

## Senate Concurrent Resolution No. 1604

By Senators Pilcher-Cook, Abrams, Bruce, Love, Lynn, Masterson, Merrick,  
Olson, Ostmeyer, Petersen, Pyle, Steineger and Taddiken

2-9

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 Senate and two-*  
5 *thirds of the members elected (or appointed) and qualified to the*  
6 *House of Representatives 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 nor prohibited  
22 from gaining state medical licensure, for accepting direct payment  
23 from a person or employer for lawful health care 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.

31 "(2) Affect which health care services are permitted by law.

32 "(3) Prohibit care provided pursuant to the provisions relating  
33 to workers compensation.

34 "(4) Prohibit care provided pursuant to the provisions relating  
35 to state employee benefit programs.

1 “(5) Affect laws or rules in effect as of August 1, 2009.

2 “(6) Affect the terms or conditions of any health care system  
3 to the extent that those terms and conditions do not have the effect  
4 of punishing or penalizing a person or employer for paying directly  
5 for lawful health care services or a health care provider or hospital  
6 for accepting direct payment from a person or employer for lawful  
7 health care services.

8 “(d) For the purposes of this section:

9 “(1) “Compel” includes penalties or fines.

10 “(2) “Direct payment or pay directly” means payment for  
11 lawful health care services without a public or private third party,  
12 not including an employer, paying for any portion of the service.

13 “(3) “Health care system” means any public or private entity  
14 whose function or purpose is the management of, processing of,  
15 enrollment of individuals for or payment for, in full or in part,  
16 health care services or health care data or health care information  
17 for its participants.

18 “(4) “Lawful health care services” means any health-related  
19 service or treatment to the extent that the service or treatment is  
20 permitted or not prohibited by law or regulation that may be  
21 provided by persons or businesses otherwise permitted to offer  
22 such services.

23 “(5) “Penalties or fines” means any civil or criminal penalty  
24 or fine, tax, salary or wage withholding or surcharge or any named  
25 fee with a similar effect established by law or rule by a government  
26 established, created or controlled agency that is used to punish or  
27 discourage the exercise of rights protected under this section.”

28 Sec. 2. The following statement shall be printed on the ballot  
29 with the amendment as a whole:

30 “Explanatory statement. The purpose of this health care freedom  
31 amendment is to preserve constitutionally the right and freedom  
32 of Kansans to provide for their health care. This proposition  
33 would not affect which health care services a health care  
34 provider or hospital is required to perform or provide; would  
35 not affect which health care services are permitted by law;  
36 would not prohibit care provided pursuant to the general  
37 provisions relating to workers compensation; would not prohibit  
38 care pursuant to the provisions relating to state employee  
39 benefit programs; would not affect laws or rules in effect as of  
40 August 1, 2009; or would not affect the terms or conditions of  
41 any health care system to the extent that those terms and  
42 conditions do not have the effect of punishing a person or  
43 employer for paying directly for lawful health care services.

1           Nothing in this amendment is meant to discourage anyone from  
2           purchasing health insurance.

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

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

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