

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

SR 23

4
5 By: Senator Bradford
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8 **SENATE RESOLUTION**

9 "MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO
10 EITHER ENACT MEANINGFUL PATIENT PROTECTIONS AT THE
11 FEDERAL LEVEL WITH RESPECT TO EMPLOYER SELF-FUNDED
12 PLANS OR, IN THE ABSENCE OF SUCH FEDERAL ACTION, AMEND
13 THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) OF
14 1974 TO GRANT AUTHORITY TO ALL INDIVIDUAL STATES TO
15 MONITOR AND REGULATE SELF-FUNDED, EMPLOYER-BASED
16 HEALTH PLANS. "

17 **Subtitle**

18 "REQUESTING THE U. S. CONGRESS TO EITHER
19 ENACT PATIENT PROTECTIONS TO APPLY TO
20 SELF-FUNDED EMPLOYER HEALTH PLANS OR
21 PERMIT INDIVIDUAL STATES TO DO SO. "
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25 WHEREAS, the McCarran-Ferguson Act, passed by the Congress of the
26 United States in 1945, established a statutory framework whereby
27 responsibility for regulating the insurance industry was left largely to the
28 states; and

29 WHEREAS, the Employee Retirement Income Security Act (ERISA) of 1974
30 significantly altered this concept by creating a federal framework for
31 regulating employer-based health, pension and welfare-benefit plans; and

32 WHEREAS, the provisions of ERISA prevent states from directly
33 regulating most employer-based health plans that are not deemed to be
34 "insurance" for purposes of federal laws; and

35 WHEREAS, available data suggests that self-funding of employer-based
36 health plans is increasing at a significant rate, among both large and small

1 businesses; and

2 WHEREAS, between 1989 and 1993, the General Accounting Office estimates
3 that the number of self-funded plan enrollees increased by about six million;
4 and

5 WHEREAS, approximately 40-50 percent of the employer-based health plans
6 are presently self-funded by employers, who retain most or all of the
7 financial risk for their respective health plans; and

8 WHEREAS, as self-funding of health plans has grown, states have lost
9 regulatory oversight of this growing portion of the health insurance market;
10 and

11 WHEREAS, the federal government has been slow to enact meaningful
12 patient protections such as mechanisms for the recovery of benefits due plan
13 participants, recovery of compensatory damages from the fiduciary caused by
14 its failure to pay benefits due under the plan, enforcement of the plan-
15 participant's rights under the terms of the plan, assurance of timely payment,
16 and clarification of the plan-participant's rights to future benefits under
17 the terms of the plan; and

18 WHEREAS, in the absence of federal patient protections, state-level
19 action is needed,

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21 NOW THEREFORE,

22 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-SECOND GENERAL ASSEMBLY OF THE
23 STATE OF ARKANSAS:

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25 That the Congress of the United States be urged to either enact
26 meaningful patient protections at the federal level with respect to employer
27 self-funded plans or, in the absence of such federal action, amend the
28 Employee Retirement Income Security Act (ERISA) of 1974 to grant authority to
29 all individual states to monitor and regulate self-funded, employer-based
30 health plans.

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32 BE IT FURTHER RESOLVED that the Chief of Staff of the Senate transmit
33 copies of this resolution to the President of the United States, the Speaker
34 of the United States House of Representatives, the President of the United
35 States Senate, the Secretary of the United States Department of Labor, and the
36 Congressional Delegation of Arkansas.