

FIRST EXTRAORDINARY SESSION

HOUSE BILL NO. 4

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HARRIS (110) (Sponsor), SCHOEMEHL, HENKE, BURNETT, DOUGHERTY, LIESE, MEINERS, WALSH, KUESSNER, BRINGER, CASEY, GEORGE, MEADOWS, SELBY AND YAEGER (Co-sponsors).

Read 1st time September 6, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2507L.01I

AN ACT

To repeal section 188.080, RSMo, and to enact in lieu thereof eight new sections relating to abortion regulations and services for minors, with penalty provisions and an emergency clause.

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

Section A. Section 188.080, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 33.900, 135.630, 188.031, 188.080, 188.250, 188.325, 188.335, and 188.345, to read as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) "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 condition, illness, injury or disability, or to safeguard the health of people and ensure the prevention of any type of disease, infection or injury, the promotion of specific lifestyle, hygiene and sanitary conditions, or to assist persons to provide for themselves and others and to assist those experiencing any social or physical condition or disadvantage, and including the furnishing of any sort of physical, health,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 medical or dental assessment, care, counseling, education or treatment, whether to
14 individuals or groups of individuals; except that, health and social services programs shall
15 not include a research project;

16 (3) "Independent affiliate", an entity that provides abortion services that is
17 affiliated with an entity that does not provide abortion services, is separately incorporated
18 from the entity that does not provide abortion services, does not receive or share a direct
19 or indirect economic or marketing benefit from such affiliation with the entity that does
20 not provide abortion services, and does not share any of the following with the entity that
21 does not provide abortion services, regardless of whether reimbursement is made for any
22 expenditures associated with sharing the following:

23 (a) The same name or similar names;

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

26 (c) Expenses;

27 (d) Employee wages or salaries; or

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

30 (4) "Nondirective pregnancy counseling", counseling related to pregnancy that
31 does not include abortion services, but may include providing patients with information
32 regarding providers of health care and social service programs, or otherwise providing
33 information required by federal law;

34 (5) "Public funds", shall include:

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

40 (b) Any funds received or controlled by any official, department, division or agency
41 of state government or political subdivision thereof, or granted or distributed to any other
42 person or entity, pursuant to appropriation by the general assembly or the governing body
43 of any political subdivision of this state.

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

49 and social services program:

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

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

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

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

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

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

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

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

75 (c) An independent auditing firm approved by the governmental entity expending,
76 paying or granting the public funds and retained by the entity receiving public funds.

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

78 (1) Eligible to receive reimbursements pursuant to Title XIX of the federal Social
79 Security Act (42 U.S.C. Section 1396, et seq.) may be reimbursed for services it has
80 performed, for which the payment to such entity is otherwise prohibited pursuant to
81 subsection 2 of this section, if reimbursement for such services is required pursuant to the
82 federal act and the refusal to reimburse for such required services will result in the
83 withholding of federal Medicaid funds to the state of Missouri. No state Medicaid plan
84 shall be adopted by the state or submitted to the federal government that includes services

85 that violate the provisions of subsection 2 of this section and are not mandated for state
86 Medicaid plans by the federal Medicaid law, Title XIX of the Social Security Act, as
87 amended;

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

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

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

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

96

97 Federal statutory or regulatory provisions or guidelines of general application shall not
98 constitute such written order as described herein.

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

2 (1) "Contribution", a donation of cash, stock, bonds or other marketable securities,
3 or real property;

4 (2) "Director", the director of the department of social services;

5 (3) "Pregnancy resource center", a nonresidential facility located in this state:

6 (a) Established and operating primarily to provide assistance to women with crisis
7 pregnancies or unplanned pregnancies by offering pregnancy testing, counseling,
8 emotional and material support, and other similar services to encourage and assist such
9 women in carrying their pregnancies to term; and

10 (b) Where childbirths are not performed; and

11 (c) Which does not perform or refer for abortions and which does not hold itself
12 out as performing or referring for abortions; and

13 (d) Which provides direct client services at the facility, as opposed to merely
14 providing counseling or referral services by telephone; and

15 (e) Which provides its services at no cost to its clients; and

16 (f) Which is exempt from income taxation pursuant to the United States Internal
17 Revenue Code;

18 (4) "State tax liability", in the case of a business taxpayer, any liability incurred by
19 such taxpayer pursuant to the provisions of chapters 143, 147, 148, and 153, RSMo,
20 excluding sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an
21 individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of
22 chapter 143, RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions;

23 (5) "Taxpayer", a person, firm, a partner in a firm, corporation or a shareholder
24 in an S corporation doing business in the state of Missouri and subject to the state income
25 tax imposed by the provisions of chapter 143, RSMo, or a corporation subject to the annual
26 corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance
27 company paying an annual tax on its gross premium receipts in this state, or other
28 financial institution paying taxes to the state of Missouri or any political subdivision of this
29 state pursuant to the provisions of chapter 148, RSMo, or an express company which pays
30 an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or an
31 individual subject to the state income tax imposed by the provisions of chapter 143, RSMo.

32 2. A taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax
33 liability, in an amount equal to fifty percent of the amount such taxpayer contributed to
34 a pregnancy resource center.

35 3. The amount of the tax credit claimed shall not exceed the amount of the
36 taxpayer's state tax liability for the taxable year that the credit is claimed, and such
37 taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand dollars per
38 taxable year. However, any tax credit that cannot be claimed in the taxable year the
39 contribution was made may be carried over to the next four succeeding taxable years until
40 the full credit has been claimed.

41 4. Except for any excess credit which is carried over pursuant to subsection 3 of this
42 section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such
43 taxpayer's contribution or contributions to a pregnancy resource center or centers in such
44 taxpayer's taxable year has a value of at least one hundred dollars.

45 5. The director shall determine, at least annually, which facilities in this state may
46 be classified as pregnancy resource centers. The director may require of a facility seeking
47 to be classified as a pregnancy resource center whatever information which is reasonably
48 necessary to make such a determination. The director shall classify a facility as a
49 pregnancy resource center if such facility meets the definition set forth in subsection 1 of
50 this section.

51 6. The director shall establish a procedure by which a taxpayer can determine if
52 a facility has been classified as a pregnancy resource center. Pregnancy resource centers
53 shall be permitted to decline a contribution from a taxpayer. The cumulative amount of
54 tax credits which may be claimed by all the taxpayers contributing to pregnancy resource
55 centers in any one fiscal year shall not exceed two million dollars. Tax credits shall be
56 issued in the order contributions are received.

57 7. The director shall establish a procedure by which, from the beginning of the
58 fiscal year until some point in time later in the fiscal year to be determined by the director,

59 the cumulative amount of tax credits are equally apportioned among all facilities classified
60 as pregnancy resource centers. If a pregnancy resource center fails to use all, or some
61 percentage to be determined by the director, of its apportioned tax credits during this
62 predetermined period of time, the director may reapportion these unused tax credits to
63 those pregnancy resource centers that have used all, or some percentage to be determined
64 by the director, of their apportioned tax credits during this predetermined period of time.
65 The director may establish more than one period of time and reapportion more than once
66 during each fiscal year. To the maximum extent possible, the director shall establish the
67 procedure described in this subsection in such a manner as to ensure that taxpayers can
68 claim all the tax credits possible up to the cumulative amount of tax credits available for
69 the fiscal year.

70 8. Taxpayers shall only be permitted to redeem the tax credits authorized under
71 this section if the director of revenue has reallocated other state tax credits to this section.
72 The director shall reallocate such other state tax credits if by law such credits are limited
73 to a maximum amount during a specified time period and such amount has not been fully
74 redeemed or is not reasonably expected to be fully redeemed.

75 9. This section shall apply to all tax years ending on or after December 31, 2008.

188.031. For purposes of section 188.028 "next friend" shall not include another
2 minor child, or any entity or person in an individual or representative capacity that has a
3 financial interest or potential gain from the proposed abortion, or any employee of or
4 volunteer for such entity or person.

188.080. Notwithstanding any other penalty provision in this chapter, any person who
2 is not a licensed physician as defined in section 188.015 who performs **or induces** or attempts
3 to perform **or induce** an abortion on another as defined in subdivision (1) of section 188.015,
4 is guilty of a [class B felony] **class A misdemeanor**, and, upon conviction, shall be punished as
5 provided by law. Any physician performing **or inducing** an abortion who does not have
6 [surgical] **clinical** privileges at a hospital which offers obstetrical or gynecological care **located**
7 **within thirty miles of the location at which the abortion is performed or induced** shall be
8 guilty of a [class B felony] **class A misdemeanor**, and, upon conviction, shall be punished as
9 provided by law.

188.250. 1. No person shall intentionally cause, aid, or assist a minor to obtain an
2 abortion without the consent or consents, or judicial decree, required by section 188.028,
3 RSMo.

4 2. A person who violates subsection 1 of this section shall be civilly liable to the
5 minor and to the person or persons required to give the consent or consents pursuant to
6 section 188.028. A court may award damages to the person or persons adversely affected

7 by a violation of subsection 1 of this section, including compensation for emotional injury
8 without the need for personal presence at the act or event, and the court may further
9 award attorneys' fees, litigation costs, and punitive damages. Any adult who engages in
10 or consents to another person engaging in a sex act with a minor in violation of the
11 provisions of chapter 566, 567, 568, or 573, RSMo, which results in the minor's pregnancy
12 shall not be awarded damages pursuant to this section.

13 3. It shall not be a defense to a claim brought pursuant to this section that the
14 abortion was performed or induced pursuant to consent to the abortion given in a manner
15 that is otherwise lawful in the state or place where the abortion was performed or induced.

16 4. An unemancipated minor does not have capacity to consent to any action in
17 violation of this section or section 188.028.

18 5. A court may enjoin conduct that would be in violation of this section upon
19 petition by the attorney general, a prosecuting or circuit attorney, or any person adversely
20 affected or who reasonably may be adversely affected by such conduct, upon a showing
21 that such conduct:

22 (1) Is reasonably anticipated to occur in the future; or

23 (2) Has occurred in the past, whether with the same minor or others, and that it is
24 not unreasonable to expect that such conduct will be repeated.

188.325. 1. There is hereby established the "Missouri Alternatives to Abortion
2 Services Program" which shall be administered by a state agency or agencies, as designated
3 by appropriations to such or each agency. The alternatives to abortion services program
4 shall consist of services or counseling to pregnant women and continuing for one year after
5 birth to assist women in carrying their unborn children to term instead of having
6 abortions, and to assist women in caring for their dependent children or placing their
7 children for adoption.

8 2. Services provided under the alternatives to abortion program shall include, but
9 not be limited to the following:

10 (1) Prenatal care;

11 (2) Medical and mental health care;

12 (3) Parenting skills;

13 (4) Drug and alcohol testing and treatment;

14 (5) Child care, and newborn and infant care;

15 (6) Housing and utilities;

16 (7) Educational services;

17 (8) Food, clothing, and supplies relating to pregnancy, newborn care, and
18 parenting;

- 19 **(9) Adoption assistance;**
- 20 **(10) Job training and placement;**
- 21 **(11) Establishing and promoting responsible paternity;**
- 22 **(12) Ultrasound services;**
- 23 **(13) Case management;**
- 24 **(14) Domestic abuse protection; and**
- 25 **(15) Transportation.**

26 **3. Actual provision and delivery of services and counseling shall be dependent on**
27 **client needs and not otherwise prioritized by the agency or agencies administering the**
28 **program. Services and counseling shall be available only during pregnancy and continuing**
29 **for one year after birth, and shall exclude any family planning services.**

30 **4. The agency or agencies administering the program shall to the greatest extent**
31 **possible supplement and match moneys appropriated for the alternatives to abortion**
32 **services program with federal and other public moneys and with private moneys. The**
33 **agency or agencies administering the program shall prioritize such additional federal,**
34 **other public, and private moneys so that they are used for the alternatives for abortion**
35 **services program.**

36 **5. The alternatives to abortion services program and the moneys expended under**
37 **this section shall not be used to perform or induce, assist in the performing or inducing of**
38 **or refer for abortions. Moneys expended under this section shall not be granted to**
39 **organizations or affiliates of organizations that perform or induce, assist in the performing**
40 **or inducing of or refer for abortions.**

188.335. 1. There is hereby established the "Missouri Alternatives to Abortion
2 **Public Awareness Program" which shall be administered by a state agency or agencies, as**
3 **designated by appropriations to such or each agency.**

4 **2. The agency or agencies by which the alternatives to abortion public awareness**
5 **program is administered shall establish and implement an ongoing advertising campaign**
6 **publicizing alternatives to abortion services within the state, including alternatives to**
7 **abortion agencies within the state and the alternatives to abortion services program**
8 **established in section 188.325. Such advertising campaign may utilize, but shall not be**
9 **limited to, the following media: television, radio, outdoor advertising, newspapers,**
10 **magazines, and other print media, web sites, and the Internet. The agency or agencies**
11 **administering the program may contract with professional advertising agencies or other**
12 **professional entities to conduct such advertising campaign on behalf of the agency or**
13 **agencies.**

14 **3. The agency or agencies administering the program shall to the greatest extent**

15 possible supplement and match moneys appropriated for the alternatives to abortion
16 public awareness program with federal and other public moneys and with private moneys.
17 The agency or agencies administering the program shall prioritize such additional federal,
18 other public, and private moneys so that they are used for the alternatives to abortion
19 public awareness program.

20 **4. The alternatives to abortion public awareness program and the moneys expended**
21 **under this section shall not be used to perform or induce, assist in the performing or**
22 **inducing of or refer for abortions. Moneys expended under this section shall not be**
23 **granted to organizations or affiliates of organizations that perform or induce, assist in the**
24 **performing or inducing of or refer for abortions.**

188.345. Twenty-five percent of the funds received by the state of Missouri from
2 **subsequent participating manufacturers that, after January 1, 2004, joined or will join the**
3 **master settlement agreement defined in section 196.1000, RSMo, shall be appropriated by**
4 **the general assembly for the purposes of sections 188.325 to 188.335.**

Section B. Because immediate action is necessary to ensure the health and safety of
2 minors section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage and approval.