

House Concurrent Resolution No. 5032

By Representatives Landwehr, Mast, Jack and Schwab, A. Brown, Brunk, Carlson, Crum, DeGraaf, Faber, Fund, George, Goico, Gordon, Grange, Hermanson, M. Holmes, Horst, Huebert, Kelley, Kerschen, Kiegerl, Kinzer, Knox, McLeland, Merrick, Morrison, Neufeld, O'Brien, O'Neal, Olson, Patton, Peck, Powell, Prescott, Proehl, Rhoades, Seiwert, Siegfried, Suellentrop, Vickrey, B. Wolf and Yoder

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14 A PROPOSITION to amend the constitution of the state of Kansas by
15 adding a new article 16 thereto, concerning health care.

16
17 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
18 *members elected (or appointed) and qualified to the House of Repre-*
19 *sentatives and two-thirds of the members elected (or appointed) and*
20 *qualified to the Senate concurring therein:*

21 Section 1. The following proposition to amend the constitution of the
22 state of Kansas shall be submitted to the qualified electors of the state
23 for their approval or rejection: The constitution of the state of Kansas is
24 amended by adding a new article 16 thereto to read as follows:

“Article 16. — HEALTH CARE

25
26 “§ 1. **Health care.** (a) To preserve the freedom of Kansans to
27 provide for their health care:

28 “(1) A law or rule shall not compel, directly or indirectly, any
29 person, employer or health care provider to participate in any health
30 care system or purchase health insurance.

31 “(2) A person or employer may pay directly for lawful health
32 care services and shall not be required to pay penalties or fines for
33 paying directly for lawful health care services. A health care pro-
34 vider may accept direct payment for lawful health care services and
35 shall not be required to pay penalties or fines for accepting direct

36 payment from a person or employer for lawful health care services.
37 “(b) Subject to reasonable and necessary rules that do not sub-
38 stantially limit a person’s options, the purchase or sale of health
39 insurance in private health care systems shall not be prohibited by
40 law or rule.

41 “(c) This section does not:

42 “(1) Affect which health care services a health care provider or
43 hospital is required to perform or provide.

- 1 “(2) Affect which health care services are permitted by law.
2 “(3) Prohibit care provided pursuant to the provisions relating
3 to workers compensation.
4 “(4) Prohibit care provided pursuant to the provisions relating
5 to state employee benefit programs.
6 “(5) Affect laws or rules in effect as of August 1, 2009.
7 “(6) Affect the terms or conditions of any health care system to
8 the extent that those terms and conditions do not have the effect
9 of punishing or penalizing a person or employer for paying directly
10 for lawful health care services or a health care provider or hospital
11 for accepting direct payment from a person or employer for lawful
12 health care services.
13 “(d) For the purposes of this section:
14 “(1) “Compel” includes penalties or fines.
15 “(2) “Direct payment or pay directly” means payment for lawful
16 health care services without a public or private third party, not in-
17 cluding an employer, paying for any portion of the service.
18 “(3) “Health care system” means any public or private entity
19 whose function or purpose is the management of, processing of,
20 enrollment of individuals for or payment for, in full or in part, health
21 care services or health care data or health care information for its
22 participants.
23 “(4) “Lawful health care services” means any health-related
24 service or treatment to the extent that the service or treatment is
25 permitted or not prohibited by law or regulation that may be pro-
26 vided by persons or businesses otherwise permitted to offer such
27 services.
28 “(5) “Penalties or fines” means any civil or criminal penalty or
29 fine, tax, salary or wage withholding or surcharge or any named fee
30 with a similar effect established by law or rule by a government
31 established, created or controlled agency that is used to punish or
32 discourage the exercise of rights protected under this section.”
33 Sec. 2. The following statement shall be printed on the ballot with
34 the amendment as a whole:
35 *“Explanatory statement.* The purpose of this health care freedom
36 amendment is to preserve constitutionally the right and freedom
37 of Kansans to provide for their health care. This proposition
38 would not affect which health care services a health care provider
39 or hospital is required to perform or provide; would not affect
40 which health care services are permitted by law; would not pro-
41 hibit care provided pursuant to the general provisions relating to
42 workers compensation; would not prohibit care pursuant to the
43 provisions relating to state employee benefit programs; would

1 not affect laws or rules in effect as of August 1, 2009; or would
2 not affect the terms or conditions of any health care system to
3 the extent that those terms and conditions do not have the effect
4 of punishing a person or employer for paying directly for lawful
5 health care services. Nothing in this amendment is meant to
6 discourage anyone from purchasing health insurance.

7 “A vote for this proposition would preserve constitutionally the right
8 of a person, employer or health care provider to be free from
9 laws or rules compelling participation in any health care system;
10 preserve constitutionally the right of a person or employer to
11 purchase lawful health care services directly from a health care
12 provider; preserve constitutionally the right of a health care pro-
13 vider to accept direct payment from a person or employer for
14 lawful health care services; and preserve constitutionally the
15 right to have the ability to purchase or sell health insurance in
16 private health care systems.

17 “A vote against this proposition would provide for no constitutional
18 right of a person, employer or health care provider to be free
19 from laws and rules compelling participation in any health care
20 system; would provide for no constitutional right of a person or
21 employer to purchase lawful health care services directly from a
22 health care provider; would provide for no constitutional right of
23 a health care provider to accept direct payment from a person
24 or employer for lawful health care services; and would provide
25 for no constitutional right to have the ability to purchase or sell
26 health insurance in private health care systems.”

27 Sec. 3. This resolution, if approved by two-thirds of the members
28 elected (or appointed) and qualified to the House of Representatives, and
29 two-thirds of the members elected (or appointed) and qualified to the
30 Senate, shall be entered on the journals, together with the yeas and nays.
31 The secretary of state shall cause this resolution to be published as pro-
32 vided by law and shall cause the proposed amendment to be submitted
33 to the electors of the state at the general election in November in the
34 year 2010 unless a special election is called at a sooner date by concurrent
35 resolution of the legislature, in which case it shall be submitted to the
36 electors of the state at the special election.