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Otter is first governor to sign a law saying state will defy requirement to buy insurance

Democrats in Washington, D.C., hope to pass health care reform soon, but Republican state leaders in Idaho are preparing to go to court to fight it. Gov. Butch Otter signed the Idaho Health Freedom Act on Wednesday in his first public bill signing of the 2010 session. "If I am (first), I'm glad," said Otter, who was flanked by several Republican lawmakers.

At least 36 other states are considering similar legislation in response to the drive by President Obama and congressional Democrats to expand health insurance to 30 million uninsured Americans, in part by requiring them to buy insurance. Virginia has enacted similar legislation, but it became law without a signature by Gov. Bob McDonnell.

"How can somebody mandate us because we're breathing to buy health insurance?" said Rep. Jim Clark, R-Hayden Lake, one of the Idaho bill's co-sponsors. "É Now we're saying in code: We're not going to stand for that."

The law directs Idaho's attorney general to sue if mandatory insurance becomes federal law. State lawmakers opted for a bill rather than a resolution to give the measure greater weight and to help Idaho's standing in court, where the issue seems headed. But critics claim the state law won't stand up to a federal law and that Idaho is doomed to spend a fortune in court. The U.S. Constitution's supremacy clause says federal law outranks state law. "We should be spending our limited resources in the classroom, not the courtroom," said Sen. Kate Kelly, D-Boise, the Senate's minority leader. "The Idaho Health Freedom Act does just the opposite."

Advocates say legal action may require up to one additional attorney and staff at a cost of about \$100,000, but say the state may be able to fight with existing resources for less or no extra cost. Otter suggested the sheer number of states passing similar legislation will make a difference in the courts. "The ivory tower folks will tell you, 'No, they're not going anywhere,'" Otter said. "But I'll tell you what: You get 36 states, that's a critical mass. That's a constitutional mass."

Governors in Indiana, Rhode Island, South Dakota, Arizona and Utah were noted for comments they made opposing the health care bill in an e-mail circulated Wednesday by U.S. House GOP leader John Boehner of Ohio. Even in the budget crisis, Otter said the Idaho Health Freedom Act is an important piece of legislation.

"I put a high priority on the sovereignty of the state of Idaho," Otter said. "Yes, it is a proper use of our time."

States' rights have been a central issue during the 2010 Legislature. Otter supports House Concurrent Resolution 64, which seeks to amend the 10th Amendment to the U.S. Constitution and strengthen language protecting states' rights. The resolution is in the House.

House Bill 589, passed by the Idaho House along party lines, aims to limit federal authority to regulate guns made and sold in Idaho by making them off limits to federal buyer background checks and dealer licensing rules.

The Idaho Health Freedom Act says "every person within the state of Idaho is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty by the federal government of the United States of America."

Otter said the state needs to do more to make health care affordable by getting more providers into the state. "If our only attention is going to be on how we pay the bill and not how we lower the bill, I think we miss aiming at where the real problem is, and it should be to lower that cost," Otter said.

But opponents complained that the law does not do anything to help Idahoans deal with rising health care costs.

"It is bad policy," said Jim Wordelman, state director for AARP. "Families, children and the elderly are facing real health care problems, high costs and no access to needed health care. This bill doesn't address those kitchen-table issues."

The bill passed the House 52-18 on a party-line vote. The Senate passed the bill 24-10 with Republicans John Andreason, R-Boise, Chuck Coiner, R-Twin Falls, and Joe Stegner, R-Moscow, joining seven Democrats in opposition.

"We, as a state, have said we are sovereign," said Rep. Raul Labrador, R-Eagle, who is running for the Republican nomination in the 1st Congressional District. "We will decide for ourselves whether we want legislation dealing with health care."