16-191

JAMES C. KIRKPATRICK
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JASON KANDER
SECRETARY OF STATE
STATE OF MISSOURI

ELECTIONS DIVISION
(573) 751-2301

December 23, 2015

RECEIVED
DEC 23 2015
STATE AUDITORS OFFICE

The Honorable Nicole Galloway
State Auditor
State Capitol Building
Jefferson City, MO 65101

RE: Petition approval request from Bradley Ketcher regarding a proposed statutory amendment to Chapters 196 & 210, version 2 (2016-191)

Dear Auditor Galloway:

Enclosed please find an initiative petition sample sheet for a proposal to amend the Revised Statutes of Missouri filed by Bradley Ketcher on December 22, 2015.

We are referring the enclosed petition sample sheet to you for the purposes of preparing a fiscal note and fiscal note summary as required by Section 116.332, RSMo. Section 116.175.2, RSMo requires the state auditor to forward the fiscal note and fiscal note summary to the attorney general within twenty days of receipt of the petition sample sheet.

Thank you for your immediate consideration of this request.

Sincerely,

Jason Kander

Jason Kander

cc: Hon. Chris Koster
Sheri Hoffman
Barbara Wood

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County _____

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It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

**INITIATIVE PETITION**

To the Honorable Jason Kander, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or city of St. Louis), respectfully order that the following proposed law shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 8th day of November, 2016, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or city of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

RECEIVED
2015 DEC 22 AM 9:31
SEC. OF STATE

[Official Ballot title]

**CIRCULATOR'S AFFIDAVIT**

STATE OF MISSOURI, COUNTY OF _____

I, _____, being first duly sworn, say (print or type names of signers)

| NAME (Signature) | DATE SIGNED | REGISTERED VOTING ADDRESS (Number) (Street), (City, Town, or Village) | ZIP CODE | CONGR. DIST. | NAME (Printed or Typed) |
|---|---|---|---|---|---|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |
| 7. | | | | | |
| 8. | | | | | |
| 9. | | | | | |
| 10. | | | | | |

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County.

FURTHERMORE, I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT AND THAT I HAVE NEVER BEEN CONVICTED OF, FOUND GUILTY OF, OR PLED GUILTY TO ANY OFFENSE INVOLVING FORGERY.

I am at least 18 years of age. I do ____ do not ____ (check one) expect to be paid for circulating this petition.

If paid, list the payer:

_____.
(Name of payer)

_____
Signature of Affiant (Person obtaining signatures)

_____
Printed Name of Affiant

_____
Address of Affiant (Street, City, State & Zip Code)

Subscribed and sworn to before me this _____day of _____, A.D. 201_____.

Notary Public (Seal)

_____
Signature of Notary

_____
(Street, City, State & Zip Code)

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*Be it enacted by the people of the State of Missouri:*

Section 196.1131 is enacted and Sections 196.1003, 210.170, 210.171 and 210.172 of the Revised Statues of Missouri are amended to read as follows:

196.1131. 1. For the sole and exclusive purpose of providing funding for treatment and prevention of childhood cancer, on and after January 1, 2017, a tax equal to five cents before discounts and deals shall be levied and imposed upon the sale of each package of twenty cigarettes, or lesser portion thereof. The tax imposed by this section shall be in addition to other taxes imposed by law on the sale of cigarette packages and shall be collected in the same manner and at the same time as the taxes imposed by law upon the sale of packages of cigarettes.

2. The Childhood Cancer Treatment and Prevention Fund is hereby created within the state treasury which shall consist of funds from the taxes established in subsection 1 of this section, appropriated moneys, gifts, contributions, grants, or bequests.

3. Beginning January 1, 2017, the state treasurer without legislative action shall credit to and place in the Childhood Cancer Treatment and Prevention Fund all moneys collected as a result of the tax imposed by subsection 1 of this section as said moneys are received. All of the moneys from the tax imposed by this section shall be kept separate from the general revenue fund as well as any other funds or accounts in the state treasury and shall be credited to and placed only in the Childhood Cancer Treatment and Prevention Fund and the accounts created within the Childhood Cancer Treatment and Prevention Fund. Any moneys credited to and placed in the Childhood Cancer Treatment and Prevention Fund and any account created by this section shall be appropriated and used only for a purpose authorized by this section and shall not be subject to the provisions of section 33.080, RSMo. The unexpended balances of such moneys shall remain in the Childhood Cancer Treatment and Prevention Fund and in the particular account in which the moneys are placed, and such balances shall not revert to the general revenue fund. All interest which accrues upon the moneys in any account within the Childhood Cancer Treatment and Prevention Fund shall be added to such account and shall not be credited to the general revenue fund. Except as otherwise provided in this section, generally applicable laws concerning use of public funds shall apply to the Childhood Cancer Treatment and Prevention Fund.

4. The Children's Trust Fund Board shall administer the fund. The fund shall be used exclusively for the treatment and prevention of childhood cancers, including through grants and contracts with the Childrens Health Insurance Program, other state agencies, political subdivisions and health care services providers.

5. No funding from the Childhood Cancer Treatment and Prevention Fund shall be used to fund abortion or any similar procedures. No funding from the Childhood Cancer Treatment and Prevention Fund shall be used to pay for research which is banned by Missouri law.

6. (1) The actual costs of collecting the tax imposed by this section shall be paid from the moneys in the Childhood Cancer Treatment and Prevention Fund as may be provided by law, not to exceed five percent of the total moneys collected;

(2) The department of revenue shall refund moneys overpaid or erroneously paid pursuant to this section as may be provided by law; and

(3) On a fiscal year basis, the director of the department of revenue shall determine by estimate whether the tax imposed by this section has caused a reduction in the amount of moneys collected and deposited into the fair share fund, the health initiatives fund, or the state school moneys fund pursuant to chapter 149, RSMo. If an estimated reduction in the amount of moneys collected and deposited into any of those funds pursuant to chapter 149, RSMo has been caused by the tax imposed by this section, an amount equal to the estimated amount of moneys that were not collected and deposited into that fund or funds because of the tax imposed by this section shall be transferred from the Childhood Cancer Treatment and Prevention Fund to the appropriate fund or funds. The aggregate amount transferred to the fair share fund, the health initiatives fund, and the state school moneys fund from the Childhood Cancer Treatment and Prevention Fund for any fiscal year shall not exceed three percent of the total moneys collected pursuant to this section during that same fiscal year.

7. The state auditor shall perform an annual audit of the funds and initiatives undertaken pursuant to this section, which shall include an evaluation of whether pre-existing funding for programs or initiatives has been reduced because of the new funding for such purposes provided through the Childhood Cancer Treatment and Prevention Fund or any of its accounts. Such audit shall be performed on a fiscal year basis. The state auditor shall make copies of each audit available to the public. Every three years the state auditor shall prepare a comprehensive report assessing the

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work and progress of initiatives undertaken pursuant to this section. Such assessment report shall analyze the impact of the programs, grants, and contracts performed, shall be provided to the governor and the general assembly, and shall be available to the public.

8. The tax imposed by this section shall be imposed on all cigarettes in the possession or under the control of any dealer or distributor on and after 12:01 a.m. on January 1, 2017, as determined by department of revenue rule. The initiatives and programs authorized under this section shall be implemented as soon as reasonably practicable, but at least by July 1, 2017.

9. The additional revenue provided by the provisions of this section shall not be part of the "total state revenue" within the meaning of article X of the constitution. The expenditure of this additional revenue shall not be an "expense of state government" under article X of the constitution.

10. The net proceeds from the tax imposed by this section shall constitute new and additional funding for the initiatives and programs described in this section and shall not be used to replace existing funding as of July 1, 2016 for the same or similar initiatives and programs.

11. All of the provisions of this section shall be self-enforcing. All of the provisions of this section are severable. If any provision of this section is found by a court of competent jurisdiction to be unconstitutional or unconstitutionally enacted, the remaining provisions of this section shall be and remain valid.

196.1003. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)

| | |
|---|---|
| 1999: | $.0094241 per unit sold after the date of enactment of this Act; |
| 2000: | $.0104712 per unit sold; |
| for each of 2001 and 2002: | $.0136125 per unit sold; |
| for each of 2003 through 2006: | $.0167539 per unit sold; |
| for each of 2007 and each year thereafter: | $.0188482 per unit sold. |

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the [State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)] Master Settlement Agreement payments, as determined under section IX(i) of that agreement, including after final determination of all adjustments such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the State's general revenue fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. Any tobacco product manufacturer that violates the provisions of this section shall pay the State's cost and attorney's fees incurred during a successful prosecution under this section.

210.170. 1. There is hereby created within the office of administration of the state of Missouri the "Children's Trust Fund Board", which shall be composed of twenty-one members as follows:

(1) Twelve public members to be appointed by the governor by and with the advice and consent of the senate. As a group, the public members appointed pursuant to this subdivision shall demonstrate knowledge in the areas of prevention programs and children's health care, shall be representative of the demographic composition of this state, and, to the extent practicable, shall be representative of all of the following categories:

(a) Organized labor;

(b) The business community;

(c) The educational community;

(d) The religious community;

(e) The legal community;

(f) Professional providers of prevention services to families and children;

(g) Volunteers in prevention services;

(h) Social services;

(i) Health care services; and

(j) Mental health services;

(2) A physician licensed pursuant to chapter 334;

(3) Two members of the Missouri house of representatives, who shall be appointed by the speaker of the house of representatives and shall be members of two different political parties;

(4) Two members of the Missouri senate, who shall be appointed by the president pro tem of the senate and who shall be members of two different political parties; and

(5) Four members chosen and appointed by the governor.

2. All members of the board appointed by the speaker of the house or the president pro tem of the senate shall serve until their term in the house or senate during which they were appointed to the board expires. All public members of the board shall serve for terms of three years; except, that of the public members first appointed, four shall serve for terms of three years, four shall

serve for terms of two years, and three shall serve for terms of one year. No public members may serve more than two consecutive terms, regardless of whether such terms were full or partial terms. Each member shall serve until his successor is appointed. All vacancies on the board shall be filled for the balance of the unexpired term in the same manner in which the board membership which is vacant was originally filled.

3. Any public member of the board may be removed by the governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

4. The board may employ an executive director who shall be charged with carrying out the duties and responsibilities assigned to him or her by the board. The executive director may obtain all necessary office space, facilities, and equipment, and may hire and set the compensation of such staff as is approved by the board and within the limitations of appropriations for the purpose. All staff members, except the executive director, shall be employed pursuant to chapter 36.

5. Each member of the board may be reimbursed for all actual and necessary expenses incurred by the member in the performance of his or her official duties. All reimbursements made pursuant to this subsection shall be made from funds in the children's trust fund or the Childhood Cancer Treatment and Prevention Fund appropriated for that purpose.

6. All business transactions of the board shall be conducted in public meetings in accordance with sections 610.010 to 610.030.

7. The board may accept federal funds for the purposes of sections 210.170 to 210.173 and section 143.1000 as well as gifts and donations from individuals, private organizations, and foundations. The acceptance and use of federal funds shall not commit any state funds nor place any obligation upon the general assembly to continue the programs or activities for which the federal funds are made available. All funds received in the manner described in this subsection shall be transmitted to the state treasurer for deposit in the state treasury to the credit of the children's trust fund or the Childhood Cancer Treatment and Prevention Fund, as appropriate.

8. The board shall elect a chairperson from among the public members, who shall serve for a term of two years. The board may elect such other officers and establish such committees as it deems appropriate.

9. The board shall exercise its powers and duties independently of the office of administration except that budgetary, procurement, accounting, and other related management functions shall be performed by the office of administration.

210.171. As used in sections 210.170 to 210.173 and section 143.1000, the following terms shall mean:

(1) "Board", the children's trust fund board created in section 210.170;

(2) "Prevention program", any community-based educational or service program designed to prevent or alleviate child abuse or neglect.

(3) "Childhood cancer treatment and prevention," the treatment and prevention of childhood cancer.

210.172. The board shall have the following powers and duties:

(1) To meet not less than twice annually at the call of the chairperson to conduct its official business;

(2) To require that at least eight of the board members authorize the disbursement of funds from the children's trust fund;

(3) To, one year after the appointment of the original board and annually thereafter, develop a state plan for the distribution and disbursement of funds in the children's trust fund. The plan developed under this subdivision shall assure that an equal opportunity exists for the establishment of prevention programs and the receipt of moneys from the children's trust fund in all geographic areas of this state. Such plan shall be transmitted to the governor, the president pro tem of the senate, the speaker of the Missouri house of representatives, and the appropriation committees of the Missouri senate and Missouri house of representatives, and shall be made available to the general public. In carrying out a plan developed under this subdivision, the board shall establish procedures to:

(a) Enter into contracts with public or private agencies, schools, or qualified individuals to establish community-based educational and service prevention programs with or without using the procurement procedures of the office of administration. Such prevention programs shall focus on the prevention of child abuse and neglect. Community-based service prevention programs shall include programs such as crisis care, parent aides, counseling, and support groups. Participation by individuals in any community-based educational or service prevention program shall be strictly voluntary. In awarding contracts under this paragraph, consideration shall be given by the board to factors such as need, geographic location diversity, coordination with or improvement of existing services, and extensive use of volunteers;

(b) Develop and publicize criteria for the awarding of contracts for programs to be supported with money from the children's trust fund within the limits of appropriations made for that purpose;

(c) Review and monitor expenditures of moneys from the children's trust fund on a periodic basis;

(d) Consult with applicable state agencies, commissions, and boards to help determine probable effectiveness, fiscal soundness, and need for proposed community-based educational and service prevention programs;

(e) Facilitate information exchange between groups concerned with prevention programs;

(f) Provide for statewide educational and public informational conferences and workshops for the purpose of developing appropriate public awareness regarding the problems of families and children, of encouraging professional persons and groups to recognize and deal with problems of families and children, of making information regarding the problems of families and children and their prevention available to the general public in order to encourage citizens to become involved in the prevention of such problems, and of encouraging the development of community prevention programs; and

(g) Establish a procedure for an annual internal evaluation of the functions, responsibilities, and performance of the board, which evaluation shall be coordinated with the annual state plan of the board.

(h) Using only monies appropriated from the Childhood Cancer Treatment and Prevention Fund and not from the Children's Trust Fund, carry out grants and contracts for childhood cancer treatment and prevention consistent with section 196.1131, RSMo. The Board and its staff may consult with other public entities in carry out its childhood cancer treatment and prevention responsibilities.