

REVISED
State Corporation Commission
2021 Fiscal Impact Statement

1. Bill Number: SB1341

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

2. Patron: Barker

3. Committee: Senate Floor

4. Title: Health insurance; association health plan for real estate salespersons.

5. Summary: Provides that a licensed insurer may issue a policy of group accident and sickness insurance to an association of real estate salespersons (association), which association shall be deemed the policyholder, and that such association health plan is not considered to be insurance and is not subject to the existing requirements for insurance if certain requirements are met. The bill requires that (i) all members of the association be eligible for coverage, including employer members with at least one employee that is domiciled in the Commonwealth and self-employed individuals; (ii) membership in the association not be conditioned on any health status related factor; (iii) the coverage offered through the association be available to all members regardless of any health status related factor; (iv) the association not make health insurance coverage offered through the association available other than in connection with a member of the association; and (v) premiums for the policy be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members.

The bill provides that any such policy (a) shall be considered a large group market plan subject to all coverage mandates applicable to a large group market plan, (b) shall be subject to the group health plan coverage requirements under the federal Patient Protection and Affordable Care Act, (c) shall be prohibited from denying coverage under the policy on the basis of a pre-existing condition, (d) shall be guaranteed issue and guaranteed renewable, (e) shall provide essential health benefits and cost-sharing requirements, and (f) shall offer a minimum level of coverage designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

The bill requires an insurer issuing such policy to an association to (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 on the basis of the collective group experience of the members and employees of employer members who are enrolled in coverage under the policy; (3) not vary premiums by age, except that the rate shall not vary by more than five to one for adults; (4) not vary premiums on the basis of gender; (5) not vary premiums on the basis of the health status of an individual employee of an employer member or a self-employed individual member; and (6) 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. Finally, the bill provides that the State Corporation Commission retains its regulatory authority over any such association health plan and may impose insurance requirements, as it deems appropriate.

- 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:** The State Corporation Commission Bureau of Insurance offered the following technical comments to the patron of Senate Bill 1341:

It is the Bureau's understanding of applicable federal rules that self-employed individuals, who may not have employees, are not eligible to be treated as employers. By not limiting membership eligibility to "employers," the entire arrangement may not be considered a bona fide group or association of employers under ERISA section 3(5).

The policy issued to the association of real estate salespersons is identified as a "group accident and sickness insurance" policy under § 38.2-3521.1. As such, it is subject to the requirements of Chapter 35 and Title 38.2. However, subsection G indicates that the policy shall not be considered insurance. If the coverage is to be subject to the Commission's regulatory authority as stated in the bill, the paragraph on lines 182-186 should be deleted.

For purposes of health insurance, even if the total number of participants of the association is 51 or more, the inclusion of self-employed persons who are not eligible to be treated as employers removes the ability to treat the association as a single employer. If self-employed individuals are removed from the bill, there is no mention of the number of participants in the association required to allow it to be considered a large group market plan. The Bureau suggested to the patron that the bill require that the number of participants be at least 51 to be considered a large group market plan.

- 11. Other comments:** President Biden's 1/28/21 Executive Order 14009 has revoked former President Trump's 2017 Executive Order 13813, which had laid the groundwork for federal rules to expand the definition of the term "employer" and permit self-employed individuals to form Association Health Plans, such as the arrangement contemplated in Senate Bill 1341. However, this portion of those rules was later vacated by order of the D.C. Federal District Court. The new Executive Order 14009 directs federal agencies to consider whether to suspend, revise or rescind any agency actions taken because of the 2017 Executive Order.

Date: 02/03/21/V. Tompkins