

State Corporation Commission

2019 Fiscal Impact Statement

1. **Bill Number:** HB1661

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. **Patron:** Head

3. **Committee:** Commerce and Labor

4. **Title:** Health benefits; plans established by associations of employers, certain agricultural organizations.

5. **Summary:** Directs the State Corporation Commission to adopt regulations that allow for the creation of association health plans that are consistent with certain regulations of the U.S. Department of Labor. The proposed regulation broadens the criteria under Title I of the federal Employee Retirement Income Security Act (ERISA) to allow employers to form an association solely for the purpose of sponsoring a group health plan for its employer members. Currently, employer groups are prohibited from forming associations or the sole purpose of providing group health coverage. The measure also provides that a health benefit plan sponsored by a nonprofit agricultural organization for its members is not insurance and is not subject to the jurisdiction of the Commissioner of Insurance if the health benefit plan meets certain requirements, including that it provides dues-paying members in all localities with membership opportunities and that it be administered by a third-party administrator. The measure includes provisions that exempt certain transactions regarding multiple employer welfare arrangements from insurer licensing requirements.

6. **Budget amendment necessary:** No

7. **Fiscal Impact Estimates:** No Fiscal Impact on the State Corporation Commission. According to the Virginia Department of Taxation, fiscal impact estimates are unknown. See Item 8.

8. **Fiscal Implications:** According to the Department of Taxation, House Bill 1661 would have an unknown negative General Fund revenue impact beginning in Fiscal Year 2020. It is unknown how many plans would be established that would be exempt from the Insurance Premiums License Tax (see Item 11 below). To the extent that these plans are purchased in lieu of traditional insurance subject to the tax, the bill would result in a negative revenue impact.

9. **Specific agency or political subdivisions affected:** State Corporation Commission Bureau of Insurance and the Virginia Department of Taxation

10. **Technical amendment necessary:** No

11. **Other comments:** The State Corporation Commission Bureau of Insurance raised concerns for the patron's consideration on House Bill 1661. Under current Virginia law, an organization of the type described in this bill meets the current definition of a "multiple employer welfare arrangement" and would therefore be subject to regulation by the Bureau. Virginia imposes strict solvency requirements on these arrangements by requiring that they either be fully insured by a licensed insurer or obtain a license as an insurer. Virginia and

many other states adopted stringent solvency requirements over MEWAs in the early 1990s following a string of MEWA insolvencies across the country, including in Virginia, that left policyholders with unpaid claims and financial hardship. Current Virginia law does not allow for associations or MEWAs to offer self-insured health benefit plan coverage.

If House Bill 1661 was enacted, these organizations and MEWAs which meet the exemption requirements and elect to offer health benefit plans would no longer be required to meet solvency requirements and would be exempt from all other Bureau regulation. If the organization/MEWA became insolvent, policyholders would have no coverage through Virginia's guaranty fund.

The General Assembly has in the past created limited exceptions to the requirement that MEWAs be fully insured and subject to the Bureau's regulation in the case of benefits consortiums sponsored by private education institutions and banks. The organizations and MEWAs covered under House Bill 1661 are fundamentally different from the highly regulated or highly capitalized industries these narrow exceptions would serve. Industries which are fundamentally different and with much higher risk profiles would be able to create such an exemption.

The Department of Taxation also offered the following Other Comments for Item 11. Insurance Premiums License Tax is paid by insurance companies engaged in the business of issuing policies or contracts for certain types of insurance in the Commonwealth. 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.

During the 2011 Session, the General Assembly transferred administration of the Insurance Premiums License Tax from the State Corporation Commission to the Department of Taxation. 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 Commission 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.

Date: 01/17/19/V. Tompkins