

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 749
96TH GENERAL ASSEMBLY

5697L.09C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 376.1199, RSMo, and to enact in lieu thereof ten new sections relating to the protection of the religious beliefs and moral convictions of certain persons and entities.

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

Section A. Section 376.1199, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 191.724, 191.1150, 191.1153, 191.1156, 191.1159, 191.1162, 191.1165, 191.1168, 376.1199, and 338.255, to read as follows:

191.724. 1. Notwithstanding any other provision of law to the contrary, no employee, self-employed person, or any other person shall be compelled to obtain coverage for, or be discriminated against or penalized for declining or refusing coverage for, abortion, contraception, or sterilization in a health plan if such items or procedures are contrary to the religious beliefs or moral convictions of such employee or person.

2. No employer, health plan provider, health plan sponsor, health care provider, or any other entity shall be compelled to provide coverage for, or be discriminated against or penalized for declining or refusing coverage for, abortion, contraception, or sterilization in a health plan if such items or procedures are contrary to the religious beliefs or moral convictions of such employer, health plan provider, health plan sponsor, health care provider, or entity.

3. No governmental entity, public official, or entity acting in a governmental capacity shall discriminate against or penalize a health plan, plan sponsor, health care provider, employer, employee, or other entity or person because of such plan's, sponsor's, provider's, employer's, employee's, entity's, or person's unwillingness, based on religious

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.

16 beliefs or moral convictions, to provide or obtain coverage for, participate in, or refer for,
17 abortion, contraception, or sterilization in a health plan.

191.1150. As used in sections 191.1150 to 191.1168, the following terms mean:

2 (1) "Conscience", the religious, moral, or ethical principles held by a medical
3 professional or a health care institution. For purposes of sections 191.1150 to 191.1168, a
4 medical professional's conscience means a sincere and meaningful belief in God or in
5 relation to a supreme being, or a belief which, though not so derived, occupies in the life
6 of its possessor a place parallel to that filled by God among adherents to religious faiths.
7 A health care institution's conscience shall be determined by reference to its existing or
8 proposed religious, moral, or ethical guidelines, mission statement, constitution, bylaws,
9 articles of incorporation, regulations, or other relevant documents;

10 (2) "Health care institution", any public or private organization, corporation,
11 partnership, sole proprietorship, association, agency, network, joint venture, or other
12 entity that is involved in providing medical services, including but not limited to, hospitals,
13 clinics, medical centers, ambulatory surgical centers, private physician's offices, university
14 medical schools and nursing schools, medical training facilities, or other institutions or
15 locations wherein specified medical procedures or research are performed or provided to
16 any person;

17 (3) "Medical professional", a physician, physician's assistant, registered nurse,
18 licensed practical nurse, advanced practice registered nurse, certified nurse practitioner,
19 medical assistant, medical researcher, medical or nursing school faculty, student or
20 applicant for studies or training in any program in these health care professions;

21 (4) "Participate in specified medical procedures or research", to provide, perform,
22 assist in or refer for specified medical procedures or research; and

23 (5) "Specified medical procedures or research", abortion, abortion-inducing drugs,
24 contraception, sterilization which is not medically necessary, assisted reproduction, human
25 cloning, human embryonic stem-cell research, human somatic cell nuclear transfer, fetal
26 tissue research, and non-therapeutic fetal experimentation.

191.1153. 1. A medical professional has the right not to participate, and no medical
2 professional shall be required to participate in specified medical procedures or research
3 that violate his or her conscience.

4 2. No medical professional shall be civilly, criminally, or administratively liable for
5 declining to participate in specified medical procedures or research that violate his or her
6 conscience.

7 3. It shall be unlawful for any person, medical professional, health care institution,
8 the state of Missouri, political subdivision, public or private institution, public official, or

9 any board which certifies competency in medical specialties to discriminate against any
10 medical professional based on his or her declining to participate in specified medical
11 procedures or research.

12 4. For purposes of this section, "discriminate" includes, but is not limited to, the
13 following: termination, suspension, refusal of staff privileges, refusal of board
14 certification, demotion, loss of career specialty, reduction of wages or benefits, refusal to
15 award any grant, contract, or other program, refusal to provide training opportunities, or
16 any other penalty, disciplinary, or retaliatory action. Retaliatory action shall not include
17 reassignment to a position in which participation in a specified medical procedure or
18 research is not required, so long as said reassignment does not result in a demotion nor
19 involve a reduction in remuneration or benefits.

20 5. An employee asserting a right not to participate in specified medical procedures
21 or research shall provide reasonable notice under the circumstances of his or her intent not
22 to participate.

191.1156. 1. A health care institution has the right not to participate, and no health
2 care institution shall be required to participate in specified medical procedures or research
3 that violate its conscience.

4 2. A health care institution that declines to provide or participate in specified
5 medical procedures or research that violate its conscience shall not be civilly, criminally,
6 or administratively liable if the institution provides a consent form to be signed by a
7 patient before admission to the institution stating that it reserves the right to decline to
8 provide or participate in specified medical procedures or research that violate its
9 conscience.

10 3. It shall be unlawful for any person, the state of Missouri, a political subdivision,
11 a public or private institution, or a public official to discriminate against any medical
12 institution, or any person, association, corporation, or other entity attempting to establish
13 a new health care institution or operating an existing health care institution, in any
14 manner, including but not limited to the following:

- 15 (1) Any denial, deprivation or disqualification with respect to licensure;
16 (2) Any aid, assistance, benefit, or privilege, including staff privileges; or
17 (3) Any authorization, including authorization to create, expand, improve, acquire,
18 or affiliate or merge with any health care institution,

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20 because such health care institution, or person, association, or corporation planning,
21 proposing, or operating a health care institution declines to participate in specified medical
22 procedures or research which violate the health care institution's conscience.

23 **4. It shall be unlawful for any public official, agency, institution, or entity to deny**
24 **any form of aid, assistance, grants, or benefits, or in any other manner to coerce,**
25 **disqualify, or discriminate against any person, association, corporation, or other entity**
26 **attempting to establish a new health care institution or operating an existing health care**
27 **institution because the existing or proposed health care institution declines to participate**
28 **in specified medical procedures or research contrary to the health care institution's**
29 **conscience.**

191.1159. Subject to the provisions of sections 404.800 to 404.865, nothing
2 **contained in sections 191.1150 to 191.1168 shall be construed to authorize any medical**
3 **professional or health care institution to withhold emergency medical treatment or services**
4 **necessary to save the life of a patient under such professional's or institution's care.**

191.1162. Nothing contained in sections 191.1150 to 191.1168 shall be construed to
2 **relieve a medical professional from any duty which may exist under the laws and**
3 **regulations of this state to inform his or her patient of the patient's health condition, risks,**
4 **and prognosis, and the medical options and health care resources available to the patient,**
5 **including compliance with the provisions of sections 188.010 to 188.085.**

191.1165. 1. A cause of action for damages or injunctive relief, or both, may be
2 **brought for the violation of any provision of sections 191.1150 to 191.1168. It shall not be**
3 **a defense to any claim arising out of the violation of sections 191.1150 to 191.1168 that such**
4 **violation was necessary to prevent additional burden or expense on any other medical**
5 **professional, health care institution, individual, or patient. It shall be an affirmative**
6 **defense for an employer under this section that the specified medical procedure or research**
7 **was so integral to the duties of the employee's position and to the central business purpose**
8 **of the business or enterprise that a reasonable person would understand that participating**
9 **in the specified medical procedure or research at issue was a requirement of the employee's**
10 **position.**

11 **2. Any individual, association, corporation, entity, or health care institution injured**
12 **by any public or private individual, association, agency, entity, or corporation by reason**
13 **of any conduct prohibited by sections 191.1150 to 191.1168 may commence a civil action.**
14 **Upon finding a violation of sections 191.1150 to 191.1168, the aggrieved party shall be**
15 **entitled to recover threefold the actual damages, including pain and suffering, sustained**
16 **by such individual, association, corporation, entity, or health care institution, the costs of**
17 **the action, and reasonable attorney's fees. In no case shall recovery be less than five**
18 **thousand dollars for each violation in addition to costs of the action and reasonable**
19 **attorney's fees. These damage remedies shall be cumulative, and not exclusive of other**
20 **remedies afforded under any other state or federal law.**

21 **3. The court in such civil action may award injunctive relief, including, but not**
22 **limited to, ordering reinstatement of a medical professional to his or her prior employment**
23 **position.**

191.1168. 1. It is the intent of the general assembly that sections 191.1150 to
2 **191.1168 be severable as noted in section 1.140, except sections 191.1159 and 191.1162,**
3 **which shall not be severable from those sections. In the event that any section, subsection,**
4 **subdivision, paragraph, sentence, or clause of sections 191.1150 to 191.1168, except section**
5 **191.1159 and 191.1162, be declared invalid under the Constitution of the United States or**
6 **the Constitution of the State of Missouri, it is the intent of the general assembly that the**
7 **remaining provisions of sections 191.1150 to 191.1168 remain in force and effect as far as**
8 **capable of being carried into execution as intended by the general assembly.**

9 **2. The general assembly may, by concurrent resolution, appoint one or more of its**
10 **members who sponsored or co-sponsored this act in his or her official capacity, to intervene**
11 **as a matter of right in any case in which the constitutionality of this law is challenged.**

 376.1199. 1. Each health carrier or health benefit plan that offers or issues health benefit
2 plans providing obstetrical/gynecological benefits and pharmaceutical coverage, which are
3 delivered, issued for delivery, continued or renewed in this state on or after January 1, 2002,
4 shall:

5 (1) Notwithstanding the provisions of subsection 4 of section 354.618, provide enrollees
6 with direct access to the services of a participating obstetrician, participating gynecologist or
7 participating obstetrician/gynecologist of her choice within the provider network for covered
8 services. The services covered by this subdivision shall be limited to those services defined by
9 the published recommendations of the accreditation council for graduate medical education for
10 training an obstetrician, gynecologist or obstetrician/gynecologist, including but not limited to
11 diagnosis, treatment and referral for such services. A health carrier shall not impose additional
12 co-payments, coinsurance or deductibles upon any enrollee who seeks or receives health care
13 services pursuant to this subdivision, unless similar additional co-payments, coinsurance or
14 deductibles are imposed for other types of health care services received within the provider
15 network. Nothing in this subsection shall be construed to require a health carrier to perform,
16 induce, pay for, reimburse, guarantee, arrange, provide any resources for or refer a patient for an
17 abortion, as defined in section 188.015, other than a spontaneous abortion or to prevent the death
18 of the female upon whom the abortion is performed, or to supersede or conflict with section
19 376.805; and

20 (2) Notify enrollees annually of cancer screenings covered by the enrollees' health benefit
21 plan and the current American Cancer Society guidelines for all cancer screenings or notify
22 enrollees at intervals consistent with current American Cancer Society guidelines of cancer

23 screenings which are covered by the enrollees' health benefit plans. The notice shall be delivered
24 by mail unless the enrollee and health carrier have agreed on another method of notification; and

25 (3) Include coverage for services related to diagnosis, treatment and appropriate
26 management of osteoporosis when such services are provided by a person licensed to practice
27 medicine and surgery in this state, for individuals with a condition or medical history for which
28 bone mass measurement is medically indicated for such individual. In determining whether
29 testing or treatment is medically appropriate, due consideration shall be given to peer-reviewed
30 medical literature. A policy, provision, contract, plan or agreement may apply to such services
31 the same deductibles, coinsurance and other limitations as apply to other covered services; and

32 (4) If the health benefit plan also provides coverage for pharmaceutical benefits, provide
33 coverage for contraceptives either at no charge or at the same level of deductible, coinsurance
34 or co-payment as any other covered drug.

35 No such deductible, coinsurance or co-payment shall be greater than any drug on the health
36 benefit plan's formulary. As used in this section, "contraceptive" shall include all prescription
37 drugs and devices approved by the federal Food and Drug Administration for use as a
38 contraceptive, but shall exclude all drugs and devices that are intended to induce an abortion, as
39 defined in section 188.015, which shall be subject to section 376.805. Nothing in this
40 subdivision shall be construed to exclude coverage for prescription contraceptive drugs or
41 devices ordered by a health care provider with prescriptive authority for reasons other than
42 contraceptive or abortion purposes.

43 2. For the purposes of this section, "health carrier" and "health benefit plan" shall have
44 the same meaning as defined in section 376.1350.

45 3. The provisions of this section shall not apply to a supplemental insurance policy,
46 including a life care contract, accident-only policy, specified disease policy, hospital policy
47 providing a fixed daily benefit only, Medicare supplement policy, long-term care policy,
48 short-term major medical policies of six months or less duration, or any other supplemental
49 policy as determined by the director of the department of insurance, financial institutions and
50 professional registration.

51 4. Notwithstanding the provisions of subdivision (4) of subsection 1 of this section to
52 the contrary:

53 (1) Any health carrier [may] **shall offer and** issue to any person or entity purchasing a
54 health benefit plan, a health benefit plan that excludes coverage for contraceptives if the use or
55 provision of such contraceptives is contrary to the moral, ethical or religious beliefs or tenets of
56 such person or entity;

57 (2) Upon request of an enrollee who is a member of a group health benefit plan and who
58 states that the use or provision of contraceptives is contrary to his or her moral, ethical or

59 religious beliefs, any health carrier shall issue to or on behalf of such enrollee a policy form that
60 excludes coverage for contraceptives. Any administrative costs to a group health benefit plan
61 associated with such exclusion of coverage not offset by the decreased costs of providing
62 coverage shall be borne by the group policyholder or group plan holder;

63 (3) Any health carrier which is owned, operated or controlled in substantial part by an
64 entity that is operated pursuant to moral, ethical or religious tenets that are contrary to the use
65 or provision of contraceptives shall be exempt from the provisions of subdivision (4) of
66 subsection 1 of this section. For purposes of this subsection, if new premiums are charged for
67 a contract, plan or policy, it shall be determined to be a new contract, plan or policy.

68 5. Except for a health carrier that is exempted from providing coverage for
69 contraceptives pursuant to this section, a health carrier shall allow enrollees in a health benefit
70 plan that excludes coverage for contraceptives pursuant to subsection 4 of this section to
71 purchase a health benefit plan that includes coverage for contraceptives.

72 6. Any health benefit plan issued pursuant to subsection 1 of this section shall provide
73 clear and conspicuous written notice on the enrollment form or any accompanying materials to
74 the enrollment form and the group health benefit plan **application and** contract:

75 (1) Whether coverage for contraceptives is or is not included;

76 (2) That an enrollee who is a member of a group health benefit plan with coverage for
77 contraceptives has the right to exclude coverage for contraceptives if such coverage is contrary
78 to his or her moral, ethical or religious beliefs; and

79 (3) That an enrollee who is a member of a group health benefit plan without coverage
80 for contraceptives has the right to purchase coverage for contraceptives.

81 7. Health carriers shall not disclose to the person or entity who purchased the health
82 benefit plan the names of enrollees who exclude coverage for contraceptives in the health benefit
83 plan or who purchase a health benefit plan that includes coverage for contraceptives. Health
84 carriers and the person or entity who purchased the health benefit plan shall not discriminate
85 against an enrollee because the enrollee excluded coverage for contraceptives in the health
86 benefit plan or purchased a health benefit plan that includes coverage for contraceptives.

87 8. The departments of health and senior services and insurance, financial institutions and
88 professional registration may promulgate rules necessary to implement the provisions of this
89 section. No rule or portion of a rule promulgated pursuant to this section shall become effective
90 unless it has been promulgated pursuant to chapter 536. Any rule or portion of a rule, as that
91 term is defined in section 536.010, that is created under the authority delegated in this section
92 shall become effective only if it complies with and is subject to all of the provisions of chapter
93 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any
94 of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the

95 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
96 grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be
97 invalid and void.

**338.255. Notwithstanding any other provision of law, no pharmacy licensed in this
2 state shall be required to carry or maintain in inventory any prescription or
3 nonprescription drug or device.**

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