

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR

SENATE BILL NO. 401

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Offered April 24, 2013.

Senate Substitute adopted, April 24, 2013.

Taken up for Perfection April 24, 2013. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

1908S.04P

AN ACT

To amend chapter 376, RSMo, by adding thereto ten new sections relating to health insurance exchanges, with penalty provisions and an emergency clause.

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

Section A. Chapter 376, RSMo, is amended by adding thereto ten new sections, to be known as sections 376.2000, 376.2002, 376.2004, 376.2006, 376.2008, 376.2010, 376.2011, 376.2012, 376.2014, and 1, to read as follows:

376.2000. 1. Sections 376.2000 to 376.2014 shall be known and may be cited as the "Health Insurance Marketplace Innovation Act of 2013".

2. As used in sections 376.2000 to 376.2014, the following terms mean:

(1) "Department", the department of insurance, financial institutions and professional registration;

(2) "Director", the director of the department of insurance, financial institutions and professional registration;

(3) "Exchange", any health benefit exchange established or operating in this state, including any exchange established or operated by the United States Department of Health and Human Services.

(4) "Navigator", a person that, for compensation, provides information or services in connection with eligibility, enrollment, or program specifications of any health benefit exchange operating in this state, including any person that is selected to perform the activities

17 and duties identified in 42 U.S.C. 18031(i) in this state, any person who
18 receives funds from the United States Department of Health and Human
19 Services to perform any of the activities and duties identified in 42
20 U.S.C. 18031(i), or any other person certified by the United states
21 Department of Health and Human Services, or a health benefit
22 exchange operating in this state, to perform such defined or related
23 duties irrespective of whether such person is identified as a navigator,
24 certified application counselor, in-person assister, or other title.

376.2002. 1. No individual or entity shall perform, offer to
2 perform, or advertise any service as a navigator in this state, or receive
3 navigator funding from the state or an exchange unless licensed as a
4 navigator by the department under sections 376.2000 to 376.2014.

5 2. A navigator may:

6 (1) Provide fair and impartial information and services in
7 connection with eligibility, enrollment, and program specifications of
8 any health benefit exchange operating in this state, including
9 information about the costs of coverage, advance payments of premium
10 tax credits, and cost sharing reductions;

11 (2) Facilitate the selection of a qualified health plan;

12 (3) Initiate the enrollment process;

13 (4) Provide referrals to any applicable office of health insurance
14 consumer assistance, ombudsman, or other agency for any enrollee with
15 a grievance, complaint, or question regarding their health plan,
16 coverage, or determination under the plan; and

17 (5) Use culturally and linguistically appropriate language to
18 communicate the information authorized in this subsection.

19 3. Unless also properly licensed as an insurance producer in this
20 state with authority for health under section 375.014, a navigator shall
21 not:

22 (1) Sell, solicit, or negotiate health insurance;

23 (2) Engage in any activity that would require an insurance
24 producer license;

25 (3) Provide advice concerning the benefits, terms, and features
26 of a particular health plan or offer advice about which exchange health
27 plan is better or worse for a particular individual or employer;

28 (4) Recommend or endorse a particular health plan or advise
29 consumers about which health plan to choose; or

30 (5) Provide any information or services related to health benefit
31 plans or other products not offered in the exchange.

32 4. The following entities or persons are exempt from the
33 requirement to be licensed as a navigator:

34 (1) An entity or person licensed as an insurance producer in this
35 state with authority for health under section 375.014;

36 (2) A law firm or licensed attorney in this state; and

37 (3) A "health care provider" as defined in section 376.1350
38 provided that:

39 (a) The health care provider does not receive any funds from the
40 United States Department of Health and Human Services or a health
41 exchange operating in this state to act as a navigator; and

42 (b) The activities or functions performed are related to advising,
43 assisting, or counseling patients regarding private or public coverage
44 or financial matters related to medical treatments or government
45 assistance programs.

46 However, nothing in this section shall prohibit a health care provider
47 from voluntarily becoming licensed as a navigator.

376.2004. 1. An individual applying for a navigator license shall
2 make application to the department on a form developed by the
3 director and declare under penalty of refusal, suspension, or revocation
4 of the license that the statements made in the application are true,
5 correct, and complete to the best of the individual's knowledge and
6 belief. Before approving the application, the director shall find that
7 the individual:

8 (1) Is eighteen years of age or older;

9 (2) Resides in this state or maintains his or her principal place
10 of business in the state;

11 (3) Is not disqualified for having committed any act that would
12 be grounds for refusal to issue, renew, suspend, or revoke an insurance
13 producer license under section 375.141;

14 (4) Has successfully passed the written examination prescribed
15 by the director;

16 (5) When applicable, has the written consent of the director
17 under 18 U.S.C. 1033 or any successor statute regulating crimes by or
18 affecting persons engaged in the business of insurance whose activities
19 affect interstate commerce;

20 **(6) Has identified the entity with which he or she is affiliated**
21 **and supervised; and**

22 **(7) Has paid the fees prescribed by the director.**

23 **2. An entity that acts as a navigator, supervises the activities of**
24 **individual navigators, or receives funding to perform such activities**
25 **shall obtain a navigator entity license. An entity applying for an entity**
26 **navigator license shall make application on a form containing the**
27 **information prescribed by the director.**

28 **3. The director may require any documents deemed necessary to**
29 **verify the information contained in an application submitted in**
30 **accordance with subsections 1 and 2 of this section.**

31 **4. Entities licensed as navigators shall, in a manner prescribed**
32 **by the director, provide a list of all individual navigators that are**
33 **employed by or in any manner affiliated with the navigator entity and**
34 **shall report any changes in employment or affiliation within twenty**
35 **days of such change.**

36 **5. The director shall require that each navigator obtain a surety**
37 **bond in an amount acceptable to the director or otherwise demonstrate**
38 **a level of financial responsibility capable of protecting all persons**
39 **against the wrongful acts, misrepresentations, errors, omissions, or**
40 **negligence of the navigator. The director may ask for a copy of the**
41 **bond or other evidence of financial responsibility at any time.**

42 **6. Prior to any exchange becoming operational in this state, the**
43 **director shall prescribe initial training, continuing education, and**
44 **written examination standards and requirements for navigators.**

376.2006. 1. A navigator license shall be valid for two years.

2 **2. A navigator may file an application for renewal of a license**
3 **and pay the renewal fee as prescribed by the director. Any navigator**
4 **who fails to timely file for license renewal shall be charged a late fee**
5 **in an amount prescribed by the director.**

6 **3. Prior to the filing date for an application for renewal of a**
7 **license, an individual licensee shall comply with any ongoing training**
8 **and continuing education requirements established by the**
9 **director. Such navigator shall file with the director, by a method**
10 **prescribed by the director, proof of satisfactory certification of**
11 **completion of the continuing education requirements. Any failure to**
12 **fulfill the ongoing training and continuing education requirements**

13 shall result in the expiration of the license.

376.2008. Upon contact with a person who acknowledges having
2 existing health insurance coverage obtained through an insurance
3 producer, a navigator shall advise the person to consult with a licensed
4 insurance producer regarding coverage in the private market.

376.2010. 1. The director may place on probation, suspend,
2 revoke, or refuse to issue, renew, or reinstate a navigator license or
3 may levy a fine not to exceed one thousand dollars for each violation,
4 or any combination of actions, for any one or more of the causes listed
5 in section 375.141, 375.936 or for other good cause. In the event that the
6 action by the director is not to renew or to deny an application for a
7 license, the director shall notify the applicant or licensee in writing
8 and shall advise the applicant or licensee of the reason for the denial
9 or nonrenewal. Appeal of the nonrenewal or denial of the application
10 for a navigator license shall be made under the provisions of chapter
11 621.

12 2. In addition to imposing the penalties authorized by subsection
13 1 of this section, the director may require that restitution be made to
14 any person who has suffered financial injury because of a violation of
15 this section.

16 3. The director shall have the power to examine and investigate
17 the business affairs and records of any navigator to determine whether
18 the individual or entity has engaged or is engaging in any violation of
19 this section.

20 4. The navigator license held by an entity may be suspended or
21 revoked, renewal or reinstatement thereof may be refused, or a fine
22 may be levied, with or without a suspension, revocation, or refusal to
23 renew a license, if the director finds that an individual licensee's
24 violation was known or should have been known by the employing or
25 supervising entity and the violation was not reported to the director
26 and no corrective action was undertaken on a timely basis.

376.2011. 1. If the director determines that a person has
2 engaged, is engaging, or has taken a substantial step toward engaging
3 in an act, practice, omission, or course of business constituting a
4 violation of sections 376.2000 to 376.2014 or a rule adopted or order
5 issued pursuant thereto, or a person has materially aided or is
6 materially aiding an act, practice, omission, or course of business

7 constituting a violation in sections 376.2000 to 376.2014 or a rule
8 adopted or order issued pursuant thereto, the director may issue such
9 administrative orders as authorized under section 374.046.

10 2. If the director believes that a person has engaged, is engaging,
11 or has taken a substantial step toward engaging in an act, practice,
12 omission, or course of business constituting a violation of sections
13 376.2000 to 376.2014 or a rule adopted or order issued pursuant thereto,
14 or that a person has materially aided or is materially aiding an act,
15 practice, omission, or course of business constituting a violation in
16 sections 376.2000 to 376.2014 or a rule adopted or order issued pursuant
17 thereto, the director may maintain a civil action for relief authorized
18 under section 374.048.

19 3. A violation of sections 376.2000 to 376.2014 is a level two
20 violation under section 374.049.

376.2012. 1. Each licensed navigator shall report to the director
2 within thirty calendar days of the final disposition of the matter of any
3 administrative action taken against him or her in another jurisdiction
4 or by another governmental agency in this state. This report shall
5 include a copy of the order, consent to order, or other relevant legal
6 documents.

7 2. Within thirty days of the initial pretrial hearing date, a
8 navigator shall report to the director any criminal prosecution of the
9 navigator in any jurisdiction. The report shall include a copy of the
10 initial complaint filed, the order resulting from the hearing, and any
11 other relevant legal documents.

12 3. An entity that acts as a navigator that terminates the
13 employment, engagement, affiliation, or other relationship with an
14 individual navigator shall notify the director within twenty days
15 following the effective date of the termination, using a format
16 prescribed by the director if the reason for termination is one of the
17 reasons set forth in section 375.141 or 375.936 or if the entity has
18 knowledge that the navigator was found by a court or governmental
19 body to have engaged in any such activities. Upon the written request
20 of the director, the entity shall provide additional information,
21 documents, records, or other data pertaining to the termination or
22 activity of the individual.

376.2014. 1. The requirements of sections 379.930 to 379.952 and

2 chapters 375, 376, 407 and any related rules shall apply to
3 navigators. The activities and duties of a navigator shall be deemed to
4 constitute transacting the business of insurance.

5 2. If any provision of sections 376.2000 to 376.2014 or its
6 application to any person or circumstance is held invalid by a court of
7 competent jurisdiction or by federal law, the invalidity does not affect
8 other provisions or applications of sections 376.2000 to 376.2014 that
9 can be given effect without the invalid provision or application. The
10 provisions of sections 376.2000 to 376.2014 are severable, and the valid
11 provisions or applications shall remain in full force and effect.

12 3. The director may promulgate rules and regulations to
13 implement and administer the provisions of sections 376.2000 to
14 376.2014. Any rule or portion of a rule, as that term is defined in
15 section 536.010, that is created under the authority delegated in
16 sections 376.2000 to 376.2014 shall become effective only if it complies
17 with and is subject to all of the provisions of chapter 536 and, if
18 applicable, section 536.028. Sections 376.2000 to 376.2014 and chapter
19 536 are nonseverable and if any of the powers vested with the general
20 assembly pursuant to chapter 536 to review, to delay the effective date,
21 or to disapprove and annul a rule are subsequently held
22 unconstitutional, then the grant of rulemaking authority and any rule
23 proposed or adopted after August 28, 2013, shall be invalid and void.

Section 1. Notwithstanding any other provision of law to the
2 contrary, the department of insurance, financial institutions and
3 professional registration shall exercise its authority and responsibility
4 over health insurance product form filings, consumer complaints, and
5 investigations into compliance with state law, regardless as to how a
6 health insurance product may be sold or marketed in this state or to
7 residents of this state.

Section B. Because of the need to ensure that navigators are adequately
2 trained to provide essential health insurance information to the public, section
3 A of this act is deemed necessary for the immediate preservation of the public
4 health, welfare, peace and safety, and is hereby declared to be an emergency act
5 within the meaning of the constitution, and section A of this act shall be in full
6 force and effect upon its passage and approval.

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