

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

**BILL:** CS/SB 1754

**INTRODUCER:** Banking and Insurance Committee and Senator Garcia

**SUBJECT:** Health Insurance

**DATE:** April 6, 2011                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Brown	Stovall	HR	Pre-meeting
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that the prohibition against compelling a person to purchase health insurance would not prohibit the collection of debts lawfully incurred for health insurance.

This bill creates section 624.24, Florida Statutes.

## II. Present Situation:

### **The Federal Patient Protection and Affordable Care Act**

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152. The PPACA is a broad-based, national approach designed to reform various aspects of the health insurance system including access and affordability of coverage.

The PPACA establishes new requirements on individuals, employers, and health plans; restructures the private health insurance market; and creates exchanges for individuals and employers to obtain coverage. An exchange is not an insurer; however, it would provide eligible individuals and businesses with access to insurers' plans.

The PPACA expands the Medicaid program in 2014 to include nonelderly, nonpregnant individuals with income below 133 percent of the federal poverty level who were previously ineligible for Medicaid. Also in 2014, some individuals who do not qualify for Medicaid, but who meet other requirements, will be provided with premium tax credits and cost-sharing subsidies to help pay for the premiums and out-of-pocket costs of health plans offered through an exchange.

The PPACA requires most U.S. citizens and legal residents to obtain health insurance by January 1, 2014,<sup>1</sup> or potentially pay taxes or penalties for non-compliance. A taxpayer is exempt from the penalty if the individual has a household income below a certain threshold, is a member of an Indian tribe, or has a religious objection to purchasing health insurance. An individual who fails to maintain coverage is required to pay an annual tax penalty of the greater of \$95 for each household member (up to \$285), or 1 percent of household income in 2014, \$325 or 2 percent of household income in 2015, and \$695 or 2.5 percent of income in subsequent years. The tax penalty for an entire family is capped at \$2,250. The applicable tax penalty for dependents under the age of 18 is one-half the amount for adults.

If an individual that is subject to the tax penalty fails to pay the tax penalty, the Internal Revenue Service can attempt to collect funds by reducing the amount of an individual's tax refund in the future. However, individuals that fail to pay the tax penalty will not be subject to any criminal prosecution for such failure.

### **Congressional Authority and Constitutionality**

#### ***Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)***

Congress has the power to regulate interstate commerce, including local matters and issues that "substantially affect" interstate commerce. Proponents of insurance reforms assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines; thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market destabilization caused by the large uninsured population as reason enough to authorize

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<sup>1</sup> Section 1501(b) as amended by section 101006 (b) of P.L. 111-148 and by s. 1002 of P.L. 111-152.

Congressional action under the Commerce Clause.<sup>2</sup> Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez*<sup>3</sup> which held that Congress is prohibited from “...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce.”<sup>4</sup>

***The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)***

The Tenth Amendment reserves to the states all power that is not reserved expressly for the federal government in the U.S. Constitution. Opponents of federal insurance reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, “...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance.”<sup>5</sup> Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine, which prohibits the federal government from requiring state officials to carry out onerous federal regulations.<sup>6</sup> Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.<sup>7</sup>

**State Legislative Actions**

***State Legislation Implementing PPACA***

As of September 27, 2010, at least 25 states have enacted or adopted legislation or taken official action to form a committee, task force, or board concerning health insurance reform implementation.<sup>8</sup> Additionally, at least 14 governors have issued executive orders to begin the process of health insurance reform implementation.<sup>9</sup>

***State Legislation Opposing PPACA***

In response to the federal health insurance reform, state legislators in at least 40 states have filed legislation to limit, alter, or oppose certain state or federal action, including single-payer provisions and mandates that would compel the purchase of health insurance.<sup>10</sup> In 30 of the states, the legislation includes a proposed constitutional amendment by ballot.<sup>11</sup>

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<sup>2</sup> Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).

<sup>3</sup> 514 U.S. 549 (1995).

<sup>4</sup> Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an ‘Individual Mandate’ in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).

<sup>7</sup> Hall, *supra* note 25, at 8-9.

<sup>8</sup> National Conference of State Legislators, *State Actions to Implement Federal Health Reform*, Nov. 22, 2010, available at <http://www.ncsl.org/default.aspx?tabid=20231#Legislative> (last visited Jan. 3, 2011).

<sup>9</sup> *Id.*

<sup>10</sup> National Conference of State Legislatures, *State Legislation and Actions Challenging Certain Health Reforms, 2010*, Dec. 18, 2010, available at <http://www.ncsl.org/?tabid=18906> (last visited Jan. 3, 2011).

<sup>11</sup> *Id.*

## Florida Insurance Coverage Requirements

Florida law does not require state residents to maintain health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP) insurance,<sup>12</sup> which includes specified medical benefits, as a condition of registering a motor vehicle.<sup>13</sup> Florida law also requires employers to secure the payment of workers' compensation coverage. Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure.<sup>14</sup> Workers' compensation insurance provides certain medical and indemnity benefits.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 624.24, F.S., and provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that the act does not prohibit the collection of debts lawfully incurred for health insurance.

**Section 2** provides that the bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

#### B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

#### C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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<sup>12</sup> Section 627.736, F.S.

<sup>13</sup> Section 320.02(5)(a), F.S.

<sup>14</sup> Section 440.38, F.S.

<sup>15</sup> Sections 440.13, 440.15, and 440.16, F.S.

**D. Other Constitutional Issues:**

Florida and 25 other states brought an action in the United States District Court for the Northern District of Florida challenging the constitutionality of the PPACA. On January 31, 2011, Judge Roger Vinson found the Act unconstitutional.<sup>16</sup> The court rejected the argument by the United States that the individual mandate is a tax and made it clear that he agreed with the plaintiffs' argument that the power the individual mandate seeks to harness "is simply without precedent."

On March 3, 2011, Judge Vinson granted a stay of his order on the condition that the federal government seek an immediate appeal and an expedited review. The federal government filed the appeal and motion for expedited review to the United State Court of Appeal for the Eleventh Circuit on March 8, 2011.<sup>17</sup> Florida and the other plaintiffs have filed a motion requesting a more condensed briefing and oral argument schedule than requested by the federal government. The Eleventh Circuit responded on March 11, 2011 setting the briefing schedule beginning on April 4, 2011 and ending May 25, 2011.<sup>18</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>16</sup> State of Florida, et al. v. United States Department of Health and Human Services, et al., --- F.Supp.2d ----, 2011 WL 285683 (N.D.Fla.).

<sup>17</sup> Case No. 11-11021-HH.

<sup>18</sup> State of Fla., et al. v. U.S. Dept. of Health & Human Serv., Nos. 11-11021-HH & 11-11067-HH, Order on Appellants' Mtn. to Expedite Appeal (11th Cir. March 11, 2011).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance Committee on April 5, 2011:**  
Designates section of Florida Statutes that is being created.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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