

SECOND REGULAR SESSION

# SENATE BILL NO. 546

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAMPING.

Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4499S.01I

## AN ACT

To repeal section 1.330, RSMo, and to enact in lieu thereof two new sections relating to prohibiting governments from compelling individuals to purchase health insurance and participate in health care systems.

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

Section A. Section 1.330, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 1.330 and 1.334, to read as follows:

1.330. 1. No law or rule shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

2. A person or employer may pay directly for lawful health care services and shall not be required by law or rule to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required by law or rule to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

3. Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

4. This section does not:

(1) Affect which health care services a health care provider or hospital is required to perform or provide;

(2) Affect which health care services are permitted by law;

(3) Prohibit care provided under workers' compensation as provided under state law;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 (4) Affect laws or regulations in effect as of January 1, 2010;  
19 (5) Affect the terms or conditions of any health care system to the extent  
20 that those terms and conditions do not have the effect of punishing a person or  
21 employer for paying directly for lawful health care services or a health care  
22 provider or hospital for accepting direct payment from a person or employer for  
23 lawful health care services.

24 5. As used in this section **and section 1.334**, the following terms shall  
25 mean:

26 (1) "Compel", any penalties or fines;

27 (2) "Direct payment or pay directly", payment for lawful health care  
28 services without a public or private third party, not including an employer,  
29 paying for any portion of the service;

30 (3) **"Exchange" or "health insurance exchange", shall mean either**  
31 **a state-based health benefit exchange or a federally facilitated health**  
32 **benefit exchange as those terms are defined in section 376.1186;**

33 (4) "Health care system", any public or private entity whose function or  
34 purpose is the management of, processing of, enrollment of individuals for or  
35 payment for, in full or in part, health care services or health care data or health  
36 care information for its participants;

37 (5) **"Health insurance issuer" or "issuer" shall have the same**  
38 **meaning ascribed to it in 42 U.S.C. Section 300gg-91, and shall include**  
39 **health carriers as defined in section 376.1350;**

40 [(4)] (6) "Lawful health care services" or **"health care services"**, any  
41 health-related service or treatment to the extent that the service or treatment is  
42 permitted or not prohibited by law or regulation that may be provided by persons  
43 or businesses otherwise permitted to offer such services; [and]

44 (7) **"Mode of securing", to purchase directly or on credit or by**  
45 **trade, or to contract for third-party payment by insurance or other**  
46 **legal means authorized by the state of Missouri, or to apply for or**  
47 **accept employer or government sponsored health care benefits under**  
48 **such conditions as may legally be required as a condition of such**  
49 **benefits, or any combination of the same;**

50 (8) **"Patient Protection Affordable Care Act" or "federal health**  
51 **care act", the federal Patient Protection and Affordable Care Act,**  
52 **Public Law 111-148, as amended by the federal Health Care and**

53 **Education Reconciliation Act of 2010, Public Law 111-152, and any**  
54 **amendments thereto, or regulations or guidance issued under such**  
55 **federal acts; and**

56 **[(5)] (9) "Penalties or fines", any civil or criminal penalty or fine, tax,**  
57 **salary or wage withholding or surcharge or any named fee with a similar effect**  
58 **established by law or rule by a government-established, -created or -controlled**  
59 **agency that is used to punish or discourage the exercise of rights protected under**  
60 **this section or section 1.334.**

**1.334. 1. As a guide to the interpretation and application of**  
2 **section 1.330 and this section, the public policy of this state is declared**  
3 **to be as follows:**

4 **(1) The power to require or regulate a person's choice in the**  
5 **mode of securing health care services, or to impose a penalty related**  
6 **thereto, is not found in the Constitution of the United States of**  
7 **America, and is therefore a power reserved to the people pursuant to**  
8 **the Ninth Amendment, and to the several states pursuant to the Tenth**  
9 **Amendment. The state of Missouri hereby exercises its sovereign power**  
10 **to declare the public policy of the state of Missouri regarding the right**  
11 **of all persons residing in this state in choosing the mode of securing**  
12 **health care services;**

13 **(2) It is hereby declared that the public policy of the state of**  
14 **Missouri, consistent with our constitutionally recognized and**  
15 **inalienable rights of liberty, is that every person within the state of**  
16 **Missouri is and shall be free to choose or decline to choose any mode**  
17 **of securing health care services without penalty or threat of penalty;**

18 **(3) The policy stated herein shall not be applied to impair any**  
19 **right of contract related to the provision of health care services to any**  
20 **person or group.**

21 **2. The general assembly makes the following findings:**

22 **(1) The federal Patient Protection and Affordable Care Act**  
23 **preserves certain traditional state powers to regulate health insurance,**  
24 **and grants new powers to states, that permit Missouri to enforce the**  
25 **public policy set forth in section 1.330 and this section in a manner**  
26 **consistent with, and indeed expressly provided for by, federal law;**

27 **(2) Sections 1311 and 1321 of the Patient Protection and**

28 Affordable Care Act grant Missouri the option of operating a health  
29 insurance exchange, or allowing the federal government to create  
30 one. Section 1412 of the federal health care act authorizes payments to  
31 health insurance issuers that result directly or indirectly in penalties  
32 against Missouri employers and residents, contrary to the public policy  
33 set forth in section 1.330 and this section. In certain cases, those  
34 penalties would be levied against Missouri employers and residents  
35 who refused to purchase health insurance that violates their deeply  
36 held religious beliefs. Under the plain terms of Section 1401 of the  
37 federal health care act, the payments that result in penalties against  
38 Missouri employers and residents become available only if Missouri  
39 chooses to operate a health insurance exchange. Facilitating these  
40 payments and the enforcement of penalties against employers and  
41 individuals is a key function of a state-funded or state-based health  
42 insurance exchange. Section 1555 of the federal health care act  
43 protects the right of health insurance issuers not to accept such  
44 payments;

45 (3) A final rule issued by the U.S. Internal Revenue Service  
46 attempts to offer those payments, and therefore to penalize Missouri  
47 employers and residents contrary to the public policy set forth in  
48 section 1.330 and this section, irrespective of whether the state of  
49 Missouri elects to operate a health insurance exchange. As such, this  
50 federal rule would deny the state of Missouri its power, granted by  
51 Congress, to enforce the public policy set forth in section 1.330 and this  
52 section by declining to operate a health insurance exchange. This rule  
53 denies the sovereignty of the state of Missouri, and is contrary to  
54 federal law and congressional intent;

55 (4) The Patient Protection and Affordable Care Act recognizes  
56 the states' traditional powers to license and regulate health insurance  
57 carriers. Section 1311(e) of the federal health care act permits states  
58 that operate health insurance exchanges to exclude certain health  
59 plans. Section 1301(a) reserves for all states, regardless of whether  
60 they operate a health insurance exchange, the power to exclude health  
61 insurance issuers from participation if such issuers are not "licensed  
62 and in good standing to offer health insurance coverage in [the] State."  
63 Section 1321(d) of the federal health care act, titled "No Interference

64 with State Regulatory Authority," expressly provides that the act  
65 preempts only those state laws that "that . . . prevent the application of  
66 the provisions of this title." Section 1311(k) of the federal health care  
67 act preempts only those state laws "that conflict with or prevent the  
68 application of regulations promulgated by the Secretary" of the U.S.  
69 Department of Health and Human Services;

70 (5) Subsection 4 of this section asserts only those state powers  
71 that Congress has expressly recognized or granted through the Patient  
72 Protection and Affordable Care Act. Enforcement of subsection 4 of  
73 this section therefore does not conflict with or prevent the application  
74 of any provisions of, or regulations promulgated under, the Patient  
75 Protection and Affordable Care Act;

76 (6) The federal government may, to the extent permitted by the  
77 U.S. Constitution, amend federal law at any time to preempt these  
78 powers that the Patient Protection and Affordable Care Act reserves  
79 and grants to the state of Missouri.

80 3. No public official, employee, or agent of the state of Missouri  
81 or any of its political subdivisions, nor any law or rule, shall act to  
82 impose, collect, enforce, or effectuate, directly or indirectly, any  
83 penalty in the state of Missouri that violates the public policy set forth  
84 in this section or section 1.330. It violates the public policy set forth in  
85 this section for any such individuals, laws, or rules to implement or  
86 operate a health insurance exchange under the federal Patient  
87 Protection and Affordable Care Act.

88 4. If a health insurance issuer operating in the state of Missouri  
89 accepts any remuneration that may result in the imposition of penalties  
90 contrary to the public policy set forth in this section or section 1.330,  
91 such issuer's license to transact business in the state of Missouri shall  
92 be suspended by the director of the department of insurance, financial  
93 institutions and professional registration immediately and until such  
94 time as the issuer represents it has returned that remuneration to its  
95 source and will decline any such future remuneration. Such  
96 suspensions shall not be construed as impairing the right of contract.

97 5. The attorney general shall take such action as is provided in  
98 this subsection in the defense or prosecution of rights protected under  
99 section 1.330 and this section. It is the duty of the attorney general to

100 seek injunctive and any other appropriate relief as expeditiously as  
101 possible to preserve the rights and property of the residents of the  
102 state of Missouri, and to defend as necessary the state of Missouri, its  
103 officials, employees, and agents in the event that any law or regulation  
104 violating the public policy set forth in section 1.330 and this section, is  
105 enacted by any government, subdivision, or agency thereof.

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