

State Corporation Commission

2022 Fiscal Impact Statement

1. Bill Number: SB335

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

2. Patron: Barker

3. Committee: Commerce and Labor

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 and membership, including employer members with at least one employee that is domiciled in the Commonwealth or 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 also requires the association (a) has at the outset a minimum of 100 members; (b) has been organized and maintained in good faith for purposes other than that of obtaining insurance; (c) has been in active existence for at least five years; and (d) has a constitution and bylaws that provide that the association hold regular meetings not less than annually to further purposes of the members, that the association collects dues or solicits contributions from members, and that the members have voting privileges and representation on the governing board and committees.

The bill provides that any such policy shall (1) be considered a large group market plan subject to all coverage mandates applicable to a large group market plan, (2) be subject to the group health plan coverage requirements under the federal Patient Protection and Affordable Care Act, (3) be prohibited from denying coverage under the policy on the basis of a pre-existing condition, (4) shall be guaranteed issue and guaranteed renewable, (5) provide essential health benefits and cost-sharing requirements, and (6) 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 (A) treat all of the members and employees of employer members who are enrolled in coverage under the policy as a single risk pool; (B) 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; (C) not vary premiums by age, except that the rate shall not vary by more than four to one for adults; (D) not vary premiums on the basis of gender; (E) 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 (F) 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 a policy that meets certain requirements of the bill is considered to be compliant with the large group market insurance regulations under the federal Public Health Service Act and, as such, the Commonwealth is considered to be substantially enforcing the federal Patient Protection and Affordable Care Act with regard to such policy. The bill requires the State Corporation Commission to regulate the policy in a manner that is consistent with such provisions. The bill provides that, in any case in which a federal agency renders a decision that is contrary to such provisions, notwithstanding any other provision of law, the Attorney General may resolve any difference between federal law and the laws of the Commonwealth.

- 6. Budget Amendment Necessary:** No
- 7. Fiscal Impact Estimates:** No Fiscal Impact on the State Corporation Commission
- 8. Fiscal Implications:** None for 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 provided amendments to the patron of Senate Bill 335 for his consideration:

If the purpose is to provide a fully insured association health plan (AHP) that will be considered a large group market plan under the ACA, extending association membership to self-employed individuals without employees may mean that the association will not be considered bona fide under section 3(5) of ERISA. The association would, therefore, not constitute a large group plan and would be subject to the ACA's individual and small group market rules. Even if the total number of participants in the association is 51 or more, the inclusion of self-employed persons removes the ability to treat the association as a single employer subject to large group market rules.

The Bureau recommends deletion of proposed §§ 38.2-3521.1G(7)(i) and (ii) and (9). A declaration that a policy is compliant with, and the Commonwealth is substantially enforcing, federal law, does not appear to be sufficient for determining whether a policy is in fact compliant with federal law, nor does this subsection resolve potential conflicts with federal law.

Proposed § 38.2-3521.1G(8) does not appear to prohibit varying premiums across employer members, which would potentially violate Virginia's non-discrimination statute.

- 11. Other Comments:** The amendment in the nature of a substitute to Senate Bill 335 includes Senate Bill 397.

Date: 1/31/22/V. Tompkins