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SENATE BILL NO. 120

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 3, 2014)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend the Code of Virginia by adding in Chapter 8 of Title 6.2 an article numbered 17, consisting of sections numbered 6.2-951, 6.2-952, and 6.2-953, relating to a nonprofit benefits consortium; exemption from regulation as an insurance company and from license tax.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 6.2 an article numbered 17, consisting of sections numbered 6.2-951, 6.2-952, and 6.2-953, as follows:

Article 17.

Benefits Consortium.

§ 6.2-951. Definitions.

As used in this article:

"Benefits consortium" means a trust that complies with the conditions set forth in § 6.2-952.

"ERISA" means the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended.

"Sponsoring association" means an association (i) the members of which are banks and employers that provide products and services to banks, (ii) that is incorporated under the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), (iii) that operates as a nonprofit entity under § 501(c)(6) of the Internal Revenue Code of 1986, (iv) that has been in existence for at least 20 years, and (v) that exists for purposes other than arranging for or providing health and welfare benefits to members. "Sponsoring association" includes any wholly owned subsidiary of a sponsoring association.

§ 6.2-952. Conditions for a benefits consortium.

A trust shall constitute a benefits consortium when all of the following conditions exist:

1. The trust is subject to (i) ERISA and U.S. Department of Labor regulations applicable to multiple employer welfare arrangements and (ii) the authority of the U.S. Department of Labor to enforce such law and regulations;

2. A Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs), for the applicable plan year shall be filed with the U.S. Department of Labor identifying the arrangement among the trust, sponsoring association, and benefit plans offered through the trust as a multiple employer welfare arrangement;

3. The trust operates as a nonprofit voluntary employee beneficiary association within the meaning of § 501(c)(9) of the Internal Revenue Code of 1986;

4. The trust's organizational documents:

a. Provide that the trust is sponsored by the sponsoring association;

b. State that its purpose is to provide medical, prescription drug, dental, and vision benefits to employees of the sponsoring association and its members and the dependents of those employees through benefits plans;

c. Provide that the funds of the trust are to be used for the benefit of the participating employees, and their dependents, through insurance, self-insurance, or a combination thereof as determined by the trustee and for defraying reasonable expenses of administering and operating the trust and the benefits plans offered through the trust;

d. Limit participation in the benefits plans offered through the trust to employers that are the sponsoring association, members of the sponsoring association, and their affiliates;

e. Limit the benefits plans offered through the trust to benefits plans sponsored by the sponsoring association;

f. Grant the sponsoring association the power to appoint the trustee of the trust;

g. Provide the trustee with powers for the control and management of the trust; and

h. Require the trustee to discharge its duties with respect to the trust in accordance with the fiduciary duties defined in ERISA;

5. Five or more employers participate in the benefits plans offered through the trust;

6. The trust establishes and maintains reserves determined in accordance with sound actuarial principles;

7. The trust has purchased and maintains policies of specific, aggregate, and terminal excess insurance with retention levels determined in accordance with sound actuarial principles from insurers licensed to transact the business of insurance in the Commonwealth;

8. The trust has secured one or more guarantees or standby letters of credit guaranteeing the

60 payment of claims under the benefits plans offered through the trust in an aggregate amount not less
61 than (i) the trust's annual aggregate excess insurance retention level, minus (ii) the annual premium
62 assessments for the benefit plans offered through the trust, minus (iii) the trust's net assets, which net
63 assets amount shall be net of the trust's reasonable estimate of incurred but not reported claims; and
64 such guarantees or letters of credit have been issued by (a) banks participating in the benefits plans
65 offered through the trust or (b) qualified United States financial institutions as such term is used in
66 subdivision 2 c of § 38.2-1316.4;

67 9. The trust has purchased and maintains commercially reasonable fiduciary liability insurance;

68 10. The trust has purchased and maintains a bond that satisfies the requirements of ERISA;

69 11. The trust is audited annually by an independent certified public accountant;

70 12. The trust does not include in its name the words "insurance," "insurer," "underwriter," "mutual,"
71 or any other word or term or combination of words or terms that is uniquely descriptive of an
72 insurance company or insurance business unless the context of the remaining words or terms clearly
73 indicates that the entity is not an insurance company and is not carrying on the business of insurance;
74 and

75 13. The trust does not pay commissions or other remuneration to any person that is conditioned
76 upon the enrollment of persons in any benefits plan offered by the trust.

77 **§ 6.2-953. Benefits consortium and sponsoring association not subject to regulation or taxation as**
78 **an insurance company.**

79 A. A benefits consortium shall not be subject to:

80 1. The provisions of Title 38.2 and regulations adopted thereunder, including those provisions and
81 regulations otherwise applicable to multiple employer welfare arrangements; or

82 2. The tax levied on insurance companies pursuant to § 58.1-2501.

83 B. The sponsoring association of a benefits consortium or any of its subsidiaries shall not, by virtue
84 of its sponsorship of the benefits consortium or the benefits plans offered through the benefits
85 consortium, be subject to any provisions or regulations described in subdivision A 1 or any tax
86 described in subdivision A 2.

87 **2. That the provisions of this act shall become effective on January 1, 2015.**