

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1101**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Insurance Policy, March 1, 2006 with recommendation that House Committee Substitute for House Bill No. 1101 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

3861L.02C

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**AN ACT**

To repeal sections 290.145, 376.421, and 379.952, RSMo, and to enact in lieu thereof three new sections relating to improper employment practices.

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

Section A. Sections 290.145, 376.421, and 379.952, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 290.145, 376.421, and 379.952, to read  
3 as follows:

290.145. It shall be an improper employment practice for an employer to refuse to hire,  
2 or to discharge, any individual, or to otherwise disadvantage any individual, with respect to  
3 compensation, terms or conditions of employment because the individual uses lawful alcohol or  
4 tobacco products off the premises of the employer during hours such individual is not working  
5 for the employer, unless such use interferes with the duties and performance of the employee,  
6 the employee's coworkers, or the overall operation of the employer's business; except that,  
7 nothing in this section shall prohibit an employer from providing or contracting for health  
8 insurance benefits at a reduced premium rate **or at a reduced deductible level** for employees  
9 who do not smoke or use tobacco products. Religious organizations and church-operated  
10 institutions, and not-for-profit organizations whose principal business is health care promotion  
11 shall be exempt from the provisions of this section. The provisions of this section shall not be  
12 deemed to create a cause of action for injunctive relief, damages or other relief.

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.

376.421. 1. Except as provided in subsection 2 of this section, no policy of group health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships, if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials;

(b) The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject such coverage in writing; and

(c) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten employees and in a policy insuring ten or more employees if:

a. Application is not made within thirty-one days after the date of eligibility for insurance; or

b. The person voluntarily terminated the insurance while continuing to be eligible for insurance under the policy; or

c. After the expiration of an open enrollment period during which the person could have enrolled for the insurance or could have elected another level of benefits under the policy;

(2) A policy issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee, trustees or agent shall be deemed the policyholder, to insure debtors of the creditor or creditors with respect to their indebtedness subject to the following requirements:

36 (a) The debtors eligible for insurance under the policy shall be all of the debtors of the  
37 creditor or creditors, or all of any class or classes thereof. The policy may provide that the term  
38 "debtors" shall include:

39 a. Borrowers of money or purchasers or lessees of goods, services, or property for which  
40 payment is arranged through a credit transaction;

41 b. The debtors of one or more subsidiary corporations; and

42 c. The debtors of one or more affiliated corporations, proprietorships or partnerships if  
43 the business of the policyholder and of such affiliated corporations, proprietorships or  
44 partnerships is under common control;

45 (b) The premium for the policy shall be paid either from the creditor's funds or from  
46 charges collected from the insured debtors, or from both. Except as provided in paragraph (c)  
47 of this subdivision, a policy on which no part of the premium is to be derived from funds  
48 contributed by insured debtors specifically for their insurance must insure all eligible debtors;

49 (c) An insurer may exclude any debtors as to whom evidence of individual insurability  
50 is not satisfactory to the insurer in a policy insuring fewer than ten debtors and in a policy  
51 insuring ten or more debtors if:

52 a. Application is not made within thirty-one days after the date of eligibility for  
53 insurance; or

54 b. The person voluntarily terminated the insurance while continuing to be eligible for  
55 insurance under the policy; or

56 c. After the expiration of an open enrollment period during which the person could have  
57 enrolled for the insurance or could have elected another level of benefits under the policy;

58 (d) The total amount of insurance payable with respect to an indebtedness shall not  
59 exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor. The  
60 insurer may exclude any payments which are delinquent on the date the debtor becomes disabled  
61 as defined in the policy;

62 (e) The insurance may be payable to the creditor or to any successor to the right, title,  
63 and interest of the creditor. Such payment or payments shall reduce or extinguish the unpaid  
64 indebtedness of the debtor to the extent of each such payment and any excess of insurance shall  
65 be payable to the insured or the estate of the insured;

66 (f) Notwithstanding the preceding provisions of this subdivision, insurance on  
67 agricultural credit transaction commitments may be written up to the amount of the loan  
68 commitment, and insurance on educational credit transaction commitments may be written up  
69 to the amount of the loan commitment less the amount of any repayments made on the loan;

70 (3) A policy issued to a labor union or similar employee organization, which shall be  
71 deemed to be the policyholder, to insure members of such union or organization for the benefit

72 of persons other than the union or organization or any of its officials, representatives, or agents,  
73 subject to the following requirements:

74 (a) The members eligible for insurance under the policy shall be all of the members of  
75 the union or organization, or all of any class or classes thereof;

76 (b) The premium for the policy shall be paid either from funds of the union or  
77 organization or from funds contributed by the insured members specifically for their insurance,  
78 or from both. Except as provided in paragraph (c) of this subdivision, a policy on which no part  
79 of the premium is to be derived from funds contributed by the insured members specifically for  
80 their insurance must insure all eligible members, except those who reject such coverage in  
81 writing;

82 (c) An insurer may exclude or limit the coverage on any person as to whom evidence of  
83 individual insurability is not satisfactory to the insurer in a policy insuring fewer than ten  
84 members and in a policy insuring ten or more members if:

85 a. Application is not made within thirty-one days after the date of eligibility for  
86 insurance; or

87 b. The person voluntarily terminated the insurance while continuing to be eligible for  
88 insurance under the policy; or

89 c. After the expiration of an open enrollment period during which the person could have  
90 enrolled for the insurance or could have elected another level of benefits under the policy;

91 (4) A policy issued to a trust, or to the trustee of a fund, established or adopted by two  
92 or more employers, or by one or more labor unions or similar employee organizations, or by one  
93 or more employers and one or more labor unions or similar employee organizations, which trust  
94 or trustee shall be deemed the policyholder, to insure employees of the employers or members  
95 of the unions or organizations for the benefit of persons other than the employers or the unions  
96 or organizations, subject to the following requirements:

97 (a) The persons eligible for insurance shall be all of the employees of the employers or  
98 all of the members of the unions or organizations, or all of any class or classes thereof. The  
99 policy may provide that the term "employees" shall include the employees of one or more  
100 subsidiary corporations, and the employees, individual proprietors, and partners of one or more  
101 affiliated corporations, proprietorships or partnerships if the business of the employer and of such  
102 affiliated corporations, proprietorships or partnerships is under common control. The policy may  
103 provide that the term "employees" shall include the individual proprietor or partners if the  
104 employer is an individual proprietorship or partnership. The policy may provide that the term  
105 "employees" shall include retired employees, former employees and directors of a corporate  
106 employer. The policy may provide that the term "employees" shall include the trustees or their  
107 employees, or both, if their duties are principally connected with such trusteeship;

108 (b) The premium for the policy shall be paid from funds contributed by the employer or  
109 employers of the insured persons or by the union or unions or similar employee organizations,  
110 or by both, or from funds contributed by the insured persons or from both the insured persons  
111 and the employer or union or similar employee organization. Except as provided in paragraph  
112 (c) of this subdivision, a policy on which no part of the premium is to be derived from funds  
113 contributed by the insured persons specifically for their insurance, must insure all eligible  
114 persons except those who reject such coverage in writing;

115 (c) An insurer may exclude or limit the coverage on any person as to whom evidence of  
116 individual insurability is not satisfactory to the insurer;

117 (5) A policy issued to an association or to a trust or to the trustees of a fund established,  
118 created and maintained for the benefit of members of one or more associations. The association  
119 or associations shall have at the outset a minimum of one hundred persons; shall have been  
120 organized and maintained in good faith for purposes other than that of obtaining insurance; shall  
121 have been in active existence for at least two years; shall have a constitution and bylaws which  
122 provide that the association or associations shall hold regular meetings not less than annually to  
123 further the purposes of the members; shall, except for credit unions, collect dues or solicit  
124 contributions from members; and shall provide the members with voting privileges and  
125 representation on the governing board and committees. The policy shall be subject to the  
126 following requirements:

127 (a) The policy may insure members of such association or associations, employees  
128 thereof, or employees of members, or one or more of the preceding, or all of any class or classes  
129 thereof for the benefit of persons other than the employee's employer;

130 (b) The premium for the policy shall be paid from funds contributed by the association  
131 or associations or by employer members, or by both, or from funds contributed by the covered  
132 persons or from both the covered persons and the association, associations, or employer  
133 members;

134 (c) Except as provided in paragraph (d) of this subdivision, a policy on which no part of  
135 the premium is to be derived from funds contributed by the covered persons specifically for their  
136 insurance must insure all eligible persons, except those who reject such coverage in writing;

137 (d) An insurer may exclude or limit the coverage on any person as to whom evidence of  
138 individual insurability is not satisfactory to the insurer;

139 (6) A policy issued to a credit union or to a trustee or trustees or agent designated by two  
140 or more credit unions, which credit union, trustee, trustees or agent shall be deemed the  
141 policyholder, to insure members of such credit union or credit unions for the benefit of persons  
142 other than the credit union or credit unions, trustee or trustees, or agent or any of their officials,  
143 subject to the following requirements:

(a) The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes thereof;

(b) The premium for the policy shall be paid by the policyholder from the credit union's funds and, except as provided in paragraph (c) of this subdivision, must insure all eligible members;

(c) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer;

(7) A policy issued to cover persons in a group where that group is specifically described by a law of this state as one which may be covered for group life insurance. The provisions of such law relating to eligibility and evidence of insurability shall apply.

2. Group health insurance offered to a resident of this state under a group health insurance policy issued to a group other than one described in subsection 1 of this section shall be subject to the following requirements:

(1) No such group health insurance policy shall be delivered in this state unless the director finds that:

(a) The issuance of such group policy is not contrary to the best interest of the public;

(b) The issuance of the group policy would result in economies of acquisition or administration; and

(c) The benefits are reasonable in relation to the premiums charged;

(2) No such group health insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in subdivision (1) of this subsection has made a determination that such requirements have been met;

(3) The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered persons, or from both;

(4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

**3. As used in this section, "insurer" shall have the same meaning as the definition of "health carrier" under section 376.1350, and "class" means a predefined group of persons eligible for coverage under a group insurance policy where members of a class represent the same or essentially the same hazard; except that, an insurer may offer a policy to an employer that charges a reduced premium rate or deductible for employees who do not smoke or use tobacco products as authorized under section 290.145, RSMo, and such insurer shall not be considered to be in violation of any unfair trade practice, as defined in section 379.936, RSMo, even if only some employers elect to purchase such a policy and other employers do not.**

379.952. 1. Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan.

2. (1) Except as provided in subdivision (2) of this subsection, no small employer carrier or agent or broker shall, directly or indirectly, engage in the following activities:

(a) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer;

(b) Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(2) The provisions of subdivision (1) of this subsection shall not apply with respect to information provided by a small employer carrier or agent or broker to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

3. (1) Except as provided in subdivision (2) of this subsection, no small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent or broker that provides for or results in the compensation paid to an agent or broker for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(2) Subdivision (1) of this subsection shall not apply with respect to a compensation arrangement that provides compensation to an agent or broker on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation or geographic area of the small employer.

4. A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent or broker, if any, for the sale of a basic or standard health benefit plan.

5. No small employer carrier shall terminate, fail to renew or limit its contract or agreement of representation with an agent or broker for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the agent or broker with the small employer carrier.

6. No small employer carrier or producer shall induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits

37 provided in connection with the employee's employment; **except that, a carrier may offer a**  
38 **policy to a small employer that charges a reduced premium rate or deductible for**  
39 **employees who do not smoke or use tobacco products, and such carrier shall not be**  
40 **considered in violation of sections 379.930 to 379.952 or any unfair trade practice, as**  
41 **defined in section 379.936, even if only some small employers elect to purchase such a**  
42 **policy and other small employers do not.**

43         7. Denial by a small employer carrier of an application for coverage from a small  
44 employer shall be in writing and shall state the reason or reasons for the denial with specificity.

45         8. The director may promulgate rules setting forth additional standards to provide for the  
46 fair marketing and broad availability of health benefit plans to small employers in this state.

47         9. (1) A violation of this section by a small employer carrier or a producer shall be an  
48 unfair trade practice under sections 375.930 to 375.949, RSMo.

49         (2) If a small employer carrier enters into a contract, agreement or other arrangement  
50 with a third-party administrator to provide administrative marketing or other services related to  
51 the offering of health benefit plans to small employers in this state, the third-party administrator  
52 shall be subject to this section as if it were a small employer carrier.

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