

SENATE THIRD READING  
SB 326 (Pan)  
As Amended September 1, 2021  
Majority vote

## SUMMARY

Codifies the following existing federal Patient and Protection Affordable Care Act (ACA) law into state law:

- 1) The requirement to provide coverage of essential health benefits (EHBs);
- 2) The prohibition on imposing preexisting condition provision or waived condition provision upon any individual;
- 3) The requirement for a health care service plan (health plan) or health insurer or carrier to fairly and affirmatively offer, market, and sell all of the health plan or insurer's health benefit plans sold in the individual and small group market; and,
- 4) The requirement to establish only specified rating criteria in the individual and small group markets.

## Major Provisions

## COMMENTS

- 1) *ACA*. Enacted in March 2010, the ACA provides the framework, policies, regulations and guidelines for the implementation of comprehensive health care reform by the states. The ACA expands access to quality, affordable insurance and health care. As of January 1, 2014, insurers are no longer able to deny coverage or charge higher premiums based on preexisting conditions (under rules referred to as guaranteed issue and modified community rating, respectively). These aspects of the ACA, along with tax credits for low and middle income people buying insurance on their own in new health benefit exchanges, make it easier for people with preexisting conditions to gain insurance coverage.
- 2) *ACA lawsuit*. In December 2018, a federal judge in Texas struck down the entire ACA on the grounds that its mandate requiring people to buy health insurance is unconstitutional and the rest of the law is void without it. At issue was whether the health law's insurance mandate still compelled people to buy coverage after Congress reduced the penalty to zero dollars as a result of the federal 2017 tax law. When the United States (U.S.) Supreme Court upheld the mandate as constitutional in 2012, it was based on Congress's taxing power and that Congress could legally impose a tax penalty on people who do not have health insurance. The recent ACA lawsuit, led by Texas, argued that with the penalty zeroed out, the individual mandate had become unconstitutional, and that the rest of the law could not be severed from it. California's Attorney General (AG) led a coalition of state AGs in filing an expedited motion to prevent disruption to Americans' healthcare and to challenge the December decision. In November 2020, the U.S. Supreme Court heard oral argument in *California v. Texas*. In June 2021, the U.S. Supreme Court decision upheld the ACA and determined that the states had not met the minimum threshold to show injury in this case. The U.S. Supreme Court dismissed the ACA lawsuit on the basis that the challengers of the 2010 law did not

have the legal right to bring the case and “failed to show a concrete, particularized injury fairly traceable to the defendants' conduct in enforcing the specific statutory provision they attack as unconstitutional.”

**According to the Author**

Over 10 years after the passage of the ACA, with several years of successful implementation in California, it is time to remove unnecessary ties of California law to the repeal of federal law. Early in the implementation stages of the ACA, some parties raised concerns about the structural changes the ACA would have on health insurance markets. Also because of repeated challenges in the courts, state legislation that was enacted to implement the ACA in California contained provisions that tied the state law to specific federal requirements of the ACA, such as the federal individual mandate, so that if the ACA were repealed, there would also be a repeal (12 months later) of some of the major consumer protection provisions of state law. These “tiebacks” are not necessary and should be removed from California law. The author concludes that California's insurance markets are strong, there is a state individual mandate, and there is minimal risk if the federal individual mandate is repealed.

**Arguments in Support**

Health Access California writes that this bill will remove several of these tie backs in California's Health and Safety Code, securing California's ability to offer quality, affordable coverage to enrollees in Covered California, our Affordable Care Act marketplace, regardless of future changes at the federal level.

**Arguments in Opposition**

There is no known registered opposition to this bill.

**FISCAL COMMENTS**

According to the Assembly Appropriations Committee, this bill likely has no costs.

**VOTES****SENATE FLOOR: 36-0-4**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Dahle, Limón, Melendez, Stern

**ASM HEALTH: 14-0-1**

**YES:** Wood, Aguiar-Curry, Arambula, Bigelow, Burke, Carrillo, Flora, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron

**ABS, ABST OR NV:** Mayes

**ASM APPROPRIATIONS: 13-0-3**

**YES:** Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Mullin, Eduardo Garcia, Luz Rivas, Quirk, Kalra, Stone, McCarty

**ABS, ABST OR NV:** Bigelow, Voepel, Fong

**UPDATED**

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