

HOUSE BILL NO. 481

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CROWELL, BEARDEN, RUPP, MOORE, ERVIN, LIPKE (157), SMITH (14), MUCKLER, DIXON, VIEBROCK (Co-sponsors), WILSON (119), CUNNINGHAM (145), PEARCE, VILLA, SUTHERLAND, BEHNEN, PORTWOOD, ROARK, ENGLER, REINHART, QUINN, BIVINS, ICET, PHILLIPS, SCHAAF, RICHARD, COOPER (155), CRAWFORD, STEVENSON, MORRIS, WOOD, SPRENG, SANDER, MYERS, RECTOR, WILSON (130), SCHNEIDER AND BAKER.

Read 1st time February 17, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0977L.02I

AN ACT

To amend chapter 33, RSMo, by adding thereto one new section relating to public funds.

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

Section A. Chapter 33, RSMo, is amended by adding thereto one new section, to be known as section 33.900, to read as follows:

33.900. 1. As used in this section, the following terms shall mean:

- (1) "Abortion services", include performing, inducing or assisting with abortions as defined in section 188.015, RSMo, or encouraging patients to have abortions, or referring patients for abortions, not necessary to save the life of the mother, or development of drugs, chemicals or devices intended to be used to induce an abortion;**
- (2) "Child", a human being recognized as a minor pursuant to the laws of this state, including, if in vivo, an unborn child as defined in section 188.015, RSMo, and if in vitro, a human being at any of the stages of biological development of an unborn child from conception or inception onward;**
- (3) "Conception", the same meaning as such term is defined in section 188.015, RSMo;**
- (4) "Facilities and administrative costs", those costs that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular research project or any other institutional activity;**
- (5) "Health and social services program", any activity, program or the furnishing of services for the purpose of preventing, supporting, alleviating, ameliorating, treating, curing or healing any human physical condition, illness, injury or disability, or to**

18 safeguard the health of people and ensure the prevention of any type of physical condition,
19 disease, infection or injury, the promotion of specific lifestyle, hygiene and sanitary
20 conditions, or to assist persons to provide for themselves and others and to assist those
21 experiencing any social or physical condition or disadvantage, and including the furnishing
22 of any sort of physical, health, medical or dental assessment, care, counseling, education
23 or treatment, whether to individuals or groups of individuals; except that, health and social
24 services program shall not include a research project;

25 (6) "Human cloning", the creation of a human being by any means other than by
26 the fertilization of an oocyte of a human female by a sperm of a human male;

27 (7) "Independent affiliate", an entity that provides abortion services that is
28 affiliated with an entity that does not provide abortion services, is separately incorporated
29 from the entity that does not provide abortion services, does not receive or share a direct
30 or indirect economic or marketing benefit from such affiliation with the entity that does
31 not provide abortion services, and does not share any of the following with the entity that
32 does not provide abortion services, regardless of whether reimbursement is made for any
33 expenditures associated with sharing the following:

34 (a) The same name or similar names;

35 (b) Medical or nonmedical facilities, including but not limited to business offices,
36 laboratories, treatment, consultation, examination and waiting rooms;

37 (c) Expenses;

38 (d) Employee wages or salaries; or

39 (e) Equipment or supplies, including but not limited to computers, telephone
40 systems, telecommunications equipment, and office and medical supplies;

41 (8) "Nondirective pregnancy counseling", counseling related to pregnancy that
42 does not include abortion services, but may include providing patients with information
43 regarding providers of health care and social service programs that provide pregnancy,
44 prenatal, delivery, infant care, foster care, adoption, and alternatives to abortion services.
45 Such information may categorize the providers by the service or services they provide;

46 (9) "Prohibited human research", research in a research project in which there is
47 the taking or utilization of the organs, tissue or cellular material of:

48 (a) A deceased child, unless consent is given by the parents in the manner provided
49 in sections 194.210 to 194.290, RSMo, relating to anatomical gifts, and neither parent
50 caused the death of such child or consented to another person causing the death of such
51 child;

52 (b) A living child, when the intended or likely result of such taking or utilization
53 is to kill or cause harm to the health, safety or welfare of such child, or when the purpose

54 is to target such child for possible destruction in the future;

55 (10) "Public funds", shall include:

56 (a) Any funds received or controlled by the state of Missouri or any official,
57 department, division, agency or political subdivision thereof, including but not limited to
58 funds derived from federal, state or local taxes, gifts or grants from any source, settlements
59 of any claims or causes of action, public or private, bond proceeds, federal grants or
60 payments, or intergovernmental transfers;

61 (b) Any funds received or controlled by any official, department, division or agency
62 of state government or political subdivision thereof, or to any other person or entity,
63 pursuant to appropriation by the general assembly or the governing body of any political
64 subdivision of this state;

65 (11) "Research project", research proposed to be funded by an award of public
66 funds conducted under the auspices of the entity or entities that applied for and received
67 such award, regardless of whether the research is funded in whole or part by such award.
68 Such research shall include basic research, including the discovery of new knowledge,
69 translational research including translating knowledge into a usable form, and
70 developmental research and clinical research including but not limited to health research
71 in human development and aging, cancer, endocrine, cardiovascular, neurological,
72 pulmonary and infectious disease.

73 2. Public funds shall not be expended, paid or granted to or on behalf of an existing
74 or proposed health and social services program to directly or indirectly subsidize abortion
75 services. To ensure that support is not lent in any manner to abortion services, and to
76 ensure that an entity that provides abortion services does not receive a direct or indirect
77 economic or marketing benefit from public funds expended in connection with any health
78 and social services program:

79 (1) Public funds shall not be expended, paid or granted in connection with any
80 health and social services program to an entity that provides abortion services;

81 (2) An entity that does not provide abortion services may receive public funds in
82 connection with any health and social services program if affiliated with an entity that
83 provides abortion services, only if the affiliated entity that provides abortion services is an
84 independent affiliate;

85 (3) An entity that provides counseling to pregnant persons in connection with a
86 health and social services program receiving public funds shall only provide nondirective
87 pregnancy counseling unless otherwise required pursuant to subsection 3 of this section;

88 (4) An entity that receives public funds in connection with any health and social
89 services program shall not display or distribute marketing materials promoting abortion

90 services;

91 (5) An entity that receives public funds in connection with any health and social
92 services program shall maintain financial records that demonstrate strict compliance with
93 this subsection;

94 (6) An independent audit of any entity that receives public funds in connection with
95 any health and social services program shall be conducted at least once every three years,
96 or sooner if required by any other provision of law or if directed by the governmental
97 entity expending, paying or granting the public funds, to ensure compliance with this
98 subsection. If the recipient of the public funds is an affiliate of an entity that provides
99 abortion services, an independent audit to ensure compliance with this subsection shall be
100 conducted at least annually. The audit shall be conducted by the state auditor if allowed
101 by law, or by either an independent auditing firm retained by the governmental entity
102 expending, paying or granting the public funds or by an independent auditing firm
103 approved by the governmental entity expending, paying or granting the public funds and
104 retained by the entity receiving public funds.

105 3. Notwithstanding the provisions of subsection 2 of this section, any entity:

106 (1) Eligible to receive reimbursements pursuant to Title XIX of the federal Social
107 Security Act (42 U.S.C. Section 1396, et seq.) may be reimbursed for services it has
108 performed, for which the payment to such entity is otherwise prohibited pursuant to
109 subsection 2 of this section, if reimbursement for such services is required pursuant to the
110 federal act and the refusal to reimburse for such required services will result in the
111 withholding of federal Medicaid funds to the state of Missouri. No state Medicaid plan
112 shall be adopted by the state or submitted to the federal government that includes services
113 that violate the provisions of subsection 2 of this section and are not mandated for state
114 Medicaid plans by the federal Medicaid law, Title XIX of the Social Security Act, as
115 amended;

116 (2) Receiving federal funds pursuant to Title X of the federal Public Health Services
117 Act may perform services which are required pursuant to the federal act, but otherwise
118 prohibited pursuant to subsection 2 of this section if:

119 (a) Specifically directed by the United States Secretary of Health and Human
120 Services to perform such services by written order directed to the organization; and

121 (b) Such order is final and no longer subject to appeal; and

122 (c) The refusal to perform such required services will result in the withholding of
123 federal funds to said organization.

124

125 Federal statutory or regulatory provisions or guidelines of general application shall not

126 constitute such written order as described herein.

127 **4. Restrictions of specific applicability contained in the statutory laws of this state**
128 **regarding the use of public funds for abortion services shall take precedence over the**
129 **restrictions of general applicability contained in subsection 2 of this section and sections**
130 **188.200 to 188.220, RSMo.**

131 **5. Public funds shall not be expended, paid, or granted to or on behalf of an existing**
132 **or proposed research project that involves abortion services, human cloning, or prohibited**
133 **human research. A research project that receives an award of public funds shall not share**
134 **costs with another research project, person, or entity not eligible to receive public funds**
135 **pursuant to this subsection; provided that a research project that receives an award of**
136 **public funds may pay a pro rata share of facilities and administrative costs, determined in**
137 **the award of public funds, according to standards which ensure that public funds do not**
138 **in any way subsidize facilities and administrative costs of other research projects, persons,**
139 **or entities not eligible to receive public funds pursuant to this subsection. The application**
140 **for an award of public funds shall set forth the proposed rates of pro rata cost**
141 **reimbursement and shall provide supporting data and rationale for such rates. All**
142 **applicants for and recipients of awards of public funds shall comply with the cost**
143 **accounting principles set forth in Part 9905 of Title 48 of the Code of Federal Regulations,**
144 **or successor regulations, in connection with the application for and administration of the**
145 **research project. All moneys derived from an award of public funds shall be expended**
146 **only by checks, drafts, or electronic transfers using a separate accounting process**
147 **maintained for each research project. No moneys derived from an award of public funds**
148 **shall be used to cover costs for any other research project or to any other person or entity.**
149 **No moneys derived from an award of public funds shall be passed through to any other**
150 **research project, person, or entity unless included in the original application for the award**
151 **of public funds or in subsequent amendments or requests to use separate subcontractors.**
152 **A research project that receives an award of public funds shall maintain financial records**
153 **that demonstrate strict compliance with this subsection. Any audit conducted pursuant**
154 **to the provisions of any grant or contract awarding public funds shall also certify whether**
155 **there is compliance with this subsection and shall note any noncompliance as a material**
156 **audit finding.**

157 **6. The provisions of this section shall inure to the benefit of all residents of this**
158 **state. Any taxpayer of this state or its political subdivisions shall have standing to bring**
159 **suit in any circuit court with competent jurisdiction against the state of Missouri or any**
160 **official, department, division, agency or political subdivision of the state, and any recipient**
161 **of public funds who is in violation of this section.**

162 **7. This section shall not be construed to permit or make lawful any conduct that**
163 **is otherwise unlawful pursuant to the laws of this state.**

164 **8. Any provision of this section is not severable from any appropriation subject to**
165 **this section or any appropriation declared by any court to be subject to this section. If any**
166 **provision of this section is found to be invalid, unenforceable or unconstitutional, any**
167 **appropriation subject to this section or any appropriation declared by any court to be**
168 **subject to this section shall be void, invalid and unenforceable.**