

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 38.2-3432 of the Code of Virginia, relating to accident and sickness insurance; small employer market; preexisting conditions.*

[H 835]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-3432 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-3432. Small employer market subject to certain provisions.

A. Every individual or group policy, subscription contract or plan delivered, issued for delivery or renewal in this Commonwealth or providing benefits to or on behalf of a small employer pursuant to this article is subject to the following provisions:

1. Except in the case of a late enrollee, any preexisting-conditions provision may not limit, deny or exclude coverage for a period beyond twelve months following the insured's effective date of coverage and may only relate to conditions manifesting themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment or for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage or as to a pregnancy existing on the effective date of coverage.

2. A condition which would otherwise be covered pursuant to subdivision A 1 may not be excluded from coverage.

3. In determining whether a preexisting-conditions provision applies to an insured, all coverage shall credit the time the person was covered under previous ~~individual or group policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis~~ coverage provided under: (i) Medicare, Medicaid, CHAMPUS, the Indian Health Service Program or any other similar publicly sponsored program, (ii) a group health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the essential health benefit plan, or (iii) an individual health insurance policy, including coverage issued by a health maintenance organization, health services plan or fraternal benefit society, that provides benefits similar to or exceeding the benefits provided under the essential health benefit plan if the previous coverage was continuous to a date not more than thirty days prior to the effective date of the new coverage, whether or not the new coverage is provided by a different employer, exclusive of any applicable waiting period under such coverage.

B. Coverage shall be renewable with respect to all insureds at the option of the employer except:

1. For nonpayment of the required premiums by the policyholder, contract holder or enrollee;

2. For abuse or misuse of a provider network provision;

3. For fraud or misrepresentation of the policyholder, contract holder or enrollee, with respect to their coverage;

4. When the employer is no longer actively engaged in the business in which it was engaged on the effective date of the coverage;

5. For failure to comply with contribution and participation requirements defined by the health benefit plan;

6. For failure to comply with health benefit plan provisions that have been approved by the Commission;

7. When primary small employer new business ceases to be written by an insurer in the small employer market, provided that the following conditions are satisfied:

a. Notice of the decision to cease writing new business in the primary small employer market is provided to the Commission and to either the policyholder, contract holder, enrollee or employer;

b. Writing new business in the primary small employer market in this Commonwealth shall be prohibited for a period of three years from the date of notice to the Commission pursuant to this subdivision. In the case of a health maintenance organization which ceases to do new business in the small employer market in one service area of the Commonwealth, the rules set forth in this subdivision shall apply to the health maintenance organization's operations in that service area;

c. When a small employer carrier ceases to write new business and renew business in the primary small employer market, it may continue to participate in the market of small employers which are not primary small employers if it complies with the provisions of this article applicable to the small employer market. Nothing in this provision shall prohibit a small employer carrier from writing and renewing business in the primary small employer market if it has ceased writing and renewing business to small employers which are not primary small employers; and

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HB835ER

57 d. Health benefit plans subject to this article shall not be canceled for 180 days after the date of the  
58 notice required under subdivision 7 a of this subsection and for that business of a small employer carrier  
59 which remains in force, any small employer carrier that ceases to write new business in the small  
60 employer market shall continue to be governed by this article with respect to business conducted under  
61 this article; or

62 8. Benefits and premiums which have been added by rider to the essential or standard benefit plans  
63 issued to primary small employers shall be renewable at the sole option of the small employer carrier.

64 C. If coverage is offered under this article, such coverage shall be offered and made available to all  
65 of the eligible employees of a small employer and their dependents. No coverage may be offered to only  
66 certain eligible employees or their dependents and no employees or their dependents may be excluded or  
67 charged additional premiums because of health status; provided that small employer groups having  
68 policies, contracts or plans in effect prior to July 1, 1994, which charge different premiums to their  
69 employees or dependents because of health status, may, upon written request to the small employer  
70 carrier at the time of any renewal of such policy, contract or plan, continue to have different premiums  
71 charged to their employees and dependents because of health status; however, this ability to charge  
72 different premiums because of health status shall expire on July 1, 1997.

73 D. If coverage to the small employer market pursuant to this article ceases to be written,  
74 administered or otherwise provided, such coverage shall continue to be governed by this article with  
75 respect to business conducted under this article that was transacted prior to the effective date of  
76 termination and that remains in force.

77 E. No coverage offered under this article shall exclude an employer based solely on the nature of the  
78 employer's business.