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HOUSE BILL NO. 2233

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 26, 2017)

(Patron Prior to Substitute—Delegate Cline)

A *BILL to amend and reenact § 38.2-1802 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, relating to sales of health benefit plans from persons licensed to sell such plans in other states.*

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1802 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, as follows:

§ 38.2-1802. Acting as agent for unlicensed insurer prohibited; penalties.

A. No person other than a licensed surplus lines broker shall sell, solicit, or negotiate contracts of insurance in this Commonwealth on behalf of any insurer which is not licensed to transact the business of insurance in this Commonwealth. Nothing in this section shall prohibit any person from obtaining insurance upon his own life or property from an unlicensed insurer.

B. Any person violating the provisions of this section shall be guilty upon conviction of a Class 1 misdemeanor and punished for each offense. In addition, any person violating this section shall be (i) liable on any claim against any unlicensed insurer that arises out of a contract or policy sold, solicited, or negotiated by the person or which the person assisted in selling, soliciting, or negotiating; or (ii) punished as provided in §§ 38.2-218 and 38.2-1831; or (iii) subject to both *clauses* (i) and (ii).

C. Nothing in this section shall apply to the selling, soliciting, or negotiating of ~~contracts of insurance on:~~

1. ~~Vessels~~ *Contracts of insurance on vessels* or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance policies as distinguished from inland marine insurance policies, provided that a property and casualty or limited lines property and casualty agent licensed in this Commonwealth sells, solicits, or negotiates these classes of insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth; ~~or~~

2. ~~The~~ *Contracts of insurance on* rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to their ownership, maintenance or operation; ~~or~~

3. *Health benefit plans on behalf of a foreign insurer that is licensed to sell, offer, or provide health benefit plans in any other state, if such foreign insurer is authorized to sell, offer, or provide the health benefit plans in the Commonwealth pursuant to Chapter 64 (§ 38.2-6400 et seq.).*

D. A property and casualty or limited lines property and casualty agent licensed in this Commonwealth who, pursuant to the provisions of subdivision C 1, sells, solicits, or negotiates ocean marine insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth shall provide a notice to the insured stating that the insurance policy is to be placed with an insurer not licensed to transact the business of insurance in the Commonwealth and stating that (i) in the event of the insolvency of the insurer, there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer, and (ii) the insured may not be protected under the insurance laws of this Commonwealth. The notice required by this subsection shall be in a form prescribed by the Commission and shall be signed and dated by the agent and the insured. The signatures required by this subsection may be in electronic form. The agent shall keep a copy of the notice for at least three years after the effective date of the policy to which the notice pertains. A copy of the notice shall be given to the insured prior to placement of the insurance.

CHAPTER 64.**SALE OF HEALTH BENEFIT PLANS BY FOREIGN HEALTH INSURERS.****§ 38.2-6400. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Covered person" means an individual who is entitled to health care services provided, arranged for, paid for, or reimbursed pursuant to a health benefit plan.

"Foreign health insurer" means an insurer domiciled and licensed to sell, offer, or provide health benefit plans in any other state.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a foreign health insurer is unlikely to be able to meet obligations to policyholders with

60 respect to known claims or to any other obligations in the normal course of business.

61 "Health benefit plan" means an arrangement for the delivery of health care, on an individual or
62 group basis, in which an insurer undertakes to provide, arrange for, pay for, or reimburse any of the
63 costs of health care services for a covered person that is offered in accordance with the laws of any
64 state. "Health benefit plan" does not include short-term travel, accident only, limited or specified
65 disease, or individual conversion policies or contracts, nor policies or contracts designed for issuance to
66 persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any
67 other similar coverage under state or federal governmental plans.

68 "Health care services" means the furnishing of services to any individual for the purpose of
69 preventing, alleviating, curing, or healing human illness, injury, or physical disability.

70 "Insurer" means any entity that is authorized to sell, offer, or provide a health benefit plan, including
71 an entity providing a plan of health insurance, health benefit or health care services, an accident and
72 sickness insurance company, a health maintenance organization, a corporation offering a health benefit
73 plan, a fraternal benefit society, or other entity that provides health benefit plans subject to state
74 insurance regulation. "Insurer" does not include a multiple employer welfare arrangement.

75 "Licensed health insurer" means an insurer licensed to sell, offer, or provide health benefit plans in
76 the Commonwealth.

77 "Provider" or "health care provider" means any hospital, physician, or other person authorized by
78 statute, licensed, or certified to furnish health care services.

79 **§ 38.2-6401. When foreign health insurers may offer health benefit plans in the Commonwealth.**

80 A. Notwithstanding any other law, rule, or regulation to the contrary, a foreign health insurer may
81 sell, offer, and provide an individual or group health benefit plan in the Commonwealth, if the foreign
82 health insurer:

83 1. Offers the same health benefit plan that has been approved for use in its domiciliary state and
84 provides documentation that it is in compliance with all applicable laws, regulations, and other
85 requirements of its domiciliary state; and

86 2. Obtains a certificate of registration pursuant to § 38.2-6402.

87 B. Except as provided in this chapter, a health benefit plan sold, offered, or provided by a foreign
88 health insurer in the Commonwealth in accordance with the provisions of this chapter shall not be
89 subject to laws applicable to the sale, offering, or provision of accident and sickness insurance,
90 including, but not limited to, requirements imposed by Articles 1.2 (§ 32.1-137.7 et seq.) and 2.1
91 (§ 32.1-138.6 et seq.) of Chapter 5 of Title 32.1, §§ 38.2-232, 38.2-316, and 38.2-316.1, and Chapters
92 34 (§ 38.2-3400 et seq.), 35 (§ 38.2-3500 et seq.), 37.1 (§ 38.2-3717 et seq.), 42 (§ 38.2-4200 et seq.),
93 43 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 58 (§ 38.2-5800 et seq.), and 59 (§ 38.2-5900 et seq.).

94 **§ 38.2-6402. Registration required.**

95 A. A foreign health insurer shall not sell, offer, or provide a health benefit plan in the
96 Commonwealth until it has registered with the Commission to do so, using a form prescribed by the
97 Commission. The Commission shall issue a certificate of registration to the foreign health insurer unless
98 the Commission determines that the foreign health insurer:

99 1. Will not provide a health benefit plan in compliance with the provisions of this chapter;

100 2. Is in a hazardous financial condition, as determined by an examination by the Commission
101 conducted in accordance with the Financial Condition Examiners Handbook of the National Association
102 of Insurance Commissioners; or

103 3. Has not adopted procedures to ensure compliance with all applicable laws governing the
104 confidentiality of its records with respect to providers and covered persons.

105 B. A certificate of registration issued pursuant to this section shall be valid for three years from the
106 date of issuance by the Commission unless the registration is revoked or suspended pursuant to
107 § 38.2-6404.

108 C. The Commission shall establish by regulation:

109 1. Procedures for a foreign health insurer to renew a registration, pursuant to and consistent with
110 the provisions of this chapter; and

111 2. Registration fees, the amount of which shall be no greater than is reasonably necessary to enable
112 the Commission to carry out the provisions of this chapter.

113 **§ 38.2-6403. Required disclosures.**

114 Any and all certificates and evidences of coverage provided to enrollees, subscribers, or insured
115 members under a health benefit plan provided by a foreign health insurer in the Commonwealth, and all
116 applications or enrollment forms used in connection with such plans, shall disclose in plain language,
117 using at least 14-point bold type, the following:

118 1. The differences between the health benefit plan issued by the foreign health insurer and a policy
119 in accordance with the requirements of this title applicable to an accident and sickness insurance policy
120 issued by a licensed health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.), including a description
121 of the differences that relate to underwriting standards, premium rating, preexisting conditions,

renewability, portability, and cancellation;

2. An explanation of which state's laws govern the issuance of, and requirements under, the health benefit plan offered under this chapter; and

3. A notice in a form prescribed by the Commission that the health benefit plan is being procured from a foreign health insurer that is registered by the Commission to provide or issue such plan, but that the foreign health insurer is not licensed or regulated by the Commission and that there is no protection under the Virginia Life, Accident and Sickness Insurance Guaranty Association, established under Chapter 17 (§ 38.2-1700 et seq.), against financial loss to claimants or policyholders or plan holders because of the insolvency of foreign health insurer not licensed in the Commonwealth. The notice shall be given prior to acceptance of the health benefit plan. In addition, a copy of the notice shall be affixed to the health benefit plan provided or issued to the policyholder or plan holder and to insured members, subscribers, or certificate holders in the evidence of coverage.

§ 38.2-6404. Revocation of registration; marketing materials.

A. The Commission may deny, revoke, or suspend, after notice and opportunity to be heard, a certificate of registration issued to a foreign health insurer pursuant to this chapter upon finding that the foreign health insurer has violated any provision of this chapter, including any finding by the Commission that a foreign health insurer is no longer in compliance with any of the conditions for issuance of a certificate of registration set forth in § 38.2-6402 or any regulation adopted pursuant to this chapter. The Commission shall provide for an appropriate and timely right of appeal for the foreign health insurer whose certificate is denied, revoked, or suspended.

B. The Commission shall establish fair marketing standards for marketing materials used by foreign health insurers in the marketing of health benefit plans in the Commonwealth, which standards shall be consistent with those applicable to health benefit plans offered by a licensed health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.).

C. The procedures and standards established under subsection B shall be applied on a nondiscriminatory basis so as not to place greater responsibilities on foreign health insurers than the responsibilities placed on licensed health insurers.

§ 38.2-6405. Applicability of certain requirements.

A foreign health insurer offering health benefit plans pursuant to this chapter shall comply with:

1. Protections for covered persons from unfair trade practices applicable to accident and sickness insurance pursuant to Chapter 5 (§ 38.2-500 et seq.);

2. The capital and surplus requirements for licensure specified in § 38.2-1028 or 38.2-1029, as determined to be applicable to foreign health insurers by the Commission;

3. Applicable requirements of this title and Title 58.1 pertaining to taxes and assessments imposed on licensed health insurers selling individual and group health insurance policies in the Commonwealth; and

4. Applicable requirements of Title 13.1 regarding the obtaining of authority to transact business in the Commonwealth and the maintenance of a registered office and registered agent.

§ 38.2-6406. Examinations.

The Commission shall be authorized to conduct market conduct and financial condition examinations of all foreign health insurers seeking to offer health benefit plans in the Commonwealth or who have been given approval to offer health benefit plans in the Commonwealth. Such examinations shall be conducted in the same manner and under the same terms and conditions as for domestic licensed health insurers.

§ 38.2-6407. Regulations.

The Commission shall adopt regulations to effectuate the purposes of this chapter; however, the regulations shall not:

1. Require a foreign health insurer, directly or indirectly, to modify coverage or benefit requirements, or restrict underwriting requirements or premium ratings, in any way that conflicts with the insurer's domiciliary state's laws or regulations;

2. Provide for regulatory requirements that are more stringent than those applicable to licensed health insurers; or

3. Require any health benefit plan issued by the foreign health insurer to be countersigned by an insurance agent residing in the Commonwealth.

2. That the provisions of this act shall become effective on July 1, 2018.