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**Senate Bill No. 489**

(By Senators Kessler (Mr. President), Plymale, Klempa and Yost)

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[Introduced February 2, 2012; referred to the Committee on  
Banking and Insurance; and then to the Committee on the  
Judiciary.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-11a, relating to preventing taxpayer subsidization of health insurance covering elective abortions; prohibiting all qualified health plans offered through a state exchange from including abortion coverage except to prevent the death of the mother; preventing all other health plans, including health insurance contracts, plans or policies, offered outside of the exchange, but within the state, from providing coverage for elective abortions except by optional separate supplemental coverage for abortion; and providing a severability clause.

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

That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new section, designated §9-2-11a, to read as  
2 follows:

3 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND**  
4 **RESPONSIBILITIES GENERALLY.**

5 **§9-2-11a. Preventing taxpayer subsidization of health insurance**  
6 **covering elective abortions; abortion coverage only**  
7 **offered through supplemental policies.**

8 (a) Pursuant to the Patient Protection and Affordable Care  
9 Act, Pub. L. No. 111-148, all qualified health plans offered  
10 through an Exchange established in the state are prohibited from  
11 including elective abortion coverage. Nothing in this section  
12 prevents anyone from purchasing optional supplemental coverage for  
13 elective abortions for which there is paid a separate premium in  
14 accordance with subsection (d) of this section in the health  
15 insurance market outside of the Exchange.

16 (b) No health plan, including health insurance contracts,  
17 plans or policies, offered outside an Exchange but within the  
18 state, may provide coverage for elective abortions except by  
19 optional separate supplemental coverage for abortion for which  
20 there is paid a separate premium in accordance with subsection (d)  
21 of this section.

22 (c) For purposes of this section, an "elective abortion" means

1 an abortion for any reason other than to prevent the death of the  
2 mother: *Provided*, That an abortion is not one to prevent the death  
3 of the mother based on a claim or diagnosis that she will engage in  
4 conduct that will result in her death.

5 (d) The issuer of any health plan providing elective abortion  
6 coverage:

7 (1) Shall calculate the premium for coverage so that it fully  
8 covers the estimated cost of covering elective abortions, per  
9 enrollee, determined on an average actuarial basis, and the issuer  
10 of the plan may not take into account any cost reduction in a  
11 health plan covering an enrollee estimated to result from the  
12 provision of abortion coverage, including prenatal care, delivery  
13 or postnatal care;

14 (2) If the enrollee is enrolling in a health plan providing  
15 other coverage at the same time as the enrollee is enrolling in a  
16 plan providing elective abortion coverage, shall require a separate  
17 signature, distinct from that to enroll in the health plan  
18 providing other coverage, in order to enroll in the separate  
19 supplemental plan providing elective abortion coverage;

20 (3) Shall provide a notice to enrollees, at the time of  
21 enrollment, that:

22 (A) Specifically states the cost of the separate premium for  
23 coverage of elective abortions, distinct and apart from the cost of

1 the premium for a health plan providing other coverage and this  
2 cost shall be agreed with a separate signature;

3 (B) States that enrollment in elective abortion coverage is  
4 optional; and

5 (C) If the enrollee is enrolling in a health plan providing  
6 other coverage at the same time the enrollee is enrolling in a plan  
7 providing elective abortion coverage, states that the enrollee may  
8 choose to enroll in the plan providing other coverage without  
9 enrolling in the plan providing elective abortion coverage.

10 (e) The issuer of a health plan providing coverage other than  
11 elective abortion may not discount or reduce the premium for the  
12 coverage on the basis that an enrollee has elective abortion  
13 coverage.

14 (f) Any employer who offers employees a health plan providing  
15 elective abortion coverage shall, at the time of beginning  
16 employment and at least once in each calendar year thereafter,  
17 provide each employee the option to choose or reject the separate  
18 supplemental elective abortion coverage, verified yearly with a  
19 separate signature.

20 (g) Any entity offering a group health plan providing separate  
21 supplemental elective abortion coverage, other than employers  
22 offering such a plan to their employees, shall, at the time each  
23 group member begins coverage and at least once in each calendar

1 year thereafter, provide each group member the option to choose or  
2 reject the separate supplemental elective abortion coverage.

3 (h) Nothing in this section applies in circumstances in which  
4 federal law preempts state health insurance regulation.

5 (i) No funds from the Medicaid program account may be expended  
6 for an abortion or for any related expenses except to the extent  
7 required by federal law or necessary for continued participation in  
8 a federal program.

9 (j) Severability. If any one or more provision, section,  
10 subsection, sentence, clause, phrase or word of this section or the  
11 application thereof to any person or circumstance is found to be  
12 unconstitutional, the same is hereby declared to be severable and  
13 the balance of this section remains effective notwithstanding such  
14 unconstitutionality. The Legislature hereby declares that it would  
15 have passed this section, and each provision, section, subsection,  
16 sentence, clause, phrase or word thereof, irrespective of the fact  
17 that any one or more provision, section, subsection, sentence,  
18 clause, phrase, or word be declared unconstitutional.

NOTE: The purpose of this bill is to limit health insurance  
coverage for elective abortions to coverage provided through  
supplemental policies.

This section is new; therefore, strike-throughs and  
underscoring have been omitted.