

****REVISED****

**State Corporation Commission
2018 Fiscal Impact Statement**

1. Bill Number: HB1268

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

2. Patron: Toscano

3. Committee: Commerce and Labor

4. Title: Health benefits; employees of members of an association.

5. Summary: Authorizes an association organized as a nonstock corporation whose members are employers conducting business in the Commonwealth to sponsor a trust that may offer or sell health plans to its members. To be eligible to sponsor a plan, the association is required to have been actively in existence for five years, have at least five members, have been formed for purposes other than obtaining or providing health benefits, and operate as a nonprofit entity. The health plans are to provide health benefits to the employees of members and the sponsoring association and their dependents. The health plan is a self-funded employee welfare benefit plan governed by and subject to the provisions of the federal Employee Retirement Income Security Act of 1974. The measure requires that health plans offered or sold under the program provide coverage for essential health benefits. The measure exempts such trust from state taxation and from insurance regulations.

6. Budget amendment necessary: No

7. Fiscal Impact Estimates: No Fiscal Impact on the State Corporation Commission. According to the Department of Taxation, fiscal impact estimates are **not** available. (See Line 8.)

8. Fiscal Implications: None on the State Corporation Commission. According to the Department of Taxation:

Administrative Costs

The Department of Taxation ("the Department") has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2019. This bill would allow employers to provide health benefits to their employees by making payments to trusts that have been formed by trade associations of which the employers are members. This bill would provide that such trusts are not subject to Virginia's Insurance Premiums License Tax. To the extent that employers begin using these trusts to provide health benefits to their employees rather than purchasing health insurance from insurance companies, premium income would effectively be diverted away from insurance companies to these trusts. However, because it is unknown how many trade associations in Virginia would form such trusts and how many employers would participate, the extent of the negative revenue impact of this bill is unknown.

9. Specific agency or political subdivisions affected: State Corporation Commission Bureau of Insurance, Department of Taxation

10. Technical amendment necessary: No

11. Other comments: According to the Department of Taxation:

Insurance Premiums License Tax

Virginia imposes the Insurance Premiums License Tax on insurance companies engaged in the business of issuing policies or contracts for certain types of insurance in the state. The tax is generally imposed at a rate equal to 2.25 percent of an insurance company's subscriber fee income or direct gross premium income from such policies or contracts. However, for policies or contracts providing industrial sick benefit insurance, and for certain small domestic insurance companies doing business solely in Virginia, the tax is applied at a rate of one percent. A home service contract is a contract or agreement to perform or indemnify for the repair, replacement, or maintenance of the components, parts, appliances, or systems of a residential dwelling. Under current Virginia law, provider fees collected on home service contracts are subject to the Insurance Premiums License Tax in an amount equal to 2.25.

During the 2011 Session, the General Assembly transferred administration of the Insurance Premiums License Tax from the State Corporation Commission ("SCC") to the Department. The Department became responsible for processing tax returns, handling related payments and billing, customer service functions, and collections and audit duties. The Department also became responsible for administering the retaliatory cost assessment on certain foreign insurance companies, as well as the retaliatory costs tax credit for domestic insurance companies.

The SCC continued to be responsible for the licensing of insurance companies, administering the refund process for surplus funds paid to the Guaranty Association, and administering assessments for the Fire Programs Fund, the Dam Safety, Flood Prevention and Protection Assistance Fund, the program to reduce losses from motor vehicle thefts, and the program to reduce losses from insurance fraud.

Virginia's Corporate Income Tax

Corporations are generally subject to Virginia corporate income tax if they have sufficient nexus with Virginia. The starting point for computing the corporate income tax is a corporation's federal taxable income. A corporation's federal taxable income may be modified by numerous applicable additions, subtractions, and deductions. The resulting amount is a corporation's Virginia taxable income. When a corporation conducts business both within Virginia and outside Virginia, allocation and apportionment are used to determine the portion of such corporation's Virginia taxable income that is subject to Virginia's income tax. When a corporation conducts business only within Virginia, Virginia's income tax is imposed on the entire Virginia taxable income of such corporation.

However, certain corporations are exempt from Virginia income tax. These corporations include:

- A public service corporation to the extent such corporation is subject to the license tax on gross receipts imposed on such corporations;
- Insurance companies to the extent such company is subject to the Insurance Premiums License Tax on gross premiums and reciprocal or inter-insurance exchanges which pay a premium tax to Virginia;
- State and national banks, banking associations and trust companies to the extent such companies are subject to the bank franchise tax on net capital;
- Credit unions organized and conducted as such;
- S corporations;
- Non-profit corporations which by reason of their purposes or activities are exempt from federal income tax under the laws of the United States, except to the extent those organizations have unrelated business income or other taxable income under such laws.

Federal Tax-Exempt Organizations

Certain organizations are exempt from federal income tax. To qualify for exemption from federal income tax, the organization must be organized for one or more of the purposes specifically designated in the federal law. These include:

- An organization organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals;
- Social welfare organizations;

- Labor, agricultural, or horticultural organizations;
- Trade associations;
- Social clubs;
- Fraternal beneficiary societies; and
- Voluntary employees' beneficiary associations.

A trade association is a non-profit association of persons having some common business interest, where its purpose is to promote such common business interest. Trade associations are membership organizations having a meaningful extent of membership support. To be eligible for tax exemption, such association must be directed to the improvement of business conditions of one or more lines of business, as distinguished from the performance of particular services for individual persons. Its primary activity is not permitted to consist of performing particular services for individual persons. Moreover, its purpose must not be to engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining.

A voluntary employees' beneficiary association ("VEBA") may include health benefit plans, life insurance, disability insurance, accident insurance, vacation, or other employee benefits. A VEBA can be a trust, corporation, or association to which employer and/or employee contributions are made.

Proposed Legislation

This bill would allow certain associations organized as nonstock corporations whose members are employers conducting business in Virginia to sponsor a trust that may offer or sell health plans to its members. The bill would provide that the trust would not be subject to:

- Any provision of Virginia insurance law or Virginia insurance regulations, including those provisions and regulations otherwise applicable to multiple employer welfare arrangements; or
- The Virginia Insurance Premium License Tax.

The bill would also provide that the sponsoring association of a trust or any of its subsidiaries would not, by virtue of its sponsorship of the trust or any association plan, be subject to any provisions of Virginia insurance law or regulations or the Virginia Insurance Premiums License Tax.

A "sponsoring association" eligible to sponsor such trusts would be defined as a nonstock corporation formed under Virginia law that:

- Has been actively in existence for at least five years;
- Has had in the five preceding years an average of not fewer than five members, all of which are employers;
- Has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;
- Does not condition membership in the sponsoring association on any factor relating to the health status of an individual, including an employee of a member of the sponsoring association or a dependent of such an employee;
- Makes any association plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through a member;
- Does not make any association plan available to any person who is not a member of the association;
- Operates as a trade association exempt from income taxation under federal tax law; and
- Meets such additional requirements as may be imposed under Virginia law.

To be sponsored by such an association, the trust would be required, among other things, to operate as a nonprofit VEBA. The trust would be permitted to offer or sell health plans to its members. The health plans would be required to provide health benefits to the employees of members and the sponsoring association and their dependents without regard to any factor relating to the health status of such individuals. The health plans would be required to provide coverage for essential health benefits.

The effective date of this bill is not specified.

11. Other comments: The State Corporation Commission Bureau of Insurance advised the patron of House Bill 1268 to consider that the federal Department of Labor has disseminated revised federal rules under Title I of the Employee Retirement Income Security Act (ERISA) that would broaden the criteria for determining when employers may join together in an employer group or association. The proposed rules, when finalized, will clarify the federal regulatory framework for association health plans and multiple employer welfare arrangements (MEWAs).

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Date: 01/26/18/V. Tompkins