

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 139

**Senator Lang
Cosponsor: Senator Romanchuk**

A BILL

To amend sections 1739.02, 1739.05, 1739.12, 1
1739.13, and 3924.01 of the Revised Code to 2
amend the law regulating multiple employer 3
welfare arrangements. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1739.02, 1739.05, 1739.12, 5
1739.13, and 3924.01 of the Revised Code be amended to read as 6
follows: 7

Sec. 1739.02. (A) The following groups that have been 8
organized and maintained in good faith ~~for a continuous period~~ 9
~~of five years or more for purposes, provided that the group has~~ 10
one substantial business purpose other than obtaining insurance, 11
may establish, maintain, or operate a group self-insurance 12
program under a multiple employer welfare arrangement that is 13
chartered and created in this state under sections 1739.01 to 14
1739.22 of the Revised Code: 15

(1) A chamber of commerce; 16

(2) A trade association; 17

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|---|----------------------------------|
| (3) An industry association; | 18 |
| (4) A professional association; | 19 |
| (5) A voluntary employee beneficiary association that is exempt from taxation by the internal revenue service under section 501(c) (9) of the Internal Revenue Code of 1986, as amended; | 20 21 22 23 |
| (6) A business league that is exempt from taxation by the internal revenue service under section 501(c) (6) of the Internal Revenue Code of 1986, as amended; | 24 25 26 |
| (7) <u>An association of employers with a principal office located within the borders of this state or with a principal office within a metropolitan area that has boundaries in this state;</u> | 27 28 29 30 |
| <u>(8)</u> Any other association that the superintendent of insurance may define by rule. | 31 32 |
| (B) Except as provided in section 9.833 and sections 1739.01 to 1739.22 of the Revised Code, no multiple employer welfare arrangement or other entity by which two or more employers jointly participate in a common employee welfare benefit plan shall operate a group self-insurance program in this state after four months after April 9, 1993. | 33 34 35 36 37 38 |
| (C) Sections 1739.01 to 1739.22 of the Revised Code do not apply to any entity that establishes, maintains, or operates a fully insured program. | 39 40 41 |
| (D) No person shall establish, operate, or maintain a multiple employer welfare arrangement providing benefits through a group self-insurance program in this state unless the multiple employer welfare arrangement has a valid certificate of | 42 43 44 45 |

authority from the superintendent of insurance. 46

Sec. 1739.05. (A) A multiple employer welfare arrangement 47
that is created pursuant to sections 1739.01 to 1739.22 of the 48
Revised Code and that operates a group self-insurance program 49
may be established only if any of the following applies: 50

(1) The arrangement has and maintains a minimum enrollment 51
of three hundred employees of two or more employers. 52

(2) The arrangement has and maintains a minimum enrollment 53
of three hundred self-employed individuals. 54

(3) The arrangement has and maintains a minimum enrollment 55
of three hundred employees or self-employed individuals in any 56
combination of divisions (A) (1) and (2) of this section. 57

(B) (1) A multiple employer welfare arrangement that is 58
created pursuant to sections 1739.01 to 1739.22 of the Revised 59
Code and that operates a group self-insurance program shall 60
comply with all laws applicable to self-funded programs in this 61
state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 62
3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 63
3901.491, 3902.01 to 3902.14, 3923.041, 3923.24, 3923.282, 64
3923.30, 3923.301, 3923.38, 3923.581, 3923.602, 3923.63, 65
3923.80, 3923.84, 3923.85, 3923.851, 3923.86, 3923.87, 3923.89, 66
3923.90, 3924.031, 3924.032, and 3924.27 of the Revised Code. 67

(2) A self-insured multiple employer welfare arrangement 68
shall be deemed a single large employer for the purposes of 69
complying with division (B) (1) of this section, as applicable. 70

(C) A multiple employer welfare arrangement created 71
pursuant to sections 1739.01 to 1739.22 of the Revised Code 72
shall solicit enrollments only through agents or solicitors 73
licensed pursuant to Chapter 3905. of the Revised Code to sell 74

or solicit sickness and accident insurance. 75

(D) A multiple employer welfare arrangement created 76
pursuant to sections 1739.01 to 1739.22 of the Revised Code 77
shall provide benefits only to individuals who are members, 78
employees of members, or the dependents of members or employees, 79
or are eligible for continuation of coverage under section 80
1751.53 or 3923.38 of the Revised Code or under Title X of the 81
"Consolidated Omnibus Budget Reconciliation Act of 1985," 100 82
Stat. 227, 29 U.S.C.A. 1161, as amended. 83

(E) A multiple employer welfare arrangement created 84
pursuant to sections 1739.01 to 1739.22 of the Revised Code is 85
subject to, and shall comply with, sections 3903.81 to 3903.93 86
of the Revised Code in the same manner as other life or health 87
insurers, as defined in section 3903.81 of the Revised Code. 88

Sec. 1739.12. (A) The excess loss funding program of a 89
multiple employer welfare arrangement operating a group self- 90
insurance program shall be filed with the superintendent of 91
insurance. 92

(B) As a condition to the issuance and maintenance of a 93
certificate of authority, a multiple employer welfare 94
arrangement operating a group self-insurance program shall 95
purchase individual stop-loss insurance from insurers authorized 96
to transact business in this state ~~with a deductible retention~~ 97
~~of no more than five per cent of the arrangement's annual~~ 98
~~aggregate premium up to one million dollars and no more than two~~ 99
~~and one-half per cent of the arrangement's annual aggregate~~ 100
~~premium above that amount~~ with a retention level determined in 101
accordance with sound actuarial principles and approved in rule 102
by the superintendent. The arrangement also shall purchase, as a 103
condition to the issuance and maintenance of a certificate of 104

authority, aggregate stop-loss insurance from insurers 105
authorized to transact business in this state with a deductible 106
retention of no more than one hundred twenty-five per cent of 107
its projected claims for the succeeding fiscal year. 108

(C) Any excess or stop-loss insurance policy purchased by 109
a multiple employer welfare arrangement shall provide that the 110
superintendent must be notified by the arrangement of the 111
cancellation of the policy for any reason, including the failure 112
of the arrangement to pay any applicable premium. 113

(D) No excess or stop-loss insurance policy purchased by a 114
multiple employer welfare arrangement shall ~~do any of the~~ 115
~~following deny excess or stop-loss insurance coverage to an~~ 116
individual on the basis of actual or expected claims for ~~an~~ that 117
individual or ~~an~~ the individual's given diagnosis. 118

~~(1) Assign a different attachment point for that~~ 119
~~individual;~~ 120

~~(2) Assign a deductible to that individual that must be~~ 121
~~met before excess or stop loss insurance applies;~~ 122

~~(3) Deny excess or stop-loss insurance coverage to that~~ 123
~~individual.~~ 124

Sec. 1739.13. (A) (1) A multiple employer welfare 125
arrangement operating a group self-insurance program shall 126
establish and maintain a minimum surplus of not less than five 127
hundred thousand dollars or such higher amounts of surplus as 128
the superintendent of insurance may establish by rule 129
appropriate loss and loss expense reserves for the protection of 130
the members and their employees, as determined in accordance 131
with sound actuarial principles and 26 U.S.C. 419 and 419A. 132

(2) The superintendent may permit a multiple employer 133

welfare arrangement up to two years to accumulate the reserve 134
requirement, and the superintendent may require such an 135
arrangement to provide collateral until such time as the 136
reserves are fully accumulated. 137

(B) Except as otherwise provided for in sections 1739.01 138
to 1739.21 of the Revised Code, the assets of a multiple 139
employer welfare arrangement operating a group self-insurance 140
program shall be invested only in securities or other 141
investments permitted by the laws of this state for the 142
investment of assets of domestic insurance companies other than 143
life. 144

(C) A multiple employer welfare arrangement operating a 145
group self-insurance program shall maintain assets in cash, 146
receivables, or securities authorized by the laws of this state 147
for the investment of assets of domestic insurance companies 148
other than life in an amount that is equivalent to or higher 149
than the unearned premiums and minimum surplus required under 150
sections 1739.01 to 1739.22 of the Revised Code, the reserves 151
for losses outstanding and unpaid, and any other liabilities of 152
the arrangement. 153

Sec. 3924.01. As used in sections 3924.01 to 3924.14 of 154
the Revised Code: 155

(A) "Actuarial certification" means a written statement 156
prepared by a member of the American academy of actuaries, or by 157
any other person acceptable to the superintendent of insurance, 158
that states that, based upon the person's examination, a carrier 159
offering health benefit plans to small employers is in 160
compliance with sections 3924.01 to 3924.14 of the Revised Code. 161
"Actuarial certification" shall include a review of the 162
appropriate records of, and the actuarial assumptions and 163

methods used by, the carrier relative to establishing premium 164
rates for the health benefit plans. 165

(B) "Adjusted average market premium price" means the 166
average market premium price as determined by the board of 167
directors of the Ohio health reinsurance program either on the 168
basis of the arithmetic mean of all carriers' premium rates for 169
an OHC plan sold to groups with similar case characteristics by 170
all carriers selling OHC plans in the state, or on any other 171
equitable basis determined by the board. 172

(C) "Base premium rate" means, as to any health benefit 173
plan that is issued by a carrier and that covers at least two 174
but no more than fifty employees of a small employer, the lowest 175
premium rate for a new or existing business prescribed by the 176
carrier for the same or similar coverage under a plan or 177
arrangement covering any small employer with similar case 178
characteristics. 179

(D) "Carrier" means any sickness and accident insurance 180
company or health insuring corporation authorized to issue 181
health benefit plans in this state or a MEWA. A sickness and 182
accident insurance company that owns or operates a health 183
insuring corporation, either as a separate corporation or as a 184
line of business, shall be considered as a separate carrier from 185
that health insuring corporation for purposes of sections 186
3924.01 to 3924.14 of the Revised Code. 187

(E) "Case characteristics" means, with respect to a small 188
employer, the geographic area in which the employees work; the 189
age and sex of the individual employees and their dependents; 190
the appropriate industry classification as determined by the 191
carrier; the number of employees and dependents; and such other 192
objective criteria as may be established by the carrier. "Case 193

characteristics" does not include claims experience, health 194
status, or duration of coverage from the date of issue. 195

(F) "Dependent" means the spouse or child of an eligible 196
employee, subject to applicable terms of the health benefits 197
plan covering the employee. 198

(G) "Eligible employee" means an employee who works a 199
normal work week of thirty or more hours. "Eligible employee" 200
does not include a temporary or substitute employee, or a 201
seasonal employee who works only part of the calendar year on 202
the basis of natural or suitable times or circumstances. 203

(H) "Health benefit plan" means any hospital or medical 204
expense policy or certificate or any health plan provided by a 205
carrier, that is delivered, issued for delivery, renewed, or 206
used in this state on or after the date occurring six months 207
after November 24, 1995. "Health benefit plan" does not include 208
policies covering only accident, credit, dental, disability 209
income, long-term care, hospital indemnity, medicare supplement, 210
specified disease, or vision care; coverage under a one-time- 211
limited-duration policy that is less than twelve months; 212
coverage issued as a supplement to liability insurance; 213
insurance arising out of a workers' compensation or similar law; 214
automobile medical-payment insurance; or insurance under which 215
benefits are payable with or without regard to fault and which 216
is statutorily required to be contained in any liability 217
insurance policy or equivalent self-insurance. 218

(I) "Late enrollee" means an eligible employee or 219
dependent who enrolls in a small employer's health benefit plan 220
other than during the first period in which the employee or 221
dependent is eligible to enroll under the plan or during a 222
special enrollment period described in section 2701(f) of the 223

"Health Insurance Portability and Accountability Act of 1996," 224
Pub. L. No. 104-191, 110 Stat. 1955, 42 U.S.C.A. 300gg, as 225
amended. 226

(J) "MEWA" means any "multiple employer welfare 227
arrangement" as defined in section 3 of the "Federal Employee 228
Retirement Income Security Act of 1974," 88 Stat. 832, 29 229
U.S.C.A. 1001, as amended, except for any arrangement which is 230
fully insured as defined in division (b) (6) (D) of section 514 of 231
that act. 232

(K) "Midpoint rate" means, for small employers with 233
similar case characteristics and plan designs and as determined 234
by the applicable carrier for a rating period, the arithmetic 235
average of the applicable base premium rate and the 236
corresponding highest premium rate. 237

(L) "Pre-existing conditions provision" means a policy 238
provision that excludes or limits coverage for charges or 239
expenses incurred during a specified period following the 240
insured's enrollment date as to a condition for which medical 241
advice, diagnosis, care, or treatment was recommended or 242
received during a specified period immediately preceding the 243
enrollment date. Genetic information shall not be treated as 244
such a condition in the absence of a diagnosis of the condition 245
related to such information. 246

For purposes of this division, "enrollment date" means, 247
with respect to an individual covered under a group health 248
benefit plan, the date of enrollment of the individual in the 249
plan or, if earlier, the first day of the waiting period for 250
such enrollment. 251

(M) "Service waiting period" means the period of time 252

after employment begins before an employee is eligible to be 253
covered for benefits under the terms of any applicable health 254
benefit plan offered by the small employer. 255

(N) (1) "Small employer" means, in connection with a group 256
health benefit plan and with respect to a calendar year and a 257
plan year, an employer who employed an average of at least two 258
but no more than fifty eligible employees on business days 259
during the preceding calendar year and who employs at least two 260
employees on the first day of the plan year. 261

(2) For purposes of division (N) (1) of this section, all 262
persons treated as a single employer under 29 U.S.C. 1002(5) or 263
subsection (b), (c), (m), or (o) of section 414 of the "Internal 264
Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as 265
amended, shall be considered one employer. In the case of an 266
employer that was not in existence throughout the preceding 267
calendar year, the determination of whether the employer is a 268
small or large employer shall be based on the average number of 269
eligible employees that it is reasonably expected the employer 270
will employ on business days in the current calendar year. Any 271
reference in division (N) of this section to an "employer" 272
includes any predecessor of the employer. Except as otherwise 273
specifically provided, provisions of sections 3924.01 to 3924.14 274
of the Revised Code that apply to a small employer that has a 275
health benefit plan shall continue to apply until the plan 276
anniversary following the date the employer no longer meets the 277
requirements of this division. 278

(O) "OHC plan" means an Ohio health care plan, which is 279
the basic, standard, or carrier reimbursement plan for small 280
employers and individuals established in accordance with section 281
3924.10 of the Revised Code. 282

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| Section 2. That existing sections 1739.02, 1739.05, | 283 |
| 1739.12, 1739.13, and 3924.01 of the Revised Code are hereby | 284 |
| repealed. | 285 |