

FIRST REGULAR SESSION

[PERFECTED]

HOUSE SUBSTITUTE FOR

HOUSE BILL NO. 481

92ND GENERAL ASSEMBLY

Taken up for Perfection April 23, 2003.

House Substitute for House Bill No. 481 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

0977L.05P

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
2 known as section 33.900, to read as follows:

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

2 **(1) "Abortion services", include performing, inducing or assisting with abortions**
3 **as defined in section 188.015, RSMo, or encouraging patients to have abortions, or**
4 **referring patients for abortions, not necessary to save the life of the mother, or**
5 **development of drugs, chemicals or devices intended to be used to induce an abortion;**

6 **(2) "Child", a human being recognized as a minor pursuant to the laws of this state,**
7 **including, if in vivo, an unborn child as defined in section 188.015, RSMo, and if in vitro,**
8 **a human being at any of the stages of biological development of an unborn child from**
9 **conception or inception onward;**

10 **(3) "Conception", the same meaning as such term is defined in section 188.015,**
11 **RSMo;**

12 **(4) "Facilities and administrative costs", those costs that are incurred for common**
13 **or joint objectives and therefore cannot be identified readily and specifically with a**
14 **particular research project or any other institutional activity;**

15 **(5) "Health and social services program", any activity, program or the furnishing**
16 **of services for the purpose of preventing, supporting, alleviating, ameliorating, treating,**

17 curing or healing any human condition, illness, injury or disability, or to safeguard the
18 health of people and ensure the prevention of any type of disease, infection or injury, the
19 promotion of specific lifestyle, hygiene and sanitary conditions, or to assist persons to
20 provide for themselves and others and to assist those experiencing any social or physical
21 condition or disadvantage, and including the furnishing of any sort of physical, health,
22 medical or dental assessment, care, counseling, education or treatment, whether to
23 individuals or groups of individuals; except that, health and social services program shall
24 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, or otherwise providing
44 information required by federal law;

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

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

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

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

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

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

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

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

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

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

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

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

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

89 services;

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

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

100 (a) The state auditor if allowed by law; or

101 (b) An independent auditing firm retained by the governmental entity expending,
102 paying or granting the public funds; or

103 (c) An independent auditing firm approved by the governmental entity expending,
104 paying or granting the public funds and 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 for 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.**