

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR

# SENATE BILL NO. 464

96TH GENERAL ASSEMBLY

2012

4313S.03T

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## AN ACT

To amend chapter 376, RSMo, by adding thereto one new section relating to the authority for creating and operating health insurance exchanges in Missouri, with a referendum clause.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.1186, to read as follows:

**376.1186. 1. No state-based health benefit exchange may be established, created, or operated within this state in order to implement Section 1311 of the federal health care act, 42 U.S.C. Section 18031, or any other provision of the federal health care act that relates to the creation and operation of a state-based health benefit exchange, unless the authority to create or operate such an exchange is enacted into law through:**

**(1) A bill as prescribed by Article III of the Missouri Constitution;**

**(2) An initiative petition as prescribed by Article III, Section 50 of the Missouri Constitution; or**

**(3) A referendum as prescribed by Article III, Section 52(a) of the Missouri Constitution.**

**2. In no case shall the authority for establishing, administering, or operating a state-based health benefit exchange in Missouri be based upon an executive order issued by the governor of Missouri.**

**3. No department, agency, instrumentality or political subdivision of the state of Missouri shall establish any program,**

19 promulgate any rule, policy, guideline or plan or change any program,  
20 rule, policy or guideline to implement, establish, create, administer or  
21 otherwise operate a state-based health benefit exchange described in  
22 the federal health care act unless such department, agency,  
23 instrumentality or political subdivision has received statutory  
24 authority to do so in a manner consistent with subsection 1 of this  
25 section. No department, agency, instrumentality or political  
26 subdivision of the state of Missouri shall act as an eligible entity as  
27 described in Section 1311(f)(3)(B) of the federal health care act to  
28 perform one or more of the responsibilities of a state-based health  
29 benefit exchange unless authorized by statute or a regulation validly  
30 promulgated pursuant to such statute.

31 4. No department, agency, instrumentality, or political  
32 subdivision of this state shall apply for, accept or expend federal  
33 moneys related to the creation, implementation or operation of a state-  
34 based health benefit exchange or a federally-facilitated health benefit  
35 exchange unless such acceptance or expenditure is authorized by  
36 statute or an appropriations bill.

37 5. No department, agency, instrumentality, political subdivision,  
38 public officer or employee of this state shall enter into any agreement  
39 or any obligation to establish, administer, or operate a federally-  
40 facilitated health benefit exchange described in Section 1321(c)(1) of  
41 the federal health care act unless such department, agency,  
42 instrumentality, political subdivision, public officer or employee of this  
43 state has received statutory authority to enter into such agreements or  
44 obligations. No department, agency, instrumentality, political  
45 subdivision, public officer or employee of this state shall provide  
46 assistance or resources of any kind to any department, agency, public  
47 official, employee or agent of the federal government related to the  
48 creation or operation of a federally-facilitated health benefit exchange  
49 unless such assistance or resources are authorized by state statute or  
50 a regulation promulgated thereto or such assistance or resources are  
51 specifically required by federal law.

52 6. Any taxpayer of this state or any member of the general  
53 assembly shall have standing to bring suit against the state of Missouri  
54 or any official, department, division, agency, or political subdivision of

55 this state which is in violation of this section in any court with  
56 jurisdiction to enforce the provisions of this section. The court shall  
57 award attorney's fees, court costs, and all reasonable expenses incurred  
58 by the taxpayer or member of the general assembly if the court finds  
59 that the provisions of this section have been violated. Such attorney's  
60 fees, court costs, and reasonable expenses shall be paid from funds  
61 appropriated to the department, division, agency, or any political  
62 subdivision of this state determined to have violated, in whole or in  
63 part, the provisions of this section. In no case shall the award of  
64 attorney's fees, court costs, or reasonable expenses be paid from the  
65 legal defense fund, nor shall any department, division, agency, or  
66 political subdivision of this state request, or be granted, additional  
67 appropriations in order to satisfy an award made under this section.

68 7. As used in this section, the term "federal health care act" shall  
69 mean the federal Patient Protection and Affordable Care Act, Public  
70 Law 111-148, as amended by the federal Health Care and Education  
71 Reconciliation Act of 2010, Public Law 111-152, and any amendments  
72 thereto, or regulations or guidance issued under such federal acts.

73 8. As used in this section, the term "state-based health benefit  
74 exchange" means a governmental agency or non-profit entity  
75 established by the state of Missouri and not the federal government  
76 that meets the applicable requirements of Section 1311 of the federal  
77 health care act and regulations promulgated thereto and makes  
78 qualified health care plans available to qualified individuals and  
79 qualified employers. The term "state-based health benefit exchange"  
80 includes regional or other interstate exchanges and subsidiary  
81 exchanges as described in Section 1311(f)(1) and (2) of the federal  
82 health care act. The term "federally-facilitated health benefit exchange"  
83 means a health benefit exchange established and operated by the  
84 Secretary of Health and Human Services under Section 1321(c)(1) of the  
85 federal health care act, either directly or through agreement with a  
86 not-for-profit entity.

Section B. This act is hereby submitted to the qualified voters of this state  
2 for approval or rejection at an election which is hereby ordered and which shall  
3 be held and conducted on Tuesday next following the first Monday in November,

4 2012, pursuant to the laws and constitutional provisions of this state for the  
5 submission of referendum measures by the general assembly, and this act shall  
6 become effective when approved by a majority of the votes cast thereon at such  
7 election and not otherwise.

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Unofficial

Bill

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