



Rep. Barbara R. Sears
47th House District

Memorandum

TO: House Republican Members
FROM: Representative Barbara Sears
DATE: March 24, 2013
RE: HB 91

Many are receiving calls and/or emails regarding my position on HB 91. The following is a summary of my concerns regarding HB 91: I am supportive of our constitutional Healthcare Freedom Amendment as passed by Ohioans.

Representative Maag and I sponsored HJR2 in the 129th General Assembly which was the Healthcare Freedom resolution; the Senate resolution SJR 5 passed the Senate and failed in the House by 1 vote.

The same provisions that were added to protect our private marketplace and passed overwhelmingly by Ohioans make HB 91 unworkable in my opinion.

Below is a summary of my thoughts regarding the interaction of HB 91 and our Constitutional amendment – Healthcare Freedom Act. I am unsure why The Tenth Amendment Centers and others would dishonestly portray my position; however their decision does not change the facts. It seems illogical to push legislation that would work towards the destruction of our private healthcare marketplace.

I have yet to hear an argument that suggests that HB 91 doesn't violate our Constitution.

From HB 91

Sec. 3964.02. (A) A health insurance issuer operating in this state shall not accept any remuneration, credit, or subsidy, as described in 42 U.S.C. 18082, that may result in the imposition of penalties against any employer or individual in this state.

(B) If a health insurance issuer violates division (A) of this section, the issuer's license to issue new business in the state shall be suspended immediately and until such time as the issuer represents it has returned that remuneration, credit, or subsidy to its source and will decline any such future remuneration, credit, or subsidy. Such suspensions shall not be construed as impairing the right of contract or the right to continue or renew existing business in the state.

I believe that if we pass HB 91, we violate Section 21(b) and Section 21(c) of the Healthcare Freedom Amendment.

To put this into practical terms, if a carrier were to accept funding under the terms outlined in the PPACA, it is possible that an employer could be penalized. How could this happen?

The PPACA requires that:

1. If an employer with more than 50 fulltime equivalent employees, who does not offers health insurance coverage and has at least one employee who receives a premium tax credit or cost sharing subsidy in the exchange, the employer would then be subject to a penalty for not offering coverage. The penalty is \$2,000 annually times the number of full-time employees minus 30 in the first year, and grows annually.
2. If an employer with more than 50 fulltime equivalent employees offers health insurance that does not cover at least 60% of typical health care expenses and an employee chooses to buy on the Exchange and receive a premium tax credit, the employer would then be subject to a penalty for not offering affordable coverage. The penalty is \$3,000 for each fulltime employee receiving a tax credit up to \$2,000 annually times the number of full-time employees minus 30 in the first year, and grows annually.
3. If an employer with more than 50 fulltime equivalent employees offers health insurance with any employee paying more than 9.5% of family income for the employer coverage and an employee chooses to buy on the Exchange and receive a premium tax credit, the employer would then be subject to a penalty for not offering affordable coverage. The penalty is \$3,000 for each fulltime employee receiving a tax credit up to \$2,000 annually times the number of full-time employees minus 30 in the first year, and grows annually.

If any employer is put in a position “that may result in the imposition of penalties against any employer or individual in this state.” “[T]he issuer’s license to issue new business in the state shall be suspended immediately” (HB 91-130).

The issuer can renew policies but shall be prohibited from the sale of health insurance and Ohioans will be prohibited to purchase health insurance through the carrier. (HB 91-130)

The Healthcare Freedom Constitutional Amendment passed by 66% of Ohio and in all 88 counties in Ohio states:

- Section 21 (A) No federal, state, or local law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in a health care system.
- Section 21 (B) No federal, state, or local law or rule shall prohibit the purchase or sale of health care or health insurance.

- Section 21 (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.

Section 21 (E) (3) “Penalty or fine” means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this section”

I could suggest that if we pass HB 91, then we violate Section 21(b) and Section 21(c) in that we will be prohibiting both the sale of health insurance and an individual’s right to purchase health insurance by imposing law and rules that would be specifically used to punish a carrier should they accept any remuneration, credit, or subsidy as provided in the PPACA.

I appreciate the effort to find an appropriate way to protect our healthcare freedom and our private marketplace. However I believe that HB 91 does not get that accomplished no matter how some would like to characterize the interaction of HB 91 with the Healthcare Freedom Constitutional Amendment.