COMMITTEE REPORT

March 31, 2010

**S. 980**

Introduced by Senators Bright, S. Martin and Bryant

S. Printed 3/31/10--S.

Read the first time January 12, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Joint Resolution (S. 980) proposing an amendment to Article I of the Constitution of South Carolina, 1895, relating to the Declaration of Rights, by adding Section 25 to preempt any federal law or rule, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the joint resolution, as and if amended, by striking all after the enacting language and inserting therein the following:

/ SECTION 1. It is proposed that Article I of the Constitution of this State be amended by adding:

“Section 25. (A) For purposes of this section:

(1) ‘Health care system’ means any public or private entity whose function or purpose is the provision, management, processing, enrollment of individuals for payment of, in full or in part, health care services, data, or information for its participants.

(2) ‘Penalties or fines’ means any civil or criminal penalty or fine, tax, salary or wage withholding, surcharge, or any named fee with a similar effect established by federal law or rule that is utilized to punish or discourage the exercise of rights protected under this section.

(3) ‘Compel’ includes penalties or fines.

(4) ‘Direct payment or pay directly’ means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(5) ‘Lawful health care services’ means any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(B) No law or rule may compel a person or employer, directly or indirectly, by the use of fines, penalties, or any other means, to participate in any health care system. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(C) Subject to reasonable and necessary rules that do not substantially limit a person’s options, the purchase or sale of health insurance in private health care systems may not be prohibited by law or rule.

(D) The General Assembly may provide by law reasonable and necessary regulations on the purchase and sale of health insurance in private health care systems, provided that a person's options are not substantially limited.

(E) This section does not:

(1) affect which health care services a health care provider or hospital is required to perform or provide;

(2) affect which health care services are permitted by law;

(3) prohibit care provided pursuant to any statutes enacted by the legislature relating to worker's compensation;

(4) affect laws or rules in effect as of January 1, 2010;

(5) affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services;

(6) apply to individuals voluntarily applying for coverage under a state-administered program pursuant to Title XIX or Title XXI of the Social Security Act; or

(7) apply to students being required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment.

Nothing herein shall impair the rights of persons to privately contract for health insurance for family members or former family members."

SECTION 2. The proposed amendment in Section 1 must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

“Must Article I of the Constitution of this State, relating to the Declaration of Rights, be amended to preempt any federal law or rule that restricts a person's choice of private health care providers or the right to pay for medical services?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.” /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LARRY A. MARTIN C. BRADLEY HUTTO

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Elections Commission reports that while there would be a cost to place the referendum on the ballot, funding received for statewide elections should be sufficient to cover the cost.

*Approved By:*

Harry Bell

Office of State Budget

**A** **JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE DECLARATION OF RIGHTS, BY ADDING SECTION 25 TO PREEMPT ANY FEDERAL LAW OR RULE THAT RESTRICTS A PERSON’S CHOICE OF PRIVATE HEALTH CARE PROVIDERS OR THE RIGHT TO PAY FOR MEDICAL SERVICES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. It is proposed that Article I of the Constitution of this State be amended by adding:

“Section 25. (A) For purposes of this section:

(1) ‘Direct purchase’ means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(2) ‘Health care system’ means any public or private entity whose function or purpose is the provision, management, processing, enrollment of individuals for payment of, in full or in part, health care services, data, or information for its participants.

(3) ‘Penalties or fines’ means any civil or criminal penalty or fine, tax, salary or wage withholding, surcharge, or any named fee with a similar effect established by federal law or rule that is utilized to punish or discourage the exercise of rights protected under this section.

(B) No federal law or rule shall compel a person or employer, directly or indirectly, by the use of fines, penalties, or any other means, to participate in any health care system. A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may provide directly purchased lawful health care services and shall not be required to pay penalties or fines for providing directly purchased lawful health care services.

(C) The terms or conditions of any health care system shall not be affected to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for providing directly purchased lawful health care services.

(D) The General Assembly must provide for by law reasonable and necessary regulations on the purchase and sale of health insurance in private health care systems, provided that a person’s options are not substantially limited.

(E) This section does not:

(1) affect which health care services a health care provider or hospital is required to perform or provide;

(2) affect which health care services are permitted by law;

(3) prohibit care provided pursuant to any statutes enacted by the General Assembly relating to worker’s compensation.”

SECTION 2. The proposed amendment in Section 1 must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with following words:

“Must Article I of the Constitution of this State, relating to the Declaration of Rights, be amended to preempt any federal law or rule that restricts a person’s choice of private health care providers or the right to pay for medical services?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word, ‘No’.”

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