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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE RESOLUTION

No. 36

Session of  
1999

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INTRODUCED BY LESCOVITZ, BATTISTO, PESCI, HALUSKA, PRESTON,  
HORSEY, TANGRETTI, SAINATO, WALKO, SURRA, CALTAGIRONE,  
McCALL, RAMOS, PLATTS, GEIST, STEELMAN, MELIO, YOUNGBLOOD,  
STABACK AND BELFANTI, FEBRUARY 9, 1999

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REFERRED TO COMMITTEE ON INTERGOVERNMENTAL AFFAIRS,  
FEBRUARY 9, 1999

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A RESOLUTION

1 Memorializing the Congress of the United States to amend ERISA  
2 to grant authority to the several states to regulate self-  
3 funded, employer-based health plans; memorializing the United  
4 States Department of Labor to coordinate enforcement efforts;  
5 and encouraging other states to enact similar resolutions.

6 WHEREAS, The McCarran-Ferguson Act, passed by the Congress of  
7 the United States in 1945, established a statutory framework  
8 whereby responsibility for regulating insurance and the  
9 insurance industry was left largely to the states; and

10 WHEREAS, The Employee Retirement Income Security Act of 1974  
11 (ERISA) significantly altered this concept by creating a Federal  
12 framework for regulating employer-based pension and welfare  
13 benefit plans, including health plans; and

14 WHEREAS, ERISA preemption effectively prohibits states from  
15 directly regulating most employer-based health plans, which are  
16 not deemed to be "insurance" for purposes of Stark laws,  
17 resulting in ERISA preemption from state regulation; and

18 WHEREAS, Over the past 24 years, state governments have

1 gradually come to realize that ERISA is an impediment to  
2 ensuring adequate consumer protections for all individuals with  
3 employer-based health care coverage and to enacting  
4 administrative simplification and cost reduction reforms that  
5 could improve the efficiency and equity of their health care  
6 markets; and

7 WHEREAS, Available data suggests that self-funding of  
8 employer-based health plans is increasing at a significant rate,  
9 both among larger and smaller businesses; and

10 WHEREAS, The General Accounting Office estimates that the  
11 number of self-funded plan enrollees increased by about 6  
12 million individuals between 1989 and 1993; and

13 WHEREAS, Approximately 40% to 50% of employer-based health  
14 plans are presently self-funded by employers, who retain most or  
15 all of the financial risk for their respective health plans; and

16 WHEREAS, As self-funding of health plans has grown, states  
17 have lost regulatory oversight over a growing portion of the  
18 health market; and

19 WHEREAS, As this phenomenon continues, state governments are  
20 slowly but surely losing their ability to manage their health  
21 care markets; and

22 WHEREAS, Given the improbability of Federal reforms to  
23 achieve universal health coverage in the near future, many state  
24 legislatures are seeking an active role in expanding the number  
25 of individuals covered by an insurance plan and in controlling  
26 health care costs and regulating abuses; and

27 WHEREAS, In a very real sense, ERISA preemption is an  
28 obstacle to the states in adopting a wide range of health care  
29 reform strategies; and

30 WHEREAS, Employers are increasingly adopting funding methods

1 for their health plans that blur the distinction between self-  
2 funded and fully insured, including more extensive use of stop-  
3 loss coverage and risk-sharing arrangements with managed care  
4 organizations; and

5 WHEREAS, These innovative funding methods have so blurred the  
6 distinction between self-funded and fully insured health plans  
7 that many experts argue that there is no real distinction at  
8 all; and

9 WHEREAS, The states' inability to protect consumers enrolled  
10 in self-funded health plans from employers or plans who fail to  
11 provide the consumers' anticipated level of health care is  
12 gradually eroding the public's confidence in government, even as  
13 self-funded plans are afforded an unfair advantage over  
14 traditional health insurance providers due to lack of Federal or  
15 state accountability, regulation or remedy for the individual  
16 members of ERISA plans confronting insurance denials; and

17 WHEREAS, Many ERISA plan participants and their dependents  
18 have been or are being permanently injured because courts have  
19 narrowly interpreted ERISA's remedy provisions and broadly  
20 interpreted ERISA's preemption provisions, thereby creating a  
21 substantial economic incentive for plan administrators to deny  
22 medically necessary benefits legitimately covered under ERISA  
23 plans; and

24 WHEREAS, The time has now come for the several states to  
25 aggressively seek changes in ERISA to give them more flexibility  
26 in regulating health plans at the state level and to increase  
27 access to health care and to lower health care costs; and

28 WHEREAS, Employers shall be immune from prosecution within an  
29 ERISA claim and shall have the right to remain self-funded  
30 without risk of liability through ERISA plans; and

1       WHEREAS, ERISA section 502(a)(1)(B) currently reads as  
2 follows: "(B) to recover benefits due to him under the terms of  
3 his plan, to enforce his rights under the terms of the plan, or  
4 to clarify his rights to future benefits under the terms of the  
5 plan"; therefore be it

6       RESOLVED, That the House of Representatives of the  
7 Commonwealth of Pennsylvania memorialize the Congress to amend  
8 the Employee Retirement Income Act of 1974 (ERISA) to grant  
9 authority to all individual states to monitor and regulate self-  
10 funded, employer-based health plans in the interest of providing  
11 greater consumer protection by each state attorney general and  
12 of effecting significant health care reforms by each state  
13 insurance and health administrative agency; and be it further

14       RESOLVED, That the House of Representatives memorialize the  
15 United States Department of Labor to coordinate enforcement  
16 efforts among the various state attorneys general and insurance  
17 administrative agencies; and be it further

18       RESOLVED, That the House of Representatives of the  
19 Commonwealth of Pennsylvania urge the Congress to amend ERISA  
20 section (a)(1)(B) to read as follows: "(B) to recover benefits  
21 due to him under the terms of his plan, to recover from the  
22 fiduciary compensatory damages caused by the fiduciary's failure  
23 to pay benefits due under the plan, to enforce his rights under  
24 the terms of the plan, or to authorize in a timely manner  
25 assurance of payment and clarify his rights to future benefits  
26 under the terms of the plans"; and be it further

27       RESOLVED, That the House of Representatives of the  
28 Commonwealth of Pennsylvania most fervently urge and encourage  
29 each state legislative body of the United States to enact this  
30 resolution, or one similar in context and form, as a show of

1 solidarity in petitioning the Federal Government for greater  
2 state authority in regulating self-funded, employer-based health  
3 plans; and be it further

4       RESOLVED, That copies of this resolution be sent to the  
5 President of the United States, the Secretary of the United  
6 States Department of Labor, the Speaker and Clerk of the United  
7 States House of Representatives, the President and Secretary of  
8 the United States Senate, each member of the Pennsylvania  
9 congressional delegation and the presiding officer of each house  
10 of each state legislative body in the United States.