State Corporation Commission
2009 Fiscal Impact Statement

1. Bill Number: SB1331

House of Origin	X	Introduced	___	Substitute	___	Engrossed
Second House	___	In Committee	___	Substitute	___	Enrolled

2. Patron: Cuccinelli

3. Committee: Commerce and Labor

4. Title: **Health benefits plans offered by foreign health insurers.**

5. Summary/Purpose: Creates a new Chapter 64 in Title 38.2 entitled "Health Insurance Choice" which authorizes foreign health insurers licensed to sell health benefit plans in any other state to sell Health Insurance Choice benefit plans to residents of Virginia if the foreign health insurer meets certain requirements.

6. Fiscal Impact Estimates: No Fiscal Impact on the State Corporation Commission

7. Budget amendment necessary: No

8. Fiscal implications: None on the State Corporation Commission

9. Specific agency or political subdivisions affected: State Corporation Commission and its Bureau of Insurance

10. Technical amendment necessary: The definition of "health benefits plan" under § 38.2-6400 provides, in part, that it is "an arrangement for delivery of health care, on an *individual* or *group* basis," which implies that such plans may be offered to both individuals and groups. Yet, § 38.2-6401 states that "foreign health insurers may offer health benefit plans to *residents* in the Commonwealth" and "resident" is defined under § 38.2-6400 as an individual. The Bureau believes this wording needs clarification.

Under § 38.2-6400, "insurer" is defined as including a *multiple welfare-employer welfare organization* and then the language specifically excludes *multiple employer welfare arrangement*.

The Bureau of Insurance does not issue certificates of authority under Title 38.2. These certificates would fall under Title 13.1 (Corporations), which is administered by the Office of the Clerk of the Virginia State Corporation Commission. The certificate of authority to transact business in Virginia under Title 13.1 is only a registration by a non-Virginia corporation to conduct business in Virginia generally. The certificate of authority is not an insurance license, which is issued by the Bureau of Insurance. As such, the sections in Chapter 64 that reference certificate of authority would have to be amended. These sections include §§ 38.2-6401 A 2, 38.2-6402, and 38.2-6404 of the Code of Virginia.

11. Other comments: The Bureau of Insurance advised the patron of SB 1331 that allowing foreign insurers to offer and sell products in Virginia that do not meet Virginia's minimum standards and requirements while requiring domestic and licensed insurers to meet those standards and requirements may have significant implications for the Virginia marketplace:

1. Virginia's domestic insurers would be placed at a competitive disadvantage by not being allowed to offer products marketed by these Health Insurance Choice (Chapter 64) plans. Foreign insurers with fewer mandates and lesser regulatory requirements may trend toward dominating the Virginia market. In fact, insurance organizations may be incentivized to "forum shop" to organize in jurisdictions with less stringent regulation and enforcement, particularly in regard to activities outside the home jurisdiction itself, i.e. the issue of extraterritorial non-enforcement.

2. The proposed legislation provides limited financial standards for the admission and licensing of Chapter 64 foreign health insurers and thus removes much of the Bureau's authority with respect to the effective financial oversight of such insurers, both at the time the insurer applies for a license and after it has obtained a license. Specifically, the proposal provides that a Chapter 64 licensee only be subject to the baseline minimum capital and surplus requirements of Chapter 10 of Title 38.2 and a determination that the insurer is not in hazardous financial condition. By contrast, insurers currently licensed to do business are subject to an array of statutory financial standards in Title 38.2 that apply to the assessment of such critical areas as the insurer's investments, policy and claim reserve adequacy, capital requirements calibrated to the insurer's own risk exposures (i.e. risk-based capital), reinsurance coverage, and operating performance. In addition, licensed insurers are subject to regular reporting and examination requirements to ensure timely monitoring. It should be noted generally that the application of such standards and requirements helps ensure appropriate margins against uncertainty, supports a degree of confidence against insolvency, and aims to target financially troubled insurers for attention long before the insurer reaches a state of "hazardous financial condition." Staying regulatory action until an insurer reaches such a hazardous state arguably weakens solvency protection for consumers substantially.

3. The proposal makes Chapter 64 licensees subject to the applicable provisions of Chapter 17 of Title 38.2, the Virginia Life, Accident and Sickness Insurance Guaranty Association chapter (Guaranty Fund Act). The general purpose of the Guaranty Fund Act is to provide limited protection for the unpaid life and health claims of covered insureds in the event of the insolvency of a member insurer. Coverage for shortfalls in claim payments is supported through assessments on member insurers. Member insurers are defined currently as those licensed in Virginia. The proposal is unclear, first of all, as to which provisions of Chapter 17 would be applicable to Chapter 64 licensees. Would they be subject, for

example, to paying all assessments to cover the insolvencies of all member insurers, including non-Chapter 64 licensees? In addition, the Guaranty Fund Act is currently not applicable to licensed health maintenance organizations. Enrollees of health maintenance organizations are currently covered by an alternative set of solvency protection mechanisms set forth in Chapter 43 of Title 38.2. The terms of protection were crafted with the operational realities of health maintenance organizations in mind, including the treatment of health care providers. Coverages of enrollee claim shortfalls in the event of an insolvency are supported by members, in this case, licensed health maintenance organizations. Under the proposal, however, Chapter 64 licensees encompass both indemnity insurers as well as health maintenance organizations, and both forms of organizations are placed under Chapter 17, the Guaranty Fund Act.

Finally, current members of the Virginia Life, Accident and Sickness Insurance Guaranty Association may raise the issue of moral hazard in regard to Chapter 64 licensees. Arguably, Chapter 64 would places less stringent financial requirements on Chapter 64 licensees than those borne by fully licensed and Virginia-domiciled insurers. Thus it could be argued that the competitive advantages enjoyed by less secure Chapter 64 licensees would be further enhanced by a leveling safety net whose costs are equally borne by them and those more secure carriers subject to full licensing requirements.

4. There are numerous consumer protections afforded under Virginia law that would not extend to purchasers of a product issued under this proposal unless the foreign insurer's state of domicile had similar requirements and exercised oversight and enforcement over contracts issued to non-residents. A few examples include a requirement for interest added to late claim payments; prohibitions against certain prescription drug denials; standards for fair business practices associated with contracts between insurers and providers; ensured access to certain specialty providers; requirements pertaining to freedom of choice among pharmacy providers; advance notification to policyholders of premium rate increases in excess of 35%; a mandated offer for a point of service option for HMO enrollees; and a requirement on licensed insurers to offer two basic health care plans in the small employer market. These are but some examples of statutory protections that may be compromised because of the lack or attenuation of Virginia's direct jurisdiction over the products and market behavior of Chapter 64 plans, and because of the lack of focus or enforcement of standards by a Chapter 64 licensee's home jurisdiction regarding the Chapter 64 licensee's market behavior outside its home jurisdiction, i.e. market behavior in Virginia.

5. Policies issued under this proposal would not be subject to Virginia's requirements governing Managed Care Health Insurance Plans (MCHIPS), which include significant consumer services. The Office of the Virginia Managed Care Ombudsman and the External Appeals Office were created under Chapter 59 of Title 38.2 to assist consumers in their efforts to appeal adverse medical claim

decisions made by the MCHIPs. Both of these functions have served Virginia's consumers by providing a fair and balanced method of resolving difficult medical issues. While the home jurisdiction of a Chapter 64 licensee may provide for similar mechanisms for persons resident or covered under policies issued in its jurisdiction, it is unclear whether or not a Virginia resident covered under a policy issued by a Chapter 64 licensee in Virginia could utilize such mechanisms.

Other significant areas of "MCHIP" oversight that would not apply to Chapter 64 licensees under this proposal include quality standards regarding the delivery of health care services, access to health care providers, and comprehensive standards regarding the MCHIP's complaint system. Some of these are enforced by the Bureau of Insurance and some by the Virginia Department of Health (see Chapter 58 of Title 38.2 and Chapter 1 of Title 32.1 respectively). Again, the home jurisdiction of a Chapter 64 plan may have similar standards but it is unclear how and to what extent that insurer's state of domicile would or could assert its authority in Virginia.

6. Although rates for group health plans currently are simply "filed and used" and not subject to prior approval, Virginia is a prior approval state for individual health insurance. This essentially means that a licensed insurer offering individual health products must demonstrate actuarially that certain minimum loss ratio standards will be achieved in order to secure approval of the initial rates for each product as well as for any rate increases. Though it is difficult for the Bureau to estimate the cost implications of not having Chapter 64 plans subject to such prior approval standards, the Bureau wishes to point out that since products may be rated territorially, it is unclear to the Bureau how or if this proposed legislation intends the rating requirements of a Chapter 64 licensee's home state to apply to rate offerings in Virginia residents. Sections 38.2-316 and 38.2-3501 of the Code of Virginia, which address rating requirements applicable to health insurance products, are specifically excluded from applicability to Chapter 64 plans under the proposal.

7. Policies issued by the Chapter 64 plans would not be subject to Virginia mandated health insurance benefits. The Bureau recognizes that mandates of coverage add to the cost of health insurance policies. The Bureau also believes it is important to note that a mandate's cost is fully considered, along with a wide array of other criteria, including social impact and medical efficacy, by Virginia legislators before the mandate is recommended for approval. Each mandate is subject to the deliberative processes of the Special Advisory Commission on Mandated Health Insurance Benefits. Thus, if the General Assembly chooses to enact an additional mandated benefit, it could be argued that the General Assembly has essentially determined that the need for such a mandated coverage would outweigh its cost.

Date: 01/28/09 V. Tompkins
cc: Secretary of Commerce and Trade
Secretary of Health and Human Resources