**South Carolina General Assembly**

120th Session, 2013-2014

**S. 102**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Bright, S. Martin, Grooms, Verdin, Bryant, Corbin and Shealy

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Introduced in the Senate on January 8, 2013

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Freedom of Choice in Health Care Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/13/2012 Senate Prefiled

12/13/2012 Senate Referred to Committee on **Banking and Insurance**

1/8/2013 Senate Introduced and read first time ([Senate Journal‑page 74](file:///h:\SJ%20Archive\2013\01-08-13.docx))

1/8/2013 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 74](file:///h:\SJ%20Archive\2013\01-08-13.docx))

**VERSIONS OF THIS BILL**

[12/13/2012](file:///p:\pprever\2013-14\102_20121213.docx)

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 38 OF THE 1976 CODE, BY ADDING SECTION 38‑1‑40 TO ENACT THE “FREEDOM OF CHOICE IN HEALTH CARE ACT,” TO PROVIDE THAT THE GENERAL ASSEMBLY DECLARES THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT EXCEEDS THE POWER GRANTED TO CONGRESS UNDER THE UNITED STATES CONSTITUTION AND THEREFORE IS NOT LAW, BUT IS ALTOGETHER VOID AND OF NO FORCE, TO PROVIDE THAT IT SHALL BE THE DUTY OF THE GENERAL ASSEMBLY TO ADOPT AND ENACT ANY AND ALL MEASURES TO PREVENT THE ENFORCEMENT OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT WITHIN THE LIMITS OF THIS STATE, TO PROVIDE THAT NO PUBLIC OFFICER OR EMPLOYEE OF THIS STATE SHALL HAVE ANY AUTHORITY TO ENFORCE OR ATTEMPT TO ENFORCE ANY ASPECT OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT, TO PROVIDE THAT ANY OFFICIAL, AGENT, OR EMPLOYEE OF THE UNITED STATES GOVERNMENT WHO UNDERTAKES ANY ACT WITHIN THE BORDERS OF THIS STATE THAT ENFORCES OR ATTEMPTS TO ENFORCE ANY ASPECT OF THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT IS GUILTY OF A MISDEMEANOR, AND TO PROVIDE THAT ANY PERSON WHO HAS BEEN SUBJECT TO ANY ACT ATTEMPTING TO ENFORCE THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT WITHIN THIS STATE’S BORDERS SHALL HAVE A PRIVATE CAUSE OF ACTION FOR DECLARATORY JUDGMENT AND FOR DAMAGES AGAINST ANY PERSON VIOLATING THE PROVISIONS OF THIS SECTION.

Whereas, the South Carolina General Assembly finds that:

(1) The General Assembly is firmly resolved to support and defend the United States Constitution against every aggression, either foreign or domestic, and the General Assembly is bound to watch over and oppose every infraction of those principles which constitutes the basis of the Union of the States, because only a faithful observance of those principles can secure the nation’s existence and the public happiness;

(2) Acting through the United States Constitution, the people of the several states created the national government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs;

(3) The limitation of the national government’s power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves;

(4) Whenever the national government assumes powers that the people did not grant it in the Constitution, its acts are without authority, void, and of no force;

(5) The several states composing the United States of America are not united on the principle of unlimited submission to their national government. The government created by the compact among the states is not the exclusive or final judge of the extent of the powers granted to it by the Constitution, because that would have made the national government’s discretion, and not the Constitution, the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made pursuant to the powers granted in the Constitution, such supremacy does not apply to the Patient Protection and Affordable Care Act, because that act exceeds the powers granted to the national government;

(6) The people of the several states have given Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes”, but the federal law known as the Patient Protection and Affordable Care Act exceeds this power by forcing individual citizens to engage in commerce by purchasing products they may neither want nor need, and also intruding upon the authority each state has reserved to determine how the provision of health care should be regulated within its own borders;

(7) The State of South Carolina has joined Florida, Virginia, Iowa, Oklahoma, Kansas, Maine, Ohio, Wisconsin, Wyoming, Alabama, Alaska, Arizona, Colorado, Georgia, Indiana, Idaho, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Pennsylvania, South Dakota, Utah, Washington, and Texas to contest the individual mandate portions of the Patient Protection and Affordable Care Act and challenge its constitutionality;

(8) In attempting to justify the federal Patient Protection and Affordable Care Act, the national government has construed those parts of the United States Constitution which delegate to Congress the power “to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States” and “to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof” in such a way as to destroy all limits the Constitution has imposed upon its powers. These constitutional provisions merely identify the means by which the national government may execute its limited powers and ought not to be so construed as themselves to give unlimited powers because to do so would be to destroy the balance of power between the national government and the state governments. Now therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Freedom of Choice in Health Care Act”.

SECTION 2. Chapter 1, Title 38 of the 1976 Code is amended by adding:

“Section 38-1-40. (A) The General Assembly declares that the federal law known as the Patient Protection and Affordable Care Act, signed by President Barack Obama on March 23, 2010, exceeds the power granted to Congress under the United States Constitution and therefore is not law, but is altogether void and of no force.

(B) It shall be the duty of the General Assembly to adopt and enact any and all measures as may be necessary to prevent the enforcement of the Patient Protection and Affordable Care Act within the limits of this State.

(C) No public officer or employee of this State shall have any authority to enforce or attempt to enforce any aspect of the federal Patient Protection and Affordable Care Act.

(D) Any official, agent, or employee of the United States or this State who knowingly undertakes any act within the borders of this State that enforces or attempts to enforce any aspect of the federal Patient Protection and Affordable Care Act is guilty of a misdemeanor and may be sentenced to up to one year in prison or fined not more than one thousand dollars or both.

(E) Any person who has been subject to any act attempting to enforce the federal Patient Protection and Affordable Care Act within this state’s borders shall have a private cause of action for declaratory judgment and for damages against any person violating the provisions of subsection (C) or (D) of this section.”

SECTION 3. This act takes effect upon approval by the Governor.

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