



June 9, 2020

The Honorable Tom Brinkman,
Chair, Ohio House Insurance Committee
77 South High Street, 12th Floor
Columbus, OH 43215

Dear Chairman Brinkman:

I am writing on behalf of the nearly 22,000 governing members of the Ohio NFIB to express our concerns with House Bill 390. Thank you for the opportunity to provide comments.

By way of background, a typical NFIB member employs 20 or fewer and has less than \$2 million in annual sales. Our members come from all industries, and we look like any Main Street in your legislative districts.

NFIB regularly surveys our members on a host of business issues. The current pandemic has shifted the focus from finding qualified workers to reestablishing their operations. However, the cost of health insurance remains a top concern. In fact, since 1986, NFIB members have indicated the cost of health insurance as their number one concern. Small business owners strive to put together a benefits package to meet the needs and demands of their workforces all while remaining competitive. Flexibility and plan design are keys to making sure employees have a healthcare plan that fits their needs and the financial realities of their employers. However, volatility remains. State public policymakers can exacerbate this problem by passing state-imposed health insurance mandates.

Per federal Employee Retirement Income Security Act (ERISA) law, self-insured plans are exempt from state-imposed health insurance mandates. Thus, when a state-imposed health insurance mandate is passed, a large segment of the eligible population is left without coverage. Although state legislators can require coverage for public employee benefit plans (including their own) and Medicaid, not all acts of the legislature do so.

House Bill 390 aims to preserve the components of the Affordable Care Act (ACA), in the event the law is struck down, in part or whole. As this committee is aware, challenges to the law have been largely unsuccessful. *NFIB v Sebelius* was decided by the United States

Supreme Court in 2012, upholding the ACA as constitutional. While the merits of the various provisions of the ACA may be debated, the reality for most NFIB members who are still able to provide health insurance is a regular increase in premiums.

According to the Kaiser Family Foundation (KFF), average family premiums have increased 54 percent since 2009.¹ KFF also reports 28.5 percent of firms with 50 or fewer employees offer health insurance. This stands in stark contrast to 97.3 percent of firms with 50 or more employees offering health insurance.² Many of the firms that employ 50 or more, can self-insure and as such are subject to neither the essential health benefits of the ACA nor any state-imposed health insurance mandates. This is a major concern we have with House Bill 390.

As with any state-imposed health insurance mandate, the applicability is severely limited by federal ERISA law. Federal ERISA law preempts state law, prohibiting the application of state-imposed health insurance mandates to self-insured plans. As noted in the Legislative Service Commission bill analysis, the provisions of House Bill 390 apply to individual and small group plans. This leaves a significant portion of the private sector not covered by House Bill 390 or any other state-imposed health insurance mandates.

NFIB believes in providing as much flexibility to employers and their employees to design health insurance plans that fit workplace needs. When the Ohio General Assembly enacts mandates, it restricts this flexibility. As indicated above, it is much more challenging for employers with 50 or fewer employees to be able to provide health insurance. In the event the ACA is struck down, passage of House Bill 390 would serve to restrict plan flexibility, once again preserving mandates, and their associated costs, on a small segment of the privately insured market, i.e. smaller businesses. Therefore, we respectfully ask that the Ohio House Insurance Committee not proceed with passage of this legislation.

Thank you for your consideration.

Sincerely,



Christopher J. Ferruso
Ohio Legislative Director

¹ <https://www.kff.org/health-costs/press-release/benchmark-employer-survey-finds-average-family-premiums-now-top-20000/>

² <https://www.kff.org/other/state-indicator/firms-offering-coverage-by-size/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>