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SENATE BILL NO. 1351

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-574, relating to the formation of a benefits consortium by a sponsoring association.*

Patrons—Wagner, DeSteph and Suetterlein

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-574, as follows:

CHAPTER 52.

BENEFITS CONSORTIUM.

§ 59.1-571. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Benefits consortium" means a trust that complies with the conditions set forth in § 59.1-572.

"Benefits plan" means a health plan that is sponsored by a sponsoring association and offered or sold to members through a trust to provide health benefits as permitted under ERISA and the provisions of this chapter.

"ERISA" means the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended.

"Health benefits" means coverage for all or a portion of the costs of medical, prescription drug, dental, and vision care incurred by an individual covered by a health plan.

"Health plan" has the meaning ascribed to employee welfare benefit plan in § 3(1) of ERISA at 29 U.S.C. § 1002(1).

"Member" means a person that (i) conducts business operations within the Commonwealth, (ii) employs individuals who reside in the Commonwealth, and (iii) is a member of the sponsoring association.

"Sponsoring association" means a nonstock corporation formed under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 that:

- 1. Has been actively in existence for at least 10 years;*
- 2. Has had in the five preceding years an average of not fewer than five members;*
- 3. Has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;*

4. 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;

5. Makes any benefits 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;

6. Does not make any benefits plan available to any person who is not a member of the association;

7. Operates as a nonprofit entity under § 501(c)(6) of the Internal Revenue Code of 1986; and

8. Meets such additional requirements as may be imposed under the laws of the Commonwealth.

"Sponsoring association" includes any wholly owned subsidiary of a sponsoring association.

"Trust" means a trust that (i) is established to accept and hold assets of a health plan in trust in accordance with the terms of the written trust document for the sole purposes of providing medical, prescription drug, dental, and vision benefits and defraying reasonable administrative costs of providing health benefits under a benefits plan and (ii) complies with the conditions set forth in § 59.1-572.

§ 59.1-572. Conditions for a benefits consortium.

A trust shall constitute a benefits consortium and be authorized to sell or offer to sell benefits plans to members of the sponsoring association in accordance with the provisions of this chapter if all of the following conditions are satisfied:

1. The trust is subject to (i) ERISA and U.S. Department of Labor regulations applicable to multiple employer welfare arrangements and (ii) the authority of the U.S. Department of Labor to enforce such law and regulations;

2. A Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs), for the applicable plan year shall be filed with the U.S. Department of Labor identifying the arrangement among the trust,

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sponsoring association, and benefits plans offered through the trust as a multiple employer welfare arrangement;

3. The trust operates as a nonprofit voluntary employee beneficiary association within the meaning of § 501(c)(9) of the Internal Revenue Code of 1986;

4. The trust's organizational documents:

a. Provide that the trust is sponsored by the sponsoring association;

b. State that its purpose is to provide medical, prescription drug, dental, and vision benefits to participating employees of the sponsoring association or its members, and the dependents of those employees, through benefits plans;

c. Provide that the funds of the trust are to be used for the benefit of participating employees, and the dependents of those employees, through insurance, self-insurance, or a combination thereof, as determined by the trustee, and for defraying reasonable expenses of administering and operating the trust and any benefits plan;

d. Limit participation in benefits plans to the sponsoring association and its members;

e. Limit the health plans offered through the trust to benefits plans;

f. Grant the sponsoring association the power to appoint the trustee of the trust;

g. Provide the trustee with powers for the control and management of the trust; and

h. Require the trustee to discharge its duties with respect to the trust in accordance with the fiduciary duties defined in ERISA;

5. Five or more members participate in one or more benefits plans;

6. The trust establishes and maintains reserves determined in accordance with sound actuarial principles;

7. The trust has purchased and maintains policies of specific, aggregate, and terminal excess insurance with retention levels determined in accordance with sound actuarial principles from insurers licensed to transact the business of insurance in the Commonwealth;

8. The trust has secured one or more guarantees or standby letters of credit that:

a. Guarantee the payment of claims under the benefits plans in an aggregate amount not less than the trust's annual aggregate excess insurance retention level, minus the annual premium assessments for the benefits plans, minus the trust's net assets, which net assets amount shall be net of the trust's reasonable estimate of incurred but not reported claims; and

b. Have been issued by (i) banks participating in the benefits plans or (ii) qualified United States financial institutions as such term is used in subdivision 2 c of § 38.2-1316.4;

9. The trust has purchased and maintains commercially reasonable fiduciary liability insurance;

10. The trust has purchased and maintains a bond that satisfies the requirements of ERISA;

11. The trust is audited annually by an independent certified public accountant;

12. The trust does not include in its name 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 entity is not an insurance company and is not carrying on the business of insurance; and

13. The trust does not pay commissions or other remuneration to any person that is conditioned upon the enrollment of persons in any benefits plan.

§ 59.1-573. Additional requirements.

A. The board of directors of the sponsoring association shall:

1. Have exclusive fiscal control over and responsibility for the operation of any benefits plan;

2. Operate any benefits plans in accordance with the fiduciary duties defined in ERISA; and

3. Have the power to make and collect special assessments against members and, if any assessment is not timely paid, to enforce collection of such assessment.

B. Each member shall be liable for its allocated share of the liabilities of the sponsoring association under a benefits plan as determined by the board of directors.

C. The payment of commissions or other remuneration to any person on account of the enrollment of persons in any benefits plan is prohibited.

§ 59.1-574. Benefits consortium and sponsoring association not subject to regulation or taxation as an insurance company.

A. A benefits consortium shall not be subject to:

1. The provisions of Title 38.2 or regulations adopted thereunder, including those provisions and regulations otherwise applicable to multiple employer welfare arrangements; or

2. The tax levied on insurance companies pursuant to § 58.1-2501.

B. The sponsoring association of a benefits consortium shall not, by virtue of its sponsorship of the benefits consortium or any benefits plan, be subject to any provisions or regulations described in subdivision A 1 or any tax described in subdivision A 2.