

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 578

*An Act to amend and reenact § 23-4.2:1 of the Code of Virginia, relating to benefits consortia; benefits plans.*

[H 757]

Approved April 4, 2014

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

**1. That § 23-4.2:1 of the Code of Virginia is amended and reenacted as follows:**

**§ 23-4.2:1. Formation of not-for-profit benefits consortium.**

A. As used in this section:

"Benefits consortium" means a nonstock corporation formed pursuant to subsection B.

"Benefits plan" means plans adopted by the board of directors of a benefits consortium to provide health and welfare benefits to employees of private educational institutions that are members of the benefits consortium, *employees of the sponsoring association of the benefits consortium, employees of the benefits consortium*, and their dependents.

"Employee welfare benefit plan" has the meaning set forth in § 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(1).

"Private educational institution" means a nonpublic, nonprofit college or university that is accredited by a nationally recognized regional accreditation body or by the Board of Governors of the American Bar Association; and

1. Has its primary campus located within the Commonwealth;
2. Is owned and operated by a corporation, trust, association or religious institution or any subsidiary or affiliate of any such entity;
3. Has been in existence as a private educational institution in the Commonwealth for at least 10 years;
4. Is a member in good standing of the sponsoring association; and
5. Otherwise qualifies as an institution of higher education as defined in § 23-276.1.

"Sponsoring association" means an association of private educational institutions that is incorporated under the laws of the Commonwealth, has been in existence for at least 20 years and exists for purposes other than arranging for or providing health and welfare benefits to members.

B. Notwithstanding any provision of law to the contrary, five or more private educational institutions may form a not-for-profit benefits consortium for the purpose of establishing a self-funded employee welfare benefit plan by acting as incorporators of a nonstock corporation pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.). In addition to provisions required or permitted by the Virginia Nonstock Corporation Act, the organizational documents of the benefits consortium shall:

1. Limit membership in the benefits consortium to private educational institutions, *the sponsoring association of the benefits consortium, and the benefits consortium*;
2. Set forth the name and address of each of the initial members of the corporation;
3. Set forth requirements for the admission of additional private educational institutions to the corporation and the procedure for admission of additional members;
4. Require that each initial member of the corporation and each additional private educational institution admitted to membership agree to remain a member of the benefits consortium for a period of at least five years from the date the consortium begins operations or the date of its admission to membership, as the case may be;
5. Provide that the number of directors of the corporation shall be equal to the number of members and include one person employed by each member and may provide for an additional director who shall be an employee of the sponsoring association; however, two individuals affiliated with the same member may not serve on the board of directors at the same time;
6. Provide that the board of directors shall have exclusive fiscal control over and be responsible for the operation of the benefits plan and shall govern the benefits consortium in accordance with the fiduciary duties defined in the federal Employee Retirement Income Security Act of 1974;
7. Vest in the board of directors the power to make and collect special assessments against members and, if any assessment is not timely paid, to enforce collection of same in the name of the corporation;
8. State the purposes of the benefits consortium, including the types of risks to be shared by its members;
9. Provide that each member shall be liable for its allocated share of the liabilities of the benefits consortium as determined by the board of directors;
10. Require that the benefits consortium purchase and maintain (i) a bond that satisfies the requirements of the Employee Retirement Income Security Act of 1974, (ii) fiduciary liability insurance,

and (iii) a policy or policies of excess insurance with a retention level determined in accordance with sound actuarial principles from an insurer licensed to transact the business of insurance in the Commonwealth;

11. Require that the benefits consortium be audited annually by an independent certified public accountant engaged by the board of directors;

12. Prohibit the payment of commissions or other remuneration to any person on account of the enrollment of persons in any benefit plan offered by the benefits consortium; and

13. Not include in the name of the corporation the words "insurance," "insurer," "underwriter," "mutual" or any other word or term or combination of words or terms that is uniquely descriptive of an insurance company or insurance business unless the context of the remaining words or terms clearly indicate that the corporation is not an insurance company and is not carrying on the business of insurance.

C. A benefits consortium shall establish and maintain reserves determined in accordance with sound actuarial principles. Capital may be maintained in the form of an irrevocable letter of credit issued to the benefits consortium by a state or national bank authorized to engage in the banking business in the Commonwealth.

D. Except to the extent specifically provided in this section, a benefits consortium organized under and operated in conformity with this section, so long as it remains in good standing under the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and otherwise meets the requirements set forth in this section, shall be governed solely by and be subject only to the provisions of the Employee Retirement Income Security Act of 1974 as implemented by the United States Department of Labor, shall be exempt from all state taxation, and shall not otherwise be subject to the provisions of Title 38.2, including regulation as a multiple employer welfare arrangement.