

Senate Concurrent Resolution No. 1604

By Senators Pilcher-Cook, Abrams, Bruce, Love, Lynn, Masterson, Merrick,
Olson, Ostmeier, 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.