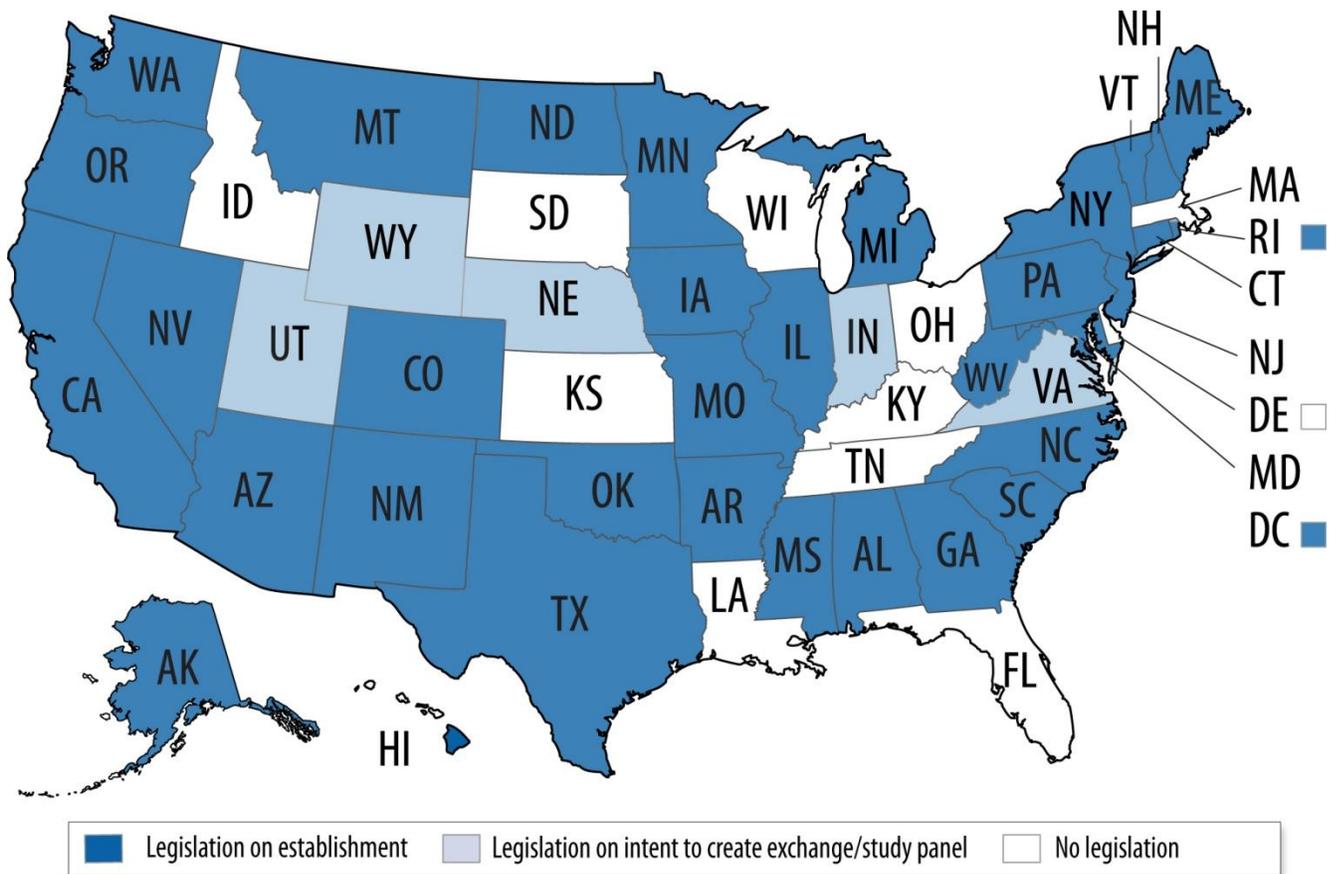


Analysis of State Health Insurance Exchange Legislation: Establishment Status and Governance Issues

One of the key coverage elements of the Affordable Care Act (ACA) is the creation of state-based health insurance exchanges – new competitive marketplaces in which individuals and small businesses can choose among an array of affordable, comprehensive health insurance plans. Below is a summary of proposed or enacted state exchange legislation introduced during 2011 legislative sessions, with a particular focus on governance and conflict of interest provisions.

Figure 1. 2011 State Legislation on Exchanges



State Legislation on Health Insurance Exchanges

As of November 8, 2011, 34 states and the District of Columbia have introduced legislation to set up exchanges (see Table 1). In ten of these states, the legislation has been passed by the legislature or enacted into law. Seven states and D.C. have legislation that remains pending in their respective legislatures and 17 states failed to pass exchange establishment legislation prior to the close of their 2011 legislative sessions. In some states, multiple exchange bills with differing provisions have been introduced and debated simultaneously.

Table 1. States with Legislation Introduced to Establish an ACA-Compliant Health Insurance Exchange (bill number)

Legislation Passed or Enacted (10 states)		
California (SB900 & AB1602) ¹	Maryland (HB166 ⁵)	Vermont (HB202 ⁸)
Colorado (SB11-200 ²)	Nevada (SB440 ⁶)	Washington (SB5445 ⁹)
Connecticut (SB921 ³)	Oregon (SB99 ⁷)	West Virginia (SB408 ¹⁰)
Hawaiï (SB1348 ⁴)		
Legislation Pending or Tabled in 2011 (8 states)		
District of Columbia (B19-2)	New Hampshire (SB163 ¹³)	North Carolina (HB126, HB115, SB418)
Illinois (SB1729, SB1313)	New Jersey (S2553 ¹⁴ , S1288, S2597)	Pennsylvania (HB627)
Maine (LD1497, LD1498) ¹¹		
Michigan (SB693 ¹²)		
Legislation Failed, Withdrawn, Expired or Vetoed in 2011 (17 states)		
Alabama (HB401 ¹⁵)	Minnesota (HF497, HF1204 ²¹)	North Dakota (HB1474 ²⁷)
Alaska (SB70 ¹⁶)	Mississippi (HB1220 ²²)	Oklahoma (HB2130 ²⁸)
Arizona (SB1524, HB2666) ¹⁷	Missouri (HB609 ²³)	Rhode Island (SB87 ²⁹)
Arkansas (HB2138 ¹⁸)	Montana (HB124, HB620) ²⁴	South Carolina (HB3738 ³⁰)
Georgia (HB476 ¹⁹)	New Mexico (SB38 ²⁵ /370)	Texas (SB1782, SB1510, SB1586, HB636) ³¹
Iowa (SF348, SF391) ²⁰	New York (S05652, GPB#12R ²⁶)	

¹ California exchange legislation included two complementary bills that were signed by the Governor on September 30, 2010.

² Colorado SB11-200 was signed into law by the Governor on June 1, 2011.

³ Connecticut SB921, which was amended to reflect agreement between the authors of SB921, SB1204, and HB6323, passed the Senate on May 31, 2011, passed the House on June 4, 2011 and was signed by Governor on July, 1 2011.

⁴ Hawaiï SB1348 was passed by the legislature and signed by the Governor on July 8, 2011.

⁵ Maryland HB166 was signed into law by the Governor on April 12, 2011.

⁶ Nevada SB440 was passed by the legislature and, although not signed by the Governor, became law on June 16, 2011.

⁷ Oregon SB99, which passed the legislature and signed by the Governor on June 17th, 2011.

⁸ Vermont HB202 passed the Senate on May 6, 2011 and was signed by the Governor on May 26, 2011.

⁹ Washington SB5445 passed the legislature on April 18, 2011 was signed by the Governor on May 11, 2011.

¹⁰ West Virginia SB408 was signed by the Governor on April 5, 2001.

¹¹ Maine LD1497 and LD1498 were carried over to the next session by the legislature, which also introduced LD1582, a resolution creating the Advisory Committee on Maine's Health Insurance Exchange (see Table 2).

¹² Michigan SB693 passed the Senate on November 10, 2011.

¹³ New Hampshire SB163 was referred by the legislature, tabling the bill until the 2012 legislative session.

¹⁴ New Jersey S2553 was passed by the Assembly on June 29, 2011 and currently awaits action in the Senate.

¹⁵ Alabama HB401 died when the legislature adjourned on June 9, 2011.

¹⁶ Alaska SB70 did not pass either chamber before the legislative special session ended on May 14, 2011.

¹⁷ Arizona SB1524 and HB2666 were not passed by the close of the 2011 legislative session.

¹⁸ Arkansas HB2138 was withdrawn by the author March 31, 2011, but recommended for interim study by the legislature.

¹⁹ Georgia HB476 was withdrawn in the House just prior to the close of the 2011 legislative session on March 16, 2011.

²⁰ Iowa's legislature adjourned on June 30, 2011 without passing either piece of exchange legislation.

²¹ The Minnesota legislature failed to take action on either bill before the regular session ended on May 23, 2011.

²² Mississippi HB1220 passed the House and Senate but not Conference Committee before the end of the legislative session.

²³ Missouri HB609 passed the House on April 14, 2011, but was not taken up by the Senate before the end of the session. On June 23rd, the Senate President created the Senate Interim Committee on Health Insurance Exchanges.

²⁴ Montana HB124 and HB620 were voted down by the House Business and Labor Committee on March 23, 2011.

²⁵ New Mexico SB38 passed both chambers of the legislature but was vetoed by Governor Martinez on April 8, 2011.

²⁶ NYGPB#12R was passed by the Assembly on June 23, 2011 but not the Senate prior to the close of the session on June 24, 2011. However, it may be taken up when the legislature returns for special session later in the year.

²⁷ North Dakota HB1474 was introduced during a five-day fall special session but was voted down on November 10, 2011.

²⁸ Oklahoma HB2130 was not passed by the Senate before the legislature adjourned on May 20, 2011. However, the legislature established an Interim Study Committee to explore exchange implementation in Oklahoma.

²⁹ Rhode Island SB87 passed the Senate on April 5 but not the House by the June 30, 2011 close of the session.

³⁰ South Carolina HB3738 was not passed by the legislature when the session ended June 2, 2011. An Executive Order signed on March 10, 2011 established the South Carolina Health Planning Committee, whose report is due October 28, 2011.

³¹ Texas's legislative session ended on May 30, 2011 without passing any of the introduced exchange bills.

Twelve states have introduced bills that do not establish an exchange, but rather indicate the state's intent to create an exchange at a future point or form a study panel or commission to evaluate exchange implementation issues in preparation for the 2012 legislative session. Nine states have passed such legislation while three states have rejected these measures (see Table 2). Eleven states currently have no legislation introduced regarding exchanges, although a few states reportedly will introduce exchange-related bills before the end of 2011 (see Table 3). See the Appendix for a list of exchange-related bills introduced in state legislatures.

Table 2. States with Legislation Introduced Regarding Intent to Create an ACA-Compliant State Exchange
Establishes a Study Panel or Commission
Passed or Enacted (7 states)
Illinois (SB1555 ³²) Maine (LD1582 ³³) Mississippi (HB377 ³⁴) Montana (HJ33 ³⁵) Nebraska (LR85, LR294 ³⁶) Utah (HB128 ³⁷) Wyoming (HB50 ³⁸)
Failed (1 state)
Indiana (SB580 ³⁹)
Indicates Intent to Create a State Exchange
Passed or Enacted (2 states)
North Dakota (HB1126) Virginia (HB2434)
Failed (2 states)
Arkansas (SB880, SB904, HB2104) Oklahoma (SB960)

Table 3. States Without Legislation regarding an ACA-Compliant State Exchange	
No Legislation Introduced (11 states)	
Delaware	Massachusetts ⁴¹
Florida	Ohio
Idaho	South Dakota
Kansas	Tennessee
Kentucky	Wisconsin
Louisiana ⁴⁰	

Governance of State Health Insurance Exchanges

The ACA gives states the option to administer the exchange either through an existing or new state agency, a quasi-governmental entity, or a non-profit organization. Of the 34 jurisdictions with legislation establishing exchanges, four states have bills that set up the exchange under the purview of an existing state agency. The majority of states (30) have legislation that would establish a new quasi-governmental entity with an independent governing board. Four states have legislation establishing their exchanges as a separate non-profit organization independent from state government. Several states have multiple bills with differing models for governance (see Table 4).

³² Illinois SB1555 passed both chambers on May 29, 2011 and was approved by the Governor on July 14, 2011.

³³ Maine LD1582 was passed on June 8, 2011 and was signed by the Governor July 6, 2011.

³⁴ Mississippi HB377 was approved by the Governor on April 26, 2011

³⁵ Montana HJ33 was passed by the legislature on April 29, 2011 and established an interim study committee.

³⁶ Nebraska LR85 and LR294 were referred on May 23, 2011.

³⁷ Utah HB128, which was signed into law on March 30, 2011, includes a number of insurance market changes along with a Health System Reform Task Force to evaluate options for bringing the state's existing exchange into ACA compliance.

³⁸ Wyoming HB50 was passed by the legislature and signed by the governor on March 10, 2011.

³⁹ Indiana SB580 was not passed prior to the end of the legislative session. However, Governor Daniels signed an Executive Order on January 3, 2011 instructing the development of the non-profit Indiana Insurance Market, Inc.

⁴⁰ The Jindal Administration announced on March 23, 2011 that Louisiana would not be pursuing establishment legislation of a state exchange, and would instead allow the federal government to operate an exchange in the state.

⁴¹ Massachusetts is currently developing legislation to bring the Commonwealth Connector, an exchange entity created prior to the passage of the ACA, into compliance with the ACA's state exchange requirements.

Table 4. Governance Model in State Exchange Legislation	
State Legislation Establishing an Exchange Operated by a State Agency (4 states)	
Iowa (SF391 ⁴²) Minnesota (HF1204)	North Dakota (HB1474) Vermont (HB202 ⁴³)*
State Legislation Establishing an Exchange as a Quasi-Governmental Entity (30 states)	
Alabama (HB401) Alaska (SB70) Arizona (SB1524, HB2666) Arkansas (HB2138) California (SB900)* Colorado (SB11-200)* Connecticut (SB1204, HB6323, SB921*) District of Columbia (B19-0002) Georgia (HB476) Illinois (SB1729, SB1313) Iowa (SF348) Maine (LD1497, LD1498) Maryland (HB166)* Michigan (SB693) Mississippi (HB1220)	Missouri (HB609) Montana (HB620, HB124) Nevada (SB440)* New Hampshire (SB163) New Jersey (S1288, S2553) New Mexico (SB38/370) New York (S05652, GPB#12R) Oklahoma (HB2130) Oregon (SB99)* Pennsylvania (HB627, SB940) Rhode Island (SB87) South Carolina (HB3738) Texas (SB1782, SB1510, SB1586, HB636) Washington (HB1740, SB5445*) West Virginia (SB408)*
State Legislation Establishing an Exchange as a Non-Profit Organization (4 states)	
Hawaii (SB1348, HB1201)* Minnesota (HF497)	New Jersey (S2597) North Carolina (HB126, HB115, SB418)

* passed or enacted

Conflict of Interest Standards for the Governing Boards of Independent Exchanges

If a state elects to create its exchange as a quasi-governmental agency or a non-profit organization, it must establish a governing body for the exchange. State legislation varies regarding the composition of these proposed governing boards as well as on eliminating or limiting conflicts of interest among board members by prohibiting certain conflicted parties (e.g., insurers and agents/brokers who would be directly affected by exchange decision-making).

Twenty-one states have bills prohibiting insurers, agents/brokers and/or other conflicted parties from service on the board. Eleven states have bills that require at least one board member be an insurer; nine of them also reserve a board position for an agent or broker. In eight states, legislation is silent on the issue; they do not require, but also do not prohibit, insurers or brokers from board membership (see Table 5).

⁴² Iowa SF391 directs the Commissioner of Insurance, at his or her discretion, to establish an exchange that is either operated by the insurance division of the Department of Commerce or is set up as a non-profit corporation.

⁴³ Vermont HB202 directs Green Mountain Care to be staffed and administered by the Vermont Department of Health Access. However, a newly-created Green Mountain Care Board will be charged with policy-setting for the program.

Table 5. Addressing Conflict of Interest on Exchange Governing Boards	
State Legislation That Prohibits Insurers or Agents/Brokers from Serving on the Exchange Board (21 states)	
Arizona (SB1524)	Montana (HB 124)
California (SB900)*	Nevada (SB440)*
Connecticut (SB1204, HB6323, SB921 ^{44*})	New Jersey (S2597, S2553, S1288 ⁴⁷)
District of Columbia (B19-0002)	New Mexico (SB38/370)
Georgia (HB476)	North Carolina (HB126, SB418)
Illinois (SB1729, ⁴⁵ SB1313 ⁴⁶)	Rhode Island (SB87)
Iowa (SF348)	South Carolina (HB3738)
Maine (LD1498)	Texas (SB1782)
Maryland (HB166)*	Vermont (HB202 ⁴⁸)*
Michigan (SB693)	Washington (SB5445 ⁴⁹)*
Minnesota (HF1204)	
State Legislation That Requires Insurers <i>and</i> Agents/Brokers to Serve on the Exchange Board (10 states)	
Alabama (HB 401)	Montana (HB620)
Arizona (HB2666)	New Hampshire (SB163)
Maine (LD1497)	North Dakota (HB1474)
Mississippi (HB1220)	Oklahoma (HB2130)
Missouri (HB609)	West Virginia (SB408 ⁵⁰)*
State Legislation That Requires Insurers but Not Brokers to Serve on the Exchange Board (2 states)	
Alaska (SB70)	North Carolina (HB115)
State Legislation That Permits, but Does Not Require, Insurers and/or Agents/Brokers to Serve on the Exchange Board (8 states)	
Arkansas (HB2138)	New York (S05652, GPB#12R)
Colorado (SB11-200)*	Oregon (SB99 ⁵¹)*
Hawaii (SB1348, HB1201)*	Pennsylvania (HB627, SB940)
Minnesota (HF497)	Texas (SB1510, SB1586, HB636)

* passed or enacted

⁴⁴ Connecticut SB921 originally included an insurer, but not an agent/broker, on the governing board. However, subsequent amendments added language prohibiting insurers, brokers, and other conflicted parties from board services.

⁴⁵ Illinois SB1729 prohibits insurers from board membership, but dedicates one slot for a licensed agent/broker.

⁴⁶ Illinois SB1313 prohibits insurers from the board but is silent regarding membership for agents/brokers.

⁴⁷ New Jersey S1288 prohibits insurers from the board but is silent regarding membership for agents/brokers.

⁴⁸ While not explicitly a governing board, the Green Mountain Care Board (Vermont HB202) prohibits board members from being an employee of or having any financial interest in an entity that will be regulated by the board/program.

⁴⁹ Washington SB5445 does not explicitly prohibit insurers or insurance agents or brokers from board membership; however, it states that board members may not have any conflicts of interest related to the work of the board.

⁵⁰ West Virginia SB408 requires that insurers form a committee to select a representative to serve on the board; however, the representative may not be employed by or have any financial relationship with any insurer.

⁵¹ Oregon SB99 permits up to two board members to be representatives of insurers, agents/brokers, providers, or associated trade associations.

Appendix. List of 2011 State Legislation on Health Insurance Exchanges
(Bill Number is hyperlink to copy of legislation)

State	Bill Number	Purpose	Sponsor	Status
Alabama	HB401	Establishment	Wren (R)	Failed
Alaska	SB70	Establishment	French (D)	Failed
Arizona	SB1524	Establishment	Sinema (D)	Failed
	HB2666	Establishment	McLain (R)	Failed
Arkansas	SB880	Intent	Malone (D)	Failed
	SB904	Intent	Malone (D)	Failed
	HB2104	Intent	Woods (R)	Failed
	HB2130	Establishment	Allen (D)	Withdrawn
California	SB900	Establishment	Alquist (D)	Enacted
	AB1602	Establishment	Perez (D)	Enacted
Colorado	SB11-200	Establishment	Boyd (D)	Enacted
Connecticut	SB921	Establishment	Joint Insurance and Real Estate Committee	Enacted
	SB1204	Establishment	Public Health Committee	Failed
	HB6323	Establishment	Joint Insurance and Real Estate Committee	Failed
District of Columbia	B19-0002	Establishment	Catania (I)	Pending
Georgia	HB476	Establishment	Smith (R)	Failed
Hawaii	SB1348	Establishment	Baker (D)	Enacted
Illinois	SB1555	Study Panel	Haine (D)	Enacted
	SB1729	Establishment	Koehler (D)	Pending
	SB1313	Establishment	Schoenberg (D)	Pending
	HB1577	Intent	Mautino (D)	Pending
Indiana	SB580	Study Panel	Simpson (D)	Failed
Iowa	SF348	Establishment	Hatch (D)	Failed
	SF391	Establishment	Rielly (D)	Failed
Maine	LD1497	Establishment	McKane (R)	Tabled
	LD1498	Establishment	Treat (D)	Tabled
	LD1582	Study Panel	Richardson (R)	Enacted
Maryland	HB166	Establishment	Governor O'Malley (D)	Enacted
Michigan	SB693	Establishment	Marleau (R)	Pending
Minnesota	HF497	Establishment	Gottwalt (R)	Failed
	HF1204	Establishment	Murphy (D)	Failed
Mississippi	HB377	Study Panel	Warren (D)	Enacted
	HB1220	Establishment	Robinson (D)	Failed
Missouri	HB609	Establishment	Molendorp (R)	Failed

State	Bill Number	Purpose	Sponsor	Status
Montana	HB124	Establishment	Hunter (D)	Failed
	HB620	Establishment	Berry (D)	Failed
	HJ33	Study Panel	MacLaren (R)	Passed
Nebraska	LR85	Study Panel	Pahls (NP)	Referred
	LR293	Study Panel	Campbell (R)	Referred
	LB240	Study Panel	Nordquist (NP)	Failed
Nevada	SB440	Establishment	Senate Committee on Finance	Enacted
New Hampshire	SB163	Establishment	White (R)	Tabled
New Jersey	SB2553	Establishment	Vitale (D)	Pending
	SB2597	Establishment	Gill (D)	Pending
	SB1288	Establishment	Van Drew (D)	Pending
New York	GPB#12	Establishment	Governor Cuomo (D)	Failed
	S05652	Establishment	Seward (R)	Failed
New Mexico	SB38/370	Establishment	Feldman (D)	Vetoed
North Carolina	HB115	Establishment	Dockham (R)	Pending
	HB126	Establishment	Insko (D)	Pending
	SB418	Establishment	McKissick (D)	Pending
North Dakota	HB1126	Intent	Keiser (R)	Enacted
	HB1474	Establishment	Legislative Management (Health Care Reform Review Committee)	Failed
Oklahoma	SB960	Intent	Brown (R)	Failed
	HB2130	Establishment	Steele (R)	Failed
Oregon	SB99	Establishment	Courtney (D)	Enacted
Pennsylvania	HB627	Establishment	DeLuca (D)	Pending
	SB940	Establishment	Stack (D)	Pending
Rhode Island	SB87	Establishment	Pativia-Weed (D)	Failed
South Carolina	HB3738	Establishment	Mitchell (D)	Failed
Texas	SB1782	Establishment	Ellis (D)	Failed
	HB636	Establishment	Zerwas (D)	Failed
	SB1510	Establishment	West (D)	Failed
	SB1586	Establishment	Ogden (R)	Failed
Utah	HB128	Study Panel	Dunnigan (R)	Enacted
Vermont	HB202	Establishment	Larsen (D)	Enacted
Virginia	HB2434	Intent	Kilgore (R)	Enacted
Washington	SB5445	Establishment	Keiser (D)	Enacted
West Virginia	SB408	Establishment	Minard (D)	Enacted
Wyoming	HB50	Study Panel	Committee on Labor	Enacted