

# HOUSE BILL REPORT

## HB 1528

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### As Reported by House Committee On:

Financial Institutions & Insurance

Appropriations

**Title:** An act relating to escrow accounts required of self-funded multiple employer welfare arrangements.

**Brief Description:** Changing the beginning date for the escrow accounts required of self-funded multiple employer welfare arrangements.

**Sponsors:** Representatives Kirby, Priest, Simpson, Newhouse, Cody, Serben and Schual-Berke.

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 2/3/05, 2/8/05 [DPS];

Appropriations: 2/17/05, 2/28/05 [DPS(FII)].

#### Brief Summary of Substitute Bill

- Delays the effective date of the premium tax requirements on self-funded multiple employer welfare arrangements until April 1, 2006.
- Delays the effective date of the Washington State Health Insurance Pool assessment requirements on self-funded multiple employer welfare arrangements until April 1, 2006.

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## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson, Strow and Williams.

**Staff:** Jon Hedegard (786-7127).

### Background:

*State regulation of health insurers.*

The Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of health care service contractors (HCSCs), health maintenance organizations (HMOs), and disability insurers offering health coverage in Washington. These entities must pay an annual premium tax equal to 2 percent of all premiums collected or received during the preceding

calendar year. These entities must also pay an assessment to help fund the Washington State Health Insurance Pool (WSHIP). The WSHIP was created by the Legislature to provide access to health insurance coverage to all residents of the state who are denied or are unable to obtain health insurance coverage on either an individual or group basis.

*MEWAs and federal regulation.*

A "Multiple Employer Welfare Arrangement" (MEWA) is a group purchasing arrangement defined by the federal Employee Retirement Income Security Act (ERISA) of 1974. The ERISA defines a MEWA as an employee welfare benefit plan or other arrangement established or maintained to offer or provide welfare plan benefits to employees of two or more employers or their beneficiaries. An employee welfare benefit plan is defined to include medical, surgical, or hospital care or benefits as well as sickness, accident, disability, and death benefits. The ERISA generally preempts state laws relating to employee benefit plans. An exception allows the application of state insurance laws to ERISA-covered welfare plans that meet the MEWA definition.

*MEWAs and state regulation.*

Under current state insurance law, a MEWA established, operated, providing benefits, or maintained in this state prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. The MEWA is subject to various state requirements in chapter 48.125 RCW.

*Premium taxes and WSHIP assessments.*

Premium tax payments and the WSHIP assessments are required from a MEWA if the state statutory requirements are not preempted by federal law (ERISA). The Commissioner and interested MEWAs must request an initial advisory opinion from the United States Department of Labor (DOL) or obtain a declaratory ruling from a federal court regarding the legality of imposing state premium taxes and the WSHIP assessments on MEWAs. If not preempted by federal law, the premium tax and the WSHIP assessment requirements become effective on March 1, 2005, or 30 days following the issuance of a certificate of authority, whichever is later. The premium tax provisions may not be retroactively applied to any period before a MEWA receives a certificate of authority.

If the premium tax and the WSHIP assessment requirements are effective and no ruling has been made by the DOL, the taxes and assessments shall be deposited in interest bearing escrow accounts maintained by the MEWA.

If the DOL or a federal court determine that the premium taxes are not preempted by the ERISA, the funds in the escrow account shall be transferred to the Washington State Treasurer. If the DOL or a federal court determine that the WSHIP assessments are not preempted by the ERISA, the funds in the escrow account shall be transferred to the WSHIP Board.

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**Summary of Substitute Bill:**

The effective date of the premium tax requirements is changed from March 1, 2005, or 30 days after issuance of a certificate of authority, whichever is later, to April 1, 2006.

The effective date of the WSHIP assessment requirements is changed from March 1, 2005, or 30 days after issuance of a certificate of authority, whichever is later, to April 1, 2006.

**Substitute Bill Compared to Original Bill:**

Taxes and assessments will begin at the earliest of the following: When the United States Department of Labor or a court rules the state is not preempted; when all MEWAs are certified by the Office of the Insurance Commissioner; or April 1, 2006.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2005.

**Effective Date of Substitute Bill:** The bill has an emergency clause and takes effect immediately.

**Testimony For:** Last year's bill was amended to include the taxes and fees before it passed. The law requires MEWAs to apply for a certificate of authority. A Spokane-based MEWA recently received its certificate of authority from the Office of the Insurance Commissioner (OIC). It has been providing benefits since 1960. This MEWA received its certificate in January. The other three MEWAs have yet to apply. It took the OIC nine months to approve that application. It may take even long to approve the other three MEWAs. The Spokane-based MEWA will pay an estimated \$200,000 this year. The other MEWAs may not pay anything. The tax is not retroactive, it applies to the MEWAs who have a certificate. This is not fair. The state would not receive this money. The money goes into an escrow account. The taxes and assessments have not yet been determined to be legal. If the effective date of the taxes and assessments is delayed for a year, all of the MEWAs will be on the same footing. Hopefully, the federal government will have ruled on the issue by then. If so, everyone will know if the taxes and assessments can even be collected.

**Testimony Against:** All of the health carriers in Washington pay the premium taxes and assessments. Last year's bill intended to treat similar entities in a similar fashion. The health carriers do compete with the MEWAs for business. If the MEWAs don't have to pay taxes or assessments, they are at a competitive advantage. The escrow accounts were set up to establish equal treatment. If these monies are not collected, they will be lost forever. The bill is not retroactive. The taxes and assessments could be used to help fund the Health Services Account or the Washington State Health Insurance Pool. When the Legislature adopts laws, we presume they are valid until a court decides otherwise. This isn't a year in which a MEWA won't pay taxes, it is another year all of the MEWAs would not pay taxes. We believed that these entities were subject to state regulation for quite some time.

**Persons Testifying:** (In support) Charles Fox and Lisa Thatcher, Timber Products Manufacturers Association.

(Opposed) Mel Sorensen, America's Health Insurance Plans; and Mary Clogston, Office of the Insurance Commissioner.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hinkle.

**Staff:** Nona Snell (786-7153).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Financial Institutions & Insurance:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill has an emergency clause and takes effect immediately.

**Testimony For:** Because only one of the MEWAs is certified currently, the bill provides equity until all the MEWAs are certified. The premium tax and WSHIP assessments will go into an escrow account and will be returned to the MEWAs if the tax is not found to be legal.

**Testimony Against:** None.

**Persons Testifying:** Lisa Thatcher, Temper Products and Manufacturer Association.

**Persons Signed In To Testify But Not Testifying:** None.