DEPARTMENT OF TAXATION
2017 Fiscal Impact Statement

1. Patron Kathy J. Byron

2. Bill Number HB 2411

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Senate Commerce and Labor

4. Title Health Insurance; Reinstating Pre-Affordable Care Act Provisions

Second House:
__X__ **In Committee**
_____ **Substitute**
_____ **Enrolled**

5. Summary/Purpose:

This Fiscal Impact Statement is solely related to the provisions that impact the Insurance Premiums License Tax. The Bureau of Insurance has indicated that this bill has no impact on the State Corporation Commission.

This bill would repeal provisions that were added, and restore provisions that were amended or repealed, by the General Assembly since 2011 in efforts to bring Virginia insurance law into conformity with requirements of the federal Patient Protection and Affordable Care Act ("ACA"). Among such provisions, this bill would reinstate the open enrollment requirement for corporations that offer a health services plan and convert into domestic insurers or stock insurers.

This bill would also reinstate the reduced Insurance Premiums License Tax rate that was imposed prior to Taxable Year 2014 on the direct gross subscriber fee income derived from certain contracts issued by corporations that operate a health services plan, dental services plan, or optometric services plan. This reduced tax rate would be effective for Taxable Year 2018 and each taxable year thereafter. Under current law, a flat rate of 2.25 percent is imposed on the direct subscriber fee income derived from all contracts issued by such corporations.

The bill would be effective on the later of July 1, 2017, or the effective date of federal legislation repealing the ACA.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine, and does not require additional funding. The State Corporation Commission has indicated no fiscal impact.

Revenue Impact

This bill would have an unknown negative impact on the Commonwealth's revenues, beginning as early as Fiscal Year 2018. Such negative revenue impact, if any, would be due to the reinstatement of a reduced Insurance Premiums License Tax rate that was available to certain corporations prior to Taxable Year 2014.

When the prior 0.75 percent rate was increased to 2.25 percent in Taxable Year 2014, the estimated annual positive revenue impact on the Commonwealth was approximately $16 million. However, the annual revenue impact of this bill is unknown because it is uncertain whether any insurance companies would qualify for the reduced rate. It is possible that insurance companies that qualified for the reduced rate prior to Taxable Year 2014 have since reorganized in such a way that they no longer qualify for the reduced rate. To the extent that there are insurance companies that qualify for the reduced rate, there would be an unknown negative impact on the Commonwealth's revenues beginning in Fiscal Year 2018.

Any negative General Fund revenue impact would occur as early as Fiscal Year 2018. One-third of the revenue from the Insurance Premiums License Tax goes to the Priority Transportation Fund (a sub-fund of the Transportation Trust Fund) and two-thirds of the revenue from the Insurance Premiums License Tax goes to the General Fund. Because the transfer to the Priority Transportation Fund occurs in the subsequent fiscal year, any negative revenue impact would not occur until Fiscal Year 2019 or later.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Background

The Insurance Premiums License Tax is a tax imposed on every insurance company that is engaged in the business of issuing policies or contracts for insurance and on every corporation that issues subscription contracts for insurance that are health services plans, dental services plans, or optometric services plans. The Insurance Premiums License Tax rate imposed on a corporation's direct gross subscriber fee income that is derived from subscription contracts is generally 2.25 percent.

Prior to Taxable Year 2014, a reduced rate of 0.75 percent was imposed on such income that was derived from subscription contracts issued to individuals and from open enrollment contracts. "Open enrollment contracts" were defined as comprehensive accident and sickness contracts issued pursuant to an open enrollment program by a licensed nonstock corporation licensed providing coverage to individuals. "Comprehensive accident and sickness contracts" were defined as contracts conforming to the requirements of Virginia Insurance Law which are issued to provide basic hospital and medical-surgical coverage.

A corporation that operated a health services plan and offered an open enrollment program was required to continue to offer such program, directly or through a subsidiary, even if it converted into a domestic mutual insurer or stock insurer. An insurer that offered an open enrollment program subsequent to a conversion was subject to a reduced Insurance Premiums License Tax of 0.75 percent on premium income that was derived from individual accident and sickness insurance policies and open enrollment contracts. Premium income derived from other accident and sickness insurance was subject to a rate of 2.25 percent.

On March 23, 2010, the federal Patient Protection and Affordable Care Act ("ACA") was signed into law. This federal bill was designed to reduce the number of Americans without health insurance and to reduce the cost of healthcare. The ACA required every state to establish an American Health Benefit Exchange ("Exchange") by January 1, 2014. Exchanges are marketplaces through which participating insurance companies may sell health insurance. Beginning on October 1, 2013, the ACA required Exchanges to have annual open enrollment periods during which individuals and small businesses may purchase private health insurance from participating insurance companies. For taxable years beginning on and after January 1, 2014, the ACA will prohibit health insurance providers from discriminating against or charging higher rates for any individual based on pre-existing conditions.

After the federal ACA was passed, there was a potential conflict between it and Virginia insurance law. Under Virginia insurance law in effect at the time, a policy purchased under an open enrollment program was permitted to require a 12-month waiting period before services for any pre-existing condition would be covered. When the guaranteed issuance provisions of the ACA became effective on January 1, 2014, such plans would be prohibited from applying a pre-existing condition waiting period, thereby subjecting the plans to significant risk.

To prevent a conflict between federal and Virginia law, the General Assembly enacted 2013 *Acts of Assembly*, Chapters 136 and 210. This legislation repealed the open enrollment requirement for corporations that offer a health services plan and convert into domestic insurers or stock insurers. Because the open enrollment requirement was no longer imposed, this law also repealed the Insurance Premiums License Tax rate structure that applies to premium income generated by such insurers following a conversion.

This law repealed the reduced Insurance Premiums License Tax rate imposed on the direct gross subscriber fee income derived from certain contracts issued by corporations that operate a health services plan, dental services plan, or optometric services plan. For Taxable Years 2014 and thereafter, a rate of 2.25 percent is imposed on the direct subscriber fee income derived from all contracts issued by such corporations.

Proposed Legislation

This bill would repeal provisions that were added, and restore provisions that were amended or repealed, by the General Assembly since 2011 in efforts to bring Virginia insurance law into conformity with requirements of the federal Patient Protection and Affordable Care Act ("ACA"). Among such provisions, this bill would reinstate the open enrollment requirement for corporations that offer a health services plan and convert into domestic insurers or stock insurers.

This bill would also reinstate the reduced Insurance Premiums License Tax rate that was imposed prior to Taxable Year 2014 on the direct gross subscriber fee income derived from certain contracts issued by corporations that operate a health services plan, dental services plan, or optometric services plan. This reduced tax rate would be effective for Taxable Year 2018 and each taxable year thereafter. Under current law, a flat rate of 2.25 percent is imposed on the direct subscriber fee income derived from all contracts issued by such corporations.

The bill would be effective on the later of July 1, 2017, or the effective date of federal legislation repealing the ACA.

cc : Secretary of Finance

Date: 2/9/2017 JJS
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