

# VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

## CHAPTER 136

*An Act to amend the Code of Virginia by adding a section numbered 15.2-1517.1, relating to the formation of a not-for-profit benefits consortium by localities.*

[S 1046]

Approved March 16, 2015

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 15.2-1517.1 as follows:**

**§ 15.2-1517.1. Formation of not-for-profit benefits consortium.**

*A. As used in this section:*

*"Benefits consortium" means a nonstock corporation formed pursuant to subsection B.*

*"Benefits plan" means a plan adopted by the board of directors of a benefits consortium to provide health and welfare benefits to employees of localities that are members of the benefits consortium and their dependents.*

*"Employee welfare benefit plan" has the meaning set forth in § 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1).*

*"Locality" means any city or county or the school board with authority over public schools within the boundaries of a city or county.*

*B. Notwithstanding any provision of law to the contrary, the governing bodies of three or more localities that as of December 31, 2014, comprised the membership of a multiple employer welfare arrangement may form a not-for-profit benefits consortium for the purpose of establishing a self-funded employee welfare benefits plan by acting as incorporators of a nonstock corporation pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.). In addition to provisions required or permitted by the Virginia Nonstock Corporation Act, the organizational documents of the benefits consortium shall:*

- 1. Limit membership in the benefits consortium to localities;*
- 2. Set forth the name and address of each of the initial members of the corporation;*
- 3. Set forth requirements for the admission of additional localities to the corporation;*
- 4. Set forth the procedure for admission of additional localities to the corporation;*
- 5. Require that each initial member of the corporation and each additional locality admitted to membership agree to remain a member of the benefits consortium for a period of at least five years from the date the consortium begins operations or the date of the additional locality's admission to membership, as the case may be;*
- 6. Provide that the number of directors of the corporation shall be equal to the number of members;*
- 7. Provide that the board of directors shall have exclusive fiscal control over and be responsible for the operation of the benefits plan and shall govern the benefits consortium in accordance with applicable law;*
- 8. Vest in the board of directors the power to make and collect special assessments against members and, if any assessment is not timely paid, to enforce collection of same in the name of the corporation;*
- 9. State the purposes of the benefits consortium, including the types of risks to be shared by its members;*
- 10. Provide that each member shall be contractually liable for its allocated share of the liabilities of the benefits consortium as determined by the board of directors;*
- 11. Require that the benefits consortium purchase and maintain (i) a bond that satisfies the requirements of applicable law, (ii) fiduciary liability insurance, and (iii) a policy or policies of excess insurance with a retention level determined in accordance with sound actuarial principles from an insurer licensed to transact the business of insurance in the Commonwealth;*
- 12. Require that the benefits consortium be audited annually by an independent certified public accountant engaged by the board of directors; and*
- 13. Not include in the name of the corporation the words "insurance," "insurer," "underwriter," "mutual," or any other word or term or combination of words or terms that is uniquely descriptive of an insurance company or insurance business unless the context of the remaining words or terms clearly indicates that the corporation is not an insurance company and is not carrying on the business of insurance.*

*C. A benefits consortium shall establish and maintain reserves determined in accordance with sound actuarial principles. Capital may be maintained in the form of an irrevocable letter of credit issued to the benefits consortium by a state or national bank authorized to engage in the banking business in the Commonwealth.*

*D. A benefits consortium may create a self-funded trust through which the members provide for their*

*employees and their dependents any benefit that a member that is a locality is authorized to provide under an accident and health insurance program authorized by § 15.2-1517.*

*E. Except to the extent specifically provided in this section, a benefits consortium organized under and operated in conformity with this section, so long as it remains in good standing under the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and otherwise meets the requirements set forth in this section, shall be exempt from all state taxation, and shall not otherwise be subject to the provisions of Title 38.2, including regulation as a multiple employer welfare arrangement.*