

- SUBJECT:** Exempting individuals from the requirement to obtain health insurance
- COMMITTEE:** State Sovereignty, Select — committee substitute recommended
- VOTE:** 5 ayes — Creighton, Branch, Darby, S. Miller, Pitts  
0 nays  
2 absent — Martinez Fischer, Thompson
- WITNESSES:** For — Steven Hotze, Conservative Republicans of Texas; (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business; Andrew Kerr, Texans for Fiscal Responsibility; Dustin Matocha, Empower Texans; Jonathan Saenz, Liberty Institute; Kandice Sanaie, Texas Association of Business; Lee Spiller, Citizens Commission of Human Rights; Peggy Venable, Americans for Prosperity; Thomas Wolfe, Texas Conservative Coalition; Gareth Ellzey; Rebecca Forest; Maria Martinez)  
  
Against — (*Registered, but did not testify*: Miryam Bujanda, Methodist Healthcare Ministries; Melissa Cubria, Texas Public Interest Research Group (TexPIRG); Anne Dunkelberg, Center for Public Policy Priorities; Laura Guerra-Cardus, Children’s Defense Fund - Texas; Bee Moorhead, Texas Impact)
- BACKGROUND:** The federal Patient Protection and Affordable Care Act of 2010 (ACA) requires individuals to obtain health insurance starting on January 1, 2014, or face a penalty.
- DIGEST:** CSHB 32 would provide that an individual could not be required to obtain or maintain coverage under an individual health insurance policy. This provision would not apply to
- a student or future student who was required to obtain or maintain health benefit plan coverage by an institution of higher education;
  - a person who was required to obtain or maintain health benefit plan coverage under an order requiring medical support for a child; or

- an individual voluntarily applying for benefits under Medicaid or the State Children's Health Insurance Program.

A fine or penalty could not be imposed on an individual if the individual chose not to obtain or maintain coverage under an individual health insurance policy. A fine or penalty still could be imposed on a student required to obtain or maintain health benefit plan coverage or a person under an order requiring medical support for a child.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

The ACA's requirement that individuals obtain health insurance is a burden on cash-strapped Texans and infringes on individual rights. CSHB 32 would protect a person's right not to participate in health insurance.

The U.S. Constitution places limits on the federal government's power. Every federal law requires a constitutional authorization or basis. The federal government has no authority to require individuals to purchase health insurance. While the Commerce Clause gives Congress broad powers to regulate economic activity, there simply is no precedent for requiring citizens to buy a consumer product from a private company. A person's decision not to purchase health insurance is not an economic activity at all but a non-economic activity that Congress may not regulate.

The individual mandate also violates the Tenth Amendment to the U.S. Constitution, which provides that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. The Tenth Amendment is a constitutional affirmation that powers accorded to the federal government should be narrowly construed. If the ACA is upheld, it is difficult to imagine any limit on federal power.

**OPPONENTS  
SAY:**

CSHB 32 would attempt to nullify the individual mandate provision in the ACA. The Supremacy Clause of the U.S. Constitution establishes the U.S. Constitution and federal statutes as the supreme law of the land. A state law cannot overturn a federal law as this bill attempts to do.

While the constitutionality of the ACA currently is being litigated in a number of federal courts, there is good reason to believe it will be upheld.

The Commerce Clause gives Congress extremely broad powers to regulate economic activity. The U.S. Supreme Court has gone so far as to hold that Congress may prohibit a farmer from growing wheat for personal consumption. Requiring individuals to purchase health insurance is well within Congress' constitutional authority.

CSHB 32 would do nothing to solve Texas' major health care challenges. More than 26 percent of Texans do not have health insurance, the highest rate in the nation. This translates to six and a half million Texans without health insurance, including more than 1.2 million children. The high number of uninsured Texans means that Texas stands to gain more than any other state from the ACA. By 2014, about 5 million currently uninsured Texans could qualify for coverage under the ACA.

The ACA is designed to make affordable health care available to all Americans. The bill will expand Medicaid to cover more low-income citizens and create insurance exchanges where insurance can be purchased on a sliding scale based on family income. Insurers will be prohibited from denying coverage to those with pre-existing conditions. The individual mandate requiring the purchase of health insurance is essential to ensure that health reform works. Without the individual mandate, people could wait until they got sick to buy coverage, leaving an insurance pool of sick people that would force each person to pay prohibitively high premiums. The individual mandate spreads risk over the entire population and keeps premiums affordable.

NOTES:

The substitute differs from the original by not referring specifically to a resident of Texas.

The companion bill, SB 515 by Patrick, was referred to the Senate State Affairs Committee on February 17.