

State Corporation Commission

2022 Fiscal Impact Statement

1. Bill Number: HB 1169

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

2. Patron: Fariss

3. Committee: Commerce and Energy

4. Title: Health insurance; association health plans.

5. Summary: Provides that a licensed insurer may issue a policy of group accident and sickness insurance to an 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 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 for 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 House Bill 1169 that if the bill is intended 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.

Lines 186-190 indicate that a policy is not considered insurance appears contradictory to the provision identifying a policy issued to an association as a "group accident and sickness insurance" policy under § 38.2-3521.1, which makes the policy subject to the requirements of Title 38.2. The Bureau of Insurance recommended that lines 186-190 be deleted or rewritten to remove this apparent contradiction.

House Bill 923 is similar to House Bill 1169.

Date: 1/26/22/V. Tompkins