

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1049 Session of
2013

INTRODUCED BY BAKER, KRIEGER, COX, RAPP, STERN, KAUFFMAN,
SACCONI, HEFFLEY, MILLARD, CUTLER, BLOOM, TALLMAN, AUMENT,
KNOWLES, CLYMER, BARRAR, C. HARRIS, LAWRENCE, DENLINGER,
MICOZZIE, GILLEN, SWANGER, METCALFE AND GROVE, MARCH 25, 2013

REFERRED TO COMMITTEE ON HEALTH, MARCH 25, 2013

AN ACT

1 Ensuring the rights of conscience of Pennsylvania citizens
2 relating to health insurance; and providing for health
3 insurance coverage limitations for contraception,
4 sterilization and abortifacient drugs and devices.

5 WHEREAS, The Preamble to the proposed amendments to the
6 Constitution of the United States, which became the Bill of
7 Rights, sent by Congress for consideration by the States, signed
8 by Frederick Muhlenberg, Speaker of the House of
9 Representatives, and John Adams, Vice-President and President of
10 the Senate, and attested to by John Beckley, Clerk of the House
11 of Representatives, and Samuel Otis, Secretary of the Senate,
12 provides that "The Conventions of a number of the States, having
13 at the time of their adopting the Constitution, expressed a
14 desire, in order to prevent misconstruction or abuse of its
15 powers, that further declaratory and restrictive clauses should
16 be added: And as extending the ground of public confidence in
17 the Government, will best ensure the beneficent ends of its
18 institution"; and

1 WHEREAS, The Free Exercise and Establishment Clauses of the
2 First Amendment were proposed in order to protect the rights of
3 individual conscience and religious denominations from coercion
4 by Federal authorities; and

5 WHEREAS, Protection of rights of conscience was, in 18th-
6 century terms, synonymous with religious freedom; and

7 WHEREAS, The wording of initial versions of what became the
8 First Amendment as reported in congressional debates expressly
9 affirmed the protection of rights of conscience; and

10 WHEREAS, On August 24, 1789, the House of Representatives
11 under the leadership of James Madison voted to send the
12 following proposed amendment to the Constitution: "Congress
13 shall make no law establishing religion, or to prevent the free
14 exercise thereof, or to infringe the rights of conscience"; and

15 WHEREAS, The omission of direct words affirming the
16 protection of conscience in the final version of the First
17 Amendment is consistent with the purpose of protecting rights of
18 individual conscience as a legislative goal, as the Annals of
19 Congress noted Congressman Daniel Carroll as stating: "As the
20 rights of conscience are, in their nature, of peculiar delicacy,
21 and will little bear the gentlest touch of the governmental
22 hand... [h]e would not contend with gentlemen about the
23 phraseology, his object was to secure the substance in such a
24 manner as to satisfy the wishes of the honest part of the
25 community."; and

26 WHEREAS, The public record and statements of members of the
27 First Congress who supported the First Amendment affirm that
28 they sought to protect freedom of conscience from Federal
29 interference; and

30 WHEREAS, Article I, Section 3 of the Constitution of

1 Pennsylvania Constitution states "[A]ll men have a natural and
2 infeasible right to worship Almighty God according to the
3 dictates of their own consciences; no man can of right be
4 compelled to attend, erect or support any place of worship, or
5 to maintain any ministry against his consent; no human authority
6 can, in any case whatever, control or interfere with the rights
7 of conscience, and no preference shall ever be given by law to
8 any religious establishments or modes of worship"; and

9 WHEREAS, The United States Supreme Court in *Everson v. Board*
10 of Education of Ewing, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711
11 (1947), expressly referenced a Commonwealth's ability to set
12 forth a citizen's religious freedom and affirmed the judicial
13 finding that "[T]his Court has previously recognized that the
14 provisions of the First Amendment, in the drafting and adoption
15 of which Madison and Jefferson played such leading roles, had
16 the same objective and were intended to provide the same
17 protection against the governmental intrusion on religious
18 liberty..."; and

19 WHEREAS, The First Congress, which included members of the
20 1787 Constitutional Convention, in addition to proposing the
21 First Amendment, also reenacted in 1789 the Northwest Ordinance
22 passed by the Continental Congress in 1787 for the governance of
23 territories, which provided, "[N]o person, demeaning himself in
24 a peaceable and orderly manner, shall ever be molested on
25 account of his mode of worship, or religious sentiments, in the
26 said territory... [and] Religion, morality, and knowledge being
27 necessary to good government and the happiness of mankind"; and

28 WHEREAS, Article VI, Section 3 of the Constitution of the
29 United States, which provides for the taking of oaths or
30 affirmation of office, and the ban on religious tests as a

1 precondition for holding Federal office were enacted, in part,
2 to ensure that citizens did not need to abandon their faith or
3 right of conscience to become public servants; and

4 WHEREAS, The President of the United States, the Congress of
5 the United States, and the United States Supreme Court have
6 failed to protect the rights of conscience adequately. All three
7 branches of the Federal Government have promoted and preferred
8 some beliefs and the citizens who hold them over others, and
9 those laws, policies and regulations are neither neutral nor
10 generally applicable; and

11 WHEREAS, The Federal requirement that health insurance
12 policies cover contraception methods, sterilization procedures
13 and abortifacient drugs or devices is not a neutral and
14 generally applicable law because it is not applicable to many
15 millions of Americans; and

16 WHEREAS, The Federal Religious Freedom Restoration Act
17 protects the rights of conscience against burdens imposed by
18 Federal law and provides that if any Federal law substantially
19 burdens a person's exercise of religion, the application of that
20 burden to that person must be in the least restrictive means to
21 further a compelling government interest; and

22 WHEREAS, The law of the Commonwealth prohibits the use of
23 Federal or State funds appropriated by the Commonwealth under 18
24 Pa.C.S. § 3215(c) for abortions, including the use of
25 abortifacient drugs, with limited exceptions; and

26 WHEREAS, The Federalist Papers affirm that state legislatures
27 have constitutional authority and responsibility to protect and
28 defend citizens against improper actions of the Federal
29 Government, as reflected in Federalist No. 26 by Alexander
30 Hamilton, which provides that "the State legislatures, who will

1 always be not only vigilant but suspicious and jealous guardians
2 of the rights of the citizens against encroachments from the
3 federal government, will constantly have their attention awake
4 to the conduct of the national rulers, and will be ready enough,
5 if any thing improper appears, to sound the alarm to the people,
6 and not only to be the VOICE, but, if necessary, the ARM of
7 their discontent."; and

8 WHEREAS, The General Assembly finds that the proposed
9 regulations from the United States Department of Health and
10 Human Services requiring individuals, businesses and religious
11 organizations to purchase health insurance that includes
12 coverage for contraceptive methods, sterilization procedures and
13 abortifacient drugs or devices (i) constitute a taking of
14 private property for private use in the Fifth Amendment to the
15 Constitution of the United States and (ii) violate the rights of
16 conscience and the free exercise of religion as protected and
17 provided for under Article I, Section 3 of the Constitution of
18 Pennsylvania; the First Amendment to the Constitution of the
19 United States; and the Religious Freedom Restoration Act.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Short title.

23 This act shall be known and may be cited as the Health
24 Insurance Right of Conscience Act.

25 Section 2. Health insurance coverage limitations for
26 contraception, sterilization and abortifacient drugs
27 and devices.

28 A health insurance plan, regardless of whether the plan
29 consists of self-insurance, purchased insurance, a combination
30 of purchased and self-insurance or the use of a health

1 maintenance organization, offered by the Commonwealth or any
2 locality to its employees shall not be required to include
3 coverage for United States Food and Drug Administration-approved
4 contraception methods, sterilization procedures or abortifacient
5 drugs or devices.

6 Section 3. Effective date.

7 This act shall take effect in 60 days.