

State Corporation Commission

2019 Fiscal Impact Statement

1. Bill Number: SB1689

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

2. Patron: Dunnavant

3. Committee: Commerce and Labor

4. Title: Group health benefit plans; bona fide associations; benefits consortium.

5. Summary: Authorizes an association organized as a nonstock corporation whose members are employers conducting business in the Commonwealth to sponsor a trust. The measure authorizes the trust, called a benefits consortium, to sell benefits plans to its members. The benefits plans may provide medical prescription drug, dental, and vision coverage for the employees of members and the sponsoring association and their dependents. The benefits may be self-funded or purchased from an insurer. The benefits consortium will be a multiple employer welfare arrangement subject to the provisions of the federal Employee Retirement Income Security Act of 1974. The measure exempts the benefits consortium from state taxation and insurance regulations. The measure also replaces references to "bona fide association," as used in provisions applicable to health care plans in the small employer market, with the term "sponsoring association."

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: There is no fiscal impact on the State Corporation Commission. However, according to the Virginia Department of Taxation, fiscal impact estimates are unknown. See Item 8.

8. Fiscal Implications: There is no fiscal impact on the State Corporation Commission. However, according to the Department of Taxation, Senate Bill 1689 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 Senate Bill 1689. 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 Senate Bill 1689 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 Senate Bill 1689 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.

Senate Bill 1351 and House Bill 1661 are similar to Senate Bill 1689.

Date: 01/29/19/V. Tompkins