

House Concurrent Resolution No. 5007

By Representatives Landwehr, Mosier, Denning, Rubin, Alford, Arpke, Boman, Bruchman, Brunk, Calloway, Carlson, Cassidy, Collins, Crum, DeGraaf, Donohoe, Fawcett, Garber, Goico, Gonzalez, Goodman, Gordon, Gregory, Grosserode, Hayzlett, Hermanson, Hildabrand, Hoffman, M. Holmes, Howell, Huebert, Johnson, Kelley, Kerschen, Kiegerl, Kinzer, Kleeb, Mast, McLeland, Meigs, Mesa, Montgomery, O'Brien, O'Hara, O'Neal, Osterman, Otto, Patton, Powell, Prescott, Rhoades, Ryckman, Scapa, Schwartz, Seiwert, Siegfried, Smith, Suellentrop, Vickrey, Weber and B. Wolf

1-31

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

3 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
4 *members elected (or appointed) and qualified to the House of*
5 *Representatives and two-thirds of the members elected (or appointed)*
6 *and qualified to the Senate concurring therein:*

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

11 **"Article 16. – HEALTH CARE**

12 **"§1. Health care.** (a) To preserve the freedom of Kansans to
13 provide for their health care:

14 "(1) A law or rule shall not compel, directly or indirectly, any
15 person, employer or health care provider to participate in any
16 health care system or purchase health insurance.

17 "(2) A person or employer may pay directly for lawful health
18 care services and shall not be required to pay penalties or fines for
19 paying directly for lawful health care services. A health care
20 provider may accept direct payment for lawful health care services
21 and shall not be required to pay penalties or fines for accepting
22 direct payment from a person or employer for lawful health care
23 services.

24 "(b) Subject to reasonable and necessary rules that do not
25 substantially limit a person's options, the purchase or sale of
26 private health insurance or the participation in private health care
27 systems shall not be prohibited by law or rule.

28 "(c) This section does not:

29 "(1) Affect which health care services a health care provider
30 or 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
8 to 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
16 lawful health care services without a public or private third party,
17 not including 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,
21 health care services or health care data or health care information
22 for its 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
26 provided by persons or businesses otherwise permitted to offer
27 such services.

28 “(5) “Penalties or fines” means any civil or criminal penalty
29 or fine, tax, salary or wage withholding or surcharge or any named
30 fee 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
39 provider or hospital is required to perform or provide; would
40 not affect which health care services are permitted by law;
41 would not prohibit care provided pursuant to the general
42 provisions relating to workers compensation; would not prohibit
43 care pursuant to the provisions relating to state employee

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

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

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

29 Sec. 3. This resolution, if approved by two-thirds of the members
30 elected (or appointed) and qualified to the House of Representatives, and
31 two-thirds of the members elected (or appointed) and qualified to the
32 Senate shall be entered on the journals, together with the yeas and nays.
33 The secretary of state shall cause this resolution to be published as
34 provided by law and shall cause the proposed amendment to be submitted
35 to the electors of the state at the general election in November in the year
36 2012 unless a special election is called at a sooner date by concurrent
37 resolution of the legislature, in which case it shall be submitted to the
38 electors of the state at the special election.