



2005 ASSEMBLY BILL 862

December 8, 2005 – Introduced by Representatives VOS, KERKMAN, NISCHKE, BIES, HAHN, HINES, JENSEN, JESKEWITZ, KREIBICH, F. LASEE, OTT, OWENS and WOOD, cosponsored by Senators STEPP and REYNOLDS. Referred to Committee on Insurance.

- 1 **AN ACT to create** 146.92 and 601.415 (8) of the statutes; **relating to:** self-funded
2 employer groups for providing health care coverage.

Analysis by the Legislative Reference Bureau

This bill authorizes the formation of up to five employer groups, each for the purpose of establishing and administering a health care benefit arrangement for providing, on a self-funded basis, health care benefits to the employees of the employers that participate in each employer group. Two or more employers that are members of the same chamber of commerce may form an employer group, and any other employer that is a member of that same chamber of commerce, that satisfies any minimum participation requirements established by the employer group, and that makes all required contributions may participate in the employer group that is formed. An employer that participates must offer to cover all of its employees who have a normal work week of at least 30 hours, and their dependents, and, generally, may not discontinue participation before the end of the minimum participation period established by the employer group, which may not be less than two years.

Each employer group will determine all matters necessary for the operation of its health care benefit arrangement, and must employ or contract with an actuary to make recommendations on the amounts of contributions required to fund the health care benefit arrangement. An employer group may not provide more than \$50,000 in benefits to a covered person per year on a self-funded basis and must obtain excess or stop-loss coverage. Each health care benefit arrangement must provide the same benefits for all employers participating in the employer group, but the contributions paid by participating employers for self-funding purposes and for purchasing stop-loss coverage do not have to be the same.

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Both the employer groups and the health care benefit arrangements are exempt from all requirements under the insurance statutes, except that every health care benefit arrangement must comply with every health insurance mandate under the statutes. (The health insurance mandates, generally, require coverage of certain conditions and treatments and coverage of the services of certain providers.) The employer groups may not be considered insurers, and the health care benefit arrangements may not be considered insurance contracts, for any purpose under the statutes.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.92 of the statutes is created to read:

2 **146.92 Self-funded employer groups project. (1) DEFINITIONS.** In this
3 section:

4 (a) "Eligible employee" means an employee who works on a permanent basis
5 and has a normal work week of 30 or more hours. The term includes a sole proprietor,
6 a business owner, including the owner of a farm business, a partner of a partnership,
7 and a member of a limited liability company if the sole proprietor, business owner,
8 partner, or member is included as an employee under the health care benefit
9 arrangement under this section, but the term does not include an employee who
10 works on a temporary or substitute basis.

11 (b) "Eligible employers" means employers that are members of the same
12 chamber of commerce.

13 **(2) FORMATION OF EMPLOYER GROUPS; QUALIFICATION.** (a) Two or more eligible
14 employers may form an employer group to establish and administer an employee
15 health care benefit arrangement for the joint provision of health care benefits on a
16 self-funded basis to their eligible employees, the eligible employees of other eligible

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1 employers participating in the employer group, and the dependents of those eligible
2 employees.

3 (b) No more than 5 employer groups may be formed under par. (a), and no more
4 than one employer group may be composed of employers that are members of any one
5 chamber of commerce. The first 5 employer groups that provide evidence to the
6 commissioner of insurance that they have formed and are in compliance with the
7 requirements under this section shall qualify to participate in the project under this
8 section. The commissioner of insurance shall provide notice in the Wisconsin
9 administrative register when 5 employer groups have qualified under this
10 paragraph. The notice shall list the groups and the dates on which each provided the
11 necessary evidence of compliance.

12 **(3) EMPLOYER REQUIREMENTS.** (a) An employer that participates in an employer
13 group under this section shall be required to offer health care benefits under the
14 employee health care benefit arrangement to all of the employer's eligible employees
15 and all of the eligible employees' dependents, as defined by the employer group under
16 sub. (5) (d), and may not offer any other health care benefits to its eligible employees
17 or their dependents.

18 (b) An employer that participates in an employer group under this section shall
19 be required to participate for at least the minimum participation period specified by
20 the employer group under sub. (5) (g). To ensure participation for at least that period,
21 an employer group may require all employers that desire to participate to pay, at the
22 commencement of participation, an amount that will be forfeited to the employer
23 group if the employer's participation terminates voluntarily or involuntarily before
24 the employer's minimum participation period ends.

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1 (c) Subject to the employer group's policy, if any, regarding late payments, an
2 employer's participation shall be terminated if the employer fails to pay any
3 contribution required by the employer group under sub. (5) (e).

4 (d) An employer whose participation terminates voluntarily or involuntarily
5 shall be responsible for all contribution amounts required during the employer's
6 period of participation, as well as the employer's proportionate share of the cost of
7 any eligible claims payable by the employer group that were incurred before the
8 employer's participation terminated.

9 **(4) COVERAGE; PAYMENT OF CLAIMS.** (a) Each employer group shall pay no more
10 than \$50,000 in benefits on a self-funded basis in a calendar year for each person
11 covered under its employee health care benefit arrangement. Each employer group
12 shall obtain excess or stop-loss coverage through an insurer authorized to do
13 business in this state in an amount that is sufficient to pay eligible claims that exceed
14 the amount that the employer group will pay on a self-funded basis per person in a
15 calendar year.

16 (b) An employer group shall provide the same, uniform health care benefits for
17 each employer that participates in that employer group.

18 (c) Every employee health care benefit arrangement under this section shall
19 comply with every health insurance mandate, as defined in s. 601.423.

20 (d) If an employer group ceases operating its employee health care benefit
21 arrangement, it shall continue to be responsible for paying eligible claims that were
22 incurred during the time in which the employee health care benefit arrangement was
23 operating.

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1 **(5) ADMINISTRATION.** (a) Each employer group shall determine all matters
2 necessary for the administration and operation of its employee health care benefit
3 arrangement.

4 (b) Each employer group shall designate an agent for service of process, notice,
5 or demand.

6 (c) Each employer group shall employ or contract with an actuary to make
7 recommendations, in accordance with generally accepted actuarial principles, as to
8 the amounts that will be sufficient to fund its employee health care benefit
9 arrangement.

10 (d) Each employer group shall define who is a dependent for purposes of
11 coverage under its employee health care benefit arrangement.

12 (e) Each employer group shall determine, based on the actuary's
13 recommendations, the amounts that eligible employers participating in the
14 employer group must contribute for self-funding the employee health care benefit
15 arrangement, for paying administrative expenses, including the actuary's
16 compensation, and for purchasing excess or stop-loss coverage. The contribution
17 amounts may vary from employer to employer based on criteria developed by the
18 employer group. An employer group may require contributions for establishing a
19 surplus and may levy assessments whenever the amount of any loss or expense that
20 is due exceeds the assets or whenever any required surplus is impaired.

21 (f) An employer group may specify minimum participation requirements that
22 an eligible employer must satisfy for participation in the employer group. Subject
23 to sub. (3) (c), all eligible employers that meet these requirements shall be allowed
24 to participate in the employer group.

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1 (g) Each employer group shall specify a minimum participation period, which
2 may not be less than 2 years and which shall be the same length for each employer
3 participating in the employer group.

4 (h) Notwithstanding sub. (3) (b), an employer group may specify circumstances
5 under which a participating employer may discontinue participation in the employer
6 group before the employer's minimum participation period ends without forfeiting
7 all or a portion of the amount paid by the employer under sub. (3) (b).

8 **(6) EXEMPTION FROM INSURANCE REGULATION.** Notwithstanding 29 USC 1144 (b)
9 (6) (A), except as provided in sub. (4) (c), chs. 600 to 645 and any rules promulgated
10 under chs. 600 to 645 do not apply to an employer group, or to an employee health
11 care benefit arrangement, under this section. An employer group shall not be
12 considered an insurer, and an employee health care benefit arrangement shall not
13 be considered an insurance contract, for any purpose under the statutes.

14 **SECTION 2.** 601.415 (8) of the statutes is created to read:

15 601.415 **(8) EMPLOYER GROUP QUALIFICATION.** Notwithstanding s. 146.92 (6), the
16 commissioner shall perform the duties required under s. 146.92 (2) (b) related to the
17 qualification of employer groups for the project under s. 146.92.

18 **(END)**