

State Corporation Commission

2018 Fiscal Impact Statement

1. **Bill Number:** HB49

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

2. **Patron:** Webert

3. **Committee:** Committee Referral Pending

4. **Title:** Health benefit plans; sale by authorized foreign health insurers.

5. **Summary:** Establishes a procedure by which the State Corporation Commission may authorize health insurers licensed to sell health benefit plans in any other state to sell health benefit plans in Virginia without obtaining a license to engage in the business of insurance in Virginia or complying with other requirements applicable to Virginia-licensed insurers. A health benefit plan sold by an authorized foreign health insurer is not be required to include state-mandated health benefits. The measure establishes criteria to be used by the Commission in determining whether to authorize a foreign health insurer to sell, offer, or provide a health benefit plan in the Commonwealth. The measure authorizes the Commission to conduct market conduct and financial condition examinations of any foreign health insurer that has applied for, or has received, authorization to sell health benefit plans in Virginia. The measure also specifies disclosures that an authorized foreign health insurer is required to include in applications and policies. The measure has a delayed effective date of January 1, 2019.

6. **Budget Amendment Necessary:** No

7. **Fiscal Impact Estimates:** There will be revenue reduction as per Item 8 below, but the amount of reduction cannot be estimated because premium taxes and assessments are based on written premium, and the amount of premium that may be written by foreign health insurers is unknown at this time.

8. **Fiscal Implications:** Loss to the Commonwealth of premium tax revenue otherwise charged of licensed insurers. Loss to the SCC of assessments otherwise charged of licensed insurers.

9. **Specific Agency or Political Subdivisions Affected:** State Corporation Commission
Bureau of Insurance

10. **Technical Amendment Necessary:** No

11. **Other comments:** House Bill 49 is similar to 2017 House Bill 2233. House Bill 2233 was passed by indefinitely by Senate Commerce & Labor.

The State Corporation Commission Bureau of Insurance (Bureau) offered the following comments to the patron of House Bill 49 relating to the sale of health benefit plans by foreign insurers unlicensed in Virginia (Chapter 64 plans):

- It appears that the Virginia business written by foreign health insurers would not be subject to Virginia's premium tax and assessment laws. Given that the volume of business that may be written in Virginia by one or more foreign health insurers is unknown at this time, the Bureau cannot quantify with any certainty the resulting revenue reduction to the Commonwealth.
- In the event a foreign health insurer was to become insolvent and unable to meet its contractual obligations, the Virginia consumers covered under the foreign insurer's policy would not be eligible for the protections available through the Virginia Life, Accident and Sickness Insurance Guaranty Association. Further, the Bureau could not state with any certainty whether or to what extent Virginia policyholders would be protected by the Guaranty Association in the foreign health insurer's domiciliary state in the event the foreign health insurer becomes insolvent.
- There are numerous consumer protections afforded under Virginia law that would not extend to purchasers of a product issued under this proposal. These protections are evident in current product form and rate approval requirements as well as in a number of requirements pertaining to market behavior that are too numerous to cover exhaustively in this letter. A few examples of Virginia consumer protections that would not necessarily extend to purchasers of policies issued by foreign health insurers include the following:
 - a requirement for interest added to late claim payments;
 - prohibitions against certain prescription drug denials;
 - standards for fair business practices associated with contracts between insurers and providers;
 - ensured access to certain specialty providers;
 - requirements pertaining to freedom of choice among pharmacy providers;
 - protections afforded to policyholders through Virginia's requirements governing managed care health insurance plans (MCHIPS), including the services of the Virginia Managed Care Ombudsman and the External Review Office and quality standards regarding the delivery of health care services and access to health care providers;
 - advance notification to policyholders of premium rate increases; and
 - protections afforded to consumers through Virginia's laws and regulations addressing agents, including licensure and sales practices.

Section 38.2-6403 in House Bill 49 identifies specific disclosure requirements for the application and the policy form associated with a health benefit plan issued by a foreign health insurer. It should be noted, however, that because the Commission does not have approval authority over these documents, there will be no means to verify “front-end” compliance with these disclosure requirements through a form review and approval process, as would be done with a licensed insurer in Virginia. Also, while future legislation may change Virginia’s current guaranteed issue requirements, the statement which appears on lines 115 through 122 is currently inaccurate because current law prohibits medical underwriting and requires guaranteed access to coverage regardless of medical conditions. We also suggest that the disclosure should identify potential differences in benefit requirements under the policy issued by the foreign health insurer, as well as the fact that Virginia Life, Accident and Sickness Insurance Guaranty Association coverage would not apply to the policy (as noted above). Consideration should be given to amending the language as follows:

*This health benefit plan is primarily governed by the laws of (insert the name of the state that has approved the foreign health insurer's sale, offer, or provision of the health benefit plan); therefore, all of the laws applicable to health benefit plans approved in Virginia do not apply to this health benefit plan. **including laws relating to protections by the Virginia Life, Accident and Sickness Insurance Guaranty Association against financial loss to policyholders because of the insolvency of the insurer issuing this health benefit plan. The coverage provided through this health benefit plan may be less comprehensive than that which would be provided by a Virginia-approved policy. Also** ~~which may result in premium~~ **increases may be applied** ~~in your premium~~ at renewal that would not be permissible in a Virginia-approved policy. **Depending upon future changes in laws relating to the issuance of health insurance,** ~~Any purchase of an individual health benefit plan should be considered carefully since future medical conditions may make it impossible to qualify for another individual health benefit plan. For information concerning individual health coverage under a Virginia-approved health benefit plan, please consult your insurance agent or the Virginia Bureau of Insurance."~~*

The legislation calls upon the Commission to adopt regulations to “implement this chapter,” and to establish and identify insurers and products that may be sold, offered, or provided in the Commonwealth. It does not appear, however, to establish any enforcement mechanisms, either directly within the proposed chapter or within regulations adopted by the Commission.

Date: 01/8/18/V. Tompkins