

[108H4662]

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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SHADEGG introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Public Health Service Act to provide for
cooperative governing of individual health insurance cov-
erage offered in interstate commerce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Health Care Choice Act
5 of 2005”.



1 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**
2 **FOR ENACTMENT OF LAW.**

3 This Act is enacted pursuant to the power granted
4 Congress under article I, section 8, clause 3, of the United
5 States Constitution.

6 **SEC. 3. FINDINGS.**

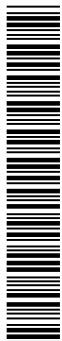
7 Congress finds the following:

8 (1) The application of numerous and significant
9 variations in State law impacts the ability of insur-
10 ers to offer, and individuals to obtain, affordable in-
11 dividual health insurance coverage, thereby impeding
12 commerce in individual health insurance coverage.

13 (2) Individual health insurance coverage is in-
14 creasingly offered through the Internet, other elec-
15 tronic means, and by mail, all of which are inher-
16 ently part of interstate commerce.

17 (3) In response to these issues, it is appropriate
18 to encourage increased efficiency in the offering of
19 individual health insurance coverage through a col-
20 laborative approach by the States in regulating this
21 coverage.

22 (4) The establishment of risk-retention groups
23 has provided a successful model for the sale of insur-
24 ance across State lines, as the acts establishing
25 those groups allow insurance to be sold in multiple
26 States but regulated by a single State.



1 **SEC. 4. COOPERATIVE GOVERNING OF INDIVIDUAL**
2 **HEALTH INSURANCE COVERAGE.**

3 (a) IN GENERAL.—Title XXVII of the Public Health
4 Service Act (42 U.S.C. 300gg et seq.) is amended by add-
5 ing at the end the following new part:

6 “PART D—COOPERATIVE GOVERNING OF INDIVIDUAL
7 HEALTH INSURANCE COVERAGE

8 **“SEC. 2795. DEFINITIONS.**

9 “In this part:

10 “(1) PRIMARY STATE.—The term ‘primary
11 State’ means, with respect to individual health insur-
12 ance coverage offered by a health insurance issuer,
13 the State designated by the issuer as the State
14 whose covered laws shall govern the health insurance
15 issuer in the sale of such coverage under this part.
16 An issuer, with respect to a particular policy, may
17 only designate one such State as its primary State
18 with respect to all such coverage it offers. Such an
19 issuer may not change the designated primary State
20 with respect to individual health insurance coverage
21 once the policy is issued, except that such a change
22 may be made upon renewal of the policy. With re-
23 spect to such designated State, the issuer is deemed
24 to be doing business in that State.

25 “(2) SECONDARY STATE.—The term ‘secondary
26 State’ means, with respect to individual health insur-



1 ance coverage offered by a health insurance issuer,
2 any State that is not the primary State. In the case
3 of a health insurance issuer that is selling a policy
4 in, or to a resident of, a secondary State, the issuer
5 is deemed to be doing business in that secondary
6 State.

7 “(3) HEALTH INSURANCE ISSUER.—The term
8 ‘health insurance issuer’ has the meaning given such
9 term in section 2791(b)(2), except that such an
10 issuer must be licensed in the primary State and be
11 qualified to sell individual health insurance coverage
12 in that State.

13 “(4) INDIVIDUAL HEALTH INSURANCE COV-
14 ERAGE.—The term ‘individual health insurance cov-
15 erage’ means health insurance coverage offered in
16 the individual market, as defined in section
17 2791(e)(1).

18 “(5) APPLICABLE STATE AUTHORITY.—The
19 term ‘applicable State authority’ means, with respect
20 to a health insurance issuer in a State, the State in-
21 surance commissioner or official or officials des-
22 ignated by the State to enforce the requirements of
23 this title for the State with respect to the issuer.

24 “(6) HAZARDOUS FINANCIAL CONDITION.—The
25 term ‘hazardous financial condition’ means that,



1 based on its present or reasonably anticipated finan-
2 cial condition, a health insurance issuer is unlikely
3 to be able—

4 “(A) to meet obligations to policyholders
5 with respect to known claims and reasonably
6 anticipated claims; or

7 “(B) to pay other obligations in the normal
8 course of business.

9 “(7) COVERED LAWS.—The term ‘covered laws’
10 means the laws, rules, regulations, agreements, and
11 orders governing the insurance business pertaining
12 to—

13 “(A) individual health insurance coverage
14 issued by a health insurance issuer;

15 “(B) the offer, sale, and issuance of indi-
16 vidual health insurance coverage to an indi-
17 vidual; and

18 “(C) the provision to an individual in rela-
19 tion to individual health insurance coverage
20 of—

21 “(i) health care and insurance related
22 services;

23 “(ii) management, operations, and in-
24 vestment activities of a health insurance
25 issuer; and



1 “(iii) loss control and claims adminis-
2 tration for a health insurance issuer with
3 respect to liability for which the issuer pro-
4 vides insurance.

5 “(8) STATE.—The term ‘State’ means only the
6 50 States and the District of Columbia.

7 “(9) UNFAIR CLAIMS SETTLEMENT PRAC-
8 TICES.—The term ‘unfair claims settlement prac-
9 tices’ means only the following practices:

10 “(A) Knowingly misrepresenting to claim-
11 ants and insured individuals relevant facts or
12 policy provisions relating to coverage at issue.

13 “(B) Failing to acknowledge with reason-
14 able promptness pertinent communications with
15 respect to claims arising under policies.

16 “(C) Failing to adopt and implement rea-
17 sonable standards for the prompt investigation
18 and settlement of claims arising under policies.

19 “(D) Failing to effectuate prompt, fair,
20 and equitable settlement of claims submitted in
21 which liability has become reasonably clear.

22 “(E) Refusing to pay claims without con-
23 ducting a reasonable investigation.

24 “(F) Failing to affirm or deny coverage of
25 claims within a reasonable period of time after



1 having completed an investigation related to
2 those claims.

3 “(10) FRAUD AND ABUSE.—The term ‘fraud
4 and abuse’ means an act or omission committed by
5 a person who, knowingly and with intent to defraud,
6 commits, or conceals any material information con-
7 cerning, one or more of the following:

8 “(A) Presenting, causing to be presented
9 or preparing with knowledge or belief that it
10 will be presented to or by an insurer, a rein-
11 surer, broker or its agent, false information as
12 part of, in support of or concerning a fact ma-
13 terial to one or more of the following:

14 “(i) An application for the issuance or
15 renewal of an insurance policy or reinsur-
16 ance contract.

17 “(ii) The rating of an insurance policy
18 or reinsurance contract.

19 “(iii) A claim for payment or benefit
20 pursuant to an insurance policy or reinsur-
21 ance contract.

22 “(iv) Premiums paid on an insurance
23 policy or reinsurance contract.



1 “(v) Payments made in accordance
2 with the terms of an insurance policy or
3 reinsurance contract.

4 “(vi) A document filed with the com-
5 missioner or the chief insurance regulatory
6 official of another jurisdiction.

7 “(vii) The financial condition of an in-
8 surer or reinsurer.

9 “(viii) The formation, acquisition,
10 merger, reconsolidation, dissolution or
11 withdrawal from one or more lines of in-
12 surance or reinsurance in all or part of a
13 State by an insurer or reinsurer.

14 “(ix) The issuance of written evidence
15 of insurance.

16 “(x) The reinstatement of an insur-
17 ance policy.

18 “(B) Solicitation or acceptance of new or
19 renewal insurance risks on behalf of an insurer
20 reinsurer or other person engaged in the busi-
21 ness of insurance by a person who knows or
22 should know that the insurer or other person
23 responsible for the risk is insolvent at the time
24 of the transaction.



1 “(C) Transaction of the business of insur-
2 ance in violation of laws requiring a license, cer-
3 tificate of authority or other legal authority for
4 the transaction of the business of insurance.

5 “(D) Attempt to commit, aiding or abet-
6 ting in the commission of, or conspiracy to com-
7 mit the acts or omissions specified in this para-
8 graph.

9 **“SEC. 2796. APPLICATION OF LAW.**

10 “(a) IN GENERAL.—The covered laws of the primary
11 State shall apply to individual health insurance coverage
12 offered by a health insurance issuer in the primary State
13 and in any secondary State, but only if the coverage and
14 issuer comply with the conditions of this section with re-
15 spect to the offering of coverage in any secondary State.

16 “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-
17 ONDARY STATE.—Except as provided in this section, a
18 health insurance issuer with respect to its offer, sale, re-
19 newal, and issuance of individual health insurance cov-
20 erage in any secondary State is exempt from any covered
21 laws of the secondary State (and any rules, regulations,
22 agreements, or orders sought or issued by such State
23 under or related to such covered laws) to the extent that
24 such laws would—



1 “(1) make unlawful, or regulate, directly or in-
2 directly, the operation of the health insurance issuer
3 operating in the secondary State, except that any
4 secondary State may require such an issuer—

5 “(A) to pay, on a nondiscriminatory basis,
6 applicable premium and other taxes (including
7 high risk pool assessments) which are levied on
8 insurers and surplus lines insurers, brokers, or
9 policyholders under the laws of the State;

10 “(B) to register with and designate the
11 State insurance commissioner as its agent solely
12 for the purpose of receiving service of legal doc-
13 uments or process;

14 “(C) to submit to an examination of its fi-
15 nancial condition by the State insurance com-
16 missioner in any State in which the issuer is
17 doing business to determine the issuer’s finan-
18 cial condition, if—

19 “(i) the State insurance commissioner
20 of the primary State has not done an ex-
21 amination within the period recommended
22 by the National Association of Insurance
23 Commissioners; and

24 “(ii) any such examination is con-
25 ducted in accordance with the examiners’



1 handbook of the National Association of
2 Insurance Commissioners and is coordi-
3 nated to avoid unjustified duplication and
4 unjustified repetition;

5 “(D) to comply with a lawful order
6 issued—

7 “(i) in a delinquency proceeding com-
8 menced by the State insurance commis-
9 sioner if there has been a finding of finan-
10 cial impairment under subparagraph (C);
11 or

12 “(ii) in a voluntary dissolution pro-
13 ceeding;

14 “(E) to comply with an injunction issued
15 by a court of competent jurisdiction, upon a pe-
16 tition by the State insurance commissioner al-
17 leging that the issuer is in hazardous financial
18 condition;

19 “(F) to participate, on a nondiscriminatory
20 basis, in any insurance insolvency guaranty as-
21 sociation or similar association to which a
22 health insurance issuer in the State is required
23 to belong;

24 “(G) to comply with any State law regard-
25 ing fraud and abuse (as defined in section



1 2795(10)), except that if the State seeks an in-
2 junction regarding the conduct described in this
3 subparagraph, such injunction must be obtained
4 from a court of competent jurisdiction; or

5 “(H) to comply with any State law regard-
6 ing unfair claims settlement practices (as de-
7 fined in section 2795(9));

8 “(2) require any individual health insurance
9 coverage issued by the issuer to be countersigned by
10 an insurance agent or broker residing in that Sec-
11 ondary State; or

12 “(3) otherwise discriminate against the issuer
13 issuing insurance in both the primary State and in
14 any secondary State.

15 “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A
16 health insurance issuer shall provide the following notice,
17 in 12-point bold type, in any insurance coverage offered
18 in a secondary State under this part by such a health in-
19 surance issuer and at renewal of the policy, with the 5
20 blank spaces therein being appropriately filled with the
21 name of the health insurance issuer, the name of primary
22 State, the name of the secondary State, the name of the
23 secondary State, and the name of the secondary State, re-
24 spectively, for the coverage concerned:



1 **Notice**

2 **‘This policy is issued by _____ and is**
3 **governed by the laws and regulations of the**
4 **State of _____, and it has met all the laws**
5 **of that State as determined by that State’s De-**
6 **partment of Insurance. This policy may be**
7 **less expensive than others because it is not**
8 **subject to all of the insurance laws and regu-**
9 **lations of the State of _____, including**
10 **coverage of some services or benefits man-**
11 **dated by the law of the State of _____. Ad-**
12 **ditionally, this policy is not subject to all of**
13 **the consumer protection laws or restrictions**
14 **on rate changes of the State of _____. As**
15 **with all insurance products, before pur-**
16 **chasing this policy, you should carefully re-**
17 **view the policy and determine what health**
18 **care services the policy covers and what bene-**
19 **fits it provides, including any exclusions, limi-**
20 **tations, or conditions for such services or ben-**
21 **efits.’.**

22 **“(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS**
23 **AND PREMIUM INCREASES.—**

24 **“(1) IN GENERAL.—**For purposes of this sec-
25 **tion, a health insurance issuer that provides indi-**



1 vidual health insurance coverage to an individual
2 under this part in a primary or secondary State may
3 not upon renewal—

4 “(A) move or reclassify the individual in-
5 sured under the health insurance coverage from
6 the class such individual is in at the time of
7 issue of the contract based on the health-status
8 related factors of the individual; or

9 “(B) increase the premiums assessed the
10 individual for such coverage based on a health
11 status-related factor or change of a health sta-
12 tus-related factor or the past or prospective
13 claim experience of the insured individual.

14 “(2) CONSTRUCTION.—Nothing in paragraph
15 (1) shall be construed to prohibit a health insurance
16 issuer—

17 “(A) from terminating or discontinuing
18 coverage or a class of coverage in accordance
19 with subsections (b) and (c) of section 2742;

20 “(B) from raising premium rates for all
21 policy holders within a class based on claims ex-
22 perience;

23 “(C) from changing premiums or offering
24 discounted premiums to individuals who engage
25 in wellness activities at intervals prescribed by



1 the issuer, if such premium changes or
2 incentives—

3 “(i) are disclosed to the consumer in
4 the insurance contract;

5 “(ii) are based on specific wellness ac-
6 tivities that are not applicable to all indi-
7 viduals; and

8 “(iii) are not obtainable by all individ-
9 uals to whom coverage is offered;

10 “(D) from reinstating lapsed coverage; or

11 “(E) from retroactively adjusting the rates
12 charged an individual insured individual if the
13 initial rates were set based on material mis-
14 representation by the individual at the time of
15 issue.

16 “(e) PRIOR OFFERING OF POLICY IN PRIMARY
17 STATE.—A health insurance issuer may not offer for sale
18 individual health insurance coverage in a secondary State
19 unless that coverage is currently offered for sale in the
20 primary State.

21 “(f) LICENSING OF AGENTS OR BROKERS FOR
22 HEALTH INSURANCE ISSUERS.—Any State may require
23 that a person acting, or offering to act, as an agent or
24 broker for a health insurance issuer with respect to the
25 offering of individual health insurance coverage obtain a



1 license from that State, except that a State may not im-
2 pose any qualification or requirement which discriminates
3 against a nonresident agent or broker.

4 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-
5 SURANCE COMMISSIONER.—Each health insurance issuer
6 issuing individual health insurance coverage in both pri-
7 mary and secondary States shall submit—

8 “(1) to the insurance commissioner of each
9 State in which it intends to offer such coverage, be-
10 fore it may offer individual health insurance cov-
11 erage in such State—

12 “(A) a copy of the plan of operation or fea-
13 sibility study or any similar statement of the
14 policy being offered and its coverage (which
15 shall include the name of its primary State and
16 its principal place of business);

17 “(B) written notice of any change in its
18 designation of its primary State; and

19 “(C) written notice from the issuer of the
20 issuer’s compliance with all the laws of the pri-
21 mary State; and

22 “(2) to the insurance commissioner of each sec-
23 ondary State in which it offers individual health in-
24 surance coverage, a copy of the issuer’s quarterly fi-
25 nancial statement submitted to the primary State,



1 which statement shall be certified by an independent
2 public accountant and contain a statement of opin-
3 ion on loss and loss adjustment expense reserves
4 made by—

5 “(A) a member of the American Academy
6 of Actuaries; or

7 “(B) a qualified loss reserve specialist.

8 “(h) POWER OF COURTS TO ENJOIN CONDUCT.—

9 Nothing in this section shall be construed to affect the
10 authority of any Federal or State court to enjoin—

11 “(1) the solicitation or sale of individual health
12 insurance coverage by a health insurance issuer to
13 any person or group who is not eligible for such in-
14 surance; or

15 “(2) the solicitation or sale of individual health
16 insurance coverage by, or operation of, a health in-
17 surance issuer that is in hazardous financial condi-
18 tion.

19 “(i) STATE POWERS TO ENFORCE STATE LAWS.—

20 “(1) IN GENERAL.—Subject to the provisions of
21 subsection (b)(1)(G) (relating to injunctions) and
22 paragraph (2), nothing in this section shall be con-
23 strued to affect the authority of any State to make
24 use of any of its powers to enforce the laws of such



1 State with respect to which a health insurance issuer
2 is not exempt under subsection (b).

3 “(2) COURTS OF COMPETENT JURISDICTION.—

4 If a State seeks an injunction regarding the conduct
5 described in paragraphs (1) and (2) of subsection
6 (h), such injunction must be obtained from a Fed-
7 eral or State court of competent jurisdiction.

8 “(j) STATES’ AUTHORITY TO SUE.—Nothing in this
9 section shall affect the authority of any State to bring ac-
10 tion in any Federal or State court.

11 “(k) GENERALLY APPLICABLE LAWS.—Nothing in
12 this section shall be construed to affect the applicability
13 of State laws generally applicable to persons or corpora-
14 tions.

15 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**
16 **BEFORE ISSUER MAY SELL INTO SECONDARY**
17 **STATES.**

18 “A health insurance issuer may not offer, sell, or
19 issue individual health insurance coverage in a secondary
20 State if the primary State does not meet the following re-
21 quirements:

22 “(1) The State insurance commissioner must
23 use a risk-based capital formula for the determina-
24 tion of capital and surplus requirements for all
25 health insurance issuers.



1 “(2) The State must have legislation or regula-
2 tions in place establishing an independent review
3 process for individuals who are covered by individual
4 health insurance coverage unless the issuer provides
5 an independent review mechanism functionally equiv-
6 alent (as determined by the primary State insurance
7 commissioner or official) to that prescribed in the
8 ‘Health Carrier External Review Model Act’ of the
9 National Association of Insurance Commissioners for
10 all individuals who purchase insurance coverage
11 under the terms of this part.

12 **“SEC. 2798. ENFORCEMENT.**

13 “(a) IN GENERAL.—Subject to subsection (b), with
14 respect to specific individual health insurance coverage the
15 primary State for such coverage has sole jurisdiction to
16 enforce the primary State’s covered laws in the primary
17 State and any secondary State.

18 “(b) SECONDARY STATE’S AUTHORITY.—Nothing in
19 subsection (a) shall be construed to affect the authority
20 of a secondary State to enforce its laws as set forth in
21 the exception specified in section 2796(b)(1).

22 “(c) COURT INTERPRETATION.—In reviewing action
23 initiated by the applicable secondary State authority, the
24 court of competent jurisdiction shall apply the covered
25 laws of the primary State.



1 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case
2 of individual health insurance coverage offered in a sec-
3 ondary State that fails to comply with the covered laws
4 of the primary State, the applicable State authority of the
5 secondary State may notify the applicable State authority
6 of the primary State.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to individual health insurance
9 coverage offered, issued, or sold after the date of the en-
10 actment of this Act.

11 **SEC. 5. SEVERABILITY.**

12 If any provision of the Act or the application of such
13 provision to any person or circumstance is held to be un-
14 constitutional, the remainder of this Act and the applica-
15 tion of the provisions of such to any other person or cir-
16 cumstance shall not be affected.

