

WHEREAS, The McCarran-Ferguson Act, passed by the U. S. Congress in 1945, established a statutory framework whereby responsibility for regulating insurance and the insurance industry was left largely to the states; and

WHEREAS, The Employee Retirement Income Security Act of 1974 (ERISA) significantly altered this concept by creating a federal framework for regulating employer-based pension and welfare benefit plans, including health plans; and

WHEREAS, ERISA effectively prohibits states from directly regulating many employer-based health plans because ERISA preempts state regulation of self-insured plans; and

WHEREAS, Available data suggests that self-funding of employer-based health plans is increasing at a significant rate among both small and large businesses; and

WHEREAS, Between 1989 and 1993, the United States General Accounting Office estimates that the number of self-funded plan enrollees increased by about 6,000,000 individuals; and

WHEREAS, Approximately 40% to 50% of employer-based health plans are presently self-funded by employers that retain most or all of the financial risk for their respective health plans; and

WHEREAS, With the growth in the self-funding of health plans, states have lost regulatory oversight over a growing portion of the health market; and

WHEREAS, Recent federal court decisions have struck down state laws regulating insured health plans by expanding ERISA's current preemption of state laws regulating self-insured plans to laws relating to insured plans; and

WHEREAS, As these phenomena continue, state governments are losing their ability to manage their health care markets; and

WHEREAS, Many state legislatures, such as the Maryland General Assembly, have taken significant actions to increase access to care, to control costs, and to regulate against abuses by health plans; and

WHEREAS, ERISA preemption is a significant obstacle to the states adopting a wide range of health care reform and consumer protection strategies; and

WHEREAS, The states' inability to protect consumers enrolled in self-funded health plans that fail to provide the consumers' anticipated level of health care is gradually eroding the public's confidence in the American health care system because self-funded plans are afforded an unfair advantage over traditional health insurance plans due to a lack of adequate state or federal accountability, regulation, or remedy for the ERISA plan members who are denied coverage; and

WHEREAS, Over the past 24 years, state governments have gradually realized that ERISA is an impediment to ensuring adequate consumer protection for all individuals with employer-based health care coverage and to enacting administrative simplification and cost reduction reforms that could improve the efficiency and equity of their health care markets; and