

# State Corporation Commission

## 2020 Fiscal Impact Statement

**1. Bill Number:** SB235

**House of Origin**    ☐ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☒ Enrolled

**2. Patron:** Barker

**3. Committee:** Passed Both Houses

**4. Title:** Health insurance; association health plans.

**5. Summary:** Provides that for policies of group accident and sickness insurance issued to an association, members of such an association may include (i) a self-employed individual and (ii) an employer member (a) with at least one employee that is domiciled in the Commonwealth. The bill provides that for such policies issued to an association that covers at least 51 members and employees of employer members of such association on the first day of the plan year the policies shall be considered a large group market plan and are required to meet various provisions in the bill. The bill provides that to determine the size of an association all of the members and employees of employer members are aggregated and treated as employed by a single employer. The bill requires an insurer issuing a policy to an association composed of (i) self-employed individuals as defined in § 38.2-3431 or (ii) employer members with at least one employee that is domiciled in the Commonwealth that do not share the same industry, trade or profession or (iii) such individuals and employer members as described in both clauses (i) and (ii) shall (1) treat all of the members and employees of employer members who are enrolled in coverage under the policy as a single risk pool; (2) set premiums based on the collective group experience of the members and employees of employer members who are enrolled in coverage under the policy; (3) vary premiums by age, except that the rate shall not vary by more than 5 to 1 for adults; (4) not vary premiums based on gender; (5) not establish discriminatory rules based on the health status of an employer member, an individual employee of an employer member, or a self-employed individual for eligibility or contribution. The above-referenced provisions do not apply to an association composed of employer members in the same industry, trade or profession.

The bill requires the Commissioner of Insurance to apply to the U.S. Secretary of Health and Human Services for a state innovation waiver under the federal Patient Protection and Affordable Care Act, P.L. 111-148, to implement the provisions of the bill upon the issuance of a final judicial order invalidating all or a portion of the State of New York et al. v. U.S. Department of Labor (DOL). Within 180 days of the issuance of the order invalidating all or a portion of the rules of the DOL, the Commission of Insurance shall submit the waiver request authorizing (i) a self-employed individual and (ii) an employer (a) with at least one employee who is domiciled in the Commonwealth or (b) that has a principal place of business that does not exceed the boundaries of a metropolitan area that is partially in the Commonwealth to participate in a group health plan issued to an association that is subject to the large group market insurance requirements and any other provisions the Commissioner deems necessary to implement the provisions of this act.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** No fiscal impact on the State Corporation Commission

**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:** No

**11. Other Comments:** The State Corporation Commission Bureau of Insurance advised the patron of Senate Bill 235 that informal guidance received from the Centers for Medicare and Medicaid Services (CMS) indicates that the provisions of the bill which would waive provisions of ERISA (the Employer Retirement Income Security of Act of 1974) to amend the definition of employer cannot be implemented via a Section 1332 State Innovation Waiver pursuant to the federal Patient Protection and Affordable Care Act as contemplated in the second enactment clause of the bill. It is possible that CMS could change its position at a future date.

House Bill 795 is identical to the enrolled version of Senate Bill 235.

**Date:** 3/10/20/V.Tompkins