

As Amended by House Committee

Session of 2011

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*
4 *the members elected (or appointed) and qualified to the House of*
5 *Representatives and two-thirds of the members elected (or*
6 *appointed) 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
9 state for their approval or rejection: The constitution of the state of
10 Kansas is amended by adding a new article 16 thereto to read as
11 follows:

12 **"Article 16. – HEALTH CARE**

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

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

18 "(2) A person or employer may pay directly for lawful
19 health care services and shall not be required to pay penalties or
20 fines for paying directly for lawful health care services. A health
21 care provider may accept direct payment for lawful health care
22 services and shall not be required to pay penalties or fines **nor**
23 **prohibited from gaining state medical licensure**, for accepting
24 direct payment from a person or employer for lawful health care
25 services.

26 "(b) Subject to reasonable and necessary rules that do not
27 substantially limit a person's options, the purchase or sale of

1 private health insurance or the participation in private health care
2 systems shall not be prohibited by law or rule.

3 “(c) This section does not:

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

6 “(2) Affect which health care services are permitted by law.

7 “(3) Prohibit care provided pursuant to the provisions
8 relating to workers compensation.

9 “(4) Prohibit care provided pursuant to the provisions
10 relating to state employee benefit programs.

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

12 “(6) Affect the terms or conditions of any health care
13 system to the extent that those terms and conditions do not have
14 the effect of punishing or penalizing a person or employer for
15 paying directly for lawful health care services or a health care
16 provider or hospital for accepting direct payment from a person
17 or employer for lawful health care services.

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

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

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

23 “(3) “Health care system” means any public or private
24 entity whose function or purpose is the management of,
25 processing of, enrollment of individuals for or payment for, in
26 full or in part, health care services or health care data or health
27 care information for its participants.

28 “(4) “Lawful health care services” means any health-
29 related service or treatment to the extent that the service or
30 treatment is permitted or not prohibited by law or regulation that
31 may be provided by persons or businesses otherwise permitted to
32 offer such services.

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

39 Sec. 2. The following statement shall be printed on the ballot with

1 the amendment as a whole:

2 “*Explanatory statement.* The purpose of this health care freedom
3 amendment is to preserve constitutionally the right and
4 freedom of Kansans to provide for their health care. This
5 proposition would not affect which health care services a
6 health care provider or hospital is required to perform or
7 provide; would not affect which health care services are
8 permitted by law; would not prohibit care provided pursuant
9 to the general provisions relating to workers compensation;
10 would not prohibit care pursuant to the provisions relating to
11 state employee benefit programs; would not affect laws or
12 rules in effect as of August 1, 2009; or would not affect the
13 terms or conditions of any health care system to the extent
14 that those terms and conditions do not have the effect of
15 punishing a person or employer for paying directly for lawful
16 health care services. Nothing in this amendment is meant to
17 discourage anyone from purchasing health insurance.

18 “A vote for this proposition would preserve constitutionally the
19 right of a person, employer or health care provider to be free
20 from laws or rules compelling participation in any health care
21 system; preserve constitutionally the right of a person or
22 employer to purchase lawful health care services directly
23 from a health care provider; preserve constitutionally the right
24 of a health care provider to accept direct payment from a
25 person or employer for lawful health care services; and
26 preserve constitutionally the right to have the ability to
27 purchase or sell health insurance in private health care
28 systems.

29 “A vote against this proposition would provide for no
30 constitutional right of a person, employer or health care
31 provider to be free from laws and rules compelling
32 participation in any health care system; would provide for no
33 constitutional right of a person or employer to purchase
34 lawful health care services directly from a health care
35 provider; would provide for no constitutional right of a health
36 care provider to accept direct payment from a person or
37 employer for lawful health care services; and would provide
38 for no constitutional right to have the ability to purchase or
39 sell health insurance in private health care systems.”

1 Sec. 3. This resolution, if approved by two-thirds of the members
2 elected (or appointed) and qualified to the House of Representatives,
3 and two-thirds of the members elected (or appointed) and qualified to
4 the Senate shall be entered on the journals, together with the yeas and
5 nays. The secretary of state shall cause this resolution to be published
6 as provided by law and shall cause the proposed amendment to be
7 submitted to the electors of the state at the general election in
8 November in the year 2012 unless a special election is called at a
9 sooner date by concurrent resolution of the legislature, in which case
10 it shall be submitted to the electors of the state at the special election.