

Senate Concurrent Resolution No. 1626

By Senators Pilcher-Cook, Abrams, Barnett, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pyle and Taddiken

2-2

11 A PROPOSITION to amend the constitution of the state of Kansas by
12 adding a new article 16 thereto, concerning health care.
13

14 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
15 *members elected (or appointed) and qualified to the Senate and two-*
16 *thirds of the members elected (or appointed) and qualified to the House*
17 *of Representatives concurring therein:*

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

22 **“Article 16. — HEALTH CARE**

23 “§ 1. **Health care.** (a) To preserve the freedom of Kansans to
24 provide for their health care:

25 “(1) A law or rule shall not compel, directly or indirectly, any
26 person, employer or health care provider to participate in any health
27 care system or purchase health insurance.

28 “(2) A person or employer may pay directly for lawful health
29 care services and shall not be required to pay penalties or fines for
30 paying directly for lawful health care services. A health care pro-
31 vider may accept direct payment for lawful health care services and
32 shall not be required to pay penalties or fines for accepting direct
33 payment from a person or employer for lawful health care services.

34 “(b) Subject to reasonable and necessary rules that do not sub-
35 stantially limit a person’s options, the purchase or sale of health
36 insurance in private health care systems shall not be prohibited by
37 law or rule.

38 “(c) This section does not:

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

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

42 “(3) Prohibit care provided pursuant to the provisions relating
43 to workers compensation.

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

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

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

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

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

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

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

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

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

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

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

1 of punishing a person or employer for paying directly for lawful
2 health care services. Nothing in this amendment is meant to
3 discourage anyone from purchasing health insurance.

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

14 “A vote against this proposition would provide for no constitutional
15 right of a person, employer or health care provider to be free
16 from laws and rules compelling participation in any health care
17 system; would provide for no constitutional right of a person or
18 employer to purchase lawful health care services directly from a
19 health care provider; would provide for no constitutional right of
20 a health care provider to accept direct payment from a person
21 or employer for lawful health care services; and would provide
22 for no constitutional right to have the ability to purchase or sell
23 health insurance in private health 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 Repre-
27 sentatives, shall be entered on the journals, together with the yeas and
28 nays. The secretary of state shall cause this resolution to be published as
29 provided by law and shall cause the proposed amendment to be submitted
30 to the electors of the state at the general election in November in the
31 year 2010 unless a special election is called at a sooner date by concurrent
32 resolution of the legislature, in which case it shall be submitted to the
33 electors of the state at the special election.