

SENATE JOINT RESOLUTION 7

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

Committee Report: Favorable
Senate action: Adopted
Read second time: March 5, 1999

RESOLUTION NO. _____

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

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

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

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

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

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

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

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

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

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

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

36 **RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND**, That this
37 General Assembly hereby requests the U. S. Congress to amend the Employment
38 Retirement Income Security Act of 1974 (ERISA) to authorize each state to monitor
39 and to regulate self-funded employer-based health plans in the interests of providing
40 greater consumer protection and effecting significant health care reforms at the state

1 level through the offices of the various insurance commissioners and states' attorneys
2 general. Additionally, the United States Department of Labor should cooperatively
3 refer complaints to the offices of the various insurance commissioners and states'
4 attorneys general; and be it further

5 RESOLVED, That § 502(a)(1)(B) of ERISA, which currently reads: "(B) to
6 recover benefits due to him under the terms of his plan, to enforce his rights under
7 the terms of the plan, or to clarify his rights to future benefits under the terms of the
8 plan;" be amended to read: "(B) to recover benefits due to him under the terms of his
9 plan, to recover from the fiduciary compensatory damages caused by the fiduciary's
10 failure to pay benefits due under the terms of the plan, to enforce his rights under the
11 terms of the plan, or to timely authorize assurance of payment and clarify his rights
12 to future benefits under the terms of the plans;" and be it further

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

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

23 RESOLVED, That a copy of this Resolution be forwarded by the Department of
24 Legislative Services to the President of the United States; the Secretary of the United
25 States Department of Labor; the Speaker and the Clerk of the United States House of
26 Representatives; the President and the Secretary of the United States Senate; and to
27 the presiding officer of each chamber of each state legislature in the nation; and be it
28 further

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