

FIRST REGULAR SESSION

# HOUSE BILL NO. 601

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FREDERICK.

1016L.011

D. ADAM CRUMBLISS, Chief Clerk

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## 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.

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Section A. Section 1.330, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 1.330 and 1.334, to read as follows: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

(4) Affect laws or regulations in effect as of January 1, 2010;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (5) Affect the terms or conditions of any health care system to the extent that those terms  
18 and conditions do not have the effect of punishing a person or employer for paying directly for  
19 lawful health care services or a health care provider or hospital for accepting direct payment from  
20 a person or employer for lawful health care services.

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

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

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

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

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

31 (5) **"Health insurance issuer" or "issuer" shall have the same meaning ascribed to**  
32 **it in 42 U.S.C. Section 300gg-91, and shall include health carriers as defined in section**  
33 **376.1350;**

34 [(4)] (6) "Lawful health care services" or **"health care services"**, any health-related  
35 service or treatment to the extent that the service or treatment is permitted or not prohibited by  
36 law or regulation that may be provided by persons or businesses otherwise permitted to offer  
37 such services; [and]

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

43 (8) **"Patient Protection Affordable Care Act" or "federal health care act", the**  
44 **federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by**  
45 **the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152,**  
46 **and any amendments thereto, or regulations or guidance issued under such federal acts;**  
47 **and**

48 [(5)] (9) "Penalties or fines", any civil or criminal penalty or fine, tax, salary or wage  
49 withholding or surcharge or any named fee with a similar effect established by law or rule by a  
50 government-established, -created or -controlled agency that is used to punish or discourage the  
51 exercise of rights protected under this section **or section 1.334.**

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

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

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

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

2. The general assembly makes the following findings:

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

(2) Sections 1311 and 1321 of the Patient Protection and Affordable Care Act grant Missouri the option of operating a health insurance exchange, or allowing the federal government to create one. Section 1412 of the federal health care act authorizes payments to health insurance issuers that result directly or indirectly in penalties against Missouri employers and residents, contrary to the public policy set forth in section 1.330 and this section. In certain cases, those penalties would be levied against Missouri employers and residents who refused to purchase health insurance that violates their deeply held religious beliefs. Under the plain terms of Section 1401 of the federal health care act, the payments that result in penalties against Missouri employers and residents become available only if Missouri chooses to operate a health insurance exchange. Facilitating these payments and the enforcement of penalties against employers and individuals is a key function of a state-funded or state-based health insurance exchange. Section 1555 of the federal health care act protects the right of health insurance issuers not to accept such payments;

(3) A final rule issued by the U.S. Internal Revenue Service attempts to offer those payments, and therefore to penalize Missouri employers and residents contrary to the public policy set forth in section 1.330 and this section, irrespective of whether the state of

37 Missouri elects to operate a health insurance exchange. As such, this federal rule would  
38 deny the state of Missouri its power, granted by Congress, to enforce the public policy set  
39 forth in section 1.330 and this section by declining to operate a health insurance exchange.  
40 This rule denies the sovereignty of the state of Missouri, and is contrary to federal law and  
41 congressional intent;

42 (4) The Patient Protection and Affordable Care Act recognizes the states'  
43 traditional powers to license and regulate health insurance carriers. Section 1311(e) of the  
44 federal health care act permits states that operate health insurance exchanges to exclude  
45 certain health plans. Section 1301(a) reserves for all states, regardless of whether they  
46 operate a health insurance exchange, the power to exclude health insurance issuers from  
47 participation if such issuers are not "licensed and in good standing to offer health  
48 insurance coverage in [the] State." Section 1321(d) of the federal health care act, titled  
49 "No Interference with State Regulatory Authority," expressly provides that the act  
50 preempts only those state laws that "that . . . prevent the application of the provisions of  
51 this title." Section 1311(k) of the federal health care act preempts only those state laws  
52 "that conflict with or prevent the application of regulations promulgated by the Secretary"  
53 of the U.S. Department of Health and Human Services;

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

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

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

68 4. If a health insurance issuer operating in the state of Missouri accepts any  
69 remuneration that may result in the imposition of penalties contrary to the public policy  
70 set forth in this section or section 1.330, such issuer's license to transact business in the  
71 state of Missouri shall be suspended by the director of the department of insurance,  
72 financial institutions and professional registration immediately and until such time as the

73 issuer represents it has returned that remuneration to its source and will decline any such  
74 future remuneration. Such suspensions shall not be construed as impairing the right of  
75 contract.

76 **5. The attorney general shall take such action as is provided in this subsection in**  
77 **the defense or prosecution of rights protected under section 1.330 and this section. It is the**  
78 **duty of the attorney general to seek injunctive and any other appropriate relief as**  
79 **expeditiously as possible to preserve the rights and property of the residents of the state**  
80 **of Missouri, and to defend as necessary the state of Missouri, its officials, employees, and**  
81 **agents in the event that any law or regulation violating the public policy set forth in section**  
82 **1.330 and this section, is enacted by any government, subdivision, or agency thereof.**

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