

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1193 Health Insurance

SPONSOR(S): Health & Human Services Quality Subcommittee; Hudson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	10 Y, 4 N, As CS	Poche	Calamas
2) Judiciary Committee	11 Y, 6 N	De La Paz	Havlicak
3) Health & Human Services Committee	11 Y, 6 N	Poche	Gormley

SUMMARY ANALYSIS

CS/HB 1193 prohibits compelling a person to purchase health insurance, with several specific exceptions. The bill does not prevent the collection of debts lawfully incurred for health insurance.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA)¹, as amended by the Health Care and Education Reconciliation Act of 2010.² PPACA, as amended, consists of approximately 2,562 pages of text and several hundred sections of law.³ The law contains comprehensive reform of the entire health care system in the United States.

Arguably the most essential provision of PPACA is the individual mandate requiring every person in the United States to purchase health insurance by 2014. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from \$95 in 2014 to \$750 in 2016, and is indexed in subsequent years.⁴ Exemptions for mandatory health insurance coverage will be granted for:

- American Indians;
- Cases of extreme financial hardship;
- Those objecting to the mandatory provision for religious reasons;
- Individuals without health insurance for less than three months; and
- Individuals in prison.⁵

Legal Challenges to PPACA

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.⁶ At the time suit was filed, Florida was joined by twelve states, by and through their individual attorneys general. Currently, twenty six states, the National Federation of Independent Business, and two private individuals are now plaintiffs in the federal action. In addition, the state of Virginia filed its own federal lawsuit challenging the constitutionality of PPACA.⁷

In total, twenty four constitutional challenges to PPACA were filed in federal courts across the country.⁸ The majority of lawsuits challenge the mandate that requires individuals to purchase health insurance.⁹ Other constitutional issues raised in the federal lawsuits include the imposition of a fine for failing to purchase health insurance, whether the federal government has constitutional authority to institute

¹ P.L. 111-148, 124 Stat. 119 (2010).

² P.L. 111-152, 124 Stat. 1029 (2010).

³ Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at <http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf>.

⁴ The federal government expects to raise \$17 billion from penalties by 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than \$1,000. See Congressional Budget Office and the staff of the Joint Committee on Taxation, *"Payments of Penalties for Being Uninsured under PPACA"*, April 22, 2010.

⁵ Hinda Chaikind, et al., Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act, CRS Report R40942.

⁶ State of Florida v. U.S. Dept. of Health and Human Services, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

⁷ State of Virginia v. Kathleen Sebelius, Case No.: 3:10-cv-188-HEH (E.D. Va.)

⁸ A list of all cases that have been filed to challenge the constitutionality of PPACA can be found at <http://healthcarereform.procon.org/view.resource.php?resourceID=004134>, last accessed on March 27, 2011; see also ACA Litigation Snapshot Overview, <http://acalitigationblog.blogspot.com>, last accessed March 25, 2011.

⁹ *Id.*

health care reform, establishing financial disclosure rules for doctors, and changes made to Medicaid and Medicare.¹⁰

The Florida lawsuit argues, in part, that the federal government is violating the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. On January 31, 2011, Judge Roger Vinson of the Federal District Court for the Northern District of Florida, Pensacola Division, entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.¹¹ Judge Vinson also ruled that, because the provisions of PPACA were rendered ineffective without the individual mandate and because the law lacked a severability clause, the entire Act was void.

Currently, the federal government has complied with certain terms established by Judge Vinson to stay his order. The terms included a provision that the federal government seek an expedited review of the order on summary judgment by the 11th Circuit Court of Appeals in Atlanta. The federal government filed an appeal and petitioned for expedited review on March 8, 2011. The 11th Circuit has scheduled the deadlines for filing briefs. Oral argument is scheduled to take place on June 8, 2011. An opinion is likely to be issued in late summer or early fall 2011.

Florida Health Insurance Mandates

Florida law does not require state residents to have health insurance. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.¹² Florida also requires most employers to carry workers' compensation insurance, which includes certain health care provisions for injured workers.¹³ While Florida does not require residents to have health insurance, the state does impose nearly 50 coverage mandates, including mandated offerings, on those who do have insurance.¹⁴

Effect of Proposed Changes

The bill prohibits compelling any person¹⁵ to purchase health insurance, with several exceptions. A person may be compelled to purchase health insurance only as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality¹⁶;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or

¹⁰ *Id.*

¹¹ See Florida v. U.S. Dept. of HHS, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.

¹² S. 627.736, F.S.

¹³ S. 440.10(1)(a), F.S.

¹⁴ Victoria Craig Bunce and JP Wieske, *Health Insurance Mandates in the States 2010*, Council for Affordable Health Care; available at http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf. For example, Florida mandates coverage for alcoholism and substance abuse, diabetic supplies, orthotics and/or prosthetics, and well child care.

¹⁵ S. 1.01(3), F.S., defines "person" as including individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

¹⁶ A "dangerous instrumentality" is defined as anything which has the inherent capacity to place people in peril, either in itself (e.g. dynamite), or by a careless use of it (e.g. boat); see Black's Law Dictionary, 8th Ed.; In Florida, motor vehicles are dangerous instrumentalities. See *Southern Cotton Oil Co. v. Anderson*, 86 So. 629 (Fla. 1920). Forklifts have also been declared dangerous instrumentalities. See *Harding v. Allen-Laux, Inc.*, 559 So.2d 107 (Fla. 2d DCA 1990). Golf carts are dangerous instrumentalities in Florida. See *Meister v. Fisher*, 462 So.2d 1071 (Fla. 1984). Lastly, vessels have been statutorily determined to be dangerous instrumentalities. See s. 327.32, F.S. (Vessels are defined in s. 327.02(39), F.S., as synonymous with boat as referenced in s. 1(b), Art. VII of the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water). These are examples of dangerous instrumentalities in Florida and do not encompass all vehicles, items, or materials that may be considered dangerous instrumentalities in common law by the courts of Florida.

- Activity between private persons.

The bill expressly provides that its terms do not prohibit the collection of debts lawfully incurred for health insurance.

B. SECTION DIRECTORY:

Section 1: Creates s. 624.24, F.S., relating to prohibition against requiring the purchase of health insurance; exceptions.

Section 2: Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Citizens of the state of Florida cannot be forced to spend money on health insurance by state law, except in very limited circumstances that affect a very small percentage of the population.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

This bill will prohibit any state law that requires any person to purchase health insurance. It is unclear at this time how the bill will affect the Legislature's ability to implement the provisions of PPACA,

should the Act ultimately be found constitutional. The federal preemption doctrine may be invoked in determining the impact of the bill on the Legislature's potential obligations to see that the provisions of PPACA are made effective in Florida.

The federal preemption doctrine is derived from the Supremacy Clause of the U.S. Constitution¹⁷, which reads, in part, "...Constitution and the laws of the U.S. ... shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." In other words, federal law, whether found in the Constitution or statute, will trump state law.

Preemption may be express or implied, and is compelled whether Congress' command is explicitly stated within the language of the statute or is implicitly contained in its structure and purpose.¹⁸ Preemption is implied when there is a conflict between a federal law and a state law.¹⁹ There is a conflict between federal law and state law when the dictates of both laws cannot be complied with or where dual compliance with the laws may be technically possible but the state law creates an obstacle to fulfilling the federal policy and goals.²⁰

Assuming that PPACA is found to be constitutional and is implemented as the law of the land, this bill will conflict with the individual mandate provision of the Act. Under the current doctrine of federal preemption, this bill may be found to be implicitly preempted by PPACA.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Health & Human Services Quality Subcommittee adopted one amendment. The amendment creates s. 624.24, F.S., to include the bill language in an established chapter of law. Placement in ch. 624, F.S., makes an existing definition of "insurance" found in that chapter applicable to the bill. Previously, "insurance" was undefined by the bill.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

¹⁷ Article VI, U.S. Constitution

¹⁸ See *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57, 111 S.Ct. 403, 112 L.Ed.2d 356 (1990).

¹⁹ See *Talbott v. Am. Isuzu Motors, Inc.*, 934 So.2d 643, 645 (Fla. 2nd DCA 2006).

²⁰ See *id.*