

SENATE JOINT RESOLUTION 7

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1999 Regular Session
(9lr0761)

ENROLLED RESOLUTION
-- Finance/Economic Matters --

Introduced by **Senators Hollinger and Bromwell**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

RESOLUTION NO. _____

1 A Senate Joint Resolution concerning

2 **State Regulation of Self-Funded Employer-Based Health Plans**

3 FOR the purpose of requesting the United States Congress to amend the Employment
4 Retirement Income Security Act of 1974 (ERISA) to authorize each state to
5 monitor and to regulate self-funded employer-based health plans and to make a
6 specific amendment to the ERISA; urging other state legislatures to enact a
7 resolution similar to this resolution; and directing a copy of this resolution to be
8 forwarded to certain individuals.

9 WHEREAS, The McCarran-Ferguson Act, passed by the U. S. Congress in 1945,
10 established a statutory framework whereby responsibility for regulating insurance
11 and the insurance industry was left largely to the states; and

12 WHEREAS, The Employee Retirement Income Security Act of 1974 (ERISA)
13 significantly altered this concept by creating a federal framework for regulating
14 employer-based pension and welfare benefit plans, including health plans; and

15 WHEREAS, ERISA effectively prohibits states from directly regulating many
16 employer-based health plans because ERISA preempts state regulation of
17 self-insured plans; and

1 WHEREAS, Available data suggests that self-funding of employer-based health
2 plans is increasing at a significant rate among both small and large businesses; and

3 WHEREAS, Between 1989 and 1993, the United States General Accounting
4 Office estimates that the number of self-funded plan enrollees increased by about
5 6,000,000 individuals; and

6 WHEREAS, Approximately 40% to 50% of employer-based health plans are
7 presently self-funded by employers that retain most or all of the financial risk for
8 their respective health plans; and

9 WHEREAS, With the growth in the self-funding of health plans, states have
10 lost regulatory oversight over a growing portion of the health market; and

11 WHEREAS, Recent federal court decisions have struck down state laws
12 regulating insured health plans by expanding ERISA's current preemption of state
13 laws regulating self-insured plans to laws relating to insured plans; and

14 WHEREAS, As these phenomena continue, state governments are losing their
15 ability to manage their health care markets; and

16 WHEREAS, Many state legislatures, such as the Maryland General Assembly,
17 have taken significant actions to increase access to care, to control costs, and to
18 regulate against abuses by health plans; and

19 WHEREAS, ERISA preemption is a significant obstacle to the states adopting a
20 wide range of health care reform and consumer protection strategies; and

21 WHEREAS, The states' inability to protect consumers enrolled in self-funded
22 health plans that fail to provide the consumers' anticipated level of health care is
23 gradually eroding the public's confidence in the American health care system because
24 self-funded plans are afforded an unfair advantage over traditional health insurance
25 plans due to a lack of adequate state or federal accountability, regulation, or remedy
26 for the ERISA plan members who are denied coverage; and

27 WHEREAS, Over the past 24 years, state governments have gradually realized
28 that ERISA is an impediment to ensuring adequate consumer protection for all
29 individuals with employer-based health care coverage and to enacting administrative
30 simplification and cost reduction reforms that could improve the efficiency and equity
31 of their health care markets; and

32 WHEREAS, ERISA plan participants, their dependents, and their treating
33 physicians believe that they have been denied coverage for medically necessary
34 procedures because ERISA's remedy provisions have been narrowly interpreted and
35 ERISA's preemption provisions have been broadly interpreted, thereby creating
36 substantial economic incentives, with few disincentives for plan administrators to
37 deny medically necessary benefits legitimately covered under ERISA plans; and

1 WHEREAS, The time has now come for the states to aggressively seek changes
2 in ERISA to give them more flexibility in regulating health plans at the state level, to
3 increase access to health care, and to lower health care costs; now, therefore, be it

4 RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That this
5 General Assembly hereby requests the U. S. Congress to amend the Employment
6 Retirement Income Security Act of 1974 (ERISA) to authorize each state to monitor
7 and to regulate self-funded employer-based health plans in the interests of providing
8 greater consumer protection and effecting significant health care reforms at the state
9 level through the offices of the various insurance commissioners and states' attorneys
10 general. Additionally, the United States Department of Labor should cooperatively
11 refer complaints to the offices of the various insurance commissioners and states'
12 attorneys general; and be it further

13 RESOLVED, That § 502(a)(1)(B) of ERISA, which currently reads: "(B) to
14 recover benefits due to him under the terms of his plan, to enforce his rights under
15 the terms of the plan, or to clarify his rights to future benefits under the terms of the
16 plan;" be amended to read: "(B) to recover benefits due to him under the terms of his
17 plan, to recover from the fiduciary compensatory damages caused by the fiduciary's
18 failure to pay benefits due under the terms of the plan, to enforce his rights under the
19 terms of the plan, or to timely authorize assurance of payment and clarify his rights
20 to future benefits under the terms of the plans;" and be it further

21 RESOLVED, That this General Assembly most fervently urges and encourages
22 each state legislative body in the nation to enact this resolution, or one similar in
23 context and form, as a show of solidarity in petitioning the federal government for
24 greater state authority and responsibility in regulating self-funded employer-based
25 health plans; and be it further

26 RESOLVED, That a copy of this Resolution be forwarded by the Department of
27 Legislative Services to the Honorable Parris N. Glendening, Governor of Maryland;
28 The Honorable Thomas V. Mike Miller, Jr., President of the Senate of Maryland; and
29 the Honorable Casper R. Taylor, Jr., Speaker of the House of Delegates; and be it
30 further

31 RESOLVED, That a copy of this Resolution be forwarded by the Department of
32 Legislative Services to the National Conference of State Legislatures, 444 North
33 Capitol Street, N.W., Suite 515, Washington, D.C., 20001; and be it further

34 RESOLVED, That a copy of this Resolution be forwarded by the Department of
35 Legislative Services to the President of the United States; the Secretary of the United
36 States Department of Labor; the Speaker and the Clerk of the United States House of
37 Representatives; the President and the Secretary of the United States Senate; and to
38 the presiding officer of each chamber of each state legislature in the nation; and be it
39 further

40 RESOLVED, That a copy of this Resolution be forwarded by the Department of
41 Legislative Services to the Maryland Congressional Delegation: Senators Paul S.
42 Sarbanes and Barbara A. Mikulski, Senate Office Building, Washington, D.C. 20510;

- 1 and Representatives Wayne T. Gilchrest, Robert L. Ehrlich, Jr., Benjamin L. Cardin,
- 2 Albert R. Wynn, Steny Hamilton Hoyer, Roscoe G. Bartlett, Elijah E. Cummings, and
- 3 Constance A. Morella, House Office Building, Washington, D.C. 20515.