

112TH CONGRESS  
2D SESSION

# S. 2288

To amend title XXVII of the Public Health Service Act to preserve consumer and employer access to licensed independent insurance producers.

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## IN THE SENATE OF THE UNITED STATES

APRIL 17, 2012

Ms. LANDRIEU (for herself, Mr. ISAKSON, Mr. NELSON of Nebraska, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title XXVII of the Public Health Service Act to preserve consumer and employer access to licensed independent insurance producers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Access to Independent  
5 Health Insurance Advisors Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Licensed independent insurance producers  
9 (agents and brokers) provide a wide range of serv-

1       ices for both individual consumers and the business  
2       community. Producers interface with insurers, ac-  
3       quire quotes, analyze plan options, and consult cli-  
4       ents through the purchase of health insurance.

5           (2) Licensed independent insurance producers  
6       provide guidance regarding benefit and contribution  
7       arrangements to ensure compliance with applicable  
8       State and Federal laws and regulations; assist with  
9       establishing section 125 plan tax savings under the  
10      Internal Revenue Code, health reimbursement ar-  
11      rangements, flexible spending arrangements, evalu-  
12      ating and securing small business tax credits as pro-  
13      vided in the Patient Protection and Affordable Care  
14      Act, and other programs to maximize tax advantages  
15      and ensure compliance with applicable Internal Rev-  
16      enue Service guidelines; create educational materials  
17      and provide on-site assistance to aid in employee  
18      benefit communication; assist in managing eligibility  
19      for new hires and terminated employees; provide ad-  
20      vocacy for employees through the health insurance  
21      claim process; and advocate for employers with in-  
22      surers in developing proposals, renewals, and for  
23      service issues throughout the year.

24           (3) In order to meet these responsibilities, li-  
25      censed independent insurance producers are required

1 to complete continuing education on an ongoing  
2 basis in order to maintain appropriate licenses. This  
3 requirement to maintain educational standards helps  
4 assure the insured public that producers remain cur-  
5 rent with the ever-evolving insurance market.

6 (4) It is essential that licensed independent in-  
7 surance producers continue to perform these duties,  
8 and others, as the Patient Protection and Affordable  
9 Care Act has made significant changes to the regu-  
10 latory environment for health plans. To understand  
11 these changes, employers and consumers will need  
12 professional guidance even more in the future. This  
13 service is especially important for small businesses,  
14 as such producers often fill the role of a human re-  
15 sources department as well as professional consult-  
16 ant.

17 (5) The National Association of Insurance  
18 Commissioners (NAIC), whose core mission is to  
19 protect consumers in all aspects of the business of  
20 insurance, strongly advocates for the continuing role  
21 of licensed independent insurance producers in  
22 health insurance, and has expressed that the ability  
23 of insurance agents and brokers to continue assist-  
24 ing health insurance consumers at a time of rapid  
25 insurance market changes is more essential than

1       ever. On November 22, 2011, the NAIC adopted a  
 2       resolution stating that “Congress should expedi-  
 3       tiously consider legislation amending the MLR provi-  
 4       sions of the PPACA in order to preserve consumer  
 5       access to agents and brokers”.

6           (6) It is critical that the indispensable role  
 7       played by licensed independent insurance producers  
 8       is recognized and protected.

9   **SEC. 3. PROTECTING THE ABILITY OF LICENSED INDE-**  
 10           **PENDENT INSURANCE PRODUCERS TO CON-**  
 11           **TINUE TO SERVE THE PUBLIC.**

12       (a) IN GENERAL.—Section 2718 of the Public Health  
 13       Service Act (42 U.S.C. 300gg–18), as inserted by section  
 14       1001 and amended by section 10101(f) of the Patient Pro-  
 15       tection and Affordable Care Act (Public Law 110–148),  
 16       is amended—

17           (1) in subsection (a)(3), by inserting “, remu-  
 18       neration paid for licensed independent insurance  
 19       producers,” after “State taxes”; and

20           (2) in subsection (b)(1)—

21           (A) in the matter preceding clause (i) of  
 22       subparagraph (A), by inserting “, remuneration  
 23       paid for licensed independent insurance pro-  
 24       ducers in the individual and small group mar-  
 25       ket,” after “State taxes”; and

1 (B) in subparagraph (B)(i)(II), by insert-  
 2 ing “, remuneration paid for licensed inde-  
 3 pendent insurance producers in the individual  
 4 and small group market,” after “State taxes”;  
 5 and

6 (3) by adding at the end the following:

7 “(f) INDEPENDENT INSURANCE PRODUCER REMU-  
 8 NERATION DEFINITIONS.—For purposes of this section:

9 “(1) The term ‘independent insurance producer’  
 10 means an insurance agent or broker, insurance con-  
 11 sultant, benefit specialist, limited insurance rep-  
 12 resentative, and any other person required to be li-  
 13 censed under the laws of the particular State to sell,  
 14 solicit, negotiate, service, effect, procure, renew or  
 15 bind policies of insurance coverage or offer advice,  
 16 counsel, opinions, or services related to insurance.

17 “(2) The term ‘remuneration’ means compensa-  
 18 tion earned from an insurance issuer for services  
 19 rendered under contractual agreement which may in-  
 20 clude commissions or any other thing of value but  
 21 which shall not include production bonuses.”.

22 (b) REGULATIONS.—Not later than 60 days after the  
 23 date of the enactment of this Act, the Secretary of Health  
 24 and Human Services shall amend any applicable regula-

- 1 tions as necessary to implement the amendments made by
- 2 subsection (a).

