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HOUSE JOINT RESOLUTION NO. 681

Offered January 21, 1999

Memorializing the U.S. Congress to amend ERISA to grant authority to the several states to regulate self-funded employer-based health plans.

Patrons—Brink, Almand, Armstrong, Barlow, Baskerville, Bennett, Christian, Crittenden, Darner, Day, Deeds, Grayson, Hall, Johnson, Jones, D.C., Jones, J.C., Keating, McEachin, Moran, Moss, Phillips, Plum, Robinson, Shuler, Tate, Van Landingham, Van Yahres, Watts and Woodrum; Senators: Couric, Edwards, Gartlan, Howell, Marsh, Miller, Y.B., Puckett, Reynolds, Ticer and Whipple

Referred to Committee on Rules

WHEREAS, the McCarran-Ferguson Act, passed by the U.S. Congress in 1945, established a statutory framework whereby responsibility for regulating insurance and the insurance industry was left largely to the states; and

WHEREAS, the Employee Retirement Income Security Act of 1974 (ERISA) significantly altered this concept by creating a federal framework for regulating employer-based pension and welfare benefit plans, including health plans; and

WHEREAS, the provisions of ERISA preempt states from directly regulating most employer-based health plans, which are not deemed to be "insurance" for purposes of federal laws; and

WHEREAS, over the past twenty-four years, state governments have gradually come to realize that ERISA is an impediment to ensuring adequate consumer protections for all individuals with employer-based health care coverage and to enacting administrative simplification and cost reduction reforms that could improve the efficiency and equity of their health care markets; and

WHEREAS, available data suggests that self-funding of employer-based health plans is increasing at a significant rate, both among larger and smaller businesses; and

WHEREAS, between 1989 and 1993, the General Accounting Office estimates that the number of self-funded plan enrollees increased by about six million individuals; and

WHEREAS, approximately 40-50 percent of employer-based health plans are presently self-funded by employers, who retain most or all of the financial risk for their respective health plans; and

WHEREAS, as self-funding of health plans has grown, states have lost regulatory oversight over this growing portion of the health market; and

WHEREAS, given the improbability of federal reforms to achieve universal health coverage in the near future, many state legislatures are seeking an active role in expanding the number of individuals covered by an insurance plan and in controlling health care costs and regulating abuses; and

WHEREAS, the preemption provisions of ERISA are an obstacle to the states adopting a wide range of health care reform strategies; and

WHEREAS, employers are increasingly adopting funding methods for their health plans that blur the distinction between self-funded and fully insured, including more extensive use of stop-loss coverage and risk-sharing arrangements with managed care organizations; and

WHEREAS, these innovative funding methods have so blurred the distinction between self-funded and fully insured health plans that many experts argue that there is no real distinction at all; and

WHEREAS, the states' inability to protect consumers enrolled in self-funded health plans from employers or plans that fail to provide the consumers' anticipated level of health care is gradually eroding the public's confidence in government, even as self-funded plans are afforded an unfair advantage over traditional health insurance providers due to a lack of state or federal accountability, regulation or remedy for the individual members of ERISA plans confronting benefit denials; and

WHEREAS, Courts have narrowly interpreted ERISA's remedy provisions and broadly interpreted ERISA's preemption provisions, thereby creating a substantial, economic incentive for plan administrators to deny medically necessary benefits legitimately covered under ERISA plans; and

WHEREAS, the time has now come for the several states to aggressively seek changes in ERISA to give them more flexibility in regulating health plans at the state level and to increase access to health care and to lower health costs; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia General Assembly hereby memorialize the United States Congress to amend the Employment Retirement Income Act of 1974 (ERISA) to grant authority to all individual states to monitor and regulate self-funded employer-based health plans in the interest of providing greater consumer protection and effecting significant health care reforms at the state level through the office of the Commissioner of the Bureau of Insurance and with the legal enforcement through the Virginia Attorney General's Office. Such authority

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60 should allow recovery of benefits due plan participants, recovery from the fiduciary compensatory
61 damages caused by the fiduciary's failure to pay benefits due under the plan, enforcement of the plan
62 participant's rights under the terms of the plan, or should authorize timely assurance of payment and
63 clarification of the plan participants' rights to future benefits under the terms of the plan. Additionally,
64 there should be a cooperative receipt of referral of complaints from the United States Department of
65 Labor to the State Attorney General and the State Commissioner for the Bureau of Insurance for
66 regulation and timely enforcement. ERISA plans would be regulated in direct accordance with the plan
67 benefit language. Corporations with employees in several states would have their health plans regulated
68 by the Attorney General and the State Corporation Commission's Bureau of Insurance in cooperation
69 with the Department of Labor in the state in which the home office of the corporation resides.
70 Employers shall be immune from prosecution with an ERISA claim and shall have the right to remain
71 self-funded without risk of liability through ERISA plans, and be it

72 RESOLVED FURTHER, That the Virginia General Assembly most fervently urge and encourage
73 each state legislative body of the United States of America to enact this resolution, or one similar in
74 context and form, as a show of solidarity in petitioning the federal government for greater state authority
75 in regulating self-funded employer-based health plans; and, be it

76 RESOLVED FINALLY, That The Clerk of the House of Delegates be hereby directed to transmit
77 enrolled copies of this resolution to the President of the United States; the Secretary of the United States
78 Department of Labor; the Speaker and Clerk of the United States House of Representatives; the
79 President and Secretary of the United States Senate, each member of the Virginia Congressional
80 Delegation; and to the presiding officer of each house of each state legislative body in the United States
81 of America.