



**MIKE CAUSEY**  
INSURANCE COMMISSIONER

## BULLETIN

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**Number 19-B-05**

**To:** All Insurance Companies and other Entities Licensed under Chapter 58  
of the North Carolina General Statutes

**From:** **Mike Causey, Commissioner of Insurance**

**Date:** **October 3, 2019**

**Subject:** **2019 Senate Bill 86 (Session Law 2019-76)**  
**Small Business Health Care Act**

The following information is being provided to clarify the status of opportunities presented in the 2019 Senate Bill 86.

Senate Bill 86, referred to as the “Small Business Health Care Act,” became law on August 26, 2019. Sections 1, 2, 3 and 4 of the bill make changes to existing laws regulating MEWAs in North Carolina. The changes are intended to provide opportunities for employer groups to take advantage of the June 2018 U.S. Department of Labor (US DOL) rule that changed the definition of “employer” under ERISA (29 C.F.R. § 2510-3.5). The rule was changed to create a new alternative test for determining who can be an “employer” sponsor of an ERISA-covered MEWA.

However, the US DOL rule that was the impetus for Senate Bill 86 was challenged, and a court has vacated most of the rule and remanded it back to the US DOL. That court decision has been appealed. As a result, the US DOL rule is not enforceable at this time and any new opportunities for Path 2 MEWAs created by Senate Bill 86 are on hold until the court case is concluded. This is consistent with guidance given by the US DOL in two “Questions and Answers” documents.

The Department is following the progress of the court case that vacated most of the rule and will issue further bulletins on this issue if there is a change in the status of the US DOL rule.

Section 5 of Senate Bill 86 is not related to MEWAs but instead lowers the number of eligible employees required to be employed by a small employer that can be provided stop loss, catastrophic, or reinsurance coverage by an insurer. It is not affected by the court case vacating parts of the US DOL rule and becomes effective October 1, 2019.

Check the NC Department of Insurance web site for possible future updates. <http://www.ncdoi.com/>

Please refer any questions regarding this matter to Ted Hamby at [Ted.Hamby@ncdoi.gov](mailto:Ted.Hamby@ncdoi.gov)

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