

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: Authorizes a trust, as a benefits consortium, to sell health benefits plans to members of a sponsoring association, which is a nonstock corporation that operates as a nonprofit agricultural organization and created primarily to promote programs for the development of rural communities and the economic stability and sustainability of farmers in the Commonwealth. The bill provides that the trust is subject to the federal Employee Retirement Income Security Act of 1974 and U.S. Department of Labor regulations applicable to multiple employer welfare arrangements and to the authority of the U.S. Department of Labor to enforce such law and regulations. The bill requires the trust to operate as a nonprofit voluntary employee beneficiary association. The bill (i) prohibits a self-funded multiple employer welfare arrangement (MEWA) from issuing health benefit plans in the Commonwealth until it has obtained a license from the State Corporation Commission; (ii) provides that health benefit plans issued by a self-funded MEWA shall be subject to taxes and maintenance assessments levied upon insurance companies; (iii) provides that health benefit plans issued by a self-funded MEWA are subject to protections of and other provisions of the Virginia Life, Accident and Sickness Insurance Guaranty Association; (iv) makes domestic self-funded MEWAs subject to all financial and solvency requirements imposed by provisions of Title 38.2 on domestic insurers unless domestic self-funded MEWAs are otherwise specifically exempted; and (v) provides that health benefit plans issued by a self-funded MEWA shall be exempt from all statutory requirements relating to insurance premium rates, policy forms, and policy cancellation and nonrenewal. The bill provides that the sponsoring association shall not, by virtue of its sponsorship of the benefits consortium or any benefits plan, be subject to the insurance laws of the Commonwealth or the tax levied on insurance companies pursuant to § 58.1-2501.

6. Budget amendment necessary: No

7. Fiscal Impact Estimates: No Fiscal Impact on the State Corporation Commission.

8. Fiscal Implications: None

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

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, many of which were addressed in the January 31, 2019 amendment in the nature of a substitute. The new subsection B in §38.2-3420 applies certain solvency regulations under Title 38.2 to self-funded MEWAs (i.e. trust/benefits consortium). Self-funded MEWAs would be subject to 1) taxes and assessments pursuant to Chapter 25 of Title 58.1 (Insurance Premium License Tax); 2) the provisions of the Virginia Life, Accident, and Sickness Insurance Guaranty Association pursuant to Chapter 17; and 3) all financial and solvency requirements pursuant to Chapter 15 (Insurer Rehabilitation and Liquidation). In addition, the new subsection B in §38.2-3420 exempts self-funded MEWAs from market regulations relating to premium rates, policy forms, and policy cancellation and nonrenewal. Subsection B also provides that foreign self-funded MEWAs are required to obtain a license from the Commission, pursuant to Commission regulations, in order to operate in Virginia.

The new Chapter 52 (Benefits Consortium) in Title 59.1 (Trade and Commerce) of the Code of Virginia, exempts a sponsoring association (nonprofit agricultural organization) of a benefits consortium from regulation as a MEWA or as an insurance company under Title 38.2 of the Code of Virginia, and from taxation as applicable to an insurance company. The new Chapter 52 is similar to the Financial Institutions Benefits Consortium statute (§ 6.2-951 et seq. of the Code of Virginia) and parts of the Institutions of Higher Education Not-For-Profit Benefits Consortium statute (§ 23.1-106 of the Code of Virginia). Specifically, the new § 59.2-572 (Conditions for a benefits consortium) is almost the same as § 6.2-952 (Conditions for a benefits consortium), and the new § 59.1-574 (Sponsoring association not subject to regulation or taxation as an insurance company) are almost the same as § 6.2-953 (Benefits consortium and sponsoring association not subject to regulation or taxation as an insurance company). The provisions contained in the new §59.1-573 (Additional requirements) are similar to provisions contained in §23.1-106 B (Formation of not-for-profit benefits consortium).

House Bill 2443 and Senate Bill 1689 are substantially similar to House Bill 1661.

Date: 02/10/19/V. Tompkins