COMMITTEE REPORT

April 10, 2013

**H. 3101**

Introduced by Reps. Chumley, Taylor, G.R. Smith, Huggins, Wells, Henderson, Crosby, Atwater, Long, Wood, Toole, Willis, Clemmons, Hardwick, Hardee, Goldfinch, Bedingfield, D.C. Moss, Loftis, Nanney, Pitts, Putnam, V.S. Moss, Owens, Barfield, H.A. Crawford, Stringer, Hamilton, Burns, Tallon, Kennedy, Allison and Murphy

S. Printed 4/10/13--H.

Read the first time January 8, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3101) to amend the Code of Laws of South Carolina, 1976, so as to enact the “South Carolina Freedom of Health Care Protection Act” by adding Article 21 to Chapter 71, 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 title and before the enacting words.

Amend the bill further, by striking all after the enacting words and inserting:

/SECTION 1. The General Assembly declares that authority for this act is the following:

(1) The Tenth Amendment to the United States Constitution provides that the United States federal government is authorized to exercise only those powers delegated to it in the Constitution.

(2) Article VI, Clause 2 of the Constitution of the United States provides that laws of the United States are the supreme law of the land provided that they are made in pursuance of the powers delegated to the federal government in the Constitution.

(3) It is the stated policy of the South Carolina General Assembly that provisions of the Patient Protection and Affordable Care Act of 2010 grossly exceed the powers delegated to the federal government in the Constitution.

(4) The provisions of the Patient Protection and Affordable Care Act of 2010 which exceed the limited powers granted to the Congress pursuant to the Constitution, cannot and should not be considered the supreme law of the land.

(5) The General Assembly of South Carolina has the absolute and sovereign authority to interpose and refuse to enforce the provisions of the Patient Protection and Affordable Care Act of 2010 that exceed the authority of the Congress.

(6) The Fourteenth Amendment provides that the people are to be free from deprivation of life, liberty, or property, without due process of law.”

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

“Article 28

Prohibited Enforcement of the Patient Protection and Affordable Care Act

Section 1-1-1910.(A) No agency of the State, officer or employee of this State, acting on behalf of the state, may engage in an activity that aids any agency in the enforcement of those provisions of the Patient Protection and Affordable Care Act of 2010 and any subsequent federal act that amends the Patient Protection and Affordable Care Act of 2010 that exceed the authority of the United States Constitution

(B) The General Assembly of the State of South Carolina is empowered to take all necessary actions to ensure that the provisions of subsection (A) are adhered to by all agencies, departments, and political subdivisions of the State.”

SECTION 3. Article 1, Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Section 1‑7‑180. Whenever the Attorney General has reasonable cause to believe that a person or business is being harmed by implementation of the Patient Protection and Affordable Care Act and that proceedings would be in the public interest, the Attorney General may bring an action in the name of the State against such person or entity causing the harm to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. Unless the Attorney General determines in writing that the purposes of this section will be substantially impaired by delay in instituting legal proceedings, the Attorney General shall, at least three days before instituting a legal proceeding as provided in this section, give notice to the person or entity against whom the proceeding is contemplated and give such person or entity an opportunity to present reasons to the Attorney General why a proceeding should not be instituted. The action may be brought in a court of competent jurisdiction. Whenever the court issues a permanent injunction in connection with an action, which has become final, the court shall award reasonable costs to the State.”

SECTION 4. Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3579. A South Carolina resident taxpayer who is subjected to a tax by the Internal Revenue Code under 26 U.S.C. Section 5000A of the Patient Protection and Affordable Care Act shall receive a tax deduction in the exact amount of the taxes or penalty paid the federal government pursuant to 26 U.S.C. Section 5000A. The tax deduction allowed by this section must be used in the year the federal tax or penalty is paid.”

SECTION 5. Article 1, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38‑71‑42. (A) As used in this section:

(1) ‘Health Insurance Issuer’ or ‘issuer’ has the same meaning as ‘insurer’ in Section 38‑1‑20;

(2) ‘Penalty’ means a civil or criminal fine, tax, salary or wage withholding, surcharge, fee, or any other imposed consequence established by law or regulation of an agency of the State or of a subdivision of the State that is used to punish or discourage the exercise of rights protected under this chapter.

(B) A health insurance issuer operating in this State must not accept any remuneration, credit, or subsidy, as described in 42 U.S.C. 18082, that may result in the imposition of penalties against an employer or individual in this State.

(C) If a health insurance issuer violates subsection (B), the issuer’s license to issue new business in the State must be suspended immediately and until such time as the issuer represents it has returned that remuneration, credit, or subsidy to its source and will decline any such future remuneration, credit, or subsidy. This suspension must not be construed to impair the right of contract or the right to continue or renew existing business in the State.

(D) The Attorney General shall take such action as necessary in the defense or prosecution of rights protected under this chapter.

(E) The Attorney General shall seek injunctive and any other appropriate relief as expeditiously as possible to preserve the rights and property of the residents of this State and to defend, as necessary, the State and its officials, employees, and agents if any law or regulation violating the public policy set forth in this chapter is enacted by any agency of state government or of a subdivision of the State.

Section 38‑71‑44. (A) ‘Health Care Exchange’ means the same as ‘American Health Benefit Exchange’, as provided for in the Patient Protection and Affordable Care Act of 2010 and any subsequent federal act that amends that definition, and may refer to an entity or a process established pursuant to the Patient Protection and Affordable Care Act of 2010.

(B) Neither South Carolina nor a political subdivision including, but not limited to, counties, municipalities, or special purpose districts of the State may establish a Health Care Exchange for the purchase of health insurance.

(C) Neither South Carolina nor a political subdivision including, but not limited to, counties, municipalities, or special purpose districts, may participate in or purchase insurance from a health care exchange established by a nonprofit organization.

(D) A health insurance contract purchased or established in violation of this section is void and must not be enforced by the courts of this State.”

SECTION 6. Chapter 1, Title 43 of the 1976 Code is amended to read:

“Section 43-1-300. No agency, department, or other state entity, including but not limited to the Department of Social Services and the Department of Health and Human Services, may authorize an employee, contractor, vendor, or any other person acting on behalf of the department to conduct or participate in an involuntary maternal, infant, and early childhood in-home visitation pursuant to Section 2951 of the Patient Protection and Affordable Care Act of 2010 and any subsequent federal act that amends that section or that may refer to an entity or a process established pursuant to the Patient Protection and Affordable Care Act of 2010.”

SECTION 7. This act takes effect upon approval by the Governor.

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA FREEDOM OF HEALTH CARE PROTECTION ACT” BY ADDING ARTICLE 21 TO CHAPTER 71, TITLE 38 SO AS TO RENDER NULL AND VOID CERTAIN UNCONSTITUTIONAL LAWS ENACTED BY THE CONGRESS OF THE UNITED STATES TAKING CONTROL OVER THE HEALTH INSURANCE INDUSTRY AND MANDATING THAT INDIVIDUALS PURCHASE HEALTH INSURANCE UNDER THREAT OF PENALTY; TO PROHIBIT CERTAIN INDIVIDUALS FROM ENFORCING OR ATTEMPTING TO ENFORCE SUCH UNCONSTITUTIONAL LAWS; AND TO ESTABLISH CRIMINAL PENALTIES AND CIVIL LIABILITY FOR VIOLATING THIS ARTICLE.

Whereas, the people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes, and nothing more; and

Whereas, the Tenth Amendment to the United States Constitution defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves; and

Whereas, Article I, Section 1 of the United States Constitution provides in pertinent part that “All legislative powers herein granted shall be vested in a Congress of the United States”; and

Whereas, the judicial decision of the United States Supreme Court upholding the constitutionality of the “Patient Protection and Affordable Care Act” directly contravenes Article I, Section 1 of the United States Constitution because, in upholding the law by re‑characterizing the Act as a tax even though Congress specifically refused to identify it as a tax, the United States Supreme Court legislated new law in violation of Article I, Section 1 of the United States Constitution; and

Whereas, the assumption of power that the federal government has made by enacting the “Patient Protection and Affordable Care Act” interferes with the right of the people of the State of South Carolina to regulate health care as they see fit and makes a mockery of James Madison’s assurance in Federalist #45 that the “powers delegated” to the federal government are “few and defined”, while those of the states are “numerous and indefinite”. Now, therefore,

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

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Article 21

South Carolina Freedom of Health Care Protection Act

Section 38‑71‑2110. This article may be cited as the ‘South Carolina Freedom of Health Care Protection Act’.

Section 38‑71‑2120. The General Assembly declares that the federal law known as the “Patient Protection and Affordable Care Act”, signed by President Barack Obama on March 23, 2010, is not authorized by the Constitution of the United States and violates its true meaning and intent as given by the Founders and Ratifiers, and is invalid in this State, is not recognized by this State, is specifically rejected by this State, and is null and void and of no effect in this State.

Section 38‑71‑2130. It is the duty of the General Assembly to adopt and enact all measures as may be necessary to prevent the enforcement of the ‘Patient Protection and Affordable Care Act’ within the limits of this State.

Section 38‑71‑2140. (A) An official, agent, or employee of the United States government or an employee of a corporation providing services to the United States government who enforces or attempts to enforce an act, order, law, statute, rule, or regulation of the government of the United States in violation of this article is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

(B) A public officer or employee of the State of South Carolina who enforces or attempts to enforce an act, order, law, statute, rule, or regulation of the government of the United States in violation of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

Section 38‑71‑2150. An aggrieved party has a private right of action against a person violating a provision of this article and is entitled to the recovery of reasonable attorney fees incurred in prosecution of said action.”

SECTION 3. This act takes effect upon approval by the Governor.

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