HB0391S01 compared with HB0391

~~{deleted text}~~ shows text that was in HB0391 but was deleted in HB0391S01.

inserted text shows text that was not in HB0391 but was inserted into HB0391S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Jacob L. Anderegg proposes the following substitute bill:

NULLIFICATION OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the governor's programs related to the Health System Reform Act.

Highlighted Provisions:

This bill:

- ~~{declares}~~prohibits the governor or the Department of Health from expanding Medicaid to the optional population under the Patient Protection and Affordable Care Act~~{ null and void in the state of Utah}~~.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63M-1-2508, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63M-1-2508** is enacted to read:

63M-1-2508. Nullification of optional expansion of Medicaid under federal health care reform.

(1) The ~~{Legislature finds that:~~

~~(a) the people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes, and nothing more;~~

~~(b) the Tenth Amendment to the Constitution of the United States defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves; and~~

~~(c) the assumption of power that the federal government has made by enacting the Patient Protection and Affordable Care Act interferes with the right of the people of the state of Utah to regulate health care as they see fit, and does not comply with the assurance in The Federalist Papers, No. 45 (James Madison), that the "powers delegated" to the federal government are "few and defined," while those of the states are "numerous and indefinite".~~

~~(2) The Legislature declares that the federal law known as the Patient Protection and Affordable Care Act is not authorized by the Constitution of the United States and violates the constitution's true meaning and intent as given by the founders and ratifiers of the constitution, and is hereby declared to be invalid in this state, shall not be recognized by this state, is specifically rejected by this state, and shall be considered null and void and of no effect in this state.~~

~~Legislative Review Note~~

~~as of 2-28-13 6:17 AM~~

~~As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.~~

~~This bill declares that the Affordable Care Act, which was passed by Congress, signed by the President, and major portions of which were upheld as constitutional by a majority of~~purpose of this section is to respond to the United States Supreme Court~~, is invalid and without effect in the state of Utah because it violates the true meaning of the Constitution of the United States.~~

~~The United States Supreme Court has determined that at least parts of the Affordable Care Act are constitutional. *See*~~ ruling in Nat'l Federation of Business v. Sebelius, Sec'y of Health and Human Services, 132 S.~~ ~~Ct. 2566 (2012)~~. Specifically, the Court determined that the individual mandate and optional expansion of Medicaid was constitutional. There is a high probability that a court would rule that the state's nullification~~ which stated:

(a) "In the typical case we look to the States to defend their prerogatives by adopting 'the simple expedient of not yielding' to federal blandishments when they do not want to embrace the federal policies as their own. The States are separate and independent sovereigns. Sometimes they have to act like it..."; and

(b) " . . . As for the Medicaid expansion, that portion of the Affordable Care Act ~~is without effect because a state cannot circumvent a federal court ruling. In *Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958), the Supreme Court asserted that if "the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the~~

~~rights acquired under those judgments, the constitution itself becomes a solemn mockery."~~

~~The ability of the state to nullify the portions of the }~~violates the Constitution by threatening existing Medicaid funding. Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to accept the offer. The States are given no such choice in this case: They must either accept a basic change in the nature of Medicaid, or risk losing all Medicaid funding. The remedy for that constitutional violation is to preclude the Federal Government from imposing such a sanction. . . ."

(2) The Governor and the Department of Health shall not expand the state Medicaid program to the optional expansion population under the Patient Protection and Affordable Care Act~~{ that have not been ruled upon by a court is uncertain. The asserted power to nullify federal statutes is largely based on the compact theory of the union which argues that the United States was formed by a compact between and agreed upon by the states. In *Bush v. Orleans Parish School Bd.*, 188 F. Supp. 916, 923 (E.D. La. 1960) aff'd, 365 U.S. 569 (1961), the court admitted that the compact theory may have had some validity when the states were operating under the Articles of Confederation, but that upon "their [the Article's] failure, however, 'in Order to form a more perfect Union,' the people, not the states, of this country ordained and established the Constitution." *Bush*, 188 F. Supp. at 923. With the disavowal by the federal courts of the compact theory, the retention by the states of the authority to nullify federal statutes is likely to be in question.~~

~~**Office of Legislative Research and General Counsel**}~~, as permitted by the Supreme Court decision described in Subsection (1).