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# Insurance HB 47

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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 a Definition; 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.***

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| CODE SECTIONS: | O.C.G.A. §§ 33-29A-30, -34 (new) |
| BILL NUMBER: | HB 47 |
| ACT NUMBER: | 249 |
| GEORGIA LAWS: | 2011 Ga. Laws 789 |
| SUMMARY: | The Act seeks to increase the availability of health insurance coverage in the state by allowing insurers authorized to transact in the State of Georgia to offer individual accident and sickness insurance policies in Georgia that are currently approved for issuance in other states. Each out-of-state insurance policy shall be approved by the Georgia Commissioner of Insurance, who retains the authority to determine whether an insurer satisfies the standards required by this Code section, and whether a policy complies with this Code section. Once the out-of-state insurance policy is approved, any insurer in Georgia may sell a policy with similar benefits. The Act requires that each out-of-state policy |

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| | contain a disclosure notifying consumers that the policies may be governed by a state other than Georgia and thus may contain benefits different from other policies that can be purchased, in addition to requiring a side-by-side chart comparing the benefits covered in the out-of-state policy with the benefits covered under current Georgia laws and regulations. |
| EFFECTIVE DATE: | July 1, 2011 |

*History*

The State of Georgia imposes what is among the highest number of health insurance mandates on individual health insurance policies of any state in the nation.[1] Georgia law currently imposes forty-six benefits that are required to be included in any individual health insurance policy.[2] In contrast, the State of Idaho imposes only thirteen mandates on insurance policies sold to its citizens—the lowest number of mandates imposed by any state.[3] Supporters of government-imposed mandates in health insurance policies contend that the mandates protect consumers from purchasing insurance policies that fail to cover essential health care services and lower the standard for basic healthcare coverage.[4] However, insurance mandates have come under fire recently, as lawmakers look to find solutions to reduce the rising rate of insurance costs and to encourage more citizens to purchase health insurance.[5] Many see health

1. Victoria Craig Bunce & J.P. Wieske, *Health Insurance Mandates in the States 2010*, 2010 COUNCIL FOR AFFORDABLE HEALTH INS. 1, 3, *available at* http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf.

2. *Id.*

3. *Id.*

4. Memorandum from Kathy Floyd, Assoc. State Dir. for Advocacy, AARP Ga., House Bill 47 Places Consumer Protections and Essential Health Benefits at Risk (2011) (on file with Georgia State University Law Review).

5. Carrie Teegardin, *Legislators Debate Health Insurance Minimums*, ATLANTA J.-CONST., Feb. 23, 2011, *available at* www.ajc.com/news/georgia-politics-elections/legislators-debate-health-insurance-850325.html; Phil Galewitz & Lexie Verdon, *FAQ: Selling Health Insurance Across State Lines*, KAISER HEALTH NEWS, Jan. 25, 2011, http://www.kaiserhealthnews.org/Stories/2010/September/30/selling-insurance-across-state-lines.aspx;

insurance mandates as a factor that has contributed to increased insurance costs, since mandates limit the variety of available policy types and force some consumers to pay for benefits that they would not otherwise purchase.[6] Consequently, lawmakers across the country seeking to reform health insurance have looked to solutions that decrease the number of mandates imposed upon health insurance policies.[7] One such solution advocated in several states, and currently under consideration in the United States Congress, is the implementation of laws that allow the sale of insurance policies across state lines.[8]

For the past few years, several legislators in the Georgia General Assembly have fought to pass a bill that would allow insurance carriers in the State of Georgia to offer individual accident and sickness insurance policies that are currently sold in other states.[9] Advocates of such proposals have consistently argued that allowing the sale of policies from across state lines would "unlock those forces of the free market" by significantly increasing the number of policies available to Georgians.[10] They further argue that the interstate sale of health insurance will lower the cost of coverage by giving individuals the option to choose policies with only the benefits that the individual needs, rather than requiring him or her to pay for mandated benefits that do not apply to that individual's needs.[11] In the past, such efforts

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Bunce & Wieske, *supra* note 1, at 2.

6. *Legislative Briefs*, ATLANTA J.-CONST., Apr. 15, 2011, at A16, *available at* 2011 WLNR 7355283; Teegardin, *supra* note 5.

7. Bunce & Wieske, *supra* note 1, at 2; Galewitz & Verdon, *supra* note 5.

8. Galewitz & Verdon, *supra* note 5.

9. *Ga. Senate OK's Out-of-State Health Insurance Sales*, BUS. WEEK, Apr. 13, 2011, *available at* http://www.businessweek.com/ap/financialnews/D9MIRCQ80.htm.

10. Video Recording of House Insurance Committee Meeting, Feb. 24, 2011 at 8 min., 30 sec. (remarks by Rep. Matt Ramsey (R-72nd)), http://media.legis.ga.gov/hav/11_12/2011/committees/insur/insur022411EDITED.wmv [hereinafter House Video].

11. Student Observation of the Senate Labor and Insurance Committee (Apr. 11, 2011) (remarks by Rep. Matt Ramsey (R-72nd)) (on file with the Georgia State University Law Review) [hereinafter Senate Comm. Meeting] ("You're going to get a range of choices being presented to you and you can make the choice of what I need. Do I want a policy that has all the Georgia bells and whistles? That's not going away . . . . Do I want a policy that has less coverage? If there are [benefits] that I don't necessarily need to pay for, I can find a policy that fits my needs, my family's [needs], my small business's needs. That's what we are trying to do here."); Telephone Interview with Rep. Donna Sheldon (R-105th) (Apr. 6, 2011) [hereinafter Sheldon Interview] (on file with the Georgia State University Law Review) ("It's just really about giving citizens more choice and more options . . . . Does a sixty year old single woman really need to have maternity insurance, I don't think so. So that was

have been thwarted by consumer protection groups who fear the authorization of out-of-state insurance policy sales will instigate a "'race to the bottom' where providers compete to offer the cheapest plans with the least coverage."[12] In addition, a bipartisan base of female legislators has worked against the passage of such bills in an effort to ensure that current mandates protecting women's health are not essentially nullified by the sale of out-of-state policies that are not subject to Georgia's insurance mandates.[13]

HB 47's predecessor, HB 1184, was introduced in the House in the 2010 legislative session. HB 1184 would have allowed insurance agents authorized to transact in the State of Georgia to sell out-of-state insurance policies.[14] HB 47 is largely identical to HB 1184, with only minor differences.[15] HB 1184 would have required that policies sold pursuant to the bill include disclosures to consumers explaining that the policy may be controlled by the laws of a state other than Georgia, and that it may include benefits different from other policies consumers could have purchased.[16] In order for a policy to be eligible for sale pursuant to the bill the Commissioner of Insurance would have to approve it.[17] The bill would also have obligated the Commissioner to adopt rules and regulations implementing the bill.[18] While HB 1184 was passed in the House and was favorably reported by the Senate Insurance and Labor Committee, efforts to stall the bill were successful, and it never reached the Senate floor.[19] The

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pretty much what we had in mind, making sure that people can determine what they want and how much they are willing to pay.").

12. Interview with Cindy Zeldin, Executive Director, Georgians for a Healthy Future (Mar. 31, 2011) [hereinafter Zeldin Interview] (on file with Georgia State University Law Review); Floyd, *supra* note 4 (noting that the passage of HB 47 "would circumvent current Georgia standards for basic consumer protections and essential medical services that all insurers must cover today under Georgia law").

13. Zeldin Interview, *supra* note 12 (indicating that a similar bill to HB 47 did not pass the Georgia legislature last year because "the fact that the bill would be disadvantageous to women" made the bill "unpopular with some Republican women"). Republicans have fought to pass the bill for years, usually over the opposition of women legislators, who routinely express concern that such a measure would dial back hard-fought gains from Georgia insurance carriers. *Ga. Senate OK's*, *supra* note 9; *Legislative Briefs*, ATLANTA J.-CONST., Apr. 15, 2011, at A16, *available at* 20011 WLNR 7355283.

14. Lindsey Harrison & Maria Souder, Note, *Insurance*, 27 GA. ST. U. L. REV. 103, 104–05 (2010).

15. *See infra Analysis*.

16. *See* Harrison & Souder, *supra* note 14, at 110.

17. *Id.*

18. *Id.* at 111.

19. *Id.*; House Video, *supra* note 10, at 6 min., 15 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

opposition was from a coalition of Democratic and Republican female legislators who were trying to protect over twenty-five years of political effort in crafting Georgia's insurance mandates to include important, previously-lacking coverage for women's health.[20] In the 2011 legislative session, several Republican legislators tried again and introduced HB 47.[21]

*Bill Tracking of HB 47*

*Consideration and Passage by the House*

Representatives Matt Ramsey (R-72nd), John Meadows (R-5th), Howard Maxwell (R-17th), Donna Sheldon (R-105th), Allen Peake (R-137th), and Edward Lindsey (R-54th) sponsored HB 47.[22] The House read the bill for the first time on January 24, 2011, and Speaker of the House David Ralston (R-7th) assigned the bill to the House Insurance Committee. [23] The bill was read for a second time on January 25, 2011.[24]

Representative Ramsey presented HB 47 to the House Insurance Committee,[25] and stated that the bill only affected the individual insurance market—representing approximately five percent of Georgians.[26] Yet, he maintained, this is the sector of the market in which the uninsured must go to purchase their health insurance plans; thus, a critical focus of the bill would be to reduce costs to make insurance more affordable for the uninsured.[27] Representative Ramsey testified that the purpose of the bill is to allow insurance companies to offer a wider selection of products.[28] He also emphasized that the bill continues "to preserve all the basic consumer

20. Jim Galloway, *Political Insider: The Crushing of a Health Care Revolt –By GOP Women*, ATLANTA J.-CONST. Mar. 27, 2010, *available at* http://blogs.ajc.com/political-insider-jim-galloway/2010/03/27/the-crushing-of-a-health-care-revolt-by-gop-women.

21. House Video, *supra* note 10, at 6 min., 15 sec. (remarks by Rep. Matt Ramsey (R-72nd)); State of Georgia Final Composite Status Sheet, HB 47, May 24, 2011.

22. House Video, *supra* note 10, at 6 min., 15 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

23. State of Georgia Final Composite Status Sheet, HB 47, May 24, 2011.

24. *Id.*

25. House Video, *supra* note 10, at 5 min., 40 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

26. *Id*. at 7 min., 30 sec.

27. *Id*. at 7 min., 42 sec.

28. *Id.* at 10 min., 00 sec.

protections that exist in Georgia law," since the purpose of requiring out-of-state policies to go through the Georgia licensure process is to allow any consumer who has a grievance with an insurance company to seek redress through the Georgia Insurance Commissioner's grievance process.[29]

The House Insurance Committee favorably reported the bill on February 24, 2011.[30] The bill was read for the third time on March 10, 2011, and on the same day the House passed HB 47 by a vote of 111 to 47.[31]

*Consideration and Passage by the Senate*

HB 47 was read for the first time in the Senate on March 11, 2011.[32] Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Labor and Insurance Committee (the Committee).[33] The Committee discussed HB 47 on April 11, 2011 and proposed two amendments to the bill as passed by the House of Representatives.[34]

First, on line 29 of page 2 of the original version of HB 47, the Committee proposed striking the words "has been" and replacing them with the words "is currently approved."[35] The Committee proposed this change to ensure that only policies that are presently authorized to be sold in other states will meet the qualifications to be approved in Georgia, thus precluding the possibility that a "stale" policy, meaning a policy that is no longer available in any state, could be used as a qualified out-of-state policy offered in Georgia.[36] The Committee voted to adopt this amendment to the bill.[37]

Another amendment proposed by the Senate Labor and Insurance Committee struck the period at the end of line 70, on page 3, and inserted the phrase "and provide that no class of providers shall be promoted or recommended to the detriment of any other class of

29. *Id.* at 10 min., 50 sec.
30. State of Georgia Final Composite Status Sheet, HB 47, May 24, 2011.
31. *See* Georgia General Assembly, HB 47, Bill Tracking, http://www1.legis.ga.gov/legis/2011_12/sum/hb47.htm.
32. State of Georgia Final Composite Status Sheet, HB 47, May 24, 2011.
33. *Id.*
34. Senate Comm. Meeting, *supra* note 11 (remarks by Rep. Matt Ramsey (R-72nd)).
35. *Id.* (remarks by Senate Labor and Insurance Committee member).
36. *Id.*
37. *Id.*

providers."[38] The Committee proposed this change to clarify that the bill does not mandate that a consumer use a certain health care provider, but rather ensures that "it is a consumer choice of which provider to choose."[39] However, this amendment ultimately failed to pass.[40]

The Committee favorably reported the amended bill to the Senate on April 11, 2011.[41] Senators debated HB 47 for three hours and voted on twenty amendments.[42] Eventually, HB 47 made it out of the Senate and the House voted on HB 47 as amended by the Senate less than an hour before midnight on *Sine Die*.[43]

*Senate Floor Amendments Adopted*

Five of the twenty amendments proposed on the floor of the Senate passed and were incorporated into the bill.[44] Senator Hardie Davis (D-22th) offered an amendment requiring that each policy sold under the Act contain a "side-by-side chart that compares the definitions of each benefit covered by the policy that has been sold in the other state with the definitions of the benefits covered under current Georgia laws and regulations where the specified benefit is similarly termed but defined differently."[45]

Senator Renee Unterman (R-45th) offered an amendment providing that the Commissioner of Insurance "shall have that authority to determine whether an insurer satisfies the standards required by [the Act] and may not approve a plan that he or she finds lacks compliance."[46] This amendment also provides the Commissioner with continuing authority to approve policies sold

38. *Id.*
39. *Id.*
40. *Id.*; Georgia General Assembly, HB 47, Bill Tracking, http://www1.legis.ga.gov/legis/2011_12/sum/hb47.htm
41. State of Georgia Final Composite Status Sheet, HB 47, May 24, 2011.
42. *State Roundup: Lawmakers Consider Insurance Purchase Across State Lines*, KAISER HEALTH NEWS, Apr. 13, 2011, http://www.kaiserhealthnews.org/daily-reports/2011/april/13/state-health-roundup.aspx.
43. *See* Georgia General Assembly, HB 47, Bill Tracking, http://www1.legis.ga.gov/legis/2011_12/sum/hb47.htm.
44. HB 47 (SFA 3, 4, 6, 7, & 13), 2011 Ga. Gen. Assem.
45. HB 47 (SFA 3), 2011 Ga. Gen. Assem.
46. HB 47 (SFA 4), 2011 Ga. Gen. Assem.

pursuant to the Act "in the same manner as he or she does" for other individual health insurance policies sold in Georgia.[47]

Senators Judson Hill (R-32nd) and Chip Rogers (R-21st) offered an amendment providing that "[t]he term 'individual accident and sickness insurance policy' shall also include comprehensive major medical coverage for medical and surgical benefits, and also includes 'High Deductible Health Plans' . . . ."[48]

Senators Greg Goggans (R-7th) and Lester Jackson (D-2nd) offered an amendment adding the language "and preserve the intent and effect of Code Sections 33-24-27.1, 33-24-27, 31-24-59.12, and 33-29-6(c)" to the portion of the Act empowering the Commissioner of Insurance to implement the Act's provisions.[49] The Code sections enumerated in their amendment refer to the inclusion of dentists, psychologists, chiropractors, optometrists, and direct access to obstetricians and gynecologists in health insurance plans offered in Georgia.[50]

Senators John Albers (R-56th) and Greg Goggans (R-7th) offered an amendment that first altered the sentence "[t]herefore, the General Assembly seeks to increase the availability of health insurance coverage by allowing insurers authorized to transact insurance in other states to issue individual accident and sickness policies in Georgia" to apply to "insurers authorized to transact insurance in Georgia to issue individual accident and sickness policies in Georgia that is currently approved for issuance in another state."[51] Second, this amendment added policies issued by an insurer's affiliate or subsidiary approved in another state in addition to simply insurers approved out of state among the policies that the Commissioner of Insurance shall approve pursuant to the Act.[52]

*Proposed Senate Floor Amendments Withdrawn*

Three of the twenty proposed Senate floor amendments were withdrawn and not voted on by the Senate. Senator Hardie Davis (D-

47. *Id.*
48. HB 47 (SFA 6), 2011 Ga. Gen. Assem.
49. HB 47 (SFA 7), 2011 Ga. Gen. Assem.
50. O.C.G.A. §§ 33-24-27, -27.1, -59.12, 33-29-6(c) (2011).
51. HB 47 (SFA 13), 2011 Ga. Gen. Assem.
52. *Id.*

22th) proposed and withdrew an amendment that would have required policies issued under the Act to provide "mandated coverage for equipment and self-management training for individuals with diabetes as required under Code Section 33-24-59.2."[53] Senator Davis also proposed and withdrew an amendment that would have required policies issued under the Act to provide "mandated coverage for colorectal cancer screening and testing as required under Code Section 33-24-56.3."[54] Senator Renee Unterman (R-45th) proposed and withdrew an amendment that would have replaced the bold-faced warning language described in section 33-29A-34 with language advising consumers that "this policy may not include all the mandated benefits required under Georgia law [including] mammograms, and Pap smears, [C]hlamydia screening, autism, and colorectal cancer screening. There are other policies that you can purchase in this state which include these mandated benefits."[55]

*Proposed Senate Floor Amendments Defeated*

Twelve of the twenty proposed Senate floor amendments to the Act were defeated. Most amendments attempted to incorporate coverage under Georgia's existing mandates, including: ovarian cancer screening; coverage of contraceptives for women; mastectomy and lymph node dissection coverage; mammogram, Pap smear and prostate screening coverage; prescription inhaler coverage; treatment of dependent children with cancer; coverage for certain anti-cancer drugs; Chlamydia screening; and direct access to obstetric and gynecological services.[56] Another defeated amendment would have required policies issued under the Act to specify which states offer such policies.[57] An additional defeated amendment would have granted the Commissioner of Insurance discretion whether or not to

53. Withdrawn Senate Floor Amendment to HB 47, introduced by Sen. Hardie Davis (D-22th), Apr. 12, 2011.

54. Withdrawn Senate Floor Amendment to HB 47, introduced by Sen. Hardie Davis (D-22th), Apr. 12, 2011.

55. Withdrawn Senate Floor Amendment to HB 47, introduced by Sen. Renee Unterman (R-45th), Apr. 12, 2011.

56. Failed Senate Floor Amendments to HB 47, Nos. 8–12, 14–15, Apr. 12, 2011.

57. Failed Senate Floor Amendment to HB 47, introduced by Sen. Ronald Ramsey (D-43rd), Apr. 12, 2011.

approve policies pursuant to the Act.[58] Finally, another defeated amendment would have required that policies sold pursuant to the Act have a medical loss ratio of greater than seventy percent.[59]

*The Act*

The Act amends Title 33 of the Official Code of Georgia Annotated by adding Code sections 33-29A-30 to -35.[60] The purpose of this Act is an attempt to provide Georgians with more "affordable and flexible" health insurance policies by granting Georgia-licensed insurers the authority to sell individual health insurance policies in Georgia that are currently sold in other states.[61]

While the text of the Act is substantially similar to that of HB 1184, the bill proposed in the 2010 legislative section,[62] there are a few significant changes.

First, section 1 of the Act adds Code section 33-29A-31, which provides the definition of individual health insurance.[63] Section 1 also adds Code section 33-29A-32 authorizing the Commissioner to approve the sale of an out-of-state insurance policy currently sold in another state to be sold in the State of Georgia by any insurer that is authorized to sell insurance in Georgia.[64] In HB 1184, these two sections were in only one section, Code section 33-29A-31.[65]

Additionally, Code section 33-29A-31, as created in the Act, expands upon the definition of an "individual accident and sickness insurance policy" by adding that such a policy "shall also include comprehensive major medical coverage for medical and surgical benefits, and also includes 'High Deductible Health Plans' sold or

58. Failed Senate Floor Amendment to HB 47, introduced by Sen. Ronald Ramsey (D-43rd), Apr. 12, 2011.

59. Failed Senate Floor Amendment to HB 47, introduced by Sen. Steve Henson (D-41st), Apr. 12, 2011.

60. HB 47, as passed, § 1, p.1, ln. 1, 2011 Ga. Gen. Assem.

61. O.C.G.A. § 33-29A-30 (Supp. 2011).

62. *Compare* O.C.G.A. § 33-29A-30 through 33-29A-35 (Supp. 2011) *with* HB 1184 (HCS), as passed House, 2010 Ga. Gen. Assem. *See generally* Harrison & Souder, *supra* note 14 (for a detailed summary of the provisions of HB 1184).

63. O.C.G.A. § 33-29A-31 (Supp. 2011).

64. O.C.G.A. § 33-29A-32 (Supp. 2011).

65. HB 1184 (HCS), as passed House, § 1, p. 1–2, ln. 21–34, 2010 Ga. Gen. Assem.

maintained under the applicable provisions of Section 223 of the Internal Revenue Code."[66]

Code section 33-29A-32, as added by the Act, allows the Insurance Commissioner to approve the sale of any individual accident and sickness insurance policy that "*is currently approved* for issuance in another state."[67] HB 1184 would have authorized the Insurance Commissioner to approve any policy that "*has been approved* for issuance in another state."[68]

The language of HB 1184 only permitted the Insurance Commissioner to approve policies issued by an "insurer" authorized to transact in Georgia.[69] In contrast, the Act broadens the category of insurance providers that the Commissioner can approve to include not just "insurers" authorized to sell insurance in Georgia, but also "*the insurer's affiliate or subsidiary.*"[70]

The Act adds the requirement that any policy sold pursuant to this Act must contain a "side-by-side chart" illustrating the benefits covered by the out-of-state insurance in contrast to the benefits currently mandated by existing Georgia laws and regulations.[71] HB 1184 contained no such provision.[72]

The Act also imposes an additional requirement to the Insurance Commissioner's duties that was not contained in HB 1184.[73] This requirement, included in Code section 33-29A-35, provides that the Insurance Commissioner shall "preserve the intent and effect of Code Sections 33-24-27.1, 33-24-27, 33-24-59.12, and 33-29-6(c)."[74]

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66. O.C.G.A. § 33-29A-31 (Supp. 2011).
67. O.C.G.A. § 33-29A-32 (Supp. 2011) (emphasis added).
68. HB 1184 (HCS), as passed House, §1, p. 1, ln. 23, 2010 Ga. Gen. Assem. (emphasis added).
69. *Compare* O.C.G.A. § 33-29A-32 (Supp. 2011) *with* HB 1184 (HCS), as passed House, § 1, p. 1–2, ln. 22–26, 2010 Ga. Gen. Assem.
70. O.C.G.A. § 33-29A-32 (Supp. 2011) (emphasis added).
71. O.C.G.A. § 33-29A-34 (Supp. 2011).
72. *Compare* O.C.G.A. § 33-29A-34 (Supp. 2011) *with* HB 1184 (HCS), as passed House, 2010 Ga. Gen. Assem.
73. *Compare* O.C.G.A. § 33-29A-35 (Supp. 2011) *with* HB 1184 (HCS), as passed House, § 1, p. 3, ln. 65–67, 2010 Ga. Gen. Assem.
74. O.C.G.A. § 33-29A-35 (Supp. 2011).

*Analysis*

Proponents of the Act cite the reduction of the high percentage of Georgians without health insurance as the primary motivator behind HB 47.[75] To that end, proponents believe that permitting the sale of individual health insurance policies in Georgia that are currently available in other states will reduce the number of uninsured Georgians by providing a wider range of policy options, including some policies that cost less than those "one-size fits all" policies insurers now offer.[76] The Act's sponsors note that HB 47 addresses some of the same problems with health insurance addressed in the federal health care reform law passed by the U.S. Congress in 2010.[77] They argue, however, that it does so from a different perspective, one based on the "free market," by reducing costs and increasing the choices of individual insurance policies for consumers.[78] Meanwhile, the Act's critics argue both that the rationale on which HB 47 is based includes some untenable economic assumptions and that it will have unintended, undesirable consequences.[79]

*Assumptions and Criticisms Relating to Consumer Choice*

The Act's primary sponsor, Representative Matt Ramsey (R-72nd), argues that while the Act will permit insurers to offer some plans with fewer benefits, consumers of individual policies will still be able to buy policies that include all of Georgia's coverage mandates, and that the law will even create access to policies with

75. Student Observation of the House Labor and Insurance Committee (Feb. 24, 2011) (remarks by Rep. Matt Ramsey (R-72nd)) (on file with the Georgia State University Law Review).

76. Senate Comm. Meeting, *supra* note 11 (remarks by Rep. Matt Ramsey (R-72nd)) ("[Potential consumers] don't have to make the decision to walk out the door without health insurance because they essentially can't afford the one size fits all policy that we have available to Georgians today.").

77. *Id.*

78. Student Observation of the House Labor and Insurance Committee, *supra* note 75 (remarks by Rep. Matt Ramsey (R-72nd)) ("Here in Georgia we have eighteen percent of our population that does not have health insurance. There has been a great deal of debate over the last two years, we all know, in Washington, and here in Georgia, on how to get at that problem. There's a number of ways to skin the cat, and what you saw in Washington last year with the federal healthcare vote was one way; one way that I personally disagree with. But this is an alternative solution that I believe is right for Georgia, and that I think it is going to put more power in the hands of our constituents to try to find a health insurance product that meets the needs of their family from a coverage's standpoint and from a price standpoint.").

79. *See* text accompanying notes 80–98.

coverage above and beyond Georgia's typical minimum—i.e., include the mandates of other states not required in Georgia—if consumers choose to buy them.[80]

However, opponents of HB 47 argue that it is unclear that insurers will continue to offer individual policies covering Georgia's mandates if such plans are more expensive to the insurer when they are no longer legally required to offer them.[81] Without clear statutory or economic incentives to offer unmandated coverage and considering competitive pressure to offer the cheapest, most "bare-bones" policy permissible, opponents further argue that the individual health insurance market in Georgia could devolve into another "one-size-fits-all" paradigm—but with drastically reduced coverage for consumers.[82] Further, Georgia's benefit mandates never prevented insurers of individual policies from offering coverage above what is minimally required by law, a reality unaffected by the Act. As Cindy Zeldin, Executive Director of Georgians for a Healthy Future, notes, "mandates are a floor, not a ceiling."[83]

*Assumptions and Criticisms Relating to Cost Management*

Proponents of the Act also argue that by allowing consumers to avoid coverage they do not believe they need, consumers will capture the savings of reduced benefits in the form of cheaper policies.[84] However, the law does nothing to guarantee that insurers will actually pass savings onto consumers by lowering their prices, and critics argue that it may not impact insurer's economic behavior the way that proponents anticipate.[85] Critics of the Act note that the

80. Senate Comm. Meeting, *supra* note 11 (remarks by Rep. Matt Ramsey (R-72nd)) ("Do I want a policy that has all the Georgia bells and whistles, that's not going away. You can still buy that policy if you want to . . . . [I]t can have less coverage than what Georgia has set or it can have more coverage than what Georgia has set.").

81. *See Interstate Health Insurance Sales: Myth vs. Reality* NAT'L ASS'N OF INS. COMM'RS & THE CTR FOR INS. POLICY AND RESEARCH, http://www.naic.org/documents/topics_interstate_sales_myths.pdf (last visited Aug. 30, 2011) [hereinafter NAIC Memorandum].

82. *Id.*; *see also* Zeldin Interview, *supra* note 12.

83. Memorandum from Cindy Zeldin, Exec. Dir., Georgians for a Healthy Future, House Bill 47 Places Consumer Protections and Essential Health Benefits at Risk 3 (2011) (on file with Georgia State University Law Review).

84. *See supra* note 11.

85. *See* Zeldin, *supra* note 83, at 3 ("[Out-of-state insurers] can price [policies] however they like.").

number of benefit mandates has a marginal impact on the cost of insurance, and that the largest factor affecting pricing is the consumer's own health status.[86] Because the healthiest consumers are the lowest risk and thus offer the highest profit margins, insurers have an incentive to market to a narrow group of consumers, shifting the choice from the consumer to the insurer.[87]

Sponsors argue that some health insurance coverage, even reduced coverage, is better than none.[88] However, permitting the sale of policies not subject to Georgia's benefit mandates necessarily means consumers will have reduced access to preventative care and coverage for catastrophic illness.[89] Both consumers and health care providers save money when serious conditions are prevented instead of progressing to the point of requiring costly treatment. Without preventative care and coverage for certain major illnesses and injuries, consumers who had hoped to save money by buying insurance with reduced coverage may face financial crises when faced with unexpected, uncovered medical bills.[90]

*Unintended Consequences*

The Act's critics are concerned that the new law creates a different, lower set of standards for the individual health insurance market compared to the group insurance market, leading to a two-class system in Georgia.[91] They fear that those people with access to insurance through their employers will be able to enjoy the benefits of mandated coverage under Georgia law, while individuals without

86. *Id.* ("[I]nsurers price policies through medical underwriting, which means that the major factor driving the price of an insurance product is the characteristics of the person purchasing it."); NAIC Memorandum, *supra* note 81.

87. NAIC Memorandum, *supra* note 81 ("In states with robust consumer protections, insurers could reap huge profits by skirting [healthcare mandates]."); Zeldin, *supra* note 83, at 3.

88. Sheldon Interview, *supra* note 11 ("I would prefer citizens to purchase a stripped down version of insurance than no insurance.").

89. Zeldin, *supra* note 83, at 4.

90. *Id.* ("[W]hen the basics aren't covered, an otherwise young and healthy person diagnosed with breast cancer may all of a sudden find herself in bankruptcy paying her medical costs.").

91. *Id.* at 1 ("HB 47 essentially does an end-run around current Georgia law, allowing insurers to offer a separate class of insurance products in the individual market that are exempt from the minimum coverage protections that our policymakers have deemed an appropriate floor for all insurance products sold in the state.").

employer-based insurance will be able to get only reduced coverage, along with its attendant costs and risks.[92]

While sponsor Representative Ramsey argues that "never . . . in the history of human kind [has] giving consumers more choices been bad for the consumer,"[93] critics point to Georgia's own history with deregulation of the gas market and the wider deregulation of financial markets as examples of how reducing regulation has harmed consumers.[94] Critics argue the legislature's lack of experience with the mechanics of the individual health insurance market, as well as the general vagueness of the Act's language, are weaknesses that could lead to hardship for consumers.[95] They note that these shortcomings in previous deregulation efforts in other industries led to market failures that hurt Georgians economically.[96]

Further, critics note that federal health reform, the Patient Protection and Affordable Care Act, may largely preempt the effects of interstate sale of individual health insurance when it becomes effective.[97] The federal law includes provisions allowing for interstate sale of insurance and also imposes a set of national mandates higher than many states' current requirements.[98]

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92. *See id.*
93. Senate Comm. Meeting, *supra* note 11 (remarks by Rep. Matt Ramsey).
94. Harrison & Souder, *supra* note 14, at 114–15.
95. *Id.*
96. *Id.*
97. Patient Protection and Affordable Care Act, Pub. L. No. 111–48, 124 Stat. 119–1025 (2010); *id.* at 115–16; Zeldin Interview, *supra* note 12.
98. Harrison & Souder, *supra* note 14, at 115–16.