should not be prohibited from choosing this option simply because other MEWAs have had difficulty.

**OPPONENTS
SAY:**

MEWAs should not be authorized for a new kind of employer until state regulations governing them are strengthened. Under current law, MEWAs are not subject to any of the solvency requirements imposed on health insurers, and when a MEWA fails, claims to consumers go unpaid. MEWAs have had a 68 percent failure rate in Texas, in part because solvency requirements are so low that MEWAs do not have to take prudent measures to protect their policyholders.

NOTES:

The original version of the bill would have allowed leasing companies to notify employees of a contract with a client in a face-to-face meeting,

rather than in an electronic document with a proof of delivery receipt, as required in the committee substitute.