RECALLED

May 29, 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, Murphy, Delleney, Horne, Daning and Brannon

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Read the first time May 2, 2013.

**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. 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 38‑71‑44. (A) ‘Health Care Exchange’ means an American Health Benefit Exchange established by any state or political subdivision of a state, as provided for in 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.

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