

THE FEDERAL ABORTION-MANDATE OPT-OUT ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Short Title.

This Act may be cited as the “Federal Abortion-Mandate Opt-Out Act.”

Section 2. Legislative Findings and Purposes.

- (a) The Legislature of the State of *[Insert name of State]* finds that:
- (1) Under the Patient Protection and Affordable Care Act (PPACA), federal tax dollars, via affordability credits (subsidies provided to individuals up to 400% of the federal poverty level), will be routed to Exchange-participating health insurance plans beginning in 2014, including plans that provide coverage for abortions.⁵
 - (2) Federal funding of insurance plans that provide abortion coverage is an unprecedented change in federal abortion funding policy. The Hyde Amendment, as passed each year in the Labor Health and Human Services Appropriations bill, and the Federal Employee Health Benefits Program (FEHBP) prohibit federal funds from subsidizing health insurance plans that provide coverage for most abortions. Under this new law, however, Exchange-participating health insurance plans that provide abortions can receive federal funds.
 - (3) The provision of federal funding for health insurance plans that provide abortion coverage is nothing short of taxpayer-funded and government-endorsed abortion.
 - (4) However, the PPACA allows a State to “opt out” of permitting health insurance plans that cover abortions to participate in the Exchanges within that State, and thereby prohibit taxpayer money from subsidizing plans that cover abortions within that State.⁶

⁵ Patient Protection and Affordable Care Act of 2011, 26 USCS § 36B (2011); 42 U.S.C. § 18023(b)(1)(A)(ii) (2011) .

⁶ Patient Protection and Affordable Care Act of 2010, 42 U.S.C. § 18023(a) (2011).



- (5) It is the long-standing policy of the State of *[Insert name of State]* that *[Insert statement(s) about State laws and policies on funding for abortion, use of state resources to promote or perform abortions, and/or restrictions on insurance plans that cover abortions]*.
- (6) The decision not to fund abortion places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy. *Rust v. Sullivan*, 500 U.S. 173, 201 (1991).
- (7) Moreover, it is permissible for a State to engage in unequal subsidization of abortion and other medical services to encourage alternative activity deemed in the public interest. *Rust v. Sullivan*, 500 U.S. 173, 198 (1991).
- (8) Citizens of the State of *[Insert name of State]*, like other Americans, oppose the use of public funds – both federal and state – to pay for abortions. For example, a January 2010 Quinnipiac poll showed that 7 in 10 Americans were opposed to provisions in federal health care reform that use federal funds to pay for abortions and abortion coverage.⁷
- (9) The Guttmacher Institute which advocates for unfettered and taxpayer-funded access to abortion confirms that more women have abortions when they are covered by public programs.
- (10) It is an accepted principle of economics and public policy, that when you subsidize or pay for a service or product, you increase demand for that service or product. Moreover, it is reasonable to conclude that this principle applies to the delivery of medical care in general and to the provision of abortion in particular.
- (11) Given that more women have abortions when they are covered by public programs, and public *or* private insurance coverage of a procedure generally leads to increased usage of that procedure, the State of *[Insert name of State]* concludes that the incidence of abortion would increase with the subsidization of private insurance plans that cover abortion.

⁷ See Heather D. Boonstra, The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States, Guttmacher Policy Review, Winter 2007, Vol. 10, No. 1, available at <http://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html> (last visited August 1, 2011).



(b) Based on the findings in subsection (a) of this Act, it is the purpose of this Act to affirmatively opt out of allowing qualified health plans that cover abortions to participate in Exchanges within the State of *[Insert name of State]*.

Section 3. Opt-Out.

(a) No abortion coverage may be provided by a qualified health plan offered through an Exchange created pursuant to PPACA within the State of *[Insert name of State]*.

(b) This limitation shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself [, *or when the pregnancy is the result of an act of rape or incest*].

Section 4. Construction.

(a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this Act to make lawful an abortion that is currently unlawful.

Section 5. Right of Intervention.

The *[Legislature]*, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act or any portion thereof is challenged.

Section 6. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 7. Effective Date.

This Act takes effect on *[Insert date]*.

