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HOUSE BILL NO. 1268

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 34.1, consisting of sections numbered 38.2-3461 through 38.2-3464, relating to health benefits; employees of members of an association.*

Patron—Toscano

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 34.1, consisting of sections numbered 38.2-3461 through 38.2-3464, as follows:

CHAPTER 34.1.**HEALTH BENEFIT PLANS FOR EMPLOYEES OF MEMBERS OF AN ASSOCIATION.****§ 38.2-3461. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Association plan" means a health plan that is sponsored by a sponsoring association and offered or sold to members through a trust, to provide health benefits as permitted under ERISA and the provisions of this chapter.

"Enrollee" means an individual covered by a health plan.

"ERISA" means the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended.

"Essential health benefits" has the meaning ascribed to the term in § 38.2-3438.

"Health benefits" means coverage for all or a portion of the costs of medical, prescription drug, dental, and vision care incurred by an enrollee.

"Health plan" has the meaning ascribed to employee welfare benefit plan in § 3(1) of ERISA at 29 U.S.C. § 1002(1).

"Member" means an employer conducting business in the Commonwealth that is a member of the sponsoring association.

"Sponsoring association" means a nonstock corporation formed under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 that:

1. Has been actively in existence for at least five years;

2. Has had in the five preceding years an average of not fewer than five members, all of which are employers;

3. Has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;

4. Does not condition membership in the sponsoring association on any factor relating to the health status of an individual, including an employee of a member of the sponsoring association or a dependent of such an employee;

5. Makes any association plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through a member;

6. Does not make any association plan available to any person who is not a member of the association;

7. Operates as a nonprofit entity under § 501(c)(6) of the Internal Revenue Code of 1986, and

8. Meets such additional requirements as may be imposed under the laws of the Commonwealth.

"Trust" means a trust that (i) is established to accept and hold assets of a health plan in trust in accordance with the terms of the written trust document and plan for the sole purposes of providing health benefits and defraying reasonable administrative costs of providing health benefits under a health plan and (ii) complies with the conditions set forth in § 38.2-3462.

§ 38.2-3462. Conditions for a trust.

A trust shall be authorized to sell or offer to sell association plans to members of the sponsoring association in accordance with the provisions of this chapter if the following conditions are satisfied:

1. The trust is subject to (i) ERISA and U.S. Department of Labor regulations applicable to multiple employer welfare arrangements and (ii) the authority of the U.S. Department of Labor to enforce such law and regulations;

2. A Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs), for the applicable plan year shall be filed with the U.S. Department of Labor identifying the arrangement among the trust,

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59 sponsoring association, and association plans offered through the trust as a multiple employer welfare
60 arrangement;

61 3. The trust operates as a nonprofit voluntary employee beneficiary association within the meaning of
62 § 501(c)(9) of the Internal Revenue Code of 1986;

63 4. The trust's organizational documents:

64 a. Provide that the trust is sponsored by the sponsoring association;

65 b. State that its purpose is to provide health benefits to employees of the sponsoring association and
66 its members and the dependents of those employees through health plans;

67 c. Provide that the funds of the trust are to be used for the benefit of enrollees, through insurance,
68 self-insurance, or a combination thereof as determined by the trustee, and for defraying reasonable
69 expenses of administering and operating the trust and any association plan;

70 d. Limit participation in association plans to employers that are the sponsoring association,
71 members, and their affiliates;

72 e. Limit the health plans offered through the trust to association plans;

73 f. Grant the sponsoring association the power to appoint the trustee of the trust;

74 g. Provide the trustee with powers for the control and management of the trust; and

75 h. Require the trustee to discharge its duties with respect to the trust in accordance with the
76 fiduciary duties defined in ERISA;

77 5. Five or more members participate in one or more association plans;

78 6. The trust establishes and maintains reserves determined in accordance with sound actuarial
79 principles. Capital may be maintained in the form of an irrevocable letter of credit issued to the trust by
80 a state or national bank authorized to engage in the banking business in the Commonwealth;

81 7. The trust has purchased and maintains policies of specific, aggregate, and terminal excess
82 insurance with retention levels determined in accordance with sound actuarial principles from insurers
83 licensed to transact the business of insurance in the Commonwealth;

84 8. a. The trust has secured one or more guarantees or standby letters of credit guaranteeing the
85 payment of claims under the association plans in an aggregate amount not less than the trust's annual
86 aggregate excess insurance retention level, minus the annual premium assessments for the association
87 plans, minus the trust's net assets, which net assets amount shall be net of the trust's reasonable
88 estimate of incurred but not reported claims; and

89 b. Such guarantees or letters of credit have been issued by (i) banks participating in the association
90 plans or (ii) qualified United States financial institutions as such term is used in subdivision 2 c of
91 § 38.2-1316.4;

92 9. Each association plan sold or offered by the trust provides coverage for essential health benefits;

93 10. The trust has purchased and maintains commercially reasonable fiduciary liability insurance;

94 11. The trust has purchased and maintains a bond that satisfies the requirements of ERISA;

95 12. The trust is audited annually by an independent certified public accountant;

96 13. The trust does not include in its name the words "insurance," "insurer," "underwriter," "mutual,"
97 or any other word or term or combination of words or terms that is uniquely descriptive of an
98 insurance company or insurance business unless the context of the remaining words or terms clearly
99 indicates that the entity is not an insurance company and is not carrying on the business of insurance;
100 and

101 14. The trust does not pay commissions or other remuneration to any person that is conditioned
102 upon the enrollment of persons in any association plan.

103 **§ 38.2-3463. Additional requirements.**

104 A. The board of directors of the sponsoring association shall have:

105 1. Exclusive fiscal control over and responsibility for the operation of any association plan and shall
106 operate the association plan in accordance with the fiduciary duties defined in ERISA; and

107 2. The power to make and collect special assessments against members and, if any assessment is not
108 timely paid, to enforce collection of such assessment in the name of the sponsoring association.

109 B. Each member shall be liable for its allocated share of the liabilities of the sponsoring association
110 under an association plan as determined by the board of directors.

111 C. The payment of commissions or other remuneration to any person on account of the enrollment of
112 persons in any association plan is prohibited.

113 **§ 38.2-3464. Trust and sponsoring association not subject to regulation or taxation as an**
114 **insurance company.**

115 A. A trust shall not be subject to:

116 1. Any provision of this title or regulations adopted thereunder other than the provisions of this
117 chapter, including those provisions and regulations otherwise applicable to multiple employer welfare
118 arrangements; or

119 2. The tax levied on insurance companies pursuant to § 58.1-2501.

120 B. The sponsoring association of a trust or any of its subsidiaries shall not, by virtue of its

- 121** *sponsorship of the trust or any association plan, be subject to any provisions or regulations described in*
122 *subdivision A 1 or any tax described in subdivision A 2.*