

**PROPOSED REFERENDUM — NOVEMBER 6, 2012**

**PROPOSITION E.** — (Proposed by the 96th General Assembly (Second Regular Session) SS SB 464)

Official Ballot Title:

Shall Missouri law be amended to prohibit the Governor or any state agency, from establishing or operating state-based health insurance exchanges unless authorized by a vote of the people or by the legislature?

No direct costs or savings for state and local governmental entities are expected from this proposal. Indirect costs or savings related to enforcement actions, missed federal funding, avoided implementation costs, and other issues are unknown.

Fair Ballot Language:

A “yes” vote will amend Missouri law to deny individuals, families, and small businesses the ability to access affordable health care plans through a state-based health benefit exchange unless authorized by statute, initiative or referendum or through an exchange operated by the federal government as required by the federal health care act.

A “no” vote will not change the current Missouri law regarding access to affordable health care plans through a state-based health benefit exchange.

If passed, this measure will have no impact on taxes.

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SB 464 [SS SB 464]

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.

SECTION

- A. Enacting clause.
- 376.1186. State-based health benefit exchanges prohibited without statutory authority — executive order to establish prohibited — state agency restrictions — taxpayer standing — definitions.
- B. Referendum clause.

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

**SECTION A. ENACTING CLAUSE.** — Chapter 376, RSMo, is amended by adding thereto one new section, to be known as section 376.1186, to read as follows:

**376.1186. STATE-BASED HEALTH BENEFIT EXCHANGES PROHIBITED WITHOUT STATUTORY AUTHORITY — EXECUTIVE ORDER TO ESTABLISH PROHIBITED — STATE AGENCY RESTRICTIONS — TAXPAYER STANDING — DEFINITIONS. — 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**

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

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

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

6. Any taxpayer of this state or any member of the general assembly shall have standing to bring suit against the state of Missouri or any official, department, division, agency, or political subdivision of this state which is in violation of this section in any court with jurisdiction to enforce the provisions of this section. The court shall award attorney's fees, court costs, and all reasonable expenses incurred by the taxpayer or member of the general assembly if the court finds that the provisions of this section have been violated. Such attorney's fees, court costs, and reasonable expenses shall be paid from funds appropriated to the department, division, agency, or any political subdivision of this state determined to have violated, in whole or in part, the provisions of this section. In no case shall the award of attorney's fees, court costs, or reasonable expenses be paid from the legal defense fund, nor shall any department, division, agency, or political subdivision of this state request, or be granted, additional appropriations in order to satisfy an award made under this section.

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

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

**SECTION B. REFERENDUM CLAUSE.** — This act is hereby submitted to the qualified voters of this state for approval or rejection at an election which is hereby ordered and which shall be held and conducted on Tuesday next following the first Monday in November, 2012, pursuant to the laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, and this act shall become effective when approved by a majority of the votes cast thereon at such election and not otherwise.

Subject to Voter Approval on November 6, 2012

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