COMMITTEE REPORT

March 31, 2010

**S. 987**

Introduced by Senators Rose, 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 Bill (S. 987) to amend Chapter 1, Title 38 of the 1976 Code, by adding Section 38‑1‑40 to enact the “Freedom of Choice in Health Care Act,” to provide that, etc., respectfully

**REPORT:**

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

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

/ SECTION 1. This act may be cited as the "Freedom of Choice in Health Care Act".

SECTION 2. Chapter 1, Title 38 of the 1976 Code is amended by adding:

“Section 38-1-40 (A). For purposes of this section:

(1) 'Health care provider' means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

(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) ‘Lawful medical services’ means any medical-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.

(4) ‘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) '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) The citizens of this State have the right to enter into private contracts with licensed health care providers for authorized health care services and to purchase private health care coverage from a licensed insurer. No law may interfere with the right of a person to be treated by or receive services from a licensed health care provider of that person's choice. No law may restrict a person's freedom of choice of private health care systems or private health care plans of any type. No law may interfere with a person's or an entity's right to pay directly for lawful medical services. No law may require any person to participate in any health care system or plan, or impose a penalty, tax, or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan. This section shall not apply to individuals voluntarily applying for coverage under a state-administered program pursuant to Title XIX or Title XXI of the Social Security Act. This section shall not 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 3. The Attorney General is directed to challenge the constitutionality of any provision enacted by the United States Congress that would violate any of the requirements of Section 38-1-40 and join with other states that are like-minded to make a similar challenge. No state agency, agent, department, instrumentality, or subdivision shall cooperate or participate in any way with any mandate passed by Congress upon notification by the Attorney General that the mandate must be challenged pursuant to this section, unless and until otherwise ordered to so by a court of competent jurisdiction.

SECTION 4. If any section, subsection, paragraph, item, subitem, subparagraph, sentence, clause, phrase, or word of Chapter 1, Title 38 of the 1976 Code as added by this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the chapter, the General Assembly hereby declaring that it would have passed each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor. /

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:

See Below

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Attorney General's Office

The Attorney General’s Office indicates it cannot readily determine the cost of a challenge to any health plan that has not yet been structured or implemented. In the absence of other sources of revenue for this type of litigation, the fiscal impact on the general fund would be the cost of any litigation associated with this plan. Any such litigation could be complex and significant in staff hours and/or in the cost of outside counsel.

Department of Health and Human Services

The department reports enactment of this bill would have no impact on the General Fund of the State or federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 38 OF THE 1976 CODE, BY ADDING SECTION 38‑1‑40 TO ENACT THE “FREEDOM OF CHOICE IN HEALTH CARE ACT,” TO PROVIDE THAT CITIZENS OF THIS STATE HAVE THE RIGHT TO PURCHASE PRIVATE HEALTH INSURANCE, TO PROVIDE THAT THE GENERAL ASSEMBLY MAY NOT REQUIRE ANY PERSON TO PURCHASE HEALTH CARE INSURANCE, AND TO REQUIRE THE ATTORNEY GENERAL TO CHALLENGE THE CONSTITUTIONALITY OF ANY HEALTH CARE PLAN MANDATED BY CONGRESS.

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

SECTION 1. This act may be cited as the “Freedom of Choice in Health Care Act”.

SECTION 2. Chapter 1, Title 38 of the 1976 Code is amended by adding:

“Section 38‑1‑40. The citizens of this State have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The legislature may not require any person to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan.”

SECTION 3. The Attorney General is directed to challenge the constitutionality of any provision enacted by the United States Congress that would require any citizen of this State to participate in any health care system or plan or that imposes a penalty or fine for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan. No state agency, agent, department, instrumentality, or subdivision shall cooperate or participate in any way with any mandate passed by Congress upon notification by the Attorney General that the mandate must be challenged pursuant to this section, unless and until otherwise ordered to so by a court of competent jurisdiction.”

SECTION 4. This act takes effect upon approval by the Governor.

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