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INSURANCE Individual Health Insurance Coverage

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INSURANCE

Individual Health Insurance Coverage: Amend Chapter 29A of Title 33 of the Official Code of Georgia Annotated, Relating to Individual Health Insurance Coverage, so as to Authorize Insurers to Offer Individual Accident and Sickness Insurance Policies in Georgia That Have Been Approved for Issuance in Other States; Provide for Legislative Findings; Provide for Definitions; Provide for Minimum Standards for Such Policies; Provide for Certain Notices; Authorize the Commissioner of Insurance to Adopt Rules and Regulations; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTION:	O.C.G.A. §§ 33-29A-30, -34 (new).
BILL NUMBER:	HB 1184
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have allowed insurers authorized to transact business in Georgia to offer Georgians individual accident and sickness policies that are approved for issuance in other states. The bill would have required that the out-of-state policies contain disclosures notifying consumers that the policies may be governed by the laws of other states and that the benefits may be different from other policies the consumer could have purchased. The sale of the out-of-state policies would have first been approved by the Georgia Commissioner of Insurance, and the Commissioner would also have had to adopt rules and regulations to implement the bill.
EFFECTIVE DATE:	N/A

History

On January 12, 2010, the Georgia Chamber of Commerce held its annual Eggs n' Issues breakfast where Governor Sonny Perdue announced an expanded health insurance access plan as part of his legislative agenda for the 2010 legislative session of the General Assembly.[1] Governor Perdue expressed concern over the U.S. Congress' policy regarding healthcare reform, specifically House Resolution (HR) 3590, which requires that everyone purchase health insurance.[2] He argued that a broader insurance market would increase product choices and reduce costs for the consumer.[3] By allowing Georgians to purchase health insurance policies that are for sale in other states, Governor Perdue's expanded health insurance access plan would have opened up the health insurance market.[4]

Under the current law, Georgia consumers only have access to health insurance policies that are approved for sale in Georgia.[5] The Governor's expanded health insurance access plan would have "open[ed] up the individual insurance market and allow[ed] consumers to find a plan that best fits their needs."[6] Representative Matt Ramsey (R-72nd) noted that in Georgia there are millions of uninsured individuals, and the current law only allows a "one size fits all" health insurance policy.[7] But if the market for health insurance policies were to be expanded, more affordable policies would become available.[8] Georgians that are currently uninsured may be able to find

1. Thomas Wheatley, *Water, Transportation and Obamacare on Agenda at Eggs n' Issues Breakfast*, CREATIVE LOAFING, Jan. 12, 2010, *available at* http://clatl.com/freshloaf/archives/2010/01/12/water-transportation-and-obamacare-on-agenda-at-eggs-n-issues-breakfast; *See* Interview with Rep. Matt Ramsey (R-72nd) (Apr. 16, 2010) [hereinafter Ramsey Interview]; *see also* Day 2 – January 12, 2010, LAWMAKERS, http://www.gpb.org/lawmakers-tv/2010/01/12.

2. Wheatley, *supra* note 1. House Resolution 3590 was signed into law on March 23, 2010, and is later referred to as the Patient Protection and Affordable Care Act. *See* discussion *infra* The Patient Protection and Affordable Care Plan.

3. *See* Wheatley, *supra* note 1; Ramsey Interview, *supra* note 1.

4. Day 2 – January 12, 2010, LAWMAKERS, *supra* note 1; Press Release, Office of the Governor, Governor Perdue Introduces Legislation to Expand Access to Health Insurance (Feb. 16, 2010), *available at* http://gov.georgia.gov/00/press/detail/0,2668,78006749_156313673_156694982,00.html [hereinafter Press Release, Office of the Governor].

5. Day 2 – January 12, 2010, LAWMAKERS, *supra* note 1.

6. Ramsey Interview, *supra* note 1; Press Release, Office of the Governor, *supra* note 4.

7. Ramsey Interview, *supra* note 1.

8. *Id.*; Press Release, Office of the Governor, *supra* note 4.

a more affordable insurance policy to fit their family's needs.[9] As the Governor's floor leader, Representative Ramsey introduced HB 1184 to allow access to out-of-state insurance policies and to expand the insurance market for Georgians.[10] Similar legislation has passed in Wyoming and is pending in twenty-two other states.[11]

Bill Tracking of HB 1184

Consideration and Passage by the House

Representatives Matt Ramsey (R-72nd), Tom Graves (R-12th), Jim Cole (R-125th), Jimmy Pruett (R-144th), and Jeff May (R-111th), respectively, sponsored HB 1184.[12] The bill was read for the first time on February17, 2010, and for a second time on February 18, 2010.[13] Speaker of the House David Ralston (R-7th) assigned the bill to the House Insurance Committee.[14] Lobbyists representing insurers Kaiser and Blue Cross presented an amended version of the bill to the Life and Health Subcommittee, a subcommittee of the House Insurance Committee, as a substitute.[15] The substitute added provisions to protect Georgia domiciled insurance providers.[16] The substitute would have also allowed any insurer authorized to sell insurance in Georgia to offer individual accident and sickness insurance policies with benefits "equivalent to those in any policy approved for sale in Georgia."[17] Additionally, the substitute would have added oversight responsibilities to the Insurance Commissioner,[18] prohibited requirements that policy holders arbitrate

9. Press Release, Office of the Governor, *supra* note 4.

10. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010; *see also* HB 1184, as introduced, § 1, p. 1, ln. 17–20, 2010 Ga. Gen. Assem.

11. Nelson Mullins Gold Dome Report, March 17, 2010, http://www.nelsonmullins.com/news/newsletters-print.cfm?id=6EBD152C-EDD1-EEA8-50F708971E0C4CC2.

12. HB 1184, as introduced, 2010 Ga. Gen. Assem.

13. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010.

14. *Id*.

15. Nelson Mullins Gold Dome Report, March 17, 2010, *supra* note 11.

16. *Id*.

17. HB 1184 (HCS), § 1, p. 2, ln. 26–30, 2010 Ga. Gen. Assem.; Nelson Mullins Gold Dome Report, March 17, 2010, *supra* note 11.

18. *Compare* HB 1184 (HCS), § 1, p. 1–2, ln. 22–26, 2010 Ga. Gen. Assem., *with* HB 1184, as introduced, § 1, 2010 Ga. Gen. Assem.

disputes,[19] and deleted language related to reciprocity agreements with other states.[20]

The substitute would have allowed the Insurance Commissioner to have more oversight of out-of-state policies, thus enabling him to help protect consumers from financially weak companies by ensuring the insurance companies meet certain actuarial standards.[21] The Insurance Commissioner would also have had the responsibility to ensure proper disclosure of benefits by the insurance companies to keep consumers properly informed of the benefits being provided.[22] The additional language prohibiting an insurance policy from requiring "the insured or his or her beneficiary to arbitrate disputes arising under the policy"[23] would have ensured that Georgia consumers could file complaints in Georgia's courts and would not be forced into arbitration.[24] Additionally, an amendment to the bill in the Committee Substitute to HB 1184 would have allowed insurance carriers already domiciled in Georgia to offer similar out-of-state policies.[25] Finally, the language referencing reciprocity agreements was deleted because the only other state that had instituted this type of bill is Wyoming.[26] The substitute bill passed out of the subcommittee with a 5 to 2 vote.[27]

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19. *Compare* HB 1184 (HCS), § 1, p. 2, ln. 47–49, 2010 Ga. Gen. Assem., *with* HB 1184, as introduced, § 1, 2010 Ga. Gen. Assem.; Nelson Mullins Gold Dome Report, March 18, 2010, *supra* note 11.

20. *Compare* HB 1184 (HCS), 2010 Ga. Gen. Assem. *with* HB 1184, as introduced, § 1, p. 1–2, ln. 22–26, 2010 Ga. Gen. Assem.; Nelson Mullins Gold Dome Report, March 17, 2010, *supra* note 11.

21. Video Recording of House Insurance Committee Meeting, Mar. 23, 2010 at 9 min., 20 sec. (remarks by Rep. Matt Ramsey (R-72nd)), http://media.legis.ga.gov/hav/09_10/2010/committees/insurance/ins032310EDITED.wmv [hereinafter House Insurance Committee Meeting] (noting that the Georgia Insurance Commissioner would be given the authority in the Bill to underwrite companies offering out-of-state policies).

22. House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (stressing the balance between consumer protection and the free market choice).

23. HB 1184 (HCS), § 1, p. 2, ln. 48–49, 2010 Ga. Gen. Assem.

24. Nelson Mullins Gold Dome Report, March 17, 2010, *supra* note 11.

25. *Id.*

26. *Compare* HB 1184, as introduced, 2010 Ga. Gen. Assem., *with HB* 1184 (HCS), § 1, p. 1–2, ln. 22–26, 2010 Ga. Gen. Assem. (language referencing the General Assembly and the Insurance Commissioner seeking "to initiate cooperation with other states to explore the possibility of reciprocity agreements" was deleted because it only would have allowed for reciprocity with Wyoming under current state laws). *See also* Interview with Rep. Georganna Sinkfield (D-60th) (Apr. 14, 2010) [hereinafter Sinkfield Interview].

27. Nelson Mullins Gold Dome Report, March 17, 2010, *supra* note 11.

Representative Ramsey presented the Committee Substitute for HB 1184 to the House Insurance Committee Meeting on March 23, 2010.[28] Ron Jackson of the Insurance Department noted the collaboration between the Insurance Commissioner, the Governor's Office, and Representative Ramsey on bill clarifications and additional consumer protection.[29] The remainder of the discussion focused on the possibility that preventative care and maintenance items, which are mandated by Georgia law, would be excluded from out-of-state policies.[30] The House Insurance Committee passed the committee substitute with a 12 to 7 vote.[31]

The House Insurance Committee favorably reported the House Committee Substitute on March 24, 2010.[32] Representative Ramsey placed the bill on the floor calendar.[33] On March 26, 2010, the bill was recommitted and read for the third time.[34] That night, Representative Jim Cole (R-125th) presented HB 1184 to the House Floor.[35] Opponents to the bill discussed how the bill would tear down some of the protections previous legislators diligently worked to provide Georgians.[36] After over two hours of debate, the House of Representatives passed HB 1184 by a vote of 108 to 55.[37]

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28. House Insurance Committee Meeting, *supra* note 21, at 9 min., 12 sec. (remarks by Chairman John Meadows (R-5th)).

29. *Id.* at 12 min., 21 sec. (remarks by Deputy Insurance Commissioner Ron Jackson) (clarifying that the out-of-state policy would be subject to the jurisdiction of Georgia so unfair trade practices, service of process, and court actions could be dealt with in Georgia).

30. *Id.* at 14 min., 35 sec. (remarks by Rep. Ron Dodson (D-75th) & Rep. Georganna Sinkfield (D-60th)) (noting that there have been efforts made to lower the number of mandates that have to be included in health insurance policies to make those policies more affordable, but still realizing that mandates of preventative care saves lives and cost society less in the long run); *see also* Nelson Mullins Gold Dome Report, March 24, 2010, http://www.nelsonmullins.com/newsletters/gold-dome-report-for-march-24-2010 (noting the opposing views of Rep. Ron Dodson (D-75th), Rep. Georganna Sinkfield (D-60th) and Rep. Carolyn Hugley (D-133rd)).

31. House Insurance Committee Meeting, *supra* note 21, at 31 min., 27 sec. (remarks by Chairman John Meadows (R-5th)).

32. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010.

33. Video Recording of House Rules Committee Meeting, Mar. 25, 2010 at 14 min., 30 sec. (remarks by Rep. Matt Ramsey (R-72nd)), mms://mediam1.gpb.org/ga/leg/2009/rm-341_HseRules_032509.wmv [hereinafter House Rules Committee Meeting].

34. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010.

35. Video Recording of House Floor Debate Part 4, Mar. 26, 2010 at 43 min., 20 sec. (remarks by Rep. Jim Cole (R-125th)), http://mediam1.gpb.org/ga/leg/2010/ga-leg-house-032610_PM3.wmv [hereinafter House Floor Debate].

36. House Floor Debate, *supra* note 6, at 1hr., 3 min., 42 sec. (remarks by Representatives Henson (D-87th), Buckner (D-130th), Hugley (D-133rd), Oliver (D-83rd), Dooley (D-38th), Reece (D-11th), Gardner (D-57th), Benfield (D-85th), Morgan (D-39th), Fullerton (D-151st), Kaiser (D-59th), Bell (D-

Consideration and Passage by the Senate

On March 30, 2010, the Senate read HB 1184, and Senate President Pro Tempore Tommie Williams (R-19th) assigned the bill to the Senate Insurance and Labor Committee.[38] In committee, Senator Bill Heath (R-31st) presented HB 1184.[39] The American Cancer Society, the AARP, and several other groups raised objections.[40] Most of the concerns related to the possibility of health insurance mandates that would not be covered by out-of-state insurance policies.[41] The issue was raised that the bill has the potential to increase cost for older adults who have health insurance.[42] Because of these concerns, a motion to table the bill was made.[43] That motion was defeated 7 to 4.[44] The committee passed the bill with a 9 to 2 vote.[45] The Senate Committee favorably reported HB 1184 on April 14, 2010, and it was read for a second time that day.[46] However, the bill was not introduced on the Senate floor and thus never made it into law.[47]

The Bill

The bill would have amended the Insurance Act of 1997[48] by adding Code sections 33-29A-30 to -34. The additional sections would have attempted to decrease the cost of individual heath

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58th), Drenner (D-86th), Sinkfield (D-60th), Porter (D-143rd)). *See generally* Michael J. Brown, Insurance Generally: Provide Coverage for Medically Necessary Equipment and Supplies for Individuals with Diabetes, 19 GA. ST. U.L. REV. 1 (Fall 2002); Alan R. Godfrey, Insurance Generally: Requires Coverage for Colorectal Cancer Screening in Health Benefit Policies, 19 GA. ST. U. L. REV. 238 (Fall 2002).

37. Georgia House of Representatives Voting Record, HB 1184, Aug. 12, 2010.

38. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010.

39. Nelson Mullins Gold Dome Report, Legislative Day 35, http://www.nelsonmullins.com/newsletters/gold-dome-report-for-april-13-2010.

40. *Id.*

41. GA. SENATE, UPPER CHAMBER REPORT, at 3 (Apr. 13, 2010).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *See* State of Georgia Final Composite Status Sheet, HB 1184, Aug. 12, 2010.

47. Georgia Nurses Association, GNA 2010 Legislative Wrap Up, http://www.georgianurses.org/2010_WRAP_UP.pdf. (last visited Oct. 1, 2010).

48. 1997 Ga. Laws 446 (codified at O.C.G.A. § 33-29A-1 (2009)).

insurance policies by increasing the market of policies available.[49] Proponents believed that by allowing companies licensed in Georgia to sell out-of-state policies, more policy choices would have become available.[50]

Section 1 of the bill would have added a new Code section, 33-29A-30, which defined the purpose of the bill.[51] It recognized that a large number of uninsured individuals exist in Georgia; therefore, "more affordable and flexible" [52] policies were needed.[53] Section 1 concluded by providing a solution: "insurers authorized to transact insurance in other states [can now] [] issue individual accident and sickness policies in Georgia."[54]

Section 1 of the bill would have added another new Code section, 33-29A-31, which described the type of insurer that would have been allowed to offer the out-of-state policies as well as the policy that would have been offered under the bill.[55] The type of insurer covered in the bill would have been any insurer (including their affiliates or subsidiaries) authorized to transact insurance in Georgia.[56] The bill would have only applied to individual accident and sickness insurance policies, which it defined as being "any policy insuring against loss resulting from sickness or from bodily injury or death by accident, or both . . . ."[57] Further, the section only would have allowed policies that have been approved for offering in other states.[58]

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49. *See generally* Press Release, Office of the Governor, *supra* note 4.

50. *Id.*

51. *See* HB 1184 (HCS), § 1, p. 1, ln. 14–20, 2010 Ga. Gen. Assem.

52. *Id.* § 1, p. 1, ln. 16.

53. *Id.*; *see also* Press Release, Office of the Governor, *supra* note 4.

54. HB 1184 (HCS), § 1, p. 1, ln. 19–20, 2010 Ga. Gen. Assem.

55. *See id.* § 1, p. 1–2, ln. 22–34.

56. *Id.* § 1, p. 1–2, ln. 22–25; *see also* House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (noting that the licensure requirement was kept in the Act so the Insurance Commissioner would have the ability to underwrite these companies "to make sure that we are not getting any financially weak companies . . . companies that would potentially run the risk of becoming insolvent and leaving the consumer holding the bag").

57. House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd).

58. *Id.*; House Insurance Committee Meeting, *supra* note 21, at 12 min., 21 sec. (remarks by Deputy Insurance Commissioner Ron Jackson) ("An issuer of a policy, who [sic] obtained a policy approval in another state, holds a certificate of authority in that state and in this state and it expressly represents Chapter 3 which is our chapter that requires an entity transacting insurance to obtain a certificate of

Code section 33-29A-32 of the bill was comprised of three subsections dealing with consumer protection.[59] Subsection (a) would have required insurers selling a policy to "satisfy actuarial standards set forth by the National Association of Insurance Commissioners (NAIC) and any regulation promulgated by the Georgia Insurance Commissioner that is not inconsistent with such NAIC standards."[60] In addition, subsection (b) would have granted the Georgia Insurance Commissioner authority to determine if policies meet the requirements of the Code section.[61] Finally, subsection (c) would have prohibited a requirement that the insured arbitrate disputes.[62]

Proposed Code section 33-29A-33 listed the disclosures that would have been required for the application and policy.[63] Subsection (a) would have required a written application to have disclosure language at the beginning of the document, thus notifying the applicant that the benefits of the policy may not be governed by Georgia law, so "all of the laws applicable to policies filed in this state may not apply to this policy" and that "any purchase of individual health insurance should be considered carefully."[64] Subsection (b) would have required the disclosure for the policy

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authority. So quite simply, if the certificate has been issued to this issuer, of the so called out-of-state policy, they are subject to our jurisdiction.").

59. Ramsey Interview, *supra* note 1; House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (stressing the balance between consumer protection and the free market choice).

60. *See* HB 1184 (HCS), § 1, p. 2, ln. 36–39, 2010 Ga. Gen. Assem.; House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (saying that this measure would ensure "that actuarial standards are applied to the companies that are coming in and getting licensure and selling policies that are precipitant to the plan [which would] protect[] the consumer from a company becoming insolvent").

61. *See* HB 1184 (HCS), § 1, p. 2, ln. 43–46, 2010 Ga. Gen. Assem.; House Insurance Committee Meeting, *supra* note 21, at 12 min., 21 sec. (remarks by Deputy Insurance Commissioner Ron Jackson) (noting that the language of the bill was revised to ensure that the provisions of Title 33 applied, "to address[ ] issues such as unfair trade practices, service of process on an insurer for purposes of legal process in a court action").

62. HB 1184 (HCS), § 1, p. 2, ln. 47–49, 2010 Ga. Gen. Assem. Revisions were made to the original bill to reflect the provisions of the Arbitration Act under the Civil Practice Act (Title 9) where arbitration does not apply to an insurance contract. Therefore, "an insured is not going to have to take their dispute to binding arbitration in Minnesota[. T]hey are going to have the right to access the Georgia courts." House Insurance Committee Meeting, *supra* note 21, at 12 min., 21 sec. (remarks by Deputy Insurance Commissioner Ron Jackson).

63. *See* HB 1184 (HCS), § 1, p. 2–3, ln. 50–63, 2010 Ga. Gen. Assem.

64. *Id.* § 1, p. 2, ln. 54–55.

where "benefits covered may be different from other policies [the applicant] can purchase."[65]

Section 1 of the bill concluded with Code section 33-29A-34, which would have instructed the Georgia Insurance Commissioner to "adopt rules and regulations necessary to implement this article . . ." in subsection (a).[66] In subsection (b), any insurer issuing and delivering policies under the bill would have had to have "[a]ny dispute resolution mechanism or provision for notice and hearing in this title" applied to them.[67]

Analysis

The proponents of the bill believe in the basic supply-and-demand model of markets where more supply would lead to a decrease in price.[68] Under this model, the more policies that are supplied to the marketplace, the cheaper policies would become; thus, more individuals would have access to health insurance.[69] The passage of a federal healthcare bill requiring every individual in Georgia to have some type of health insurance policy further encouraged proponents of the bill.[70] However, opponents of the bill: (1) believe that protections afforded under Georgia law would be bypassed to the detriment of all Georgians;[71] (2) dispute the cost savings theory and

65. *Id.* § 1, p. 3, ln. 61–62.

66. *See id.* § 1, p. 3, ln. 65–66.

67. *Id.* § 1, p. 3, ln. 68; *see also* House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) ("We have put language there that ensures jurisdiction and venue would lie in the state of Georgia. If a consumer believes they have been wronged via their insurance contract, they can seek redress in Georgia's courts.").

68. House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)); Press Release, Office of the Governor, *supra* note 4.

69. Ronald E. Bachman, *Georgia Taking the Lead in Cross-State Insurance Legislation*, Ga. Pub. Pol'y Found., http://www.gppf.org/article.asp?RT=&p=pub/HealthCare/TheUninsured/Interstate100312.htm (last visited Oct. 16, 2010) (claiming that "studies have shown that up to 12 million Americans would become insured with effective national legislation for cross-state selling"); House Floor Debate, *supra* note 35, at 43 min., 20 sec. (remarks by Rep. Jim Cole (R-125th)) (emphasizing that there will be more choices and more competition and that the bill only applies to individual healthcare insurance, and not to any group policies).

70. Wheatley, *supra* note 1; House Floor Debate, *supra* note 35, at 43 min., 20 sec. (remarks by Rep. Jim Cole (R-125th)) (indicating that Washington has mandated that all individuals have healthcare coverage); *see also* discussion *infra* "*The Patient Protection and Affordable Care Plan*."

71. "The role of the state has not changed[ ] – the state is still there to protect and to provide for the health of its citizens. We have police and fire services and we also have health requirements to protect the overall well-being [sic] of our citizens." Sinkfield Interview, *supra* note 6; *see also* Jim Galloway,

claim that a cost increase is possible;[72] and (3) caution that insurance companies would be regulated less.[73]

Basic Healthcare and Preventative Measures

Opponents of the bill note that out-of-state policies would not be required to have the basic healthcare and preventative coverage that Georgia law demands.[74] Representative Georganna Sinkfield (D-60th), who has been in the House of Representatives since 1983, has been involved in passing such legislation to bring Georgia "out of darkness into the light"[75] with respect to heath care coverage.[76] Representative Sinkfield and others believe that healthcare mandates[77] in insurance policies save lives and reduce overall costs, as opposed to increasing costs.[78] Costs would decrease because preventing an illness costs less than treating an illness.[79] Opponents also claim that "interstate sales would allow some insurers to cherry-pick the best customers by avoiding consumer protections that require them to cover individuals with preexisting conditions and limit their ability to charge higher prices for older, sicker

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The Crushing of a Health Care Revolt – by GOP Women, POLITICAL INSIDER, http://blogs.ajc.com/political-insider-jim-galloway/2010/03/27/the-crushing-of-a-health-care-revolt-by-gop-women (last visited Oct. 16, 2010).

72. Ken Mitchell, *Out-of-State Health Policies Raise Host of Questions*, TALK GWINNETT!, http://talkgwinnett.net/main/section/6-guests/1114-out-of-state-health-policies-raise-host-of-questions (last visited Oct. 16, 2010).

73. National Association of Insurance Commissioners & The Center for Insurance Policy and Research, Interstate Health Insurance Sales: Myth vs. Reality, http://www.naic.org/documents/topics_interstate_sales_myths_1003.pdf [hereinafter NAIC]; Sinkfield Interview, *supra* note 26.

74. Mitchell, *supra* note 72.

75. Sinkfield Interview, *supra* note 26.

76. *Id.* (noting that Georgia healthcare used to be below standard where insurance companies would have a "drive through" birthing process where mothers were only given a twenty-four hour hospital stay to save money and where testing was not covered for certain STDs or other treatable afflictions).

77. Healthcare mandated benefits are a requirement that an insurance policy includes that particular benefit. *Id.* (giving examples of mandates for safety and health).

78. *Compare* Bachman *supra* note 69 ("[A]rguments on mandated benefits go both ways: The National Business Group on Health believes that the Georgia mandate for colorectal cancer screenings is a cost-effective mandate; the Council for Affordable Health Insurance cited forty-one state-mandated benefits in Georgia in 2008, some of which can increase costs.") *with* NAIC, *supra* note 73 (claiming that mandated benefits only add a maximum of five percent to an insurance premium). *See also* Mitchell, *supra* note 72 (noting the increase cost to the elderly with interstate insurance).

79. Sinkfield Interview, *supra* note 26 ("Your health is all of you [because] [y]ou can't function without being healthy.").

customers."[80] Therefore, basic care and preventative laws would not adequately protect the citizenry.[81]

Cost Savings or Not?

Supporters of the bill assert that interstate sales of health insurance policies would provide people with more options, therefore more savings.[82] But others claim that options would actually decrease, and although some may save money, costs will increase for many others.[83] Opening up the insurance market would allow more policies to be offered.[84] Pressure to decrease the number of insurance policy options available may be created because in-state insurers that currently comply with Georgia's protections would have to compete with out-of-state insurers who are not required to have certain basic minimum protections.[85] The concern is that "[t]o compete, insurance policies would cover less and less, as insurers try to design polices that discourage the sickest customers from applying."[86] In addition, out-of-state insurers would be able to attract healthy enrollees away from existing risk pools. This could result in higher premiums for the high risk individual who needs the additional coverage provided by Georgia and could possibly lead to the failure of the policy provisions to pay out.[87] However, supporters of the bill note that currently there

80. NAIC, *supra* note 73 (debunking myths about the benefits of interstate insurance sales).

81. Sinkfield Interview, *supra* note 26 ("This bill attempts to allow insurers to offer health insurance plans that sidestep the longstanding consumer protections currently guaranteed by Georgia law. Existing state law is the result of many years of careful deliberations by the Legislature. For example, insurers in South Carolina, Mississippi and Florida are not required to cover colon cancer screening. Consumers buying plans from these states would be left without this critical life-saving cancer screening. Health care is a one of a consumer's largest monthly expenses. Risking that investment on a cheaper product that doesn't include consumer protections could result in serious consequences—leaving people to learn in the middle of a crisis that their insurance doesn't provide them with the coverage they expected."); *see also* Mitchell, *supra* note 72.

82. Press Release, Office of the Governor, *supra* note 4; Bachman, *supra* note 9 (asserting that interstate sales would "encourage insurers to develop and bring new, low-cost and affordable plans to Georgia").

83. NAIC, *supra* note 73; *see also* Mitchell, *supra* note 72.

84. Press Release, Office of the Governor, *supra* note 4; Ramsey Interview, *supra* note 1; Bachman, *supra* note 9.

85. NAIC, *supra* note 73; Mitchell *supra* note 72.

86. NAIC, *supra* note 73.

87. *Id.*; Mitchell, *supra* note 72 ("These out-of-state policies will be marketed to the most desirable and least "risky" clients. Consumers in Georgia's individual market who aren't attractive to underwriters will be left in their current policies. As the state's remaining pool of customers shrinks and becomes less

is little competition in Georgia's individual insurance market because only a few carriers dominate the individual insurance market. Increasing the number of providers in the market, thus increasing competition, would force insurers to improve their product and services.[88]

The Regulation of Insurers

Additionally, the regulation of insurers in this new market is an emerging concern.[89] The bill in Georgia would have included language granting the Georgia Insurance Commissioner the authority to regulate out-of-state insurers.[90] It also would have required that the Commissioner promulgate rules and regulations to comply with the bill.[91] However, opponents question the lack of experience in this marketplace operation and compare it to the deregulation of the Georgia gas markets (which failed) or the deregulation of the financial markets (which allowed financial institutions to choose their regulators to the detriment of the consumer).[92] Opponents believe that the language in HB 1184 is vague and provides no guidance.[93] "After

healthy, those remaining will face rate increases. The real impact of interstate sales may be to segment consumers, leaving many paying more for insurance and health care. For adults in their 50s and 60s this is a particular worry, since they are more likely to have health conditions and be unable to buy or change coverage.").

88. Bachman, *supra* note 9.

89. Sinkfield Interview, *supra* note 26; *see also* House Insurance Committee Meeting, *supra* note 21, at 26 min., 45 sec. (remarks by Rep. Golick (R-34th)).

90. HB 1184 (HCS), § 1, p. 1–2, ln. 22–26, 2010 Ga. Gen. Assem.; *see also* House Insurance Committee Meeting, *supra* note 21, at 12 min., 21 sec. (remarks by Deputy Insurance Commissioner Ron Jackson).

91. HB 1184 (HCS), § 1, p. 10, ln. 65–67, 2010 Ga. Gen. Assem.; *see also* House Insurance Committee Meeting, *supra* note 21, at 9 min., 45 sec. (remarks by Rep. Matt Ramsey (R-72nd)) (noting the involvement of the Insurance Commissioner in the development of the Bill).

92. Sinkfield Interview, *supra* note 26 ("I believe that this bill is similar to the deregulation of the gas market. We are essentially deregulating the insurance policy market. As with the gas market, we had no idea what the market would look like. Not a lot of other states had attempted gas deregulation and we were going to be the state in front of the rest in the South. If you deregulated gas, it was supposed to be cheaper. This is similar to the claims made here with opening up the insurance market. But in the case of gas, it did not work."); *see also* NAIC, *supra* note 73 (discussing what took place in the financial crisis).

93. House Insurance Committee Meeting, *supra* note 21, at 26 min., 45 sec. (remarks by Rep. Murphy (D-120th)) (questioning how policies would be delivered and the role of insurance agents); *see also* House Floor Debate, *supra* note 5, at 1 hr., 09 min., 06 sec. (remarks by Rep. Carolyn Hugley (D-133rd)).

the gas deregulation fiasco, we should have learned that we need to get into the details a bit more."[94] In addition, opponents express concern over managing both the challenges of integrating the new federal healthcare regulation and also its effect at the state level.[95]

Implementation of a Similar Act in Wyoming

Although twenty-two states have considered similar legislation, thus far the only state to institute the interstate sale of health insurance policies is Wyoming.[96] Like HB 1184, the Wyoming legislation also seeks to increase the number of insured individuals by increasing competition and driving down the cost of insurance.[97] Representative Colin Simpson (R-24th), an advocate for the Wyoming legislation, says that it could serve as model legislation in other states.[98] However, unlike Georgia, Wyoming does not mandate many of the insurance provisions found in other states, such as "coverage for chiropractic care or fertility treatments."[99] Therefore, many of the concerns regarding reduced quality of care in Georgia were not applicable in the passage of the Wyoming legislation.

The Patient Protection and Affordable Care Plan

Many of the concerns associated with HB 1184 are addressed in the recently passed federal law known as the Patient Protection and Affordable Care Act (PPACA).[100] In addition to mandating that all lawful residents purchase qualified insurance coverage or pay a penalty,[101] the PPACA also includes a provision allowing insurers to

94. Sinkfield Interview, *supra* note 21 (recalling that there were no real dissenting voices when gas deregulation was pushed through the House of Representatives and that dissent makes bills better by raising issues that have not been thought through).

95. House Floor Debate, *supra* note 5, at 1 hr., 23 min., 03 sec. (remarks by Rep. Pat Gardner (D-57th)).

96. Nelson Mullins Gold Dome Report, March 18, 2010, *supra* note 11.

97. Michelle Dynes, *Legislature focusing on 3 health-care issues*, WYO. TRIB. EAGLE, Feb. 20, 2010, *available at* http://www.wyomingnews.com/articles/2010/02/21/news/19local_02-21-10.txt (last viewed Oct 16, 2010).

98. *Id.*

99. *Id.*

100. *See* Patient Protection and Affordable Care Act, H.R. 3590, 111th Cong. (2nd Sess. 2010).

101. H.R. 3590 § 1104.

sell policies across state lines.[102] Under the PPACA, states may enter into an agreement where one or more "qualified health plans" is offered in the individual markets of each state entering into the compact.[103] The issuer of the plan would still be subject to unfair trade practices and consumer protection standards, and be required to abide by the regulations of the state in which the plan was issued.[104] Additionally, the issuer of the plan would be required to "clearly notify consumers that the plan may not be subject to the laws and regulations in which they reside." However, instead of providing the Georgia Insurance Commissioner with the authority to regulate out of state insurers, under the PPACA, the Secretary of Health and Human Services must first determine that the compact provides coverage that is "at least comprehensive and affordable" before the plans are approved.[105]

Additionally, Section 1341 of the PPACA requires states to establish "a nonprofit reinsurance entity" that collects payments from insurers and pays out to individual market insurers who cover high-risk individuals.[106] This reduces the risk that insurance providers will provide less and less coverage to discourage sick individuals from applying.

The recent changes in federal policy regarding healthcare reform have spurred a flurry of reactions from state legislatures. HB 1184 is just one example of a state legislature adjusting to the federally mandated requirement that individuals purchase insurance coverage or pay a penalty. Although this bill may not have a direct impact, it does address important implications for the future of healthcare reform and the concerns over federally mandated consumer purchases.

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102. *Id.* § 1333.
103. *Id.*
104. *Id.*
105. *Id.* § 1103.
106. Patient Protection and Affordable Care Act, H.R. 3590, 111th Cong. § 1341 (2nd Sess. 2010).