COMMITTEE REPORT

April 22, 2010

**H. 4181**

Introduced by Reps. Scott, Long, Haley and Duncan

S. Printed 4/22/10--H.

Read the first time January 12, 2010.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Joint Resolution (H. 4181) proposing an amendment to Article I of the Constitution of South Carolina, 1895, relating to the declaration of rights, so as to add a new section preserving the freedom, etc., respectfully

**REPORT:**

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

WILLIAM E. SANDIFER for Committee.

**A** **JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO THE DECLARATION OF RIGHTS, SO AS TO ADD A NEW SECTION PRESERVING THE FREEDOM OF SOUTH CAROLINIANS WITH RESPECT TO THE PROVIDING OF HEALTH CARE SERVICES, BY PROHIBITING ANY LAW, REGULATION, OR RULE TO COMPEL AN INDIVIDUAL, EMPLOYER, OR HEALTH CARE PROVIDER TO PARTICIPATE IN A HEALTH CARE SYSTEM, BY ALLOWING INDIVIDUALS AND EMPLOYERS TO PAY DIRECTLY FOR LAWFUL HEALTH CARE SERVICES WITHOUT PENALTIES OR FINES FOR THESE DIRECT PAYMENTS, BY PROVIDING THAT THE PURCHASE OR SALE OF HEALTH INSURANCE IN PRIVATE HEALTH CARE SYSTEMS MUST NOT BE PROHIBITED BY LAW, REGULATION, OR RULE, BY PROVIDING THOSE INCENTIVES IN WHICH THE RIGHTS PROVIDED BY THIS SECTION DO NOT APPLY, AND TO PROVIDE APPROPRIATE DEFINITIONS.

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) To preserve the freedom of South Carolinians to provide for their health care:

(1) A law, regulation, or rule may not compel, directly or indirectly, any individual, employer, or health care provider to participate in any health care system.

(2) An individual or employer may pay directly for lawful health care services and must 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 must not be required to pay penalties or fines for accepting direct payment from an individual or employer for lawful health care services.

(B) Subject to reasonable and necessary rules that do not substantially limit an individual’s options, the purchase or sale of health insurance in private health care systems must not be prohibited by law, regulation, or rule.

(C) 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;

(4) affect laws, regulations, or rules in effect as of September 30, 2009;

(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 an individual 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.

(D) For the purposes of this section:

(1) ‘Compel’ includes penalties or fines.

(2) ‘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.

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

(4) ‘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 individuals or businesses otherwise permitted to offer these services.

(5) ‘Penalties or fines’ means any civil or criminal penalty or fine, tax, salary, or wage withholding or surcharge or any named fee with a similar effect established by law or regulation by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section.”

SECTION 2. The proposed amendment 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 so as to add a new section preserving the freedom of South Carolinians with respect to the providing of health care services, by prohibiting any law, regulation, or rule to compel an individual, employer, or health care provider to participate in a health care system, by allowing individuals and employers to pay directly for lawful health care services without penalties or fines for these direct payments, by providing that the purchase or sale of health insurance in private health care systems must not be prohibited by law, regulation, or rule, by providing those incentives in which the rights provided by this section do not apply, and to provide appropriate definitions?

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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