

State of Arizona
House of Representatives
Forty-ninth Legislature
Eighth Special Session
2010

HOUSE BILL 2002

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; RELATING
TO HEALTH CARE SERVICES FREEDOM OF CHOICE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, Arizona Revised Statutes, is amended by adding
3 chapter 11, to read:

4 CHAPTER 11

5 HEALTH CARE SERVICES FREEDOM OF CHOICE

6 ARTICLE 1. GENERAL PROVISIONS

7 36-1301. Health care services; constitutional freedom of
8 choice; public policy; definitions

9 A. THE POWER TO REQUIRE OR REGULATE A PERSON'S CHOICE IN THE MODE OF
10 SECURING LAWFUL HEALTH CARE SERVICES, OR TO IMPOSE A PENALTY RELATED TO THAT
11 CHOICE, IS NOT FOUND IN THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND
12 IS THEREFORE A POWER RESERVED TO THE PEOPLE PURSUANT TO THE TENTH AMENDMENT.
13 THIS STATE EXERCISES ITS SOVEREIGN POWER TO DECLARE THE PUBLIC POLICY OF THIS
14 STATE REGARDING THE RIGHT OF ALL PERSONS RESIDING IN THIS STATE IN CHOOSING
15 THE MODE OF SECURING LAWFUL HEALTH CARE SERVICES.

16 B. IT IS THE PUBLIC POLICY OF THIS STATE, CONSISTENT WITH ALL
17 CONSTITUTIONALLY ENUMERATED RIGHTS, AS WELL AS THOSE RIGHTS OTHERWISE
18 RETAINED BY THE PEOPLE, THAT EVERY PERSON IN THIS STATE MAY CHOOSE OR DECLINE
19 TO CHOOSE ANY MODE OF SECURING LAWFUL HEALTH CARE SERVICES WITHOUT PENALTY OR
20 THREAT OF PENALTY.

21 C. THE PUBLIC POLICY STATED IN THIS SECTION DOES NOT APPLY TO IMPAIR
22 ANY RIGHT OF CONTRACT RELATED TO THE PROVISION OF LAWFUL HEALTH CARE SERVICES
23 TO ANY PERSON OR GROUP.

24 D. THE PUBLIC POLICY STATED IN THIS SECTION DOES NOT PROHIBIT OR LIMIT
25 CARE PROVIDED PURSUANT TO ARTICLE XVIII, SECTION 8, CONSTITUTION OF ARIZONA,
26 OR ANY STATUTES ENACTED BY THE LEGISLATURE RELATING TO WORKERS' COMPENSATION.

27 E. A PUBLIC OFFICIAL OR AN EMPLOYEE OR AGENT OF THIS STATE OR ANY
28 POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ACT TO IMPOSE, COLLECT, ENFORCE
29 OR EFFECTUATE ANY PENALTY IN THIS STATE THAT VIOLATES THE PUBLIC POLICY
30 PRESCRIBED IN THIS SECTION.

31 F. FOR THE PURPOSES OF THIS SECTION:

32 1. "LAWFUL HEALTH CARE SERVICES" MEANS ANY HEALTH RELATED SERVICE OR
33 TREATMENT THAT IS PERMITTED OR NOT PROHIBITED BY LAW OR REGULATION AND THAT
34 MAY BE PROVIDED BY PERSONS OR BUSINESSES OTHERWISE PERMITTED TO OFFER THAT
35 SERVICE.

36 2. "MODE OF SECURING" MEANS TO PURCHASE DIRECTLY, ON CREDIT OR BY
37 TRADE, TO CONTRACT FOR THIRD-PARTY PAYMENT BY INSURANCE OR OTHER LEGAL MEANS
38 AUTHORIZED BY THIS STATE OR TO APPLY FOR OR ACCEPT EMPLOYER OR GOVERNMENT
39 SPONSORED HEALTH CARE BENEFITS UNDER ANY CONDITIONS THAT MAY LEGALLY BE
40 REQUIRED AS A CONDITION OF THOSE BENEFITS, OR ANY COMBINATION OF THESE MODES
41 OF PURCHASE.

42 3. "PENALTY" MEANS A CIVIL OR CRIMINAL PENALTY OR FINE, A TAX, SALARY
43 OR WAGE WITHHOLDING OR SURCHARGE, OR ANY NAMED FEE WITH A SIMILAR EFFECT THAT
44 IS ESTABLISHED BY LAW OR RULE BY A GOVERNMENT ESTABLISHED, CREATED OR

1 CONTROLLED AGENCY AND THAT IS USED TO PUNISH OR DISCOURAGE THE EXERCISE OF
2 RIGHTS PROTECTED PURSUANT TO THIS SECTION.

3 Sec. 2. Legislative findings; litigation

4 A. The legislature finds that the patient protection and affordable
5 care act (P.L. 111-148) violates the public policy of this state as
6 prescribed in section 36-1301, Arizona Revised Statutes, as added by this
7 act.

8 B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and
9 any other law, the governor may direct counsel other than the attorney
10 general to initiate a legal proceeding or appear on behalf of this state to
11 enforce the public policy prescribed in this act. This subsection applies to
12 any action filed in a federal court on or before December 31, 2010.

13 C. Notwithstanding any law to the contrary, the speaker of the house
14 of representatives and the president of the senate may direct counsel to
15 initiate a legal proceeding or appear on behalf of their respective chambers
16 or on behalf of the legislature to enforce the public policy prescribed in
17 this act and the constitutional authority of the legislature.

18 Sec. 3. Retroactivity

19 This act is effective retroactively to from and after March 22, 2010.