

## **FINAL BILL ANALYSIS**

**BILL #:** *CS/HB 1193*

**FINAL HOUSE FLOOR ACTION:**

*81 Y's      34 N's*

**SPONSOR:** *Rep. Hudson*

**GOVERNOR'S ACTION:** *Approved*

**COMPANION BILLS:** *SB 1754*

---

### **SUMMARY ANALYSIS**

CS/HB 1193 passed the House on April 29, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-126, Laws of Florida, and took effect June 2, 2011.

The bill prohibits compelling a person to purchase health insurance, with several specific exceptions. The bill does not prevent the collection of debts lawfully incurred for health insurance.

The bill does not appear to have a fiscal impact on state or local government.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Current Situation**

##### Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA)<sup>1</sup>, as amended by the Health Care and Education Reconciliation Act of 2010.<sup>2</sup> PPACA, as amended, consists of approximately 2,562 pages of text and several hundred sections of law.<sup>3</sup> The law contains comprehensive reform of the entire health care system in the United States.

Arguably, the most essential provision of PPACA is the individual mandate requiring every person in the United States to purchase health insurance by 2014. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from \$95 in 2014 to \$750 in 2016, and is indexed in subsequent years.<sup>4</sup> Exemptions for mandatory health insurance coverage will be granted for:

- American Indians;
- Cases of extreme financial hardship;
- Those objecting to the mandatory provision for religious reasons;
- Individuals without health insurance for less than three months; and
- Individuals in prison.<sup>5</sup>

##### Legal Challenges to PPACA

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.<sup>6</sup> At the time suit was filed, Florida was joined by twelve states, by and through their individual attorneys general. Currently, twenty six states, the National Federation of Independent Business, and two private individuals are now plaintiffs in the federal action. In addition, the state of Virginia filed its own federal lawsuit challenging the constitutionality of PPACA.<sup>7</sup>

---

<sup>1</sup> P.L. 111-148, 124 Stat. 119 (2010).

<sup>2</sup> P.L. 111-152, 124 Stat. 1029 (2010).

<sup>3</sup> Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at <http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf>.

<sup>4</sup> The federal government expects to raise \$17 billion from penalties by 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than \$1,000. See Congressional Budget Office and the staff of the Joint Committee on Taxation, *Payments of Penalties for Being Uninsured under PPACA*, April 22, 2010.

<sup>5</sup> Hinda Chaikind, et al., Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act, CRS Report R40942.

<sup>6</sup> State of Florida v. U.S. Dept. of Health and Human Services, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

<sup>7</sup> State of Virginia v. Kathleen Sebelius, Case No.: 3:10-cv-188-HEH (E.D. Va.)

In total, more than twenty five constitutional challenges to PPACA were filed in federal courts across the country.<sup>8</sup> The majority of lawsuits challenge the mandate that requires individuals to purchase health insurance.<sup>9</sup> Other constitutional issues raised in the federal lawsuits include the imposition of a fine for failing to purchase health insurance, whether the federal government has constitutional authority to institute health care reform, establishing financial disclosure rules for doctors, and changes made to Medicaid and Medicare.<sup>10</sup>

The Florida lawsuit argues, in part, that the federal government is violating the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. On January 31, 2011, Judge Roger Vinson of the Federal District Court for the Northern District of Florida, Pensacola Division, entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.<sup>11</sup> Judge Vinson also ruled that, because the remaining provisions of PPACA were rendered ineffective without the individual mandate and because the law lacked a severability clause, the entire Act was void.

The federal government has complied with certain terms established by Judge Vinson to stay his order. The terms included a provision that the federal government seek an expedited review of the order on summary judgment by the 11<sup>th</sup> Circuit Court of Appeals in Atlanta. The federal government filed an appeal and petitioned for expedited review on March 8, 2011. The 11<sup>th</sup> Circuit has scheduled the deadlines for filing briefs. Oral argument is scheduled to take place on June 8, 2011. An opinion is likely to be issued in late summer or early fall 2011.

### Florida Health Insurance Mandates

Florida law does not require state residents to have health insurance. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.<sup>12</sup> Florida also requires most employers to carry workers' compensation insurance, which includes certain health care provisions for injured workers.<sup>13</sup> While Florida does not require residents to have health insurance, the state does impose nearly 50 coverage mandates, including mandated offerings, on those who do have insurance.<sup>14</sup>

---

<sup>8</sup> A list of all cases that have been filed to challenge the constitutionality of PPACA can be found at <http://healthcarereform.procon.org/view.resource.php?resourceID=004134>, last accessed on March 27, 2011; see also ACA Litigation Snapshot Overview, <http://acalitigationblog.blogspot.com>, last accessed March 25, 2011.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See Florida v. U.S. Dept. of HHS, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.

<sup>12</sup> S. 627.736, F.S.

<sup>13</sup> S. 440.10(1)(a), F.S.

<sup>14</sup> Victoria Craig Bunce and JP Wieske, *Health Insurance Mandates in the States 2010*, Council for Affordable Health Care; available at [http://www.cahi.org/cahi\\_contents/resources/pdf/MandatesintheStates2010.pdf](http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf). For example, Florida mandates coverage for alcoholism and substance abuse, diabetic supplies, orthotics and/or prosthetics, and well child care.

## Effect of Changes

The bill prohibits compelling any person<sup>15</sup> to purchase health insurance, with several exceptions. A person may be compelled to purchase health insurance only as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality<sup>16</sup>;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- Activity between private persons.

The bill expressly provides that its terms do not prohibit the collection of debts lawfully incurred for health insurance.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

---

<sup>15</sup> S. 1.01(3), F.S., defines "person" as including individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>16</sup> A "dangerous instrumentality" is defined as anything which has the inherent capacity to place people in peril, either in itself (e.g. dynamite), or by a careless use of it (e.g. boat); see Black's Law Dictionary, 8<sup>th</sup> Ed.; In Florida, motor vehicles are dangerous instrumentalities. See *Southern Cotton Oil Co. v. Anderson*, 86 So. 629 (Fla. 1920). Forklifts have also been declared dangerous instrumentalities. See *Harding v. Allen-Laux, Inc.*, 559 So.2d 107 (Fla. 2d DCA 1990). Golf carts are dangerous instrumentalities in Florida. See *Meister v. Fisher*, 462 So.2d 1071 (Fla. 1984). Lastly, vessels have been statutorily determined to be dangerous instrumentalities. See s. 327.32, F.S. (Vessels are defined in s. 327.02(39), F.S., as synonymous with boat as referenced in s. 1(b), Art. VII of the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water). These are examples of dangerous instrumentalities in Florida and do not encompass all vehicles, items, or materials that may be considered dangerous instrumentalities in common law by the courts of Florida.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Citizens of the state of Florida cannot be forced to spend money on health insurance by state law, except in very limited circumstances that affect a very small percentage of the population.

D. FISCAL COMMENTS:

None.