



Representative Matt Lynch
"With God All Things Are Possible"

Ohio State Motto Matthew 19:26

March 21, 2013

Dear Chairman Watchman:

Yesterday in Committee there was extensive discussion concerning the constitutionality of HB91. Please accept my observations as follows. The "Healthcare Freedom Amendment" which is now § 1.21 of the Ohio Constitution states in part as follows:

*(B) No federal, state, or local law or rule shall **prohibit** the purchase or sale of health care or health insurance.*

*(C) No federal, state, or local law or rule shall **impose a penalty** or fine for the sale or purchase of health care or health insurance.*

These sections appear to deny the state any authority to "prohibit" or "Impose a penalty" on the sale of health insurance in Ohio. However, these sections must be read in light of the definitions contained in the amendment as follows:

*(B) "**Penalty**" means any civil or criminal fine, tax, salary or wage withholding, surcharge, fee, or any other imposed consequence established by law or rule of a government or its subdivision or agency that is used to punish or discourage the exercise of rights protected under this chapter.*

It is abundantly clear that HB91 does not impose any type of civil or criminal penalty. It also does not assess any "fine, tax" or "fee". Further, there is no "right" to sell insurance in Ohio. On the contrary courts have long recognized that states may regulate the operation of insurance companies. Accordingly no rights are "punished" or "discouraged" under the Bill.

HB91 also does not "prohibit" the sale of insurance. Rather HB91 merely adds a requirement that those selling healthcare insurance in Ohio refrain from accepting any "remuneration, credit, or subsidy" as defined in the Bill. Such a requirement is not unlike the many regulations already found in Chapter 39 of the Ohio Revised Code that must be met by an insurance company doing business in Ohio.

It is therefore my opinion that HB91 does not violate the Ohio Constitution by establishing a sanction in the form of a suspension or forfeiture of a license to sell health insurance in Ohio.

Very truly yours,

Matt Lynch
Ohio State Representative
76th District

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