

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 835**

Introduced by Nordquist, 7; Ashford, 20; Campbell, 25; Cook, 13;  
Dubas, 34; Gloor, 35; Hadley, 37; Harr, 8; Howard, 9;  
Mello, 5.

Read first time January 05, 2012

Committee:

A BILL

1 FOR AN ACT relating to insurance; to amend section 77-912, Revised  
2 Statutes Cumulative Supplement, 2010, and section  
3 81-1316, Revised Statutes Supplement, 2011; to adopt the  
4 Nebraska Health Benefit Exchange Act; to change  
5 distribution of insurance premium tax revenue; to provide  
6 an exception from the State Personnel System; to repeal  
7 the original sections; and to declare an emergency.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 14 of this act shall be known  
2 and may be cited as the Nebraska Health Benefit Exchange Act.

3           Sec. 2. The purpose of the Nebraska Health Benefit  
4 Exchange Act is to provide for the establishment of a Nebraska health  
5 benefit exchange to facilitate the purchase and sale of qualified  
6 health plans in the individual market in this state and to provide  
7 for the establishment of a small business health benefit exchange to  
8 assist qualified small employers in this state in facilitating the  
9 enrollment of their employees in qualified health plans offered in  
10 the small group market.

11           Sec. 3. The intent of the Nebraska Health Benefit  
12 Exchange Act is to:

13           (1) Increase access to quality affordable health care  
14 coverage, reduce the number of uninsured persons in Nebraska, and  
15 increase the availability of health care coverage through the private  
16 insurance market to qualified individuals and small employers and  
17 through medicaid to the eligible uninsured;

18           (2) Provide affordable options for small businesses to  
19 purchase private health insurance for their employees;

20           (3) Provide consumer choice and portability of health  
21 insurance, regardless of employment status;

22           (4) Create a transparent health insurance marketplace for  
23 Nebraskans to purchase affordable, quality health care coverage and  
24 to access available federal refundable premium tax credits and cost-  
25 sharing subsidies;

1           (5) Promote consumer education and empower consumers to  
2 compare plans and make informed decisions about their health care and  
3 coverage;

4           (6) Create a health insurance marketplace that competes  
5 on the basis of price, quality, service, and other innovative  
6 efforts; and

7           (7) Integrate medicaid eligibility to ensure  
8 administrative efficiency and seamless coverage for consumers.

9           Sec. 4. For purposes of the Nebraska Health Benefit  
10 Exchange Act:

11           (1) Board means the governing board of the exchange  
12 appointed pursuant to section 7 of this act;

13           (2) Exchange means the Nebraska health benefit exchange  
14 established pursuant to section 5 of the act;

15           (3) Federal act means the federal Patient Protection and  
16 Affordable Care Act, Public Law 111-148, as amended by the federal  
17 Health Care and Education Reconciliation Act of 2010, Public Law  
18 111-152, and any amendments thereto or regulations or guidance issued  
19 under those acts;

20           (4) Health care consumer advocate means an individual who  
21 is knowledgeable about private market insurance, public health  
22 insurance programs, enrollment and access, or related areas and has  
23 background or experience in consumer health care advocacy;

24           (5) Health insurance carrier means an entity subject to  
25 the insurance laws, rules, and regulations of this state or subject

1 to the jurisdiction of the Director of Insurance that contracts or  
2 offers to contract to provide, deliver, arrange, pay for, or  
3 reimburse any of the costs of health care services, including a  
4 sickness and accident insurance company, a health maintenance  
5 organization, a nonprofit hospital and health service corporation, or  
6 any other entity providing a plan of health insurance, health  
7 benefits, or health services;

8 (6) Qualified health plan means a health benefit plan the  
9 availability of which through the exchange has been determined by the  
10 exchange to be in the interest of qualified individuals and qualified  
11 small employers in this state. A qualified health plan must meet the  
12 criteria described in section 1311(c) of the federal act unless the  
13 federal act is repealed or is held to be unconstitutional or  
14 otherwise invalid or unlawful;

15 (7) Qualified individual means an individual, including a  
16 minor as defined in section 43-2101, who:

17 (a) Is seeking to enroll in a qualified health plan  
18 offered to individuals through the exchange;

19 (b) Resides in this state;

20 (c) At the time of enrollment, is not incarcerated, other  
21 than incarceration pending the disposition of charges; and

22 (d) Is and is reasonably expected to be for the entire  
23 period for which enrollment is sought a citizen or national of the  
24 United States or an alien lawfully present in the United States; and

25 (8) Secretary means the Secretary of the federal

1 Department of Health and Human Services.

2           Sec. 5. (1) The Nebraska health benefit exchange is  
3 hereby established within the Department of Insurance.

4           (2) The exchange, under the supervision and control of  
5 the board, shall pursue available federal funding for planning,  
6 implementation, and operation of the exchange, and the board shall  
7 adopt and promulgate rules necessary to obtain federal recognition of  
8 the exchange as a certified exchange under the federal act unless the  
9 federal act is repealed or is held to be unconstitutional or  
10 otherwise invalid or unlawful.

11           (3) The exchange, under the supervision and control of  
12 the board, may contract with or enter into a memorandum of  
13 understanding with an eligible entity for any of its functions  
14 described in the Nebraska Health Benefit Exchange Act. An eligible  
15 entity includes, but is not limited to, the Department of Health and  
16 Human Services or an entity that has experience in individual and  
17 small group health insurance, in benefit administration, or relevant  
18 to the responsibilities to be assumed by the entity, but a health  
19 insurance carrier or an affiliate of a health insurance carrier is  
20 not an eligible entity. The contracts entered into by the exchange,  
21 under the supervision and control of the board, prior to December 31,  
22 2014, shall not be subject to the approval of any other state  
23 department, office, or agency and shall be exempt from the  
24 requirements of sections 73-501 to 73-509 if the contract is  
25 necessary to meet an urgent or unexpected requirement or to meet an

1 externally imposed deadline beyond the exchange's control. Copies of  
2 all contracts or memorandums of understanding entered into by the  
3 exchange, under the supervision and control of the board, shall be  
4 maintained by the exchange as public records, subject to the  
5 proprietary rights of any party to the contract. To the extent that  
6 the exchange establishes such arrangements, the exchange remains  
7 responsible for ensuring that all state and federal requirements  
8 related to contracted functions are met. The contracts entered into  
9 by the exchange on or after January 1, 2015, shall comply with  
10 contracting requirements as specified by sections 73-501 to 73-509  
11 except that the board shall be responsible for the requirements under  
12 such sections prescribed to state agency directors.

13 (4) The exchange shall enter into information-sharing  
14 agreements with federal and state agencies and other state exchanges  
15 as needed to carry out its responsibilities under the act if the  
16 agreements include adequate protections with respect to the  
17 confidentiality of the information to be shared and comply with all  
18 state and federal laws, rules, and regulations.

19 Sec. 6. The exchange, under the supervision and control  
20 of the board, shall:

21 (1) Facilitate the purchase and sale of qualified health  
22 plans;

23 (2) Provide for the establishment of a small business  
24 health benefit exchange to assist qualified small employers in this  
25 state in facilitating the enrollment of their employees in qualified

1 health plans. The small business health benefit exchange shall  
2 include the functions and operations required for the small business  
3 health options plan as established under the federal act unless the  
4 federal act is repealed or is held to be unconstitutional or  
5 otherwise invalid or unlawful;

6 (3) Coordinate the policy and operations of the exchange  
7 with those of other state agencies whose policies and operations  
8 relate to those of the exchange, including, but not limited to, the  
9 state agency that administers Title XIX of the Social Security Act,  
10 the state agency that administers Title XXI of the Social Security  
11 Act, and other relevant agencies; and

12 (4) Unless the federal act is repealed or is held to be  
13 unconstitutional or otherwise invalid or unlawful, on or before  
14 January 1, 2014, the functions and operations of the exchange shall  
15 include at a minimum all functions required by section 1311(d)(4) of  
16 the federal Affordable Care Act and perform duties required of the  
17 exchange by the secretary related to exchange coverage.

18 Sec. 7. (1) The exchange shall operate subject to the  
19 supervision and control of a governing board. The powers conferred  
20 upon the board by the Nebraska Health Benefit Exchange Act and the  
21 carrying out of its purposes and duties shall be considered to be  
22 essential governmental functions and for a public purpose. For  
23 administrative and budgetary purposes only, the board shall be housed  
24 within the Department of Insurance.

25 (2)(a) The board shall be composed of eleven members.

1           (b) Eight members shall be appointed by the Governor in  
2 the following manner:

3           (i) Three members who are health care consumer advocates,  
4 one from each congressional district, to represent the interest of  
5 individual consumers who will access health insurance in the  
6 exchange. These members shall be appointed from a list of at least  
7 five individuals from each congressional district submitted to the  
8 Governor by the Executive Board of the Legislative Council;

9           (ii) One member to represent the interests of small  
10 businesses who are qualified to purchase health insurance in the  
11 exchange. This member shall be appointed from a list of at least five  
12 individuals submitted to the Governor by the executive board;

13           (iii) Two members to represent the interests of health  
14 care providers in the state. These members shall be appointed from a  
15 list of at least ten individuals submitted to the Governor by the  
16 Health and Human Services Committee of the Legislature;

17           (iv) One member to represent the interests of health  
18 insurance carriers who are eligible to offer health insurance in the  
19 exchange. This member shall be appointed from a list of at least five  
20 individuals submitted to the Governor by the Banking, Commerce, and  
21 Insurance Committee of the Legislature; and

22           (v) One member to represent the interests of health  
23 insurance agents. This member shall not be a captive agent of any  
24 health insurance carrier. This member shall be appointed from a list  
25 of at least five individuals submitted to the Governor by the



1 Banking, Commerce, and Insurance Committee of the Legislature.

2 (c) The following state employees shall be nonvoting, ex  
3 officio members:

4 (i) The Director of Insurance or his or her designee;

5 (ii) The Director of Medicaid and Long-Term Care or his  
6 or her designee; and

7 (iii) The Director of Children and Family Services or his  
8 or her designee.

9 (3) The initial lists submitted by the executive board  
10 and the committees of the Legislature shall be submitted to the  
11 Governor by June 1, 2012. The Governor shall make the initial  
12 appointments by July 1, 2012.

13 (4) The appointed members of the board shall serve for  
14 terms of four years, except that, of the members first appointed the  
15 Governor shall designate:

16 (a) One of the members representing the interests of  
17 health care providers in the state to serve a term of three years and  
18 the other to serve a term of two years;

19 (b) The member representing the interests of health  
20 insurance carriers to serve a term of two years; and

21 (c) The member representing the interests of health  
22 insurance agents to serve a term of three years.

23 (5) A member may be reappointed at the expiration of his  
24 or her term.

25 All succeeding appointments to the board shall be made in

1 the same manner as the original appointments are made and succeeding  
2 appointees shall have the same qualifications as their predecessors.

3 (6) An individual appointed to fill a vacancy, occurring  
4 other than by the expiration of a term of office, shall be appointed  
5 for the unexpired term of the member such individual succeeds and  
6 shall be eligible for appointment to subsequent full four-year terms  
7 thereafter.

8 (7) All appointments whether initial or subsequent shall  
9 be subject to the approval of a majority of the members of the  
10 Legislature, if the Legislature is in session, and if the Legislature  
11 is not in session, any appointment shall be temporary until the next  
12 session of the Legislature, at which time a majority of the members  
13 of the Legislature may approve or disapprove such appointment.

14 A member shall have his or her membership terminated if  
15 he or she ceases to meet the qualification for his or her  
16 appointment. A member may be removed from the board for good cause  
17 upon written notice and upon an opportunity to be heard before the  
18 Governor. After the hearing, the Governor shall file in the office of  
19 the Secretary of State a complete statement of the charges and the  
20 findings and disposition together with a complete record of the  
21 proceedings.

22 Sec. 8. (1) The board shall organize by selecting a  
23 chairperson, a vice-chairperson, and a secretary from among its  
24 members who shall hold office at the pleasure of the board. The vice-  
25 chairperson shall act as chairperson in the absence of the

1 chairperson or in the event of a vacancy in that position. The  
2 secretary shall keep all records of meetings and actions taken by the  
3 board.

4 (2) Five voting members of the board shall constitute a  
5 quorum and the concurrence of five voting members of the board shall  
6 be required for any action or recommendation of the board.

7 (3) A member shall not be liable for an act or omission  
8 when acting in his or her official capacity, in good faith, without  
9 intent to defraud, and in connection with the administration,  
10 management, or conduct of the Nebraska Health Benefit Exchange Act.

11 (4) Members of the board shall be reimbursed for their  
12 actual and necessary expenses as provided in sections 81-1174 to  
13 81-1177.

14 Sec. 9. The board shall:

15 (1) Meet the requirements of the Nebraska Health Benefit  
16 Exchange Act and all applicable state and federal laws, rules, and  
17 regulations, serve the public interest of the individuals and small  
18 businesses seeking health care coverage through the exchange, and  
19 ensure the operational well-being and fiscal solvency of the  
20 exchange;

21 (2) Hold regular meetings;

22 (3) Adopt bylaws, rules, and policies, including, but not  
23 limited to, governance principles that include ethics, conflict of  
24 interest standards, accountability and transparency standards, and  
25 disclosure of financial interest requirements;

1           (4) Employ an executive director and such other staff as  
2 are necessary to carry out its duties pursuant to the act. The  
3 executive director shall serve at the pleasure of the board and shall  
4 be solely responsible to it. The executive director shall be  
5 responsible for the administrative operations of the exchange and  
6 shall perform such other duties as may be delegated or assigned to  
7 him or her by the board, except that the board shall not delegate  
8 rule and regulation authority to the executive director;

9           (5) Obtain the services of experts and consultants as  
10 necessary to carry out its duties pursuant to the act. Unless  
11 prohibited by law, the Tax Commissioner, the Auditor of Public  
12 Accounts, and the Attorney General shall make available to the board  
13 such personnel, facilities, and other assistance as the board may  
14 request;

15           (6) Create an initial operational and financial plan from  
16 the implementation of the act through 2014 for the exchange;

17           (7) Implement procedures for disclosure of financial  
18 interests and conflicts of interest by members of the board;

19           (8) Apply for planning and establishment grants made  
20 available to the exchange pursuant to the federal act and apply for,  
21 receive, and expend other gifts, grants, and donations. If an  
22 executive director has not been hired when the secretary makes the  
23 grants available, the Department of Insurance shall, upon request of  
24 the board, submit the initial application for grants to the  
25 secretary. If the majority of the board has not been appointed when

1 the secretary makes grants available, the department shall submit the  
2 initial application for grants to the secretary. The board shall use  
3 the funds awarded by the secretary for the planning and establishment  
4 of the exchange consistent with subdivision (b) of section 1311 of  
5 the federal act;

6 (9) Create technical and advisory groups as needed to  
7 discuss issues related to the exchange and make recommendations to  
8 the board;

9 (10) Leverage any usable information and systems from the  
10 federal government, early innovator states, the private market, and  
11 other relevant sources in order to become compliant with the federal  
12 act;

13 (11) Work with the Department of Health and Human  
14 Services to ensure that the exchange coordinates with medicaid, the  
15 Children's Health Insurance Program, and any other applicable public  
16 programs to create a single point of entry for users of the exchange  
17 who are eligible for such programs and to promote continuity of  
18 coverage and care;

19 (12) Work with the board of directors of the  
20 Comprehensive Health Insurance Pool to create a plan to transition  
21 pool coverage recipients to qualified health plans within the  
22 exchange no later than January 1, 2014; and

23 (13) Provide a written report on or before December 1,  
24 2012, to the Governor and the Legislature concerning the planning,  
25 establishment, and operations of the exchange. The report shall

1 include recommendations:

2 (a) To ensure that the exchange is financially  
3 sustainable by 2015 as required by the federal act unless the federal  
4 act is repealed or is held to be unconstitutional or otherwise  
5 invalid or unlawful;

6 (b) To reduce the negative impact of adverse selection on  
7 the sustainability of the exchange, including, but not limited to,  
8 recommendations to ensure that regulation of health insurance  
9 carriers and health benefit plans are similar for qualified health  
10 plans offered through the exchange and health benefit plans offered  
11 outside the exchange;

12 (c) Regarding the number or types of plans offered  
13 through the exchange, ensuring qualified individuals and small  
14 employers have an adequate number and selection of choices;

15 (d) To establish a navigator grant program that awards  
16 grants to certain entities to market the exchange;

17 (e) To promote a seamless integration with the medicaid  
18 program and for policies and procedures to ensure continuity of  
19 coverage and continuity of care for consumers transitioning between  
20 health insurance carriers, including between publicly funded coverage  
21 and unsubsidized private coverage;

22 (f) To establish an appropriate payment or commission  
23 structure for brokers and agents;

24 (g) To ensure the small business health benefit exchange  
25 will meet the needs and provide value to small businesses; and

1           (h) For public relations and outreach campaigns.

2           The enumeration of specific powers in this section is not  
3 intended to restrict the board's power to take any lawful action that  
4 the board determines is necessary or convenient to carry out the  
5 functions authorized by the federal act and consistent with the  
6 intent of the Nebraska Health Benefit Exchange Act and purposes of  
7 the exchange.

8           Sec. 10. (1) The Open Meetings Act applies to the board.

9           (2) Sections 81-145 to 81-162 do not apply to the  
10 exchange.

11           Sec. 11. If any portion of the federal act or any  
12 regulation or other guidance issued thereunder is legislatively or  
13 judicially invalidated and rendered of no effect in this state, the  
14 board shall immediately issue a legal opinion as to the effect of  
15 such legislative or judicial action on the legal status of the  
16 corresponding provisions of the Nebraska Health Benefit Exchange Act  
17 and the federal act, regulation, or guidance. The board shall also  
18 issue recommendations to the Legislature for amendments to the  
19 Nebraska Health Benefit Exchange Act necessitated by such judicial or  
20 legislative action.

21           Sec. 12. The board may adopt and promulgate rules and  
22 regulations to implement the Nebraska Health Benefit Exchange Act.  
23 The rules and regulations shall not conflict with or prevent the  
24 application of regulations promulgated by the secretary under the  
25 federal act.

1           Sec. 13. Nothing in the Nebraska Health Benefit Exchange  
2 Act, and no action taken by the exchange pursuant to the act,  
3 preempts or supersedes the authority of the Director of Insurance to  
4 regulate the business of insurance within this state and, except as  
5 expressly provided to the contrary in the act, all health insurance  
6 carriers offering health benefit plans in this state shall comply  
7 fully with all applicable health insurance laws of this state and  
8 orders issued by the director.

9           Sec. 14. (1) The Nebraska Health Benefit Exchange Fund is  
10 created. The fund shall be used for the operation of the exchange.  
11 Any money in the fund available for investment shall be invested by  
12 the state investment officer pursuant to the Nebraska Capital  
13 Expansion Act and the Nebraska State Funds Investment Act.

14           (2) The following funds shall be paid into this fund:

15           (a) All funds from the federal government received and  
16 dedicated to or otherwise able to be used for the purposes of the  
17 Nebraska Health Benefit Exchange Act;

18           (b) Commencing with the premium and related retaliatory  
19 taxes for the taxable year ending December 31, 2014, and for each  
20 taxable year thereafter, any premium and related retaliatory taxes  
21 imposed by section 44-150 or 77-908 paid by insurers for writing  
22 health insurance in this state;

23           (c) All other payments, gifts, grants, bequests, or  
24 income from any source;

25           (d) Assessments or user fees to health insurance



1 carriers; and

2 (e) Appropriations by the Legislature.

3 (3) Any unexpended balance remaining in the fund at the  
4 close of the biennium shall be reappropriated for the ensuing year.

5 Sec. 15. Section 77-912, Revised Statutes Cumulative  
6 Supplement, 2010, is amended to read:

7 77-912 The Director of Insurance shall transmit fifty  
8 percent of the taxes paid in conformity with Chapter 44, article 1,  
9 and Chapter 77, article 9, to the State Treasurer, forty percent of  
10 such taxes paid to the General Fund, and ten percent of such taxes  
11 paid to the Mutual Finance Assistance Fund promptly upon completion  
12 of his or her audit and examination and in no event later than May 1  
13 of each year, except that:

14 (1) All fire insurance taxes paid pursuant to sections  
15 44-150 and 81-523 shall be remitted to the State Treasurer for credit  
16 to the General Fund;

17 (2) All workers' compensation insurance taxes paid  
18 pursuant to section 44-150 shall be remitted to the State Treasurer  
19 for credit to the Compensation Court Cash Fund; ~~and~~

20 (3) Commencing with the premium and related retaliatory  
21 taxes for the taxable year ending December 31, 2001, and for each  
22 taxable year thereafter through December 31, 2013, all premium and  
23 related retaliatory taxes imposed by section 44-150 or 77-908 paid by  
24 insurers writing health insurance in this state shall be remitted to  
25 the Comprehensive Health Insurance Pool Distributive Fund; and -

1           (4) Commencing with the premium and related retaliatory  
2 taxes for the taxable year ending December 31, 2014, and for each  
3 taxable year thereafter, all premium and related retaliatory taxes  
4 imposed by section 44-150 or 77-908 paid by insurers writing health  
5 insurance in this state shall be remitted to the Nebraska Health  
6 Benefit Exchange Fund.

7           Sec. 16. Section 81-1316, Revised Statutes Supplement,  
8 2011, is amended to read:

9           81-1316 (1) All agencies and personnel of state  
10 government shall be covered by sections 81-1301 to 81-1319 and shall  
11 be considered subject to the State Personnel System, except the  
12 following:

- 13           (a) All personnel of the office of the Governor;
- 14           (b) All personnel of the office of the Lieutenant  
15 Governor;
- 16           (c) All personnel of the office of the Secretary of  
17 State;
- 18           (d) All personnel of the office of the State Treasurer;
- 19           (e) All personnel of the office of the Attorney General;
- 20           (f) All personnel of the office of the Auditor of Public  
21 Accounts;
- 22           (g) All personnel of the Legislature;
- 23           (h) All personnel of the court systems;
- 24           (i) All personnel of the Board of Educational Lands and  
25 Funds;

- 1 (j) All personnel of the Public Service Commission;
- 2 (k) All personnel of the Nebraska Brand Committee;
- 3 (l) All personnel of the Commission of Industrial  
4 Relations;
- 5 (m) All personnel of the State Department of Education;
- 6 (n) All personnel of the Nebraska state colleges and the  
7 Board of Trustees of the Nebraska State Colleges;
- 8 (o) All personnel of the University of Nebraska;
- 9 (p) All personnel of the Coordinating Commission for  
10 Postsecondary Education;
- 11 (q) All personnel of the Governor's Policy Research  
12 Office, but not to include personnel within the State Energy Office;
- 13 (r) All personnel of the Commission on Public Advocacy;
- 14 (s) All agency heads;
- 15 (t)(i) The Director of Behavioral Health of the Division  
16 of Behavioral Health; (ii) the Director of Children and Family  
17 Services of the Division of Children and Family Services; (iii) the  
18 Director of Developmental Disabilities of the Division of  
19 Developmental Disabilities; (iv) the Director of Medicaid and Long-  
20 Term Care of the Division of Medicaid and Long-Term Care; (v) the  
21 Director of Public Health of the Division of Public Health; and (vi)  
22 the Director of Veterans' Homes of the Division of Veterans' Homes;
- 23 (u) The chief medical officer established under section  
24 81-3115, the Administrator of the Office of Juvenile Services, and  
25 the chief executive officers of the Beatrice State Developmental

1 Center, Lincoln Regional Center, Norfolk Regional Center, Hastings  
2 Regional Center, Grand Island Veterans' Home, Norfolk Veterans' Home,  
3 Eastern Nebraska Veterans' Home, Western Nebraska Veterans' Home,  
4 Youth Rehabilitation and Treatment Center-Kearney, and Youth  
5 Rehabilitation and Treatment Center-Geneva;

6 (v) The chief executive officers of all facilities  
7 operated by the Department of Correctional Services and the medical  
8 director for the department appointed pursuant to section 83-4,156;

9 (w) All personnel employed as pharmacists, physicians,  
10 psychiatrists, or psychologists by the Department of Correctional  
11 Services;

12 (x) All personnel employed as pharmacists, physicians,  
13 psychiatrists, psychologists, service area administrators, or  
14 facility operating officers of the Department of Health and Human  
15 Services;

16 (y) Deputies and examiners of the Department of Banking  
17 and Finance and the Department of Insurance as set forth in sections  
18 8-105 and 44-119, except for those deputies and examiners who remain  
19 in the State Personnel System; ~~and~~

20 (z) All personnel of the Tax Equalization and Review  
21 Commission; and -

22 (aa) All personnel of the Nebraska health benefit  
23 exchange established pursuant to section 5 of this act.

24 (2) At each agency head's discretion, up to the following  
25 number of additional positions may be exempted from the State

1 Personnel System, based on the following agency size categories:

| 2  | Number of Agency | Number of Noncovered |
|----|------------------|----------------------|
| 3  | Employees        | Positions            |
| 4  | less than 25     | 0                    |
| 5  | 25 to 100        | 1                    |
| 6  | 101 to 250       | 2                    |
| 7  | 251 to 500       | 3                    |
| 8  | 501 to 1000      | 4                    |
| 9  | 1001 to 2000     | 5                    |
| 10 | 2001 to 3000     | 8                    |
| 11 | 3001 to 4000     | 11                   |
| 12 | 4001 to 5000     | 14                   |
| 13 | over 5000        | 50                   |

14 The purpose of having such noncovered positions shall be  
 15 to allow agency heads the opportunity to recruit, hire, and supervise  
 16 critical, confidential, or policymaking personnel without  
 17 restrictions from selection procedures, compensation rules, career  
 18 protections, and grievance privileges. Persons holding the noncovered  
 19 positions shall serve at the pleasure of the agency head and shall be  
 20 paid salaries set by the agency head. An agency with over five  
 21 thousand employees shall provide notice in writing to the Health and  
 22 Human Services Committee of the Legislature when forty noncovered  
 23 positions have been filled by the agency head pursuant to this

1 subsection.

2 (3) No changes to this section or to the number of  
3 noncovered positions within an agency shall affect the status of  
4 personnel employed on the date the changes become operative without  
5 their prior written agreement. A state employee's career protections  
6 or coverage by personnel rules and regulations shall not be revoked  
7 by redesignation of the employee's position as a noncovered position  
8 without the prior written agreement of such employee.

9 Sec. 17. Original section 77-912, Revised Statutes  
10 Cumulative Supplement, 2010, and section 81-1316, Revised Statutes  
11 Supplement, 2011, are repealed.

12 Sec. 18. Since an emergency exists, this act takes effect  
13 when passed and approved according to law.