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HOUSE BILL NO. 536

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 38.2-1802 of the Code of Virginia and to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, relating to certain employers in the Commonwealth to purchase health benefits plans from persons licensed to sell such plans in other states.

Patrons—Marshall, D.W., Merricks and Peace

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1802 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 64, consisting of sections numbered 38.2-6400 through 38.2-6407, as follows:

§ 38.2-1802. Acting as agent for unlicensed insurer prohibited; penalties.

A. No person other than a licensed surplus lines broker shall sell, solicit, or negotiate contracts of insurance in this Commonwealth on behalf of any insurer which is not licensed to transact the business of insurance in this Commonwealth. Nothing in this section shall prohibit any person from obtaining insurance upon his own life or property from an unlicensed insurer.

B. Any person violating the provisions of this section shall be guilty upon conviction of a Class 1 misdemeanor and punished for each offense. In addition, any person violating this section shall be (i) liable on any claim against any unlicensed insurer that arises out of a contract or policy sold, solicited, or negotiated by the person or which the person assisted in selling, soliciting, or negotiating, or (ii) punished as provided in §§ 38.2-218 and 38.2-1831, or (iii) subject to both (i) and (ii).

C. Nothing in this section shall apply to the selling, soliciting, or negotiating of ~~contracts of~~ insurance on:

1. ~~Vessels~~ *Contracts of insurance on vessels* or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance policies as distinguished from inland marine insurance policies, provided that a property and casualty or limited lines property and casualty agent licensed in this Commonwealth sells, solicits, or negotiates these classes of insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth; or

2. ~~The~~ *Contracts of insurance on the* rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to their ownership, maintenance or operation; or

3. *Health benefits plans on behalf of an insurer that is licensed to sell, offer, or provide health benefits plans in any other state, if such foreign insurer is authorized to sell, offer, or provide the health benefits plans to eligible employers in the Commonwealth pursuant to Chapter 64 (§ 38.2-6400 et seq.).*

D. A property and casualty or limited lines property and casualty agent licensed in this Commonwealth who, pursuant to the provisions of subdivision C 1, sells, solicits, or negotiates ocean marine insurance on behalf of any insurer not licensed to transact the business of insurance in this Commonwealth shall provide a notice to the insured stating that the insurance policy is to be placed with an insurer not licensed to transact the business of insurance in the Commonwealth and stating that (i) in the event of the insolvency of the insurer, there is no protection under the Virginia Property and Casualty Insurance Guaranty Association against financial loss to claimants or policyholders because of the insolvency of an unlicensed insurer, and (ii) the insured may not be protected under the insurance laws of this Commonwealth. The notice required by this subsection shall be in a form prescribed by the Commission and shall be signed and dated by the agent and the insured. The signatures required by this subsection may be in electronic form. The agent shall keep a copy of the notice for at least three years after the effective date of the policy to which the notice pertains. A copy of the notice shall be given to the insured prior to placement of the insurance.

CHAPTER 64.**HEALTH INSURANCE CHOICE.**

§ 38.2-6400. Definitions.

As used in this chapter, unless the context requires otherwise:

"Covered person" means an individual who is entitled to health care services provided, arranged for, paid for, or reimbursed pursuant to a health benefits plan arranged through an eligible employer.

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59 "Domestic health insurer" means an insurer licensed to sell, offer, or provide health benefits plans in
60 the Commonwealth.

61 "Eligible employer" means a person that employed within the Commonwealth at least two but not
62 more than 50 employees during any year in which a health benefits plan is offered or provided under
63 the provisions of this chapter.

64 "Foreign health insurer" means an insurer licensed to sell, offer, or provide health benefits plans in
65 any other state.

66 "Hazardous financial condition" means that, based on its present or reasonably anticipated financial
67 condition, a foreign health insurer is unlikely to be able to meet obligations to policyholders with
68 respect to known claims or to any other obligations in the normal course of business.

69 "Health benefits plan" means an arrangement for the delivery of health care, on a group basis, in
70 which a health carrier undertakes to provide, arrange for, pay for, or reimburse any of the costs of
71 health care services for a covered person that is offered in accordance with the laws of any state.

72 "Health benefits plan" does not include short-term travel, accident only, limited or specified disease, or
73 individual conversion policies or contracts, nor policies or contracts designed for issuance to persons
74 eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other
75 similar coverage under state or federal governmental plans.

76 "Health care services" means the furnishing of services to any individual for the purpose of
77 preventing, alleviating, curing, or healing human illness, injury, or physical disability.

78 "Insurer" means any entity that is authorized to sell, offer, or provide a health benefits plan,
79 including an entity providing a plan of health insurance, health benefits or health services, an accident
80 and sickness insurance company, a health maintenance organization, a corporation offering a health
81 benefits plan, a fraternal benefit society, or other entity that provides health benefits plans subject to
82 state insurance regulation. "Insurer" shall not include a multiple employer welfare arrangement.

83 "Provider" or "health care provider" means any hospital, physician, or other person authorized by
84 statute, licensed, or certified to furnish health care services.

85 § 38.2-6401. When foreign health insurers may offer health benefits plans to eligible employers in the
86 Commonwealth.

87 A. Notwithstanding any other law, rule, or regulation to the contrary, a foreign health insurer may
88 sell, offer, and provide a health benefits plan to eligible employers in the Commonwealth, if the foreign
89 health insurer:

90 1. Offers the same health benefits plan in its domiciliary state and is in compliance with all
91 applicable laws, regulations, and other requirements of its domiciliary state; and

92 2. Obtains a certificate of registration pursuant to § 38.2-6402.

93 B. Except as provided in this chapter, a health benefits plan sold, offered, or provided by a foreign
94 health insurer in the Commonwealth in accordance with the provisions of this chapter shall not be
95 subject to laws applicable to the sale, offering, or provision of accident and sickness insurance,
96 including, but not limited to, requirements imposed by Articles 1.2 (§ 32.1-137.7 et seq.) and 2.1
97 (§ 32.1-138.6 et seq.) of Chapter 5 of Title 32.1, §§ 38.2-232 and 38.2-316, and Chapters 34
98 (§ 38.2-3400 et seq.), 35 (§ 38.2-3500 et seq.), 37.1 (§ 38.2-3717 et seq.), 42 (§ 38.2-4200 et seq.), 43
99 (§ 38.2-4300 et seq.), 45 (§ 38.2-4500 et seq.), 58 (§ 38.2-5800 et seq.), and 59 (§ 38.2-5900 et seq.).

100 § 38.2-6402. Registration required.

101 A. A foreign health insurer shall not sell, offer, or provide a health benefits plan to eligible
102 employers in the Commonwealth until it has registered with the Commission to do so, using a form
103 prescribed by the Commission. The Commission shall issue a certificate of registration to the foreign
104 health insurer unless the Commission determines that the foreign health insurer:

105 1. Will not provide a health benefits plan in compliance with the provisions of this chapter;

106 2. Is in a hazardous financial condition, as determined by an examination by the Commissioner
107 conducted in accordance with the Financial Analysis Handbook of the National Association of Insurance
108 Commissioners; or

109 3. Has not adopted procedures to ensure compliance with all applicable laws governing the
110 confidentiality of its records with respect to providers, eligible employers, and covered persons.

111 B. A certificate of registration issued pursuant to this section shall be valid for three years from the
112 date of issuance by the Commission.

113 C. The Commission shall establish by regulation:

114 1. Procedures for a foreign health insurer to renew a registration, pursuant to and consistent with
115 the provisions of this chapter; and

116 2. Registration fees, the amount of which shall be no greater than is reasonably necessary to enable
117 the Commission to carry out the provisions of this chapter.

118 § 38.2-6403. Required disclosures.

119 Each health benefits plan provided by a foreign health insurer to eligible employers in the
120 Commonwealth, and each application for the health benefits plan, shall disclose in plain language the

following:

1. The differences between the health benefits plan issued by the foreign health insurer and a policy in accordance with the requirements of this title applicable to an accident and sickness insurance policy issued by a domestic health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.), using at least 14-point bold type to describe the differences that relate to underwriting standards, premium rating, preexisting conditions, renewability, portability, and cancellation; and

2. An explanation of which state's laws govern the issuance of, and requirements under, the health benefits plan offered under this chapter.

§ 38.2-6404. Revocation of registration; marketing materials.

A. The Commission may deny, revoke, or suspend, after notice and opportunity to be heard, a certificate of registration issued to a foreign health insurer pursuant to this chapter upon finding that the foreign health insurer has violated any provision of this chapter, including any finding by the Commission that a foreign health insurer is no longer in compliance with any of the conditions for issuance of a certificate of registration set forth in § 38.2-6402 or any regulation adopted pursuant to this chapter. The Commission shall provide for an appropriate and timely right of appeal for the foreign health insurer whose certificate is denied, revoked, or suspended.

B. The Commission shall establish fair marketing standards for marketing materials used by foreign health insurers to market health benefits plans to eligible employers in the Commonwealth, which standards shall be consistent with those applicable to health benefits plans offered by a domestic health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.).

C. The procedures and standards established under subsection B shall be applied on a nondiscriminatory basis so as not to place greater responsibilities on foreign health insurers than the responsibilities placed on domestic health insurers doing business in the Commonwealth.

§ 38.2-6405. Applicability of certain requirements.

A foreign health insurer offering health benefits plans pursuant to this chapter shall comply with:

1. Protections for covered persons from unfair trade practices applicable to accident and sickness insurance pursuant to Chapter 5 (§ 38.2-500 et seq.);

2. The capital and surplus requirements for licensure specified in § 38.2-1028 or 38.2-1029, as determined to be applicable to foreign health insurers by the Commission;

3. Applicable requirements of this title and Title 58.1 pertaining to taxes and assessments imposed on domestic health insurers selling individual and group health insurance policies in the Commonwealth; and

4. Applicable requirements of Title 13.1 regarding the obtaining of authority to transact business in the Commonwealth and the maintenance of a registered office and registered agent.

§ 38.2-6406. Examinations.

The Commissioner shall be authorized to conduct market conduct and solvency examinations of all out-of-state companies seeking to offer health benefits plans in the Commonwealth or who have been given approval to offer health benefits plans in the Commonwealth. Such examinations shall be conducted in the same manner and under the same terms and conditions as for domestic insurers licensed to sell health benefits plans in the Commonwealth.

§ 38.2-6407. Regulations.

The Commission shall adopt regulations to effectuate the purposes of this chapter; however, the regulations shall not:

1. Directly or indirectly require a foreign health insurer to, directly or indirectly, modify coverage or benefit requirements, or restrict underwriting requirements or premium ratings, in any way that conflicts with the insurer's domiciliary state's laws or regulations;

2. Provide for regulatory requirements that are more stringent than those applicable to carriers that are licensed by the Commissioner to provide health benefits plans in the Commonwealth; or

3. Require any health benefits plan issued by the foreign health insurer to be countersigned by an insurance agent or broker residing in the Commonwealth.

2. That the provisions of this act shall become effective on July 1, 2012.