



Ohio Legislative Service Commission

Bill Analysis

Ashley Blackburn

H.B. 91

130th General Assembly
(As Introduced)

Reps. Young and Thompson, J. Adams, Beck, Becker, Boose, Brenner, Buchy, Butler, Gonzales, Green, Hood, Huffman, Lynch, Maag, Retherford, Roegner, Rosenberger, Scherer, Stebelton, Wachtmann

BILL SUMMARY

- Prohibits a health insurance issuer operating in Ohio from accepting any remuneration, credit, or subsidy from the United States Secretary of the Treasury for an individual enrolled in the issuer's plan that qualifies for a premium reduction that may result in the imposition of penalties against any employer or individual in Ohio.
- Requires a suspension of a health insurance issuer's license to issue new business in Ohio if the issuer accepts any remuneration, credit, or subsidy from the Secretary of Treasury as described above.

CONTENT AND OPERATION

Prohibited payments to health insurance issuers

The bill prohibits a health insurance issuer operating in Ohio from accepting any remuneration, credit, or subsidy, from the United States Secretary of the Treasury for an individual enrolled in the issuer's plan that qualifies for a premium reduction that may result in the imposition of penalties against any employer or individual in Ohio.¹ Under the Patient Protection and Affordable Care Act of 2010 (ACA),² an individual may be eligible for a premium tax credit or a cost-sharing reduction if one of the following applies: (1) the individual's employer did not provide minimum essential coverage, or (2) the employer provides minimum essential coverage but the coverage was determined to be unaffordable to the employee or it did not provide the required

¹ R.C. 3964.02.

² *Patient Protection and Affordable Care Act of 2010*, P.L. 111-148.

minimum actuarial value. The Secretary is authorized to make advance payments of premium tax credits or cost-sharing reductions to an issuer of a qualified health plan in order to reduce the premiums payable by individuals eligible for such credits.³ The eligibility of an individual for such payments may result in an assessable payment (a tax) on an employer.⁴

Under the bill, if a health insurance issuer accepts such remuneration, credit, or subsidy, the issuer's license to issue new business in Ohio must be suspended immediately. The bill provides that the issuer's license must remain suspended until the issuer represents it has returned that remuneration, credit, or subsidy to its source and will decline any such future remuneration, credit, or subsidy. Additionally, under the bill, the suspension of an issuer's license must not be construed as impairing the right of contract or the right to continue or renew existing business in Ohio.⁵

Duties of the Attorney General

The bill requires the Attorney General to seek injunctive, and any other appropriate relief, as expeditiously as possible, to preserve the rights and property of the Ohio residents, and to defend as necessary the state, and its officials, employees, and agents, in the event that any law or regulation violating the public policy set forth in the bill is enacted by any government, subdivision, or agency thereof.⁶

Chapter's name and definitions

The bill names Chapter 3964. of the Revised Code, enacted by the bill, the Health Care Freedom Act.⁷ As used in the Health Care Freedom Act:

- "Health insurance issuer" means an entity subject to the insurance laws and rules of Ohio, or subject to the jurisdiction of the Superintendent of Insurance, that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including a sickness and accident insurance company, a health insuring corporation, a fraternal benefit society, a self-funded multiple employer welfare arrangement, or a nonfederal, government

³ 42 U.S.C. 18082(a).

⁴ 26 U.S.C. 4980H(b).

⁵ R.C. 3964.02.

⁶ R.C. 3964.02(C) and 3964.03.

⁷ R.C. 3964.01.

health plan. "Health insurance issuer" includes a licensed third party administrator to the extent that the benefits that such an entity is contracted to administer under a health benefit plan are subject to the insurance laws and rules of Ohio or subject to the jurisdiction of the Superintendent.

- "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 the Health Care Freedom Act.⁸

COMMENT

The provisions of the bill that prohibit a health insurance issuer in Ohio from accepting any remuneration, credit, or subsidy from the Secretary of Treasury for an individual enrolled in an issuer's plan through an exchange raise questions about whether the provisions conflict with, and are preempted by, the ACA.⁹ However, only a court can definitively answer these questions.

HISTORY

ACTION	DATE
Introduced	03-05-13

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⁸ R.C. 3964.011 and R.C. 3922.01 (not in the bill).

⁹ U.S. Cont. Art. VI, cl. 2.

