

**State Corporation Commission
2010 Fiscal Impact Statement**

1. Bill Number: HB536

House of Origin X Introduced ___ Substitute ___ Engrossed
Second House ___ In Committee ___ Substitute ___ Enrolled

2. Patron: Marshall, D.W.

3. Committee: Commerce and Labor

4. Title: **Health benefits plans offered by foreign health insurers.**

5. Summary: Creates a new Chapter 64 in Title 38.2 to allow the offering of out-of-state health insurance plans to employers in the Commonwealth that have at least two but not more than 50 employees by health insurers licensed in other states.

6. No Fiscal Impact on the State Corporation Commission

7. Budget amendment necessary: No

8. Fiscal implications: None on the State Corporation Commission

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

10. Technical amendment necessary: The definition of the term “domestic health insurer” used in proposed Chapter 64 at Line 22 is inconsistent with the definition of “domestic company” contained in § 38.2-100 of the Code of Virginia. It is suggested that the word “Domestic” be stricken in the definition on Line 22 and the word “Licensed” be inserted.

11. Other comments: The Bureau of Insurance offered the patron the following comments on House Bill 536:

Financial Solvency

HB 536 provides limited financial standards for the registration of Chapter 64 foreign health insurers and thus removes much of the authority of the Bureau of Insurance with respect to the effective financial oversight of such insurers, both at the time the insurer applies for registration and after it has registered. Specifically, the proposal provides that a Chapter 64 licensee only be subject to the baseline minimum capital and surplus requirements of Chapter 10 of Title 38.2 and a determination that the insurer is not in hazardous financial condition, a general criterion that is not placed into any context of specific standards. By contrast, insurers currently licensed to do business in Virginia are subject to an array of statutory financial standards in Title 38.2 that apply to the assessment of such critical areas as the insurer’s investments, policy and claim reserve adequacy, capital requirements calibrated to the insurer’s own risk exposures (i.e. risk-based

capital), reinsurance coverage, and operating performance. In addition, licensed insurers are subject to regular reporting and examination requirements to ensure timely monitoring.

It should be noted generally that the application of such standards and requirements helps ensure appropriate margins against uncertainty, supports a degree of confidence against insolvency, and aims to target financially troubled insurers for attention long before the insurer reaches a state of “hazardous financial condition.” Staying regulatory action until an insurer reaches such a hazardous state potentially endangers solvency protection for consumers. Further, there are mechanisms in place for states to intervene and perform the function of peer review in the case of the other state’s inaction. Inaction by a state occurs when a state is faced with certain economic and political consequences involved with taking action against a domestic insurer. The inability of the Bureau of Insurance to apply statutory financial standards, and to conduct peer reviews, arguably weakens solvency protection for consumers substantially.

The Bureau of Insurance suggested two options for the patron’s consideration:

1. Consider making the foreign unlicensed companies (i.e. insurers, health maintenance organizations and health service plans) subject to the same level of financial requirements as carriers licensed in Virginia:.

On Line 100, after “2,” strike and insert as follows:

~~*Is in a hazardous financial condition, as determined by an examination by the Commissioner conducted in accordance with the Financial Analysis Handbook of the National Association of Insurance Commissioners*~~ *Has not complied with all financial condition requirements applicable to foreign insurers licensed to transact the business of insurance in this Commonwealth, pursuant to Chapters 10, 12, 13, 14, 15, 17, 41, 42, 43, 55, 58 and 61 of Title 38.2 of the Code of Virginia ;*

2. As an alternative to the first option, if the patron did not wish to consider a change in the financial requirements as set forth in HB 536, the Bureau suggested revisions to § 38.2-6403 beginning at Line 119. This proposed disclosure adds a new subdivision 3 which would be included in policies and evidences of coverage and is similar to that for unlicensed surplus lines carriers (subsection B of § 38.2-4806 of the Code):

§ 38.2-6403. Required disclosures.

Any and all certificates and evidences of coverage provided to enrollees, subscribers or insured members under a ~~Each~~ health benefits plan provided by a foreign health insurer to eligible employers in the Commonwealth, and ~~each application for the health benefit plan~~, any and all applications or enrollment forms used in connection with such plans, shall disclose in plain language, using at least 14-point bold type, the following:

1. The differences between the health benefits plan issued by the foreign health insurer and an accident and sickness insurance policy issued by a ~~domestic licensed~~ health insurer pursuant to Chapter 34 (§ 38.2-3400 et seq.) of this title, and
2. An explanation of which state's laws govern the issuance of, and requirements under, the health benefits plan offered under this chapter.
3. A notice in a form prescribed by the Commission shall be given to the policyholder/planholder under the provisions of a health benefits plan procured pursuant to this chapter. The notice shall contain, but not be limited to, statements that the health benefits plan is being procured from a foreign health insurer that is registered by the Commission to provide or issue such plan, but that the foreign health insurer is not licensed or regulated by the Commission and that there is no protection under the Virginia Life, Accident and Sickness Insurance Guaranty Association, established under Chapter 17 (§ 38.2-1700 et seq.) of this title, against financial loss to claimants or policyholders/planholders because of the insolvency of an unlicensed foreign health insurer. The notice shall be given prior to acceptance of the health benefits plan. In addition, a copy of the notice shall be affixed to the health benefits plan provided or issued to the policyholder/planholder and to insured members, subscribers or certificateholders in the evidence of coverage.

Market and Consumer Issues

1. Virginia's domestic insurers may arguably be placed at a competitive disadvantage by not being allowed to offer products marketed by Chapter 64 plans. Foreign insurers with fewer mandates and lesser regulatory requirements may trend toward dominating the Virginia market. In fact, insurance organizations may be incentivized to "forum shop" to organize in jurisdictions with lax regulation and enforcement, particularly in regard to activities outside the home jurisdiction itself, i.e. the issue of extraterritorial non-enforcement.

2. There are numerous consumer protections afforded under Virginia law that would not extend to purchasers of a product issued under this proposal unless the foreign insurer's state of domicile had similar requirements and exercised oversight and enforcement over contracts issued to all non-residents. These protections are evident in current product and underwriting/rating requirements as well as in the requirements pertaining to market behavior; the specific details of all these requirements are too numerous to cover exhaustively in this memorandum. A few examples include a requirement for interest added to late claim payments;

prohibitions against certain prescription drug denials; standards for fair business practices associated with contracts between insurers and providers; ensured access to certain specialty providers; requirements pertaining to freedom of choice among pharmacy providers; advance notification to policyholders of premium rate increases in excess of 35%; a mandated offer for a point of service option for HMO enrollees; and a requirement on licensed insurers to offer two basic health care plans in the small employer market.

3. Policies issued under this proposal would not be subject to Virginia's requirements governing managed care health insurance plans (MCHIPs), which include significant consumer services. The Office of the Virginia Managed Care Ombudsman and the External Appeals Office were created under Chapter 59 of Title 38.2 to assist consumers in their efforts to appeal adverse medical claim decisions made by the MCHIPs. Both of these functions have served Virginia's consumers by providing a fair and balanced method of resolving difficult medical issues. While the home jurisdiction of a Chapter 64 company may provide for similar mechanisms for persons resident or covered under policies issued in its jurisdiction, it is unclear whether or not a Virginia resident covered under a policy issued by a Chapter 64 company in Virginia could avail him- or herself of such mechanisms.

4. Other significant areas of "MCHIP" oversight that would not apply to Chapter 64 companies under this proposal include quality standards regarding the delivery of health care services, access to health care providers, and comprehensive standards regarding the MCHIP's complaint system. Some of these are enforced by the Bureau of Insurance and some by the Virginia Department of Health (see Chapter 58 of Title 38.2 and Chapter 1 of Title 32.1 respectively). Again, the home jurisdiction of a Chapter 64 plan may have similar standards but it is unclear how and to what extent that insurer's chosen state of domicile would or could assert its authority in Virginia where care is rendered.

5. Virginia health insurance mandates would not apply to Chapter 64 plans.

6. The Insurance Agents chapter (Chapter 18 of Title 38.2) is excluded in HB 31, which means that there is no regulation of agents as to licensure, qualifications and activities of agents in the sale of out-of-state products.

House Bill 536 is similar to House Bill 31 and House Bill 720.

Date: 01/24/10/V. Tompkins

cc: Secretary of Commerce and Trade
Secretary of Health and Human Resources