

HB 1314 -- MODIFICATION OF THE HEALTH CARE FREEDOM ACT

SPONSOR: Frederick

This bill modifies what is commonly known as the Health Care Freedom Act approved by Missouri voters in 2010.

In its provisions the bill specifies that the public policy of Missouri is as follows:

(1) The power to require or regulate a person's choice in how he or she secures health care services or to impose a penalty related to a person's choice in securing health care services is not found in the Constitution of the United States of America and as a result is a power reserved to the people through the Ninth Amendment of the Constitution of the United States of America and to the states through the Tenth Amendment of the Constitution of the United States of America. Missouri exercises its sovereign power to declare the public policy of the state regarding the right of residents in choosing the mode of securing health care services;

(2) Consistent with our constitutionally recognized and inalienable rights of liberty, every person in Missouri is and must be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty; and

(3) This policy must not be applied to impair any right of contract related to the provision of health care services to any person or group.

The bill specifies the General Assembly makes the following findings:

(1) The federal Patient Protection and Affordable Care Act preserves certain traditional state powers to regulate health insurance, and grants new powers to states, that permit Missouri to enforce the public policy stated above in a manner consistent with and expressly provided for in federal law;

(2) Sections 1311 and 1321 of the Patient Protection and Affordable Care Act grant Missouri the option of operating a health insurance exchange, or allowing the federal government to create one. Section 1421 of the Patient Protection and Affordable Care Act authorizes payments to health insurance issuers that result directly or indirectly in penalties against Missouri employers and residents, contrary to the public policy set forth above. In certain cases, those penalties would be levied against Missouri employers and residents who refused to purchase health insurance that violates their deeply held religious beliefs. Under Section

1401 of the Patient Protection and Affordable Care Act the payments that result in penalties against Missouri employers and residents become available only if Missouri chooses to operate a health insurance exchange. Facilitating these payments and the enforcement of penalties against employers and individuals is a key function of a state-funded or state-based health insurance exchange. Section 1555 of the Patient Protection and Affordable Care Act protects the right of health insurance issuers not to accept such payments;

(3) A final rule issued by the U.S. Internal Revenue Service attempts to offer those payments, and therefore to penalize Missouri employers and residents contrary to the public policy set forth above irrespective of whether the state of Missouri elects to operate a health insurance exchange. This federal rule would deny the state of Missouri its power, granted by Congress, to enforce the public policy set forth above by declining to operate a health insurance exchange. This rule denies the sovereignty of the state of Missouri, and is contrary to federal law and congressional intent;

(4) The Patient Protection and Affordable Care Act recognizes the states' traditional powers to license and regulate health insurance carriers. Section 1311(e) of the Patient Protection and Affordable Care Act permits states that operate health insurance exchanges to exclude certain health plans. Section 1301(a) reserves for all states, regardless of whether they operate a health insurance exchange, the power to exclude health insurance issuers from participation if such issuers are not "licensed and in good standing to offer health insurance coverage in [the] State." Section 1321(d) of the federal health care act, titled "No Interference with State Regulatory Authority," expressly provides that the act preempts only those state laws "that . . . prevent the application of the provisions of this title." Section 1311(k) of the federal health care act preempts only those state laws "that conflict with or prevent the application of regulations promulgated by the Secretary" of the federal Department of Health and Human Services;

(5) Subsection 4 of this section asserts only those state powers that Congress has expressly recognized or granted through the Patient Protection and Affordable Care Act. Enforcement of subsection 4 of this section therefore does not conflict with or prevent the application of any provisions of, or regulations promulgated under, the Patient Protection and Affordable Care Act; and

(6) The federal government may, to the extent permitted by the Constitution of the United States of America, amend federal law at

any time to preempt these powers that the Patient Protection and Affordable Care Act reserves and grants to the state of Missouri.

The bill prohibits any public official, employee, or agent of the state of Missouri or any of its political subdivisions, or any law or rule, from imposing, collecting, enforcing, or effectuating, directly or indirectly, any penalty in the state of Missouri that violates the public policy set forth above. It violates the public policy set forth above for any such individuals, laws, or rules to implement or operate a health insurance exchange under the federal Patient Protection and Affordable Care Act.

The bill prohibits a health insurance issuer operating in the state of Missouri from accepting any payment that may result in the imposition of penalties contrary to the public policy set forth above. If a health insurance issuer violates this provision, the issuer's license to transact business in the state of Missouri must be suspended by the Director of the Department of Insurance, Financial Institutions and Professional Registration immediately and the suspension must continue until the issuer represents it has returned that payment to its source and will decline any future payment. These suspensions must not be construed as impairing the right of contract.

The bill requires the attorney general to take action in the defense or prosecution of rights protected in the provisions of the bill. The bill directs the attorney general to seek injunctive and any other appropriate relief as expeditiously as possible to preserve the rights and property of the residents of the state of Missouri, and to defend as necessary the state of Missouri, its officials, employees, and agents in the event that any law or regulation is enacted that violates the public policy set forth above.