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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

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

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 coverage 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 “Creating Healthier Op-
5 tions in Insurance through Choice and Efficiency Act” or
6 the “CHOICE Act”.



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 its primary
14 State. An issuer may only designate one such State
15 as its primary State with respect to all such cov-
16 erage it offers.

17 “(2) SECONDARY STATE.—The term ‘secondary
18 State’ means, with respect to a health insurance
19 issuer, any State (in the United States or District
20 of Columbia) that is not the primary State.

21 “(3) HEALTH INSURANCE ISSUER.—The term
22 ‘health insurance issuer’ has the meaning given such
23 term in section 2791(b)(2).

24 “(4) INDIVIDUAL HEALTH INSURANCE COV-
25 ERAGE.—The term ‘individual health insurance cov-
26 erage’ means health insurance coverage offered in



1 the individual market, as defined in section
2 2791(e)(1).

3 “(5) APPLICABLE STATE AUTHORITY.—The
4 term ‘applicable State authority’ means, with respect
5 to a health insurance issuer in a State, the State in-
6 surance commissioner or official or officials des-
7 ignated by the State to enforce the requirements of
8 this title for the State involved with respect to the
9 issuer.

10 “(6) HAZARDOUS FINANCIAL CONDITION.—The
11 term ‘hazardous financial condition’ means that,
12 based on its present or reasonably anticipated finan-
13 cial condition, a health insurance issuer is unlikely
14 to be able—

15 “(A) to meet obligations to policyholders
16 with respect to known claims and reasonably
17 anticipated claims; or

18 “(B) to pay other obligations in the normal
19 course of business.

20 “(7) COVERED LAWS.—The term ‘covered laws’
21 means the laws governing the issuance of an indi-
22 vidual health insurance coverage pertaining to—

23 “(A) the provision of insurance related
24 services;



1 “(B) management, operations, and invest-
2 ment activities; and

3 “(C) loss control and claims administration
4 for a health insurance issuer with respect to li-
5 ability for which the issuer provides insurance

6 **“SEC. 2796. APPLICATION OF LAW.**

7 “(a) IN GENERAL.—The covered laws of the primary
8 State shall apply to individual health insurance coverage
9 offered by that health insurance issuer in the primary
10 State and in any secondary State.

11 “(b) EXEMPTIONS FROM STATE LAWS, RULES, REG-
12 ULATIONS, JUDGMENTS, AGREEMENTS, OR ORDERS IN A
13 SECONDARY STATE.—Except as provided in this section,
14 a health insurance issuer with respect to its offer, sale,
15 and issuance of individual health insurance coverage in
16 any secondary State is exempt from any State law, rule,
17 regulation, judgment, agreement, or order of the sec-
18 ondary State to the extent that such law, rule, regulation,
19 judgment, agreement, or order would—

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

24 “(A) to pay, on a nondiscriminatory basis,
25 applicable premium and other taxes which are



1 levied on insurers and surplus lines insurers,
2 brokers, or policyholders under the laws of the
3 State;

4 “(B) to register with and designate the
5 State insurance commissioner as its agent solely
6 for the purpose of receiving service of legal doc-
7 uments or process;

8 “(C) to comply with a lawful order issued
9 in a voluntary dissolution proceeding;

10 “(D) to comply with an injunction issued
11 by a court of competent jurisdiction, upon a pe-
12 tition by the State insurance commissioner al-
13 leging that the issuer is in hazardous financial
14 condition; and

15 “(E) to provide the following notice, in 12-
16 point bold type, in any insurance coverage
17 issued by such a health insurance issuer:

18 **‘Notice**

19 **‘This policy is issued by a health insur-**
20 **ance issuer in another State. Your health in-**
21 **surance issuer may not be subject to all of the**
22 **insurance laws and regulations of your State.’;**

23 or

24 “(F) to participate, on a nondiscriminatory
25 basis, in any insurance insolvency guaranty as-



1 society to which a health insurance issuer in
2 the State is required to belong;

3 “(2) require any individual health insurance
4 coverage issued by the issuer to be countersigned by
5 an insurance agent or broker residing in that Sec-
6 ondary State; or

7 “(3) otherwise discriminate against the issuer
8 issuing insurance in both primary and secondary
9 States.

10 “(c) SCOPE OF EXEMPTIONS.—The exemptions spec-
11 ified in subsection (b) apply to laws, rules, regulations,
12 judgments, agreements, and orders governing the insur-
13 ance business pertaining to—

14 “(1) individual health insurance coverage issued
15 by a health insurance issuer;

16 “(2) the offer, sale, and issuance of individual
17 health insurance coverage to an individual; and

18 “(3) the provision to an individual in relation to
19 individual health insurance coverage of—

20 “(A) insurance related services;

21 “(B) management, operations, and invest-
22 ment activities; and

23 “(C) loss control and claims administration
24 for a health insurance issuer with respect to li-
25 ability for which the issuer provides insurance.



1 “(d) LICENSING OF AGENTS OR BROKERS FOR
2 HEALTH INSURANCE ISSUERS.—Any State may require
3 that a person acting, or offering to act, as an agent or
4 broker for a health insurance issuer with respect to the
5 offering of individual health insurance coverage obtain a
6 license from that State, except that a State may not im-
7 pose any qualification or requirement which discriminates
8 against a nonresident agent or broker.

9 “(e) DOCUMENTS FOR SUBMISSION TO STATE INSUR-
10 ANCE COMMISSIONER.—Each health insurance issuer
11 issuing individual health insurance coverage in both pri-
12 mary and secondary States shall submit—

13 “(1) to the insurance commissioner of each
14 State in which it intends to offer such coverage, be-
15 fore it may offer individual health insurance cov-
16 erage in such State—

17 “(A) a copy of plan of operation or
18 feasibility study (which shall include the name
19 of its primary State and its principal place of
20 business); and

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

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



1 nancial statement submitted to the primary State,
2 which statement shall be certified by an independent
3 public accountant and contain a statement of opin-
4 ion on loss and loss adjustment expense reserves
5 made by—

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

8 “(B) a qualified loss reserve specialist.

9 “(f) POWER OF COURTS TO ENJOIN CONDUCT.—

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

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

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

20 “(g) STATE POWERS TO ENFORCE STATE LAWS.—

21 “(1) IN GENERAL.—Subject to the provisions of
22 subsection (b)(1)(D) (relating to injunctions), noth-
23 ing in this section shall be construed to affect the
24 authority of any State to make use of any of its
25 powers to enforce the laws of such State with re-



1 spect to which a health insurance issuer is not ex-
2 empt under this section.

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 (f), such injunction must be obtained from a Federal
7 or State court of competent jurisdiction.

8 “(h) 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 “(i) 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 that are not health mainte-



1 nance organizations (as defined in section 1301(a)).
2 For such health maintenance organizations the State
3 must have legislative or regulatory capital and sur-
4 plus requirements.

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

16 **“SEC. 2798. ENFORCEMENT.**

17 “(a) IN GENERAL.—Subject to subsection (c), the
18 primary State has sole jurisdiction to enforce covered laws
19 in primary and secondary States.

20 “(b) FAILURE TO COMPLY WITH PRIMARY STATE
21 LAW.—In the case of individual health insurance coverage
22 offered in a secondary State that fails to comply with cov-
23 ered laws of the primary State, the applicable State au-
24 thority of the secondary State shall notify, in writing, the



1 applicable State authority of the primary State of sus-
2 pected violations of the primary State's laws.

3 “(c) FAILURE OF A PRIMARY STATE AUTHORITY TO
4 TAKE ACTION.—The applicable State authority of the sec-
5 ondary State may initiate regulatory proceedings to en-
6 force the covered laws of the primary State if the applica-
7 ble State authority of the primary State—

8 “(1) does not initiate regulatory or legal pro-
9 ceedings within 30 days; or

10 “(2) fails to maintain an active investigation,
11 negotiation, regulatory, or judicial proceeding for
12 any 30-day period.

13 “(d) FAILURE TO RESOLVE DISPUTE.—If upon initi-
14 ating proceedings under subsection (c), the applicable
15 State authority of the secondary State is unable to resolve
16 concerns related to suspected violations of covered laws of
17 the primary State, such applicable secondary State au-
18 thority may bring action in a court of appropriate jurisdic-
19 tion.

20 “(e) COURT INTERPRETATION.—In reviewing action
21 initiated by the applicable secondary State authority, the
22 court of appropriate jurisdiction shall apply the covered
23 laws of the primary State.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to individual health insurance



1 coverage offered, issued, or sold after the date of the en-
2 actment of this Act.

3 **SEC. 5. SEVERABILITY.**

4 If any provision of the Act or the application of such
5 provision to any person or circumstance is held to be un-
6 constitutional, the remainder of this Act and the applica-
7 tion of the provisions of such to any other person or cir-
8 cumstance shall not be affected.

