

State Corporation Commission

2014 Fiscal Impact Statement

1. Bill Number: HB1057

House of Origin ☐ Introduced ☒ Substitute ☒ Engrossed
Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Kilgore

3. Committee: Commerce and Labor

4. Title: Benefits consortium; exemption and exclusions.

5. Summary: Benefits consortium; exemption and exclusions. Creates a new Article 17 in Chapter 8 of Title 6.2 of the Code of Virginia which exempts a bank benefits consortium from regulation as a multiple employer welfare arrangement or an insurer under Title 38.2 of the Code of Virginia. Also exempts a benefits consortium and its sponsoring organization from the license tax levied on insurance companies. Section 6.2-952 sets forth the conditions for establishing a benefits consortium (trust) which includes being subject to ERISA and the U.S. Department of Labor regulations applicable to MEWAs (e.g. fiduciary duties, bond requirements); requiring that a trust file a Form M-1 (Annual Return for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception) with the U.S. Department of Labor; that it operates as a nonprofit voluntary employee beneficiary association; that the trust is sponsored by a "sponsoring association," and that the purpose of the trust is to provide medical, prescription drug, and dental and vision benefits to employees of the sponsoring association and its members and the dependents of those employees. Participation in the benefit plans offered by the trust is limited to employers that are the sponsoring association, members of the sponsoring association and their affiliates. Requires that the trust establish and maintain capital reserves, purchase excess insurance with retention levels determined in accordance with sound actuarial principles, and secure one or more guarantees or standby letters of credit guaranteeing the payment of claims. A sponsoring association includes member banks and employers that provide products and services to banks.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Fiscal Impact Estimates are unknown; see Item 8.

8. Fiscal implications: House Bill 1057 stipulates that the benefits consortium is not subject to regulation or taxation as an insurance company; consequently, there would be no premium license tax revenue collected on any premiums written by the consortium and no assessments made against premiums written by the consortium.

9. Specific Agency or Political Subdivisions Affected: Virginia State Corporation Commission's Bureau of Financial Institutions and Bureau of Insurance

10. Technical Amendment Necessary: No.

11. Other Comments: The State Corporation Commission Bureau of Insurance advised the patron of House Bill 1057 that exemption of a benefits consortium (trust) from the Insurance Title results in a lack of solvency standards and a resulting degree of risk in the event of failure of a consortium. There are no consumer protections provided for in Title 38.2 for participants in the consortium which may include consumers who are not bank employees, but purchased insurance through the consortium. There is no guaranty fund coverage available in the event of an insolvency. Further, Virginia's statutory receivership scheme, which has priority of distribution placing participating policyholders near the top, would not apply, which could subject participants to only limited protection from bankruptcy laws.

In the amendment in the nature of a substitute to House Bill 1057, some of the issues initially raised by the Bureau of Insurance were addressed in new language added to § 6.2-952, including a statement that the purpose of the consortium (trust) is to provide medical, prescription drug, and dental and vision benefits (the original House Bill 1057 covered life, sickness, accident and other benefits), and the requirement that the trust secure one or more guarantees or standby letters of credit guaranteeing the payment of claims.

There is a delayed effective date of January 1, 2015.

House Bill 1057 is identical to Senate Bill 120.

Date: 02/04/14/ E. J. Face, Jr. and V. Tompkins
cc: Secretary of Commerce and Trade