

H. B. 2994

(By Delegate Householder, (By Request) and Kump
[Introduced March 20, 2013; referred to the
Committee on Health Human Resources then the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-45-1, §16-45-2, §16-45-3, §16-45-4 and §16-45-5, all relating to the healthcare compact with other states seeking to protect individual liberty and personal control over Health Care decisions by vesting regulatory authority over Health Care in the States; preamble; definitions; establishing an Interstate Advisory Health Care Commission; providing that the compact is effective on its adoption and consent of the United States Congress unless the United States Congress alters the fundamental purposes; how amendments are made; withdrawal and dissolution; and providing that the director of health be the compact administrator with authority to enter into supplementary agreements and make financial arrangement and subject to the approval of the State Auditor.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §16-45-1, §16-45-2,
4 §16-45-3, §16-45-4 and §16-45-5, all to read as follows:

5 **ARTICLE 45. THE HEALTHCARE COMPACT.**

6 **§16-45-1. Governor to execute compact.**

7 The Governor of this state is hereby authorized and directed
8 to execute a compact on behalf of the State of West Virginia with
9 any state or states of the United States legally joining therein in
10 form substantially as follows:

11 **Preamble**

12 WHEREAS, The separation of powers, both between the branches of
13 the federal government and between federal and state authority, is
14 essential to the preservation of individual liberty;

15 WHEREAS, The Constitution creates a federal government of
16 limited and enumerated powers, and reserves to the states or to the
17 people those powers not granted to the federal government;

18 WHEREAS, The federal government has enacted many laws that have
19 preempted state laws with respect to Health Care, and placed
20 increasing strain on State budgets, impairing other
21 responsibilities such as education, infrastructure and public
22 safety;

23 WHEREAS, The member states seek to protect individual liberty

1 and personal control over Health Care decisions, and believe the
2 best method to achieve these ends is by vesting regulatory
3 authority over Health Care in the states;

4 WHEREAS, By acting in concert, the member states may express
5 and inspire confidence in the ability of each member state to
6 govern health care effectively; and

7 WHEREAS, The member states recognize that consent of Congress
8 may be more easily secured if the member states collectively seek
9 consent through an interstate compact;

10 NOW THEREFORE, The member states hereto resolve, and by the
11 adoption into law under their respective State Constitutions of
12 this Health Care Compact, agree, as follows:

13 **Definitions.**

14 As used in this Compact, unless the context clearly indicates
15 otherwise:

16 (a) "Commission" means the Interstate Advisory Health Care
17 Commission.

18 (b) "Effective Date" means the date upon which this Compact
19 becomes effective for purposes of the operation of state and
20 federal law in a member state, which shall be the later of:

21 (1) The date upon which this Compact is adopted under the laws
22 of the member state, and

23 (2) The date upon which this Compact receives the consent of
24 Congress pursuant to Article I, Section 10, of the United States

1 Constitution, after at least two member states adopt this Compact.

2 (c) "Health Care" means care, services, supplies or plans
3 related to the health of an individual and includes, but is not
4 limited to:

5 (1) Preventive, diagnostic, therapeutic, rehabilitative,
6 maintenance or palliative care and counseling, service, assessment
7 or procedure with respect to the physical or mental condition or
8 functional status of an individual or that affects the structure or
9 function of the body, and

10 (2) Sale or dispensing of a drug, device, equipment or other
11 item in accordance with a prescription, and

12 (3) An individual or group plan that provides, or pays the
13 cost of, care, services or supplies related to the health of an
14 individual, except any care, services, supplies or plans provided
15 by the United States Department of Defense and United States
16 Department of Veteran Affairs, or provided to Native Americans.

17 (d) "Member State" means a State that is signatory to this
18 Compact and has adopted it under the laws of that state.

19 (e) "Member State Base Funding Level" means a number equal to
20 the total federal spending on Health Care in the member state
21 during federal fiscal year 2010. On or before the effective date,
22 each member state shall determine the Member State Base Funding
23 Level for its state, and that number shall be binding upon that
24 member state. The preliminary estimate of Member State Base

1 Funding Level for West Virginia is \$6,372,000,000.

2 (f) "Member State Current Year Funding Level" means the Member
3 State Base Funding Level multiplied by the Member State Current
4 Year Population Adjustment Factor multiplied by the Current Year
5 Inflation Adjustment Factor.

6 (g) "Member State Current Year Population Adjustment Factor"
7 means the average population of the member state in the current
8 year less the average population of the member state in federal
9 fiscal year 2010, divided by the average population of the member
10 state in federal fiscal year 2010, plus one. Average population in
11 a member state shall be determined by the United States Census
12 Bureau.

13 (h) "Current Year Inflation Adjustment Factor" means the Total
14 Gross Domestic Product Deflator in the current year divided by the
15 Total Gross Domestic Product Deflator in Federal fiscal year 2010.
16 Total Gross Domestic Product Deflator shall be determined by the
17 Bureau of Economic Analysis of the United States Department of
18 Commerce.

19 **Pledge**

20 The member states shall take joint and separate action to
21 secure the consent of the United States Congress to this Compact in
22 order to return the authority to regulate Health Care to the member
23 states consistent with the goals and principles articulated in this
24 Compact. The member states shall improve Health Care policy within

1 their respective jurisdictions and according to the judgment and
2 discretion of each member states.

3 **Legislative Power**

4 The Legislatures of the member states have the primary
5 responsibility to regulate Health Care in their respective states.

6 **State Control**

7 Each member state, within its state, may suspend by
8 legislation the operation of all federal laws, rules, regulations,
9 and orders regarding Health Care that are inconsistent with the
10 laws and regulations adopted by the member state pursuant to this
11 Compact. Federal and state laws, rules, regulations, and orders
12 regarding Health Care will remain in effect unless a member state
13 expressly suspends them pursuant to its authority under this
14 Compact. For any federal law, rule, regulation, or order that
15 remains in effect in a member state after the effective date, that
16 member state shall be responsible for the associated funding
17 obligations in its state.

18 **Funding**

19 (a) Each federal fiscal year, each Member State shall have the
20 right to Federal moneys up to an amount equal to its member state
21 Current Year Funding Level for that federal fiscal year, funded by
22 Congress as mandatory spending and not subject to annual
23 appropriation, to support the exercise of member State authority
24 under this Compact. This funding shall not be conditional on any

1 action of or regulation, policy, law, or rule being adopted by the
2 member state.

3 (b) By the start of each federal fiscal year, Congress shall
4 establish an initial Member State Current Year Funding Level for
5 each member state, based upon reasonable estimates. The final
6 Member State Current Year Funding Level shall be calculated, and
7 funding shall be reconciled by the United States Congress based
8 upon information provided by each member state and audited by the
9 United States Government Accountability Office.

10 **Interstate Advisory Health Care Commission**

11 (a) The Interstate Advisory Health Care Commission is
12 established. The commission consists of members appointed by each
13 member state through a process to be determined by each member
14 state. A member state may not appoint more than two members to the
15 Commission and may withdraw membership from the Commission at any
16 time. Each commission member is entitled to one vote. The
17 Commission shall not act unless a majority of the members are
18 present, and no action shall be binding unless approved by a
19 majority of the commission's total membership.

20 (b) The commission may elect from among its membership a
21 chairperson. The commission may adopt and publish bylaws and
22 policies that are not inconsistent with this Compact. The
23 commission shall meet at least once a year, and may meet more
24 frequently.

1 two member states and consent of the United States Congress. This
2 Compact shall be effective unless the United States Congress, in
3 consenting to this Compact, alters the fundamental purposes of this
4 Compact, which are:

5 (a) To secure the right of the member states to regulate
6 Health Care in their respective States pursuant to this Compact and
7 to suspend the operation of any conflicting federal laws, rules,
8 regulations, and orders within their states; and

9 (b) To secure federal funding for member states that choose to
10 invoke their authority under this Compact, as prescribed by section
11 5 above.

12 **Amendments**

13 The member states, by unanimous agreement, may amend this
14 Compact from time to time without the prior consent or approval of
15 Congress and any amendment shall be effective unless, within one
16 year, the Congress disapproves that amendment. Any state may join
17 this Compact after the date on which Congress consents to the
18 Compact by adoption into law under its State Constitution.

19 **Withdrawal; Dissolution**

20 Any member state may withdraw from this Compact by adopting a
21 law to that effect, but no such withdrawal shall take effect until
22 six months after the Governor of the withdrawing member state has
23 given notice of the withdrawal to the other member states. A
24 withdrawing state shall be liable for any obligations that it may

1 have incurred prior to the date on which its withdrawal becomes
2 effective. This Compact shall be dissolved upon the withdrawal of
3 all but one of the member states.

4 **§16-45-2. Compact administrator.**

5 The director of health shall be the Compact administrator and,
6 acting jointly with like officers of other party states, shall have
7 power to promulgate rules and regulations to carry out more
8 effectively the terms of the compact. The compact administrator is
9 hereby authorized, empowered and directed to cooperate with all
10 departments, agencies and officers of and in the government of this
11 state and its subdivisions in facilitating the proper
12 administration of the compact or of any supplementary agreement or
13 agreements entered into by this state thereunder.

14 **§16-45-3. Supplementary agreements.**

15 The Compact administrator is hereby authorized and empowered
16 to enter into supplementary agreements with appropriate officials
17 of other states pursuant to articles VII and XI of the Compact. In
18 the event that any such supplementary agreements shall require or
19 contemplate the use of any institution or facility of this state or
20 require or contemplate the provision of any service by this state,
21 no such agreement shall have force or effect until approved by the
22 head of the department or agency under whose jurisdiction said
23 institution or facility is operated or whose department or agency
24 will be charged with the rendering of such service.

1 **§16-45-4. Financial arrangements.**

2 The compact administrator, subject to the approval of the
3 State Auditor, may make or arrange for any payments necessary to
4 discharge any financial obligations imposed upon this state by the
5 compact or by any supplementary agreement entered into thereunder.

6 **§16-45-5. Transmittal of copies of article.**

7 Duly authenticated copies of this article shall, upon its
8 approval, be transmitted by the Secretary of State to the Governor
9 of each state, the Attorney General and the Secretary of State of
10 the United States, and the council of state governments.

NOTE: The purpose of this bill is to create a healthcare compact with other states seeking to protect individual liberty and personal control over Health Care decisions by vesting regulatory authority over Health Care in the States. The compact establishes an Interstate Advisory Health Care Commission; provides that the Compact is effective on its adoption and consent of the United States Congress unless the United States Congress alters the fundamental purposes. The compact also provides that the director of health be the compact administrator with authority to enter into supplementary agreements and make financial arrangement and subject to the approval of the State Auditor.

This article is new; therefore, it has been completely underscored.