

SENATE BILL 733

J1
SB 397/10 – FIN

CONSTITUTIONAL AMENDMENT

11r2038

By: **Senators Pipkin, Brinkley, Colburn, Getty, Glassman, Jacobs, Kittleman, Shank, and Simonaire**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Freedom Act of 2011**

3 FOR the purpose of adding a new article to the Maryland Constitution to enact limits
4 on the regulation of health care in the State; prohibiting a law from compelling
5 certain persons to participate in a health care system; prohibiting certain
6 persons from being required to pay penalties or fines for not participating in any
7 health care system; authorizing certain persons to pay directly for certain
8 health care services; authorizing a health care provider to accept direct payment
9 for certain health care services; prohibiting certain persons from being required
10 to pay penalties or fines under certain circumstances; specifying that the
11 purchase or sale of certain health insurance may not be prohibited by law;
12 specifying that this Act does not affect which health care services a health care
13 provider is required to perform or provide, which health care services are
14 authorized or not prohibited by law, and the terms and conditions of any health
15 care system under certain circumstances; specifying that this Act does not
16 prohibit health care provided under any law relating to workers' compensation;
17 defining certain terms; and submitting this amendment to the qualified voters
18 of the State for their adoption or rejection.

19 BY proposing an addition to the Maryland Constitution

20 New Article XX – Regulation of Health Care

21 Section 1

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
24 concurring), That it be proposed that the Maryland Constitution read as follows:

25 **ARTICLE XX – REGULATION OF HEALTH CARE**

26 1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
2 **MEANINGS INDICATED.**

3 **(2) “DIRECT PAYMENT” MEANS PAYMENT FOR LAWFUL HEALTH**
4 **CARE SERVICES WITHOUT A PUBLIC OR PRIVATE THIRD PARTY, OTHER THAN AN**
5 **EMPLOYER, PAYING FOR ANY PORTION OF THE SERVICE.**

6 **(3) “HEALTH CARE PROVIDER” MEANS ANY PERSON, INCLUDING**
7 **A PHYSICIAN OR HOSPITAL, THAT IS LICENSED OR OTHERWISE AUTHORIZED TO**
8 **PROVIDE LAWFUL HEALTH CARE SERVICES IN THE STATE.**

9 **(4) “LAWFUL HEALTH CARE SERVICES” MEANS ANY**
10 **HEALTH-RELATED SERVICE OR TREATMENT TO THE EXTENT THE SERVICE OR**
11 **TREATMENT IS AUTHORIZED OR NOT PROHIBITED BY LAW TO BE PROVIDED BY**
12 **PERSONS AUTHORIZED TO OFFER THE SERVICE OR TREATMENT.**

13 **(5) “PAY DIRECTLY” MEANS PAYING FOR LAWFUL HEALTH CARE**
14 **SERVICES WITHOUT A PUBLIC OR PRIVATE THIRD PARTY, OTHER THAN AN**
15 **EMPLOYER, PAYING FOR ANY PORTION OF THE SERVICE.**

16 **(B) TO PRESERVE THE FREEDOM OF MARYLANDERS TO PROVIDE FOR**
17 **THEIR HEALTH CARE:**

18 **(1) A LAW MAY NOT COMPEL, DIRECTLY OR INDIRECTLY, ANY**
19 **INDIVIDUAL, EMPLOYER, OR HEALTH CARE PROVIDER TO PARTICIPATE IN ANY**
20 **HEALTH CARE SYSTEM;**

21 **(2) AN INDIVIDUAL, AN EMPLOYER, OR A HEALTH CARE**
22 **PROVIDER MAY NOT BE REQUIRED TO PAY PENALTIES OR FINES FOR NOT**
23 **PARTICIPATING IN ANY HEALTH CARE SYSTEM;**

24 **(3) AN INDIVIDUAL OR EMPLOYER MAY PAY DIRECTLY FOR**
25 **LAWFUL HEALTH CARE SERVICES AND MAY NOT BE REQUIRED TO PAY**
26 **PENALTIES OR FINES FOR PAYING DIRECTLY FOR LAWFUL HEALTH CARE**
27 **SERVICES; AND**

28 **(4) A HEALTH CARE PROVIDER MAY ACCEPT DIRECT PAYMENT**
29 **FOR LAWFUL HEALTH CARE SERVICES AND MAY NOT BE REQUIRED TO PAY**
30 **PENALTIES OR FINES FOR ACCEPTING DIRECT PAYMENT FROM AN INDIVIDUAL**
31 **OR EMPLOYER FOR LAWFUL HEALTH CARE SERVICES.**

32 **(C) SUBJECT TO REASONABLE AND NECESSARY LAWS THAT DO NOT**
33 **SUBSTANTIALLY LIMIT AN INDIVIDUAL’S HEALTH CARE OPTIONS, THE**

1 PURCHASE OR SALE OF HEALTH INSURANCE IN PRIVATE HEALTH CARE SYSTEMS
2 MAY NOT BE PROHIBITED BY LAW.

3 (D) THIS SECTION DOES NOT:

4 (1) AFFECT WHICH HEALTH CARE SERVICES A HEALTH CARE
5 PROVIDER IS REQUIRED TO PERFORM OR PROVIDE;

6 (2) AFFECT WHICH HEALTH CARE SERVICES ARE AUTHORIZED OR
7 NOT PROHIBITED BY LAW;

8 (3) PROHIBIT HEALTH CARE PROVIDED UNDER ANY LAW
9 RELATING TO WORKERS' COMPENSATION; OR

10 (4) AFFECT THE TERMS OR CONDITIONS OF ANY HEALTH CARE
11 SYSTEM TO THE EXTENT THAT THOSE TERMS AND CONDITIONS DO NOT HAVE
12 THE EFFECT OF PENALIZING:

13 (I) AN INDIVIDUAL OR EMPLOYER FOR PAYING DIRECTLY
14 FOR LAWFUL HEALTH CARE SERVICES OR A HEALTH CARE PROVIDER; OR

15 (II) A HOSPITAL FOR ACCEPTING DIRECT PAYMENT FROM
16 AN INDIVIDUAL OR EMPLOYER FOR LAWFUL HEALTH CARE SERVICES.

17 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
18 determines that the amendment to the Maryland Constitution proposed by this Act
19 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the
20 Maryland Constitution concerning local approval of constitutional amendments do not
21 apply.

22 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
23 proposed as an amendment to the Maryland Constitution shall be submitted to the
24 qualified voters of the State at the next general election to be held in November, 2012
25 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
26 At that general election, the vote on this proposed amendment to the Constitution
27 shall be by ballot, and upon each ballot there shall be printed the words "For the
28 Constitutional Amendment" and "Against the Constitutional Amendment," as now
29 provided by law. Immediately after the election, all returns shall be made to the
30 Governor of the vote for and against the proposed amendment, as directed by Article
31 XIV of the Maryland Constitution, and further proceedings had in accordance with
32 Article XIV.