

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 580, Page 23,
2 Section 191.116, Line 59, by inserting after all of said line the following:

3
4 "191.236. As used in sections 191.236 to 191.238 the following terms shall mean:

5 (1) "Health information exchange activities", the electronic exchange of individually
6 identifiable information among unaffiliated organizations according to nationally recognized
7 standards. The following activities are not considered "health information exchange activities":

8 (a) Electronic exchange of individually identifiable information among unaffiliated
9 organizations solely for the purposes of an organized health care arrangement as defined under the
10 HIPAA Laws; and

11 (b) Electronic exchange of individually identifiable information among unaffiliated
12 organizations solely for research purposes;

13 (2) "Health information organization", any organization that oversees and governs health
14 information exchange activities;

15 (3) "HIPAA laws", the Health Insurance Portability and Accountability Act of 1996, as
16 amended, the Health Information Technology for Economic and Clinical Health Act, as amended,
17 and implementing regulations;

18 (4) "Individual", the person who is the subject of the individually identifiable information;

19 (5) "Individually identifiable information", any information that identifies an individual or
20 there is a reasonable basis to believe can be used to identify the individual including, but not limited
21 to, information created or received by health care providers, health benefit plans, organizations
22 providing social services or assessing social determinants of health, and organizations that provide
23 services to or on behalf of any of the foregoing and health care clearinghouses, and relates to the
24 past, present, or future physical or mental health or condition of an individual, the provision of
25 health care to an individual, or the past, present, or future payment for the provision of health care to
26 an individual;

27 (6) "Participant", an individual or entity who accesses, uses, or discloses individually
28 identifiable information through a health information exchange operated by a health information
29 organization including, but not limited to, health care providers, health benefit plans, organizations
30 providing social services or assessing social determinants of health, and organizations that provide
31 services to or on behalf of any of the foregoing.

32 191.238 1. (1) Notwithstanding any other provision of law to the contrary, any participant
33 may disclose, access, or use individually identifiable information through a health information
34 exchange operated by a health information organization pursuant to this chapter and in accordance
35 with applicable federal laws including, but not limited to, the HIPAA laws, without obtaining
36 individual consent or authorization.

Action Taken _____ Date _____

1 (2) Except as otherwise provided in state or federal law, an individual has the right to opt
 2 out of having the individual's individually identifiable information accessible through a health
 3 information exchange operated by a health information organization under this chapter.

4 (3) A health information organization shall implement policies that meet the requirements
 5 under the HIPAA laws governing the privacy and security of individually identifiable information
 6 that is accessible through the health information exchange.

7 (4) All participants in a health information organization under this section shall comply with
 8 the HIPAA laws, if such participant is subject to the HIPAA laws, and all policies and procedures of
 9 the health information organization with respect to the health information exchange.

10 (5) To the extent any provision of state law, rule or regulation is contrary to, or is more
 11 stringent than the provisions of this section, the provisions of this section shall control with respect
 12 to a participant's disclosure, access, or use of individually identifiable information through a health
 13 information exchange operated by a health information organization under this section.

14 (6) This section shall not limit, change, or otherwise affect the use or disclosure of
 15 individually identifiable information outside of a health information exchange operated by a health
 16 information organization under this section.

17 2. (1) Participants shall maintain a written notice of privacy practices for the health
 18 information exchange that describes all of the following:

19 (a) The categories of individually identifiable information that are accessible through the
 20 health information exchange;

21 (b) The purposes for which access to individually identifiable information is provided
 22 through the health information exchange;

23 (c) Except as otherwise provided in state or federal law, that an individual has the right to
 24 opt out of having the individual's individually identifiable information accessible through the health
 25 information exchange; and

26 (d) An explanation as to how an individual may opt out of having the individual's
 27 individually identifiable information accessible through the health information exchange.

28 (2) The notice of privacy practices maintained by participants may reference a publicly
 29 accessible website or websites that contain some or all of the information described in subdivision
 30 (1) of this subsection, such as a current list of participants and the permitted purposes for accessing
 31 individually identifiable information through the health information exchange.

32 (3) Participants shall post their current notice of privacy practices on its website in a
 33 conspicuous manner.

34 3. (1) A health information organization shall not be considered a health care provider, as
 35 that term is defined in section 538.205, based on its health information exchange activities and shall
 36 not be subject to liability for damages or costs of any nature, in law or in equity, arising out of
 37 chapter 538 and the common law of Missouri when carrying out health information exchange
 38 activities pursuant to this section.

39 (2) Participants in a health information exchange operated by a health information
 40 organization pursuant to this chapter shall not be liable in any action for damages or costs of any
 41 nature, in law or equity, which result solely from that participant's use or failure to use the health
 42 information exchange or participant's disclosure of individually identifiable information through the
 43 health information exchange in accordance with the requirements of this chapter.

44 (3) No person shall be subject to antitrust or unfair competition liability based solely on
 45 participation in a health information exchange operated by a health information organization under
 46 this chapter and performs health information exchange activities under this section.

47 (4) All employees, officers, and members of the governing board of a health information
 48 organization that operates a health information exchange under this chapter, whether temporary or
 49 permanent, shall not be subject to and shall be immune from any claim, suit, liability, damages, or

any other recourse, civil or criminal, arising from any act or proceeding, decision, or determination undertaken, performed, or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers, and privileges of the offices conferred by law upon them under this chapter, or any other state law, or policies and procedures of the health information exchange, good faith being presumed until proven otherwise, with malice required to be shown by a complainant.

(5) Individually identifiable information accessible through a health information exchange operated by a health information organization under this chapter is not subject to discovery, subpoena, or other means of legal compulsion for the release of such individually identifiable information to any person or entity. Such a health information organization shall not be compelled by a request for production, subpoena, court order, or otherwise, to disclose individually identifiable health information."; and

Further amend said bill, Page 73, Section 579.076, Line 12, by inserting after all of said line the following:

~~"[191.237. 1. No law or rule promulgated by an agency of the state of Missouri may impose a fine or penalty against a health care provider, hospital, or health care system for failing to participate in any particular health information organization.~~

~~2. A health information organization shall not restrict the exchange of state agency data or standards-based clinical summaries for patients for federal Health Insurance Portability and Accountability Act (HIPAA) allowable uses. Charges for such service shall not exceed the cost of the actual technology connection or recurring maintenance thereof.~~

~~3. As used in this section, the following terms shall mean:~~

~~(1) "Fine or penalty", any civil or criminal penalty or fine, tax, salary or wage withholding, or surcharge established by law or by rule promulgated by a state agency pursuant to chapter 536;~~

~~(2) "Health care system", any public or private entity whose function or purpose is the management of, processing of, or enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants;~~

~~(3) "Health information organization", an organization that oversees and governs the exchange of health-related information among organizations according to nationally recognized standards.];~~ and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.