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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1050 Session of  
2013

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INTRODUCED BY BAKER, KRIEGER, COX, RAPP, STERN, KAUFFMAN,  
SACCONI, HEFFLEY, MILLARD, CUTLER, BLOOM, TALLMAN, AUMENT,  
KNOWLES, CLYMER, BARRAR, C. HARRIS, LAWRENCE, DENLINGER,  
MICOZZIE, GILLEN, SWANGER AND METCALFE, MARCH 25, 2013

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REFERRED TO COMMITTEE ON HEALTH, MARCH 25, 2013

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AN ACT

1 Ensuring the rights of conscience of Pennsylvania citizens  
2 relating to health insurance; and providing for health  
3 insurance coverage limitations for contraception,  
4 sterilization and abortifacient drugs and devices.

5 WHEREAS, The Preamble to the proposed amendments to the  
6 Constitution of the United States, which became the Bill of  
7 Rights, sent by Congress for consideration by the States, signed  
8 by Frederick Muhlenberg, Speaker of the House of  
9 Representatives, and John Adams, Vice-President and President of  
10 the Senate, and attested to by John Beckley, Clerk of the House  
11 of Representatives, and Samuel Otis, Secretary of the Senate,  
12 provides that "The Conventions of a number of the States, having  
13 at the time of their adopting the Constitution, expressed a  
14 desire, in order to prevent misconstruction or abuse of its  
15 powers, that further declaratory and restrictive clauses should  
16 be added: And as extending the ground of public confidence in  
17 the Government, will best ensure the beneficent ends of its  
18 institution"; and

1       WHEREAS, The Free Exercise and Establishment Clauses of the  
2 First Amendment were proposed in order to protect the rights of  
3 individual conscience and religious denominations from coercion  
4 by Federal authorities; and

5       WHEREAS, Protection of rights of conscience was, in 18th-  
6 century terms, synonymous with religious freedom; and

7       WHEREAS, The wording of initial versions of what became the  
8 First Amendment as reported in congressional debates expressly  
9 affirmed the protection of rights of conscience; and

10       WHEREAS, On August 24, 1789, the House of Representatives  
11 under the leadership of James Madison voted to send the  
12 following proposed amendment to the Constitution: "Congress  
13 shall make no law establishing religion, or to prevent the free  
14 exercise thereof, or to infringe the rights of conscience"; and

15       WHEREAS, The omission of direct words affirming the  
16 protection of conscience in the final version of the First  
17 Amendment is consistent with the purpose of protecting rights of  
18 individual conscience as a legislative goal, as the Annals of  
19 Congress noted Congressman Daniel Carroll as stating: "As the  
20 rights of conscience are, in their nature, of peculiar delicacy,  
21 and will little bear the gentlest touch of the governmental  
22 hand... [h]e would not contend with gentlemen about the  
23 phraseology, his object was to secure the substance in such a  
24 manner as to satisfy the wishes of the honest part of the  
25 community."; and

26       WHEREAS, The public record and statements of members of the  
27 First Congress who supported the First Amendment affirm that  
28 they sought to protect freedom of conscience from Federal  
29 interference; and

30       WHEREAS, Article I, Section 3 of the Constitution of

1 Pennsylvania Constitution states "[A]ll men have a natural and  
2 infeasible right to worship Almighty God according to the  
3 dictates of their own consciences; no man can of right be  
4 compelled to attend, erect or support any place of worship, or  
5 to maintain any ministry against his consent; no human authority  
6 can, in any case whatever, control or interfere with the rights  
7 of conscience, and no preference shall ever be given by law to  
8 any religious establishments or modes of worship"; and

9 WHEREAS, The United States Supreme Court in *Everson v. Board*  
10 of Education of Ewing, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711  
11 (1947), expressly referenced a Commonwealth's ability to set  
12 forth a citizen's religious freedom and affirmed the judicial  
13 finding that "[T]his Court has previously recognized that the  
14 provisions of the First Amendment, in the drafting and adoption  
15 of which Madison and Jefferson played such leading roles, had  
16 the same objective and were intended to provide the same  
17 protection against the governmental intrusion on religious  
18 liberty..."; and

19 WHEREAS, The First Congress, which included members of the  
20 1787 Constitutional Convention, in addition to proposing the  
21 First Amendment, also reenacted in 1789 the Northwest Ordinance  
22 passed by the Continental Congress in 1787 for the governance of  
23 territories, which provided, "[N]o person, demeaning himself in  
24 a peaceable and orderly manner, shall ever be molested on  
25 account of his mode of worship, or religious sentiments, in the  
26 said territory... [and] Religion, morality, and knowledge being  
27 necessary to good government and the happiness of mankind"; and

28 WHEREAS, Article VI, Section 3 of the Constitution of the  
29 United States, which provides for the taking of oaths or  
30 affirmation of office, and the ban on religious tests as a

1 precondition for holding Federal office were enacted, in part,  
2 to ensure that citizens did not need to abandon their faith or  
3 right of conscience to become public servants; and

4 WHEREAS, The President of the United States, the Congress of  
5 the United States, and the United States Supreme Court have  
6 failed to protect the rights of conscience adequately. All three  
7 branches of the Federal Government have promoted and preferred  
8 some beliefs and the citizens who hold them over others, and  
9 those laws, policies and regulations are neither neutral nor  
10 generally applicable; and

11 WHEREAS, The Federal requirement that health insurance  
12 policies cover contraception methods, sterilization procedures  
13 and abortifacient drugs or devices is not a neutral and  
14 generally applicable law because it is not applicable to many  
15 millions of Americans; and

16 WHEREAS, The Federal Religious Freedom Restoration Act  
17 protects the rights of conscience against burdens imposed by  
18 Federal law and provides that if any Federal law substantially  
19 burdens a person's exercise of religion, the application of that  
20 burden to that person must be in the least restrictive means to  
21 further a compelling government interest; and

22 WHEREAS, The law of the Commonwealth prohibits the use of  
23 Federal or State funds appropriated by the Commonwealth under 18  
24 Pa.C.S. § 3215(c) for abortions, including the use of  
25 abortifacient drugs, with limited exceptions; and

26 WHEREAS, The Federalist Papers affirm that state legislatures  
27 have constitutional authority and responsibility to protect and  
28 defend citizens against improper actions of the Federal  
29 Government, as reflected in Federalist No. 26 by Alexander  
30 Hamilton, which provides that "the State legislatures, who will

1 always be not only vigilant but suspicious and jealous guardians  
2 of the rights of the citizens against encroachments from the  
3 federal government, will constantly have their attention awake  
4 to the conduct of the national rulers, and will be ready enough,  
5 if any thing improper appears, to sound the alarm to the people,  
6 and not only to be the VOICE, but, if necessary, the ARM of  
7 their discontent."; and

8 WHEREAS, The General Assembly finds that the proposed  
9 regulations from the United States Department of Health and  
10 Human Services requiring individuals, businesses and religious  
11 organizations to purchase health insurance that includes  
12 coverage for contraceptive methods, sterilization procedures and  
13 abortifacient drugs or devices (i) constitute a taking of  
14 private property for private use in the Fifth Amendment to the  
15 Constitution of the United States and (ii) violate the rights of  
16 conscience and the free exercise of religion as protected and  
17 provided for under Article I, Section 3 of the Constitution of  
18 Pennsylvania; the First Amendment to the Constitution of the  
19 United States; and the Religious Freedom Restoration Act.

20 The General Assembly of the Commonwealth of Pennsylvania  
21 hereby enacts as follows:

22 Section 1. Short title.

23 This act shall be known and may be cited as the Health  
24 Insurance Right of Conscience Act.

25 Section 2. Health insurance coverage limitations for  
26 contraception, sterilization and abortifacient drugs  
27 and devices.

28 (a) Duplicate policies required.--An insurer proposing to  
29 issue individual or group accident and sickness insurance  
30 policies providing hospital, medical and surgical or major

1 medical coverage on an expense-incurred basis, a corporation  
2 providing individual or group accident and sickness subscription  
3 contracts or a health maintenance organization providing a  
4 health care plan for health care services, whose policy,  
5 contract or plan, including any certificate or evidence of  
6 coverage issued in connection with the policy, contract or plan,  
7 includes coverage for United States Food and Drug  
8 Administration-approved contraception methods, sterilization  
9 procedures or abortifacient drugs or devices, shall also be  
10 required to offer a policy, contract or plan that is identical  
11 in all respects with the exception that the policy, contract, or  
12 plan does not provide coverage for contraception methods,  
13 sterilization procedures or abortifacient drugs or devices.

14 (b) Employer self-insurance plans.--An employer who provides  
15 for health and medical care or reimbursement of medical expenses  
16 for its employees as a self-insurer may not be required to  
17 include coverage for contraception methods, sterilization  
18 procedures or abortifacient drugs or devices.

19 Section 3. Applicability.

20 The provisions of this act shall apply to any insurer,  
21 corporation or health maintenance organization offering a  
22 policy, contract or plan through a health benefit exchange  
23 required or authorized by the Patient Protection and Affordable  
24 Care Act (Public Law 111-148, 124 Stat. 119), as amended by the  
25 Health Care and Education Reconciliation Act of 2010 (Public Law  
26 111-152, 124 Stat. 1029).

27 Section 4. Effective date.

28 This act shall take effect in 60 days.