

Department of Legislative Services  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 397

(Senator Pipkin, *et al.*)

Finance

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**Health Care Freedom Act of 2010**

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This proposed constitutional amendment prohibits any law requiring an individual, employer, or health care provider to participate in any health care system or pay penalties or fines for nonparticipation and any restrictions on an individual's ability to pay for health care directly or a provider's ability to accept direct payment for health care services. Subject to reasonable and necessary laws, the purchase or sale of health insurance in private health care systems may not be prohibited.

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**Fiscal Summary**

**State Effect:** Adoption of the constitutional amendment does not directly affect governmental finances.

**Local Effect:** If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2010 general election. It is not expected to result in additional costs for local election boards.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The proposed constitutional amendment specifies that it does not (1) affect which health care services are authorized or not prohibited by law or that a provider must perform or provide; (2) prohibit health care provided under any law related to workers compensation; or (3) affect the terms or conditions of any health care system to the extent that those terms and conditions do not penalize an individual or employer

for paying directly for lawful health care services or a hospital for accepting direct payment from an individual or employer for lawful health care services.

**Current Law:** Maryland law does not require State residents to obtain health care coverage.

The Maryland Insurance Administration (MIA), an independent State agency, regulates Maryland's insurance industry and ensures that insurance companies and health plans act in accordance with insurance laws. MIA licenses insurance companies operating in Maryland, conducts financial examinations of companies to ensure solvency, and reviews and approves rates and contract forms. MIA investigates life, health, automobile, homeowners, and property insurance complaints, as well as reports of insurance fraud, and conducts market conduct examinations of companies to ensure compliance with Maryland law. In addition, MIA is the agency where consumers may file health insurance appeals or grievances concerning coverage decisions or claims denials.

**Background:** According to the National Conference of State Legislatures, legislation has been introduced in at least 19 states to make or keep health insurance optional, and allow people to purchase any type of coverage they choose. Such measures are in response to federal health care reform legislation and limit, alter or oppose selected state or federal actions, including single-payer provisions and mandates that would require the purchase of insurance.

Arizona is scheduled to vote on a constitutional amendment similar to this proposed constitutional amendment in November 2010. A similar Arizona ballot initiative was defeated in 2008.

Massachusetts requires both employers and individuals to purchase health insurance and provides subsidized health insurance to individuals up to 300% of federal poverty guidelines. In addition, Vermont requires employers to provide coverage but does not require individuals to purchase insurance.

In January 2006, the Maryland General Assembly adopted the *Fair Share Health Care Fund Act*, which imposed an assessment on certain employers based on the provision of health insurance coverage. In effect, it would have required large employers to spend a certain amount of their payroll on employee health care or pay a fine. However, in *Retail Industry Leaders Association v. James D. Fielder, Jr.*, the U.S. Court of Appeals for the Fourth Circuit ultimately ruled that the bill was preempted by the federal Employee Retirement Income Security Act.

**Local Effect:** The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if

available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2010 general election in newspapers or on specimen ballots.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 603 (Delegate Shank, *et al.*) - Health and Government Operations.

**Information Source(s):** Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2010  
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Analysis by: Sarah K. Volker

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510