

SENATE JOINT RESOLUTION 7

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1999 Regular Session
9lr0761
CF 9lr1593

By: **Senators Hollinger and Bromwell**
Introduced and read first time: February 5, 1999
Assigned to: Finance

SENATE JOINT RESOLUTION

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

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

20 WHEREAS, Between 1989 and 1993, the United States General Accounting
21 Office estimates that the number of self-funded plan enrollees increased by about
22 6,000,000 individuals; and

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

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

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

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

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

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

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

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

22 WHEREAS, ERISA plan participants, their dependents, and their treating
23 physicians believe that they have been denied coverage for medically necessary
24 procedures because ERISA's remedy provisions have been narrowly interpreted and
25 ERISA's preemption provisions have been broadly interpreted, thereby creating
26 substantial economic incentives, with few disincentives for plan administrators to
27 deny medically necessary benefits legitimately covered under ERISA plans; and

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

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

40 RESOLVED, That § 502(a)(1)(B) of ERISA, which currently reads: "(B) to
41 recover benefits due to him under the terms of his plan, to enforce his rights under

1 the terms of the plan, or to clarify his rights to future benefits under the terms of the
2 plan;"; be amended to read: "(B) to recover benefits due to him under the terms of his
3 plan, to recover from the fiduciary compensatory damages caused by the fiduciary's
4 failure to pay benefits due under the terms of the plan, to enforce his rights under the
5 terms of the plan, or to timely authorize assurance of payment and clarify his rights
6 to future benefits under the terms of the plans;"; and be it further

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

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

17 RESOLVED, That a copy of this Resolution be forwarded by the Department of
18 Legislative Services to the President of the United States; the Secretary of the United
19 States Department of Labor; the Speaker and the Clerk of the United States House of
20 Representatives; the President and the Secretary of the United States Senate; and to
21 the presiding officer of each chamber of each state legislature in the nation; and be it
22 further

23 RESOLVED, That a copy of this Resolution be forwarded by the Department of
24 Legislative Services to the Maryland Congressional Delegation: Senators Paul S.
25 Sarbanes and Barbara A. Mikulski, Senate Office Building, Washington, D.C. 20510;
26 and Representatives Wayne T. Gilchrest, Robert L. Ehrlich, Jr., Benjamin L. Cardin,
27 Albert R. Wynn, Steny Hamilton Hoyer, Roscoe G. Bartlett, Elijah E. Cummings, and
28 Constance A. Morella, House Office Building, Washington, D.C. 20515.