

1 AMENDED
2 April 25, 2013
3

H. 3101

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5
6 Introduced by Reps. Chumley, Taylor, G.R. Smith, Huggins,
7 Wells, Henderson, Crosby, Atwater, Long, Wood, Toole, Willis,
8 Clemmons, Hardwick, Hardee, Goldfinch, Bedingfield,
9 D.C. Moss, Loftis, Nanney, Pitts, Putnam, V.S. Moss, Owens,
10 Barfield, H.A. Crawford, Stringer, Hamilton, Burns, Tallon,
11 Kennedy, Allison, Murphy, Delleney, Horne, Daning and Brannon
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13 S. Printed 4/25/13--H. [SEC 4/26/13 2:39 PM]

14 Read the first time January 8, 2013.

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA FREEDOM OF HEALTH CARE PROTECTION ACT” BY ADDING ARTICLE 21 TO CHAPTER 71, TITLE 38 SO AS TO RENDER NULL AND VOID CERTAIN UNCONSTITUTIONAL LAWS ENACTED BY THE CONGRESS OF THE UNITED STATES TAKING CONTROL OVER THE HEALTH INSURANCE INDUSTRY AND MANDATING THAT INDIVIDUALS PURCHASE HEALTH INSURANCE UNDER THREAT OF PENALTY; TO PROHIBIT CERTAIN INDIVIDUALS FROM ENFORCING OR ATTEMPTING TO ENFORCE SUCH UNCONSTITUTIONAL LAWS; AND TO ESTABLISH CRIMINAL PENALTIES AND CIVIL LIABILITY FOR VIOLATING THIS ARTICLE.

Amend Title To Conform

Whereas, the people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes, and nothing more; and

Whereas, the Tenth Amendment to the United States Constitution defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves; and

Whereas, Article I, Section 1 of the United States Constitution provides in pertinent part that “All legislative powers herein granted shall be vested in a Congress of the United States”; and

1 Whereas, the judicial decision of the United States Supreme Court
2 upholding the constitutionality of the “Patient Protection and
3 Affordable Care Act” directly contravenes Article I, Section 1 of
4 the United States Constitution because, in upholding the law by
5 re-characterizing the Act as a tax even though Congress
6 specifically refused to identify it as a tax, the United States
7 Supreme Court legislated new law in violation of Article I, Section
8 1 of the United States Constitution; and

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10 Whereas, the assumption of power that the federal government has
11 made by enacting the “Patient Protection and Affordable Care Act”
12 interferes with the right of the people of the State of South
13 Carolina to regulate health care as they see fit and makes a
14 mockery of James Madison’s assurance in Federalist #45 that the
15 “powers delegated” to the federal government are “few and
16 defined”, while those of the states are “numerous and indefinite”.
17 Now, therefore,

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19 Be it enacted by the General Assembly of the State of South
20 Carolina:

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22 SECTION 1. The General Assembly declares that authority for
23 this act is the following:

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25 (1) The Tenth Amendment to the United States Constitution
26 provides that the United States federal government is authorized to
27 exercise only those powers delegated to it in the Constitution.

28 (2) Article VI, Clause 2 of the Constitution of the United States
29 provides that laws of the United States are the supreme law of the
30 land provided that they are made in pursuance of the powers
31 delegated to the federal government in the Constitution.

32 (3) It is the stated policy of the South Carolina General
33 Assembly that provisions of the Patient Protection and Affordable
34 Care Act of 2010 grossly exceed the powers delegated to the
35 federal government in the Constitution.

36 (4) The provisions of the Patient Protection and Affordable
37 Care Act of 2010 which exceed the limited powers granted to the
38 Congress pursuant to the Constitution, cannot and should not be
39 considered the supreme law of the land.

40 (5) The General Assembly of South Carolina has the absolute
41 and sovereign authority to interpose and refuse to enforce the
42 provisions of the Patient Protection and Affordable Care Act of
43 2010 that exceed the authority of the Congress.

1 (6) The Fourteenth Amendment provides that the people are to
2 be free from deprivation of life, liberty, or property, without due
3 process of law.”

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5 SECTION 2. Chapter 1, Title 1 of the 1976 Code is amended by
6 adding:

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8 “Article 28

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10 Prohibited Enforcement of the Patient Protection and Affordable
11 Care Act

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13 Section 1-1-1910.(A) No agency of the State, officer or
14 employee of this State, acting on behalf of the state, may engage in
15 an activity that aids any agency in the enforcement of those
16 provisions of the Patient Protection and Affordable Care Act of
17 2010 and any subsequent federal act that amends the Patient
18 Protection and Affordable Care Act of 2010 that exceed the
19 authority of the United States Constitution.

20 (B) The General Assembly of the State of South Carolina is
21 empowered to take all necessary actions to ensure that the
22 provisions of subsection (A) are adhered to by all agencies,
23 departments, and political subdivisions of the State.”

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25 SECTION 3. Article 1, Chapter 7, Title 1 of the 1976 Code is
26 amended by adding:

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28 “Section 1-7-180. Whenever the Attorney General has
29 reasonable cause to believe that a person or business is being
30 harmed by implementation of the Patient Protection and
31 Affordable Care Act and that proceedings would be in the public
32 interest, the Attorney General may bring an action in the name of
33 the State against such person or entity causing the harm to restrain
34 by temporary restraining order, temporary injunction, or permanent
35 injunction the use of such method, act, or practice. Unless the
36 Attorney General determines in writing that the purposes of this
37 section will be substantially impaired by delay in instituting legal
38 proceedings, the Attorney General shall, at least three days before
39 instituting a legal proceeding as provided in this section, give
40 notice to the person or entity against whom the proceeding is
41 contemplated and give such person or entity an opportunity to
42 present reasons to the Attorney General why a proceeding should
43 not be instituted. The action may be brought in a court of

1 competent jurisdiction. Whenever the court issues a permanent
2 injunction in connection with an action, which has become final,
3 the court shall award reasonable costs to the State.”

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5 SECTION 4. Chapter 6, Title 12 of the 1976 Code is amended by
6 adding:

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8 “Section 12-6-3579. A South Carolina resident taxpayer who is
9 subjected to a tax by the Internal Revenue Code under 26 U.S.C.
10 Section 5000A of the Patient Protection and Affordable Care Act
11 shall receive a tax deduction in the exact amount of the taxes or
12 penalty paid the federal government pursuant to 26 U.S.C. Section
13 5000A. The tax deduction allowed by this section must be used in
14 the year the federal tax or penalty is paid.”

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16 SECTION 5. Article 1, Chapter 71, Title 38 of the 1976 Code is
17 amended by adding:

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19 “Section 38-71-44. (A) ‘Health Care Exchange’ means an
20 American Health Benefit Exchange established by any state or
21 political subdivision of a state, as provided for in the Patient
22 Protection and Affordable Care Act of 2010.

23 (B) Neither South Carolina nor a political subdivision
24 including, but not limited to, counties, municipalities, or special
25 purpose districts of the State may establish a Health Care
26 Exchange for the purchase of health insurance.

27 (C) Neither South Carolina nor a political subdivision
28 including, but not limited to, counties, municipalities, or special
29 purpose districts, may participate in or purchase insurance from a
30 health care exchange established by a nonprofit organization.

31 (D) A health insurance contract purchased or established in
32 violation of this section is void and must not be enforced by the
33 courts of this State.”

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35 SECTION 6. Chapter 1, Title 43 of the 1976 Code is amended to
36 read:

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38 “Section 43-1-300. No agency, department, or other state entity,
39 including, but not limited to, the Department of Social Services
40 and the Department of Health and Human Services, may authorize
41 an employee, contractor, vendor, or any other person acting on
42 behalf of the department to conduct or participate in an involuntary
43 maternal, infant, and early childhood in-home visitation pursuant

1 to Section 2951 of the Patient Protection and Affordable Care Act
2 of 2010 and any subsequent federal act that amends that section or
3 that may refer to an entity or a process established pursuant to the
4 Patient Protection and Affordable Care Act of 2010.”

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6 SECTION 7. This act takes effect upon approval by the Governor.

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