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SENATE BILL NO. 1006

Offered January 9, 2019

Prefiled July 16, 2018

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 38.2-6405, relating to the sale of health benefit plans by insurers licensed only in other states.

Patron—Chase

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 38.2-6405, 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 *clauses* (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* 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 benefit plans on behalf of a foreign insurer that is licensed to sell, offer, or provide health benefit plans in any other state, if such foreign insurer is authorized to sell, offer, or provide the health benefit plans 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.**SALE OF HEALTH BENEFIT PLANS BY AUTHORIZED FOREIGN HEALTH INSURERS.****§ 38.2-6400. Definitions.**

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

"Authorized foreign health insurer" means a foreign health insurer that has received authorization by the Commission to sell, offer, or provide health benefit plans in the Commonwealth as provided in § 38.2-6402.

"Covered person" means an individual who is entitled to health care services provided, arranged for,

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59 paid for, or reimbursed pursuant to a health benefit plan.

60 "Foreign health insurer" means an insurer domiciled and licensed to sell, offer, or provide health
61 benefit plans in any other state but not in the Commonwealth.

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

65 "Health benefit plan" means an arrangement for the delivery of health care, on an individual or
66 group basis, in which an insurer undertakes to provide, arrange for, pay for, or reimburse any of the
67 costs of health care services for a covered person that is offered in accordance with the laws of any
68 state where the insurer is licensed to sell, offer, or provide a health benefit plan. "Health benefit plan"
69 does not include short-term travel, accident only, limited or specified disease, or individual conversion
70 policies or contracts, nor policies or contracts designed for issuance to persons eligible for coverage
71 under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under
72 state or federal governmental plans.

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

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

80 "Licensed health insurer" means an insurer licensed to sell, offer, or provide health benefit plans in
81 the Commonwealth.

82 "State-mandated health benefit" means coverage required under this title or other laws of the
83 Commonwealth to be provided in a policy of accident and sickness insurance or a contract for a
84 health-related condition that (i) includes coverage for specific health care services or benefits; (ii)
85 places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime
86 maximum benefit amounts; or (iii) includes a specific category of licensed health care practitioners from
87 whom an insured is entitled to receive care. "State-mandated health benefit" includes, without limitation,
88 any coverage, or the offering of coverage, or a benefit provided pursuant to § 38.2-3407.5 through
89 38.2-3407.6:1, 38.2-3407.9:01, 38.2-3407.9:02, 38.2-3407.11 through 38.2-3407.11:3, 38.2-3407.16,
90 38.2-3408, 38.2-3411 through 38.2-3411.4, 38.2-3412.1, 38.2-3414, 38.2-3414.1, 38.2-3418, 38.2-3418.1,
91 38.2-3418.1:2 through 38.2-3418.14, or 38.2-4221. For purposes of this article, "state-mandated health
92 benefit" does not include a benefit that is mandated by federal law.

93 **§ 38.2-6401. Authorization for insurer licensed only in other states to sell health benefit plans;**
94 **requirement to offer or provide state-mandated health benefits.**

95 A. An authorized foreign health insurer shall be authorized to sell, offer, or provide a health benefit
96 plan in the Commonwealth as provided in this chapter, without complying with requirements applicable
97 to licensed health insurers except as may be specifically provided in this chapter or by regulation of the
98 Commission adopted under this chapter.

99 B. An authorized foreign health insurer shall not be required to offer or provide in health benefit
100 plans sold, offered, or provided in the Commonwealth any state-mandated health benefits.

101 **§ 38.2-6402. Selection of foreign health insurers to sell health benefit plans.**

102 The Commission may authorize a foreign health insurer to sell, offer, or provide a health benefit
103 plan in the Commonwealth if it finds, upon application by the foreign health insurer and after notice
104 and opportunity for a hearing, that selling, offering, or providing the health benefit plan:

105 1. Would not expose covered persons in the Commonwealth to unreasonable exposure to risk as a
106 result of the Commission's lack of jurisdiction to regulate market conduct by the foreign health insurer;

107 2. Does not place the market for health benefit plans in the Commonwealth at financial risk by
108 permitting entry to a foreign health insurer that is in a hazardous financial condition; and

109 3. Provides appropriate protection of consumers in the Commonwealth purchasing or becoming
110 covered persons under the foreign health insurer's health benefit plans.

111 **§ 38.2-6403. Disclosures required in applications and health benefit plans.**

112 A. Each written application for participation in a health benefit plan sold, offered, or provided by an
113 authorized foreign health insurer shall contain the following language in boldface type at the beginning
114 of the application document:

115 "This health benefit plan is primarily governed by the laws of (insert the name of the state that has
116 approved the foreign health insurer's sale, offer, or provision of the health benefit plan); therefore, all
117 of the laws applicable to health benefit plans approved in Virginia do not apply to this health benefit
118 plan, which may result in increases in your premium at renewal that would not be permissible in a
119 Virginia-approved policy. Any purchase of an individual health benefit plan should be considered
120 carefully since future medical conditions may make it impossible to qualify for another individual health

benefit plan. For information concerning individual health coverage under a Virginia-approved health benefit plan, please consult your insurance agent or the Virginia Bureau of Insurance."

B. Each health benefit plan sold or offered by an authorized foreign health insurer shall contain the following language in boldface type at the beginning of the document:

"The benefits of this health benefit plan providing your coverage are governed primarily by the laws of a state other than Virginia. While this health benefit plan may provide you a more affordable health insurance policy, it may also provide fewer health benefits than those normally included in health benefit plans approved in Virginia. Please consult your insurance agent to determine which state-mandated health benefits are excluded under this policy document."

§ 38.2-6404. Examinations of foreign health insurers.

The Commission is authorized to conduct market conduct and financial condition examinations of any foreign health insurer that has applied for, or has received, authorization under § 38.2-6402 to sell, offer, or provide health benefit plans in the Commonwealth. Such examinations shall be conducted in the same manner and under the same terms and conditions as for licensed health insurers.

§ 38.2-6405. Regulations.

The Commission shall adopt regulations necessary to implement this chapter, including regulations establishing procedures and requirements under which the Commission shall determine:

1. Which foreign health insurers shall be authorized to sell, offer, or provide health benefit plans in the Commonwealth; and

2. Which of an authorized foreign health insurer's health benefit plans may be sold, offered, or provided in the Commonwealth.

2. That the provisions of this act shall become effective on January 1, 2020.