

**2001 Jr2 DRAFTING REQUEST**

**Assembly Amendment (AA-AA1-ASA1-AB1)**

Received: 03/14/2002

Received By: kenneda

Wanted: Today

Identical to LRB:

For: Joseph Leibham (608) 266-0656

By/Representing: Dan (aide)

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Addl. Drafters:

Subject: Health - abortion

Extra Copies:

Submit via email: YES

Requester's email: Rep.Leibham@legis.state.wi.us ✓

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Abortion funding prohibitions

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**Instructions:**

2001 Ab 832, plus AA1

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 03/14/2002	jdye 03/14/2002		_____			
/1			rschluet 03/14/2002	_____	lrb_docadmin 03/14/2002	lrb_docadmin 03/14/2002	

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Page 2

**LRBb2616**

FE Sent For:

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/?	kenneda	1/3/02 jld		 3-14-02			

FE Sent For:

<END>

2001

Date (time) needed Now

LRB b 2016/1

BUDGET AMENDMENT D-NOTE  
NOT FOR COMPILE

DAK: jld:

See form AMENDMENTS — COMPONENTS & ITEMS.

January 2002 SPECIAL SESSION AMENDMENT  
TO ASSEMBLY AMENDMENT 1  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 2001 ASSEMBLY BILL 1

*amendment*

At the locations indicated, amend the ~~substitute amendment~~ *amendment* as follows:

*fr2*

#. Page 37, line 22: after that line insert;

" 58r. Page 24, line 18: after that line insert:

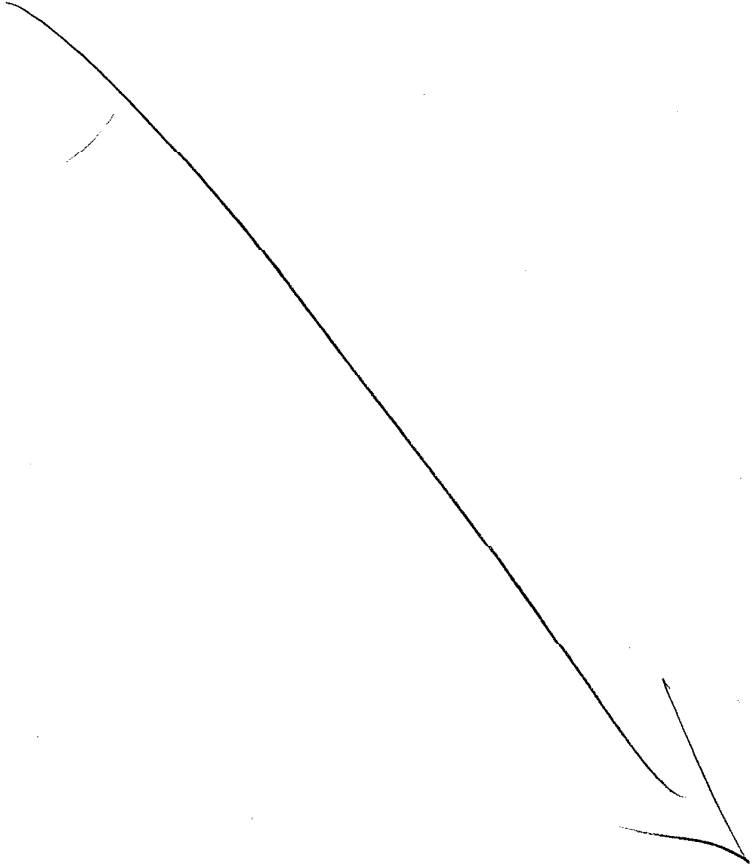
#. Page ....., line .....:

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**2001 ASSEMBLY BILL 831**

February 20, 2002 - Introduced by Representatives LEIBHAM, KESTELL, STARZYK, McCORMICK, OWENS, GUNDRUM, HUNDERTMARK, KRAWCZYK, LADWIG, SERATTI, MEYERHOFER, SUDER, J. FITZGERALD, GROTHMAN, RYBA, PETTIS, NASS, FREESE, KREIBICH, OTT, HAHN, M. LEHMAN, SYKORA, GUNDERSON, WALKER, LOEFFELHOLZ, GARD, VRAKAS, PETROWSKI, BIES and ALBERS, cosponsored by Senators BRESKE, KANAVAS, ROESSLER, S. FITZGERALD, LAZICH and WELCH. Referred to Committee on Government Operations.

1     **AN ACT to repeal** 20.9275 (2m) (c), 20.9275 (3m), 253.02 (2m) (c), 253.07 (1) (a)  
2             3. and 253.07 (1) (b) 3.; **to renumber and amend** 20.9275 (1) and 20.9275 (2)  
3             (a) 2.; **to amend** 20.9275 (2) (intro.), 20.9275 (2m) (intro.), 20.9275 (3), 253.02  
4             (2m) (intro.), 253.07 (1) (a) (intro.) and 253.07 (1) (b) (intro.); and **to create**  
5             20.9275 (1g), 20.9275 (1r) (am), 20.9275 (1r) (em), 20.9275 (2) (a) 2. a., 20.9275  
6             (2) (a) 2. b., 20.9275 (2) (a) 2. c., 20.9275 (2) (a) 2. d., 20.9275 (2) (a) 2. e., 20.9275  
7             (2) (a) 2. f., 20.9275 (2) (a) 2. g., 20.9275 (2n), 20.9275 (6), 20.9275 (7) and  
8             20.9275 (8) of the statutes; **relating to:** prohibiting an organization or affiliate  
9             of an organization that engages in abortion-related activities from receiving  
10            certain public funds, prohibiting an organization that receives certain public  
11            funds from using other public and private funds for abortion-related activities,  
12            specifying restrictions on affiliation between certain organizations, changing  
13            the types of information that may be provided by organizations that receive the

**ASSEMBLY BILL 831**

- 1 funds, changing requirements related to the maternal and child health  
2 program and family planning services, and requiring audits.

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***Analysis by the Legislative Reference Bureau***

Under current law, federal funds passing through the state treasury and state and local funds may not be paid as a grant, subsidy, or other funding that wholly or partially or directly or indirectly involves pregnancy programs, projects, or services and that is a grant, subsidy, or other funding under specific state programs (adolescent pregnancy prevention and pregnancy services, adolescent self-sufficiency and pregnancy prevention, adolescent choices, welfare and hygiene of maternity and infancy, family planning, pregnancy counseling, and outreach to low-income pregnant women and under federal maternal and child health services block grants), if the pregnancy program, project, or service using these federal, state, or local funds, using income derived from the funds, or using matching funds provides abortion services; promotes, encourages, or counsels in favor of abortion services; or makes abortion referrals either directly or through an intermediary in any instance other than when an abortion is directly and medically necessary to save the life of the pregnant woman. The funds also may not be paid if the pregnancy program, project, or service is funded from another source that requires performance of the abortion-related activities. The restriction applies only to the extent that applying it does not result in the loss of any federal funds. An organization that violates the prohibition may not receive the funds for 24 months after the violation and must return all funds paid under the grant, subsidy, or other funding; and the grant, subsidy, or other funding is terminated. This law specifically does not prohibit the providing of nondirective information explaining prenatal care and delivery; infant care, foster care, or adoption; or pregnancy termination.

Also under current law, federal funds passing through the state treasury and state and local funds may not be paid for the performance of an abortion other than an abortion that is directly and medically necessary to save the life of the pregnant woman, in a case of sexual assault or incest, or if, due to a medical condition existing before the abortion, the physician determines that the abortion is directly and medically necessary to prevent grave, long-lasting, physical health damage to the pregnant woman.

This bill expands the prohibitions on payment of public funds to an organization that engages in abortion-related activities, in the following ways:

1. The bill eliminates the provision that specifies that the prohibitions on the use of the funds apply only to the extent that applying them does not result in the loss of any federal funds; thus, the bill applies the prohibitions to all public funds, with the specific exceptions of medical assistance and badger care.

2. The bill applies the prohibition to abortion-related activities, except for abortions performed to save the life of the pregnant women, in cases of sexual assault or incest, or to prevent grave, long-lasting, physical health damage to the pregnant woman.

**ASSEMBLY BILL 831**

3. The bill prohibits payment to an organization that is affiliated with an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds that the affiliate engage in abortion-related activities, unless the organizations are physically and financially independent from each other. Specifically, the two organizations may not share the same or a similar name; medical or nonmedical facilities, equipment, or supplies; services; income, grants, donations, and other revenue; financial accounts; fund-raising activities; expenses; employees; employee wages or salaries; databases; or marketing materials and other promotional products. They also may not be located in the same building, must be separately incorporated, and must maintain financial and database records that demonstrate that the affiliate receives no economic or marketing benefit from the funded organization.

4. The bill prohibits a publicly funded organization from transferring public funds to another organization or to an affiliate of the organization that provides abortion-related activities or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in abortion-related activities.

5. The bill changes the definition of "pregnancy program, project, or service" so as to apply the prohibitions to funding of an organization that provides *any* of several specified services, rather than *all* of the services.

6. The bill applies the prohibitions to an organization that engages in abortion-related activities, rather than an organization that uses program funds (public funds, income from public funds, or matching funds) for the abortion-related activities.

The bill also expands prohibited abortion-related activities that are related to promoting, encouraging, or counseling in favor of abortion services to include acting to assist women to obtain abortions; acting to increase the availability or accessibility of abortion for family planning purposes; lobbying for passage of legislation to increase the availability of abortion; providing speakers to promote the use of abortion; paying dues to a group that advocates abortion; using legal action to make abortion available; and developing or disseminating materials advocating abortion.

The bill authorizes the filing of a petition for a writ of mandamus or prohibition with the circuit court of the county where a violation of the prohibitions is alleged to have occurred or is proposed to occur. The bill also requires the legislative audit bureau to conduct an audit of each organization receiving the public funds to determine if the organization or the state agency or local governmental unit has strictly complied with the requirements or prohibitions. If the publicly funded organization is an affiliate of an organization that engages in abortion-related activities or that receives funds from any source that requires, for receipt of the funds, that the affiliate engage in abortion-related activities, the audit must be conducted annually.

Lastly, the bill eliminates authorization, including authorization under the maternal and child health and family planning laws, to provide nondirective information about pregnancy termination and, instead, specifies that an organization that receives the funds is not prohibited from promoting, encouraging,

**ASSEMBLY BILL 831**

or counseling in favor of or referring directly or through an intermediary for prenatal care and delivery and infant care, foster care, or adoption.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1

71nb ✓  
SECTION 1. 20.9275 (1) of the statutes is renumbered 20.9275 (1r), and 20.9275 (1r) (intro.) and (e), as renumbered, are amended to read:

2

20.9275 (1r) (intro.) In this section, except as otherwise specified:

3

4

(e) "Pregnancy program, project or service" means a program, project, or service of an organization that provides services for pregnancy prevention, family planning, as defined in s. 253.07 (1) (a), pregnancy testing, pregnancy counseling, prenatal care, pregnancy services and, or reproductive health care services that are related to pregnancy.

5

6

71nc ✓  
SECTION 2. 20.9275 (1g) of the statutes is created to read:

9

10

20.9275 (1g) It is the intent of the legislature that this section shall further the profound and compelling state interest in all of the following:

11

12

(a) To protect the life of an unborn child throughout pregnancy by favoring childbirth over abortion and implementing that value judgment through the allocation of public resources.

13

14

15

(b) To ensure that the state, state agencies, and local governmental units do not lend their imprimatur to abortion-related activities.

16

17

(c) To ensure that organizations that engage in abortion-related activities do not receive a direct or indirect economic or marketing benefit from public funds.

18

19

71nd ✓  
SECTION 3. 20.9275 (1r) (am) of the statutes is created to read:



## ASSEMBLY BILL 831

1           20.9275 (1r) (am) "Family planning" means the process of establishing  
2 objectives for the number and spacing of one's children and selecting the means by  
3 which those objectives may be achieved, including a broad range of acceptable and  
4 effective methods and services to limit or enhance fertility, including contraceptive  
5 methods, including natural family planning and abstinence; the management of  
6 infertility, including adoption; and preconceptional counseling, education, and  
7 general reproductive health care, including diagnosis and treatment of infections  
8 that threaten reproductive capability. "Family planning" does not include pregnancy  
9 care, including obstetric or prenatal care.

10           SECTION 4. <sup>7line</sup> 20.9275 (1r) (em) of the statutes is created to read:

11           20.9275 (1r) (em) "Prenatal care" means medical services provided to a  
12 pregnant woman to promote maternal and fetal health.

13           SECTION 4. <sup>7line</sup> 20.9275 (2) (intro.) of the statutes is amended to read:

14           20.9275 (2) (intro.) ~~No~~ Except as provided in s. 20.927 (2) and under medical  
15 assistance, as defined in s. 49.43 (8), and badger care under s. 49.665, no state agency  
16 or local governmental unit may authorize payment of funds of this state, of any local  
17 governmental unit or, ~~subject to sub. (3m),~~ of federal funds passing through the state  
18 treasury as a grant, subsidy, or other funding that wholly or partially or directly or  
19 indirectly involves pregnancy programs, projects, or services, ~~that is including a~~  
20 grant, subsidy, or other funding under s. 46.93, 46.99, 46.995, 253.02 (2), 253.05,  
21 253.07, 253.08, or 253.085 or 42 USC 701 to 710, if any of the following applies:

22           SECTION 4. <sup>7line</sup> 20.9275 (2) (a) 2. of the statutes is renumbered 20.9275 (2) (a) 2.  
23 (intro.) and amended to read:

24           20.9275 (2) (a) 2. (intro.) Promotes, encourages, or counsels in favor of abortion  
25 services, including by doing any of the following:

and subject to sub.  
(3p),

ASSEMBLY BILL 831

- 1            **SECTION 7.** <sup>7lnh</sup> 20.9275 (2) (a) 2. a. of the statutes is created to read:
- 2            20.9275 (2) (a) 2. a. Acting to assist women to obtain abortions.
- 3            **SECTION 8.** <sup>7lni</sup> 20.9275 (2) (a) 2. b. of the statutes is created to read:
- 4            20.9275 (2) (a) 2. b. Acting to increase the availability or accessibility of
- 5            abortion for family planning purposes.
- 6            **SECTION 9.** <sup>7lnj</sup> 20.9275 (2) (a) 2. c. of the statutes is created to read:
- 7            20.9275 (2) (a) 2. c. Lobbying for the passage of legislation to increase in any
- 8            way the availability of abortion as a method of family planning.
- 9            **SECTION 10.** <sup>7lnk</sup> 20.9275 (2) (a) 2. d. of the statutes is created to read:
- 10           20.9275 (2) (a) 2. d. Providing speakers to promote the use of abortion as a
- 11           method of family planning
- 12           **SECTION 11.** <sup>7lnl</sup> 20.9275 (2) (a) 2. e. of the statutes is created to read:
- 13           20.9275 (2) (a) 2. e. Paying dues to a group that as a significant part of its
- 14           activities advocates abortion as a method of family planning. <sup>7lnm</sup>
- 15           **SECTION 12.** 20.9275 (2) (a) 2. f. of the statutes is created to read:
- 16           20.9275 (2) (a) 2. f. Using legal action to make abortion available in any way
- 17           as a method of family planning. <sup>7lnn</sup>
- 18           **SECTION 13.** 20.9275 (2) (a) 2. g. of the statutes is created to read:
- 19           20.9275 (2) (a) 2. g. Developing or disseminating in any way materials,
- 20           including printed matter and audiovisual materials, advocating abortion as a
- 21           method of family planning. <sup>7lnp</sup> ✓
- 22           **SECTION 14.** 20.9275 (2m) (intro.) of the statutes is amended to read:
- 23           20.9275 (2m) (intro.) Nothing in sub. (2) prohibits the providing of nondirective
- 24           information explaining promotion, encouragement, or counseling in favor of, or
- 25           referral either directly or through an intermediary for, any of the following:

ASSEMBLY BILL 831

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~~SECTION 15.~~ 20.9275 (2m) (c) of the statutes is repealed.

7Inrg

and subject to sub. (3p),

~~SECTION 15.~~ 20.9275 (2n) of the statutes is created to read:

7Inrc

20.9275 (2n) Except as provided in sub. (6), none of the funds specified under sub. (2) (intro.) may be paid to an organization or affiliate of an organization that does any of the following:

(a) Engages in an activity that is specified under sub. (2) (a) 1. to 3.

(b) Receives funds from any source that requires, as a condition for receipt of the funds, that the organization or affiliate perform any of the activities specified in sub. (2) (a) 1. to 3.

7Inrd

, and subject to sub. (3p)

~~SECTION 15.~~ 20.9275 (3) of the statutes is amended to read:

20.9275 (3) ~~Subject to sub. (3m)~~ Except as provided in s. 20.927 (2) and under medical assistance, as defined in s. 49.43 (8), and badger care under s. 49.665, no organization that receives funds specified under sub. (2) (intro.) may use program funds for engage in an activity that is specified under sub. (2) (a) 1. to 3. No organization that receives funds specified under sub. (2) (intro.) may transfer any program funds or any other public funds to an organization or affiliate of an organization to which sub. (2n) (a) or (b) applies.

7Inre

~~SECTION 15.~~ 20.9275 (3m) of the statutes is repealed.

7Inrg

INSERT 7-18

~~SECTION 15.~~ 20.9275 (6) of the statutes is created to read:

20.9275 (6) Subsection (2n) does not apply to an organization that otherwise is qualified to receive funding under sub. (2) and that is affiliated with an organization to which sub. (2n) (a) or (b) applies if the organizations are physically and financially independent from each other under all of the following criteria:

**ASSEMBLY BILL 831**

1 (a) The organization that receives funds specified under sub. (2) (intro.) and its  
2 independent affiliate to which sub. (2n) (a) or (b) applies are not located in the same  
3 building and do not share any of the following:

4 1. The same or a similar name.

5 2. Medical or nonmedical facilities, including treatment, consultation,  
6 examination, or waiting rooms or business offices.

7 3. Equipment or supplies, including computers, telephone systems,  
8 telecommunications equipment, vehicles, office supplies, or medical supplies.

9 4. Services, including management, accounting, or payroll services or  
10 equipment or facility maintenance.

11 5. Income, grants, donations of cash or property, in-kind gifts, or other revenue.

12 6. Financial accounts, including checking accounts, savings accounts, and  
13 investments.

14 7. Fund-raising activities.

15 8. Expenses.

16 9. Employees.

17 10. Employee wages or salaries.

18 11. Databases, including client lists.

19 12. Marketing materials and other promotional products.

20 (b) The organization that receives funds specified under sub. (2) (intro.) is  
21 separately incorporated from its independent affiliate to which sub. (2n) (a) or (b)  
22 applies.

23 (c) The organization that receives funds specified under sub. (2) (intro.)  
24 maintains financial records and database records that demonstrate that its  
25 independent affiliate to which sub. (2n) (a) or (b) applies receives no direct or indirect

ASSEMBLY BILL 831

1 economic or marketing benefit from the program funds. Separation of program funds  
2 from other moneys by means of bookkeeping alone is not sufficient to meet the  
3 requirement of this paragraph. 7lnrh

4 SECTION 20. 20.9275 (7) of the statutes is created to read:

5 20.9275 (7) At least once every 3 years, the legislative audit bureau shall  
6 conduct an audit of each organization that receives the funds specified under sub. (2)  
7 (intro.) and the state agency or local governmental unit that authorizes payment of  
8 the funds to the organization, to determine if the organization, state agency, or local  
9 governmental unit has strictly complied with this section. If the organization is an  
10 affiliate of an organization to which sub. (2n) (a) or (b) applies, the legislative audit  
11 bureau shall conduct the audit at least annually. 7lnri

12 SECTION 21. 20.9275 (8) of the statutes is created to read:

13 20.9275 (8) A person may file a petition for a writ of mandamus or prohibition  
14 with the circuit court for the county where a violation of this section is alleged to have  
15 occurred or is proposed to occur. " " ✓

16 #. Page 200, line 5: after that line insert:  
" 230m. Page 182, line 11: before that line insert:  
SECTION 22. 253.02 (2m) (intro.) of the statutes is amended to read:  
368rd

17 253.02 (2m) (intro.) Nothing in this section authorizes the performance,  
18 promotion, encouragement, or counseling in favor of, or referral either directly or  
19 through an intermediary for, voluntary termination of pregnancy. Nothing in this  
20 section prohibits the providing of nondirective information explaining promotion,  
21 encouragement, or counseling in favor of, or referral either directly or through an  
22 intermediary for, any of the following: 368re

23 SECTION 23. 253.02 (2m) (c) of the statutes is repealed. " ✓  
230n. Page 182, line 16: after that line insert:

24 SECTION 24. 253.07 (1) (a) (intro.) of the statutes is amended to read:  
369d ✓

ASSEMBLY BILL 831

1 253.07 (1) (a) (intro.) "Family planning" means voluntary action by individuals  
2 to prevent or aid conception. "Family planning" does not include the performance,  
3 promotion, encouragement, or counseling in favor of, or referral either directly or  
4 through an intermediary for, voluntary termination of pregnancy, but may include  
5 the providing of nondirective information explaining promotion, encouragement, or  
6 counseling in favor of, or referral either directly or through an intermediary for, any  
7 of the following:

369e ✓

369f ✓

8 SECTION ~~25~~. 253.07 (1) (a) 3. of the statutes is repealed.

9 SECTION ~~26~~. 253.07 (1) (b) (intro.) of the statutes is amended to read:

10 253.07 (1) (b) (intro.) "Family planning services" ~~mean~~ means counseling by  
11 trained personnel regarding family planning; distribution of information relating to  
12 family planning; and referral to licensed nurse practitioners within the scope of their  
13 practice, licensed physicians, or local health departments for consultation,  
14 examination, medical treatment, and prescriptions for the purpose of family  
15 planning. "Family planning" does not include the performance, promotion,  
16 encouragement, or counseling in favor of, or referral either directly or through an  
17 intermediary for, voluntary termination of pregnancy, but may include the providing  
18 of nondirective information explaining promotion, encouragement, or counseling in  
19 favor of, or referral either directly or through an intermediary for, any of the  
20 following:

369g ✓

21 SECTION ~~27~~. 253.07 (1) (b) 3. of the statutes is repealed. " " ✓

#. Page 344, line 19: after that line insert:

~~SECTION 28. Initial applicability.~~

" 431c. Page 435, line 24: after that line insert:

22  
23 (3) PUBLICLY FUNDED ORGANIZATIONS. The treatment of sections 20.9275 (1)  
24 (intro.), (am), and (em), (2) (intro.), (a) 2. and a. to g., (2m) (intro.) and (c), (2n), (3),  
25 (3m), and (6) to (8) of the statutes first applies to contracts on the day on which the

f2n

4b

(3p), ✓

**ASSEMBLY BILL 831**

1 contract expires or is extended, modified, or renewed, whichever first occurs and to  
2 employees who are affected by a collective bargaining agreement that contains  
3 provisions inconsistent with that treatment on the day on which the collective  
4 bargaining agreement expires or is extended, modified, or renewed, whichever first  
5 occurs. " " ✓

6

(END)

D-NOTE

**ASSEMBLY AMENDMENT 1,  
TO 2001 ASSEMBLY BILL 831**

February 26, 2002 -- Offered by Representative WIECKERT.

J  
71nr4

1 At the locations indicated, amend the bill as follows:

- 2 1. Page 5, line 15: after "49.665," insert "and subject to sub. (3p)."
- 3 2. Page 7, line 3: after "(6)," insert "and subject to sub. (3p)."
- 4 3. Page 7, line 12: after "49.665" insert ", and subject to sub. (3p)."
- 5 4. Page 7, line 18: after that line insert:

6 ~~SECTION 18m.~~ 20.9275 (3p) of the statutes is created to read:

7 20.9275 (3p) The restrictions under subs. (2), (2n), and (3) on the authorization  
8 of payment and the payment and use of funds apply only to the extent that the  
9 application of the restrictions does not result in the loss, by a medical school or  
10 medical residency program in this state, of accreditation from a national accrediting  
11 organization or agency. §

INSERT  
7-18

12 ~~5. Page 10, line 25: after "(3m)," insert "(3p)."~~

13 ~~(END)~~



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

b2016/ldn  
LRB-4932/1dn

DAK:js/pg  
JLD

February 18, 2002

To Representative Liebham:

1. Section 20.9275 (6) in this draft permits the provision of public funding to an organization that is affiliated with an organization that engages in abortion-related activities, under specified restrictions. This language is, according to Ms. Mary Klaver, current Missouri law. Several of the specific restrictions proposed and drafted appear to exceed the limit specified in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999), U.S. cert. den., 120 S. Ct. 501 (1999), however. The *Dempsey* court specified these restrictions as follows:

“To remain truly “independent” however, any affiliate that provides abortion services must not be directly or indirectly subsidized by a section 10.715 grantee . . . . No subsidy will exist if the affiliate that provides abortion services is separately incorporated, has separate facilities, and maintains adequate financial records to demonstrate that it receives no State family-planning funds.” *Id.*, at 463.

In s. 20.9275 (6) (a), as proposed and drafted, the publicly funded organization and its affiliate are prohibited from occupying the same building and sharing, among other things, the same or a similar name; equipment or supplies; services; employees; and databases. Further, s. 20.9275 (6) (c) prohibits separation of program funds from other moneys by means of bookkeeping alone; the language is not specific as to what other methods must be employed to demonstrate that the financial independence exists. *Dempsey* required only separate incorporation and facilities and “adequate” financial records; the restrictions appear to go beyond those requirements and, with respect to s. 20.9275 (6) (c), are vague.

2. Lastly, the breadth of the prohibitions under s. 20.9275 (2) (a) 2., especially with respect to counseling in favor of an abortion and referral for an abortion, may impinge on the doctor-patient relationship to a degree that violates the First Amendment to the U. S. Constitution and article I, section 3, of the Wisconsin Constitution. Restrictions on counseling or referrals for abortion that were at one time placed on recipients of Title X funds under the 1988 federal regulations were upheld in *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759 (1991). With respect to the First Amendment challenge, the court found that programs covered by the restrictions did not significantly impinge on the doctor-patient relationship because that relationship was “not sufficiently all-encompassing” given that the program “does not provide post-conception medical

care." *Rust*, 500 U.S. at 200, 111 S. Ct. at 1776. By going further than the regulations at issue in *Rust* and extending restrictions on abortion counseling and referral to all activities of a physician who provides care under the affected funding, including the panoply of health care and services provided under s. 253.02, stats., the prohibitions created in this draft may be susceptible to a free speech challenge.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb2616/1dn  
DAK:jld:rs

March 14, 2002

To Representative Liebham:

1. Section 20.9275 (6) in this draft permits the provision of public funding to an organization that is affiliated with an organization that engages in abortion-related activities, under specified restrictions. This language is, according to Ms. Mary Klaver, current Missouri law. Several of the specific restrictions proposed and drafted appear to exceed the limit specified in *Planned Parenthood of Mid-Missouri v. Dempsey*, 167 F.3d 458 (8th Cir. 1999), U.S. cert. den., 120 S. Ct. 501 (1999), however. The *Dempsey* court specified these restrictions as follows:

“To remain truly “independent” however, any affiliate that provides abortion services must not be directly or indirectly subsidized by a section 10.715 grantee . . . . No subsidy will exist if the affiliate that provides abortion services is separately incorporated, has separate facilities, and maintains adequate financial records to demonstrate that it receives no State family-planning funds.” *Id.*, at 463.

In s. 20.9275 (6) (a), as proposed and drafted, the publicly funded organization and its affiliate are prohibited from occupying the same building and sharing, among other things, the same or a similar name; equipment or supplies; services; employees; and databases. Further, s. 20.9275 (6) (c) prohibits separation of program funds from other moneys by means of bookkeeping alone; the language is not specific as to what other methods must be employed to demonstrate that the financial independence exists. *Dempsey* required only separate incorporation and facilities and “adequate” financial records; the restrictions appear to go beyond those requirements and, with respect to s. 20.9275 (6) (c), are vague.

2. Lastly, the breadth of the prohibitions under s. 20.9275 (2) (a) 2., especially with respect to counseling in favor of an abortion and referral for an abortion, may impinge on the doctor-patient relationship to a degree that violates the First Amendment to the U. S. Constitution and article I, section 3, of the Wisconsin Constitution. Restrictions on counseling or referrals for abortion that were at one time placed on recipients of Title X funds under the 1988 federal regulations were upheld in *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759 (1991). With respect to the First Amendment challenge, the court found that programs covered by the restrictions did not significantly impinge on the doctor-patient relationship because that relationship was “not sufficiently all-encompassing” given that the program “does not provide post-conception medical

care." *Rust*, 500 U.S. at 200, 111 S. Ct. at 1776. By going further than the regulations at issue in *Rust* and extending restrictions on abortion counseling and referral to all activities of a physician who provides care under the affected funding, including the panoply of health care and services provided under s. 253.02, stats., the prohibitions created in this draft may be susceptible to a free speech challenge.

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## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Thursday, March 14, 2002 11:53 AM  
**To:** Rep.Leibham  
**Subject:** LRBb2616/1 (attached)



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*Mike Barman*

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