

FIRST REGULAR SESSION

HOUSE BILL NO. 721

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LeVOTA (Sponsor), MEADOWS, SCHAAF, OXFORD,
KANDER, PACE AND LAMPE (Co-sponsors).

1588L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 197.285, RSMo, and to enact in lieu thereof two new sections relating to the health care whistleblower protection act, with penalty provisions.

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

Section A. Section 197.285, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 197.285 and 197.525, to read as follows:

197.285. 1. **No supervisor or individual with authority to hire, fire, or discipline in a hospital or ambulatory surgical center shall:**

(1) **Retaliate or otherwise take any adverse action against an employee based on his or her protected activity; or**

(2) **In any manner attempt to dissuade, prevent, or interfere with an employee who wishes to engage in protected activity.**

2. **As used in this section, the following terms mean:**

(1) **"Adverse action", any retaliatory action by a supervisor or individual with authority to hire, fire, or discipline that would dissuade a reasonable person from making or supporting protected activity under this section. Adverse actions include but are not limited to refusal to hire, termination, discrimination or disparate treatment, imposition of any discipline or penalty, or any action that adversely affects an employee's pay or benefits. Adverse actions also include threats to take any adverse actions against an employee who engages in protected activity;**

(2) **"Department", the department of health and senior services;**

(3) **"Protected activity":**

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.

- 17 **(a) The reporting or disclosure of any information related to:**
18 **a. Alleged facility mismanagement, fraudulent activity, or billing errors, or**
19 **unethical, immoral, or illegal business practices; or**
20 **b. Alleged violations of federal or state laws or regulations regarding patient care,**
21 **patient safety, or facility safety; or**
22 **c. Alleged violations of professional standards of conduct or accepted standards of**
23 **quality patient care; or**
24 **d. The ability of employees to perform their assigned duties consistent with**
25 **professional standards of conduct or accepted standards of quality patient care;**
26 **(b) Includes, but is not limited to:**
27 **a. The filing of any complaint, grievance, or assignment despite objection form; the**
28 **participation in any investigation or proceeding conducted by a hospital, ambulatory**
29 **surgical center, or any government entity; or the taking of any other action intended to**
30 **disclose or report any information described in subparagraphs a. to d. of paragraph (a) of**
31 **this subdivision;**
32 **b. The refusal to participate in an activity that would result in a violation of any**
33 **federal or state laws or regulations, professional standards of conduct, or accepted**
34 **standards of quality patient care; and**
35 **(c) Whether an action is considered protected activity entitled to protection under**
36 **this section shall not depend on whether any investigation by the hospital, ambulatory**
37 **surgical center, or any governmental authority results in a finding that the hospital or**
38 **ambulatory surgical center committed any violation of law, regulation, professional**
39 **standard of conduct, or accepted standards of quality patient care. An employee's actions**
40 **shall be deemed protected activity if the employee's commission of such activity was**
41 **reasonable and in good faith.**
42 **3. Hospitals and ambulatory surgical centers shall additionally take the following**
43 **actions:**
44 **(1) Establish and implement a written policy adopted by each hospital and ambulatory**
45 **surgical center relating to the protections for employees who [disclose information pursuant to]**
46 **engage in protected activity as defined in subsection 2 of this section. This policy shall**
47 **include a time frame for completion of investigations related to complaints, not to exceed thirty**
48 **days, and a method for notifying the complainant of the disposition of the investigation. This**
49 **policy shall be submitted to the department of health and senior services to verify**
50 **implementation[. At a minimum, such policy shall include the following provisions:**

51 (1) No supervisor or individual with authority to hire or fire in a hospital or ambulatory
52 surgical center shall prohibit employees from disclosing information pursuant to subsection 2
53 of this section;

54 (2) No supervisor or individual with authority to hire or fire in a hospital or ambulatory
55 surgical center shall use or threaten to use his or her supervisory authority to knowingly
56 discriminate against, dismiss, penalize or in any way retaliate against or harass an employee
57 because the employee in good faith reported or disclosed any information pursuant to subsection
58 2 of this section, or in any way attempt to dissuade, prevent or interfere with an employee who
59 wishes to report or disclose such information;

60 (3) Establish a program to identify a compliance officer who is a designated person
61 responsible for administering the reporting and investigation process and an alternate person
62 should the primary designee be implicated in the report.

63 2. This section shall apply to information disclosed or reported in good faith by an
64 employee concerning:

65 (1) Alleged facility mismanagement or fraudulent activity;

66 (2) Alleged violations of applicable federal or state laws or administrative rules
67 concerning patient care, patient safety or facility safety; or

68 (3) The ability of employees to successfully perform their assigned duties.

69

70 All information disclosed, collected and maintained pursuant to this subsection and pursuant to
71 the written policy requirements of this section shall be accessible to the department of health and
72 senior services at all times and shall be reviewed by the department of health and senior services
73 at least annually. Complainants shall be notified of the department of health and senior services'
74 access to such information and of the complainant's right to notify the department of health and
75 senior services of any information concerning alleged violations of applicable federal or state
76 laws or administrative rules concerning patient care, patient safety or facility safety.

77 3. Prior to any disclosure to individuals or agencies other than the department of health
78 and senior services, employees wishing to make a disclosure pursuant to the provisions of this
79 section shall first report to the individual or individuals designated by the hospital or ambulatory
80 surgical center pursuant to subsection 1 of this section.

81 4. If the compliance officer, compliance committee or management official discovers
82 credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to
83 believe that the misconduct may violate criminal, civil or administrative law, then the hospital
84 or ambulatory surgical center shall report the existence of misconduct to the appropriate
85 governmental authority within a reasonable period, but not more than seven days after
86 determining that there is credible evidence of a violation.

87 5. Reports made to the department of health and senior services shall be subject to the
88 provisions of section 197.477, provided that the restrictions of section 197.477 shall not be
89 construed to limit the employee's ability to subpoena from the original source the information
90 reported to the department pursuant to this section.

91 6. Each written policy shall allow employees making a report who wish to remain
92 anonymous to do so, and shall include safeguards to protect the confidentiality of the employee
93 making the report, the confidentiality of patients and the integrity of data, information and
94 medical records.

95 7. Each hospital and ambulatory surgical center shall, within forty-eight hours of the
96 receipt of a report, notify the employee that his or her report has been received and is being
97 reviewed.] ;

98 **(2) Appoint a compliance officer who shall be the designated person responsible for**
99 **accepting complaints or assignment despite objection forms from employees and**
100 **administering the policy's reporting and investigation process;**

101 **(3) Notify employees of their right to report or disclose any information identified**
102 **in subparagraphs a. to d. of paragraph (a) of subdivision (3) of subsection 2 of this section**
103 **to the department and the attorney general. An employer shall conspicuously display**
104 **notices of its employees' protections and obligations under this section, and use other**
105 **appropriate means to keep its employees so informed. Each notice posted under this**
106 **section shall also include the name of the compliance officer;**

107 **(4) Provide employees with forms to document alleged violations of applicable**
108 **federal or state laws or regulations concerning patient care, patient safety, or facility**
109 **safety. Assignment despite objection forms shall be provided to licensed and certified**
110 **health care professionals to document conditions that they reasonably believe constitute**
111 **improper quality of care;**

112 **(5) Permit employees making a report who wish to remain anonymous to do so, and**
113 **shall include safeguards to protect the confidentiality of the employee making the report,**
114 **the confidentiality of patients, and the integrity of data, information, and medical records.**
115 **If the employee elects to remain anonymous, such employee is permitted to designate**
116 **another individual or entity to receive the results of the investigation of the complaint;**

117 **(6) Within two business days of the receipt of a complaint, including assignment**
118 **despite objection form, the hospital or ambulatory surgical center shall forward the**
119 **complaint to the department and the attorney general. The hospital or ambulatory**
120 **surgical center shall initiate its own investigation of the complaint;**

121 **(7) In the absence of the receipt of a complaint, if a hospital's compliance officer**
122 **or any management employee receives information relevant to any actions set forth in**

123 subparagraphs a. to d. of paragraph (a) of subdivision (3) of subsection 2 of this section,
124 the hospital or ambulatory surgical center shall forward such information to the
125 department and the attorney general, and shall commence its own investigation;

126 (8) When a hospital or ambulatory surgical center receives notification of a
127 department investigation under subsection 4 of this section and an internal investigation
128 has not been commenced under subdivisions (6) to (9) of this subsection, the hospital or
129 ambulatory surgical center shall commence its own investigation into the allegations raised
130 by the department;

131 (9) All information disclosed, collected, and maintained by a hospital or ambulatory
132 surgical center under this subsection and in accordance with the written policy
133 requirements of this section shall be accessible to the department at all times and shall be
134 reviewed at least annually by the department.

135 4. All complaints, including assignment despite objection forms, whether submitted
136 directly by an employee or by a hospital or ambulatory surgical center under subdivisions
137 (6) to (9) of subsection 3 of this section, shall be automatically dual-filed with the
138 department and the attorney general. The department shall commence an investigation
139 within two business days of receipt of a complaint. Within two business days of receipt of
140 a complaint, the department shall provide notice to the hospital or ambulatory surgical
141 center of the department's investigation, and of the opportunity to present the hospital's
142 or ambulatory surgical center's position along with any supporting documentary evidence,
143 including the results of any investigation undertaken under subdivisions (6) to (9) of
144 subsection 3 of this section; provided that, the hospital's or ambulatory surgical center's
145 submission of evidence shall not be permitted to extend the investigation period beyond
146 forty-five days following submission of the complaint. As part of the department's
147 investigation of the complaint, the department shall have the authority to request that the
148 attorney general issue civil investigative demands, notices, or subpoenas to the hospital or
149 ambulatory surgical center, or any other entity that may have relevant evidence. The
150 department's investigation shall be completed within thirty calendar days following receipt
151 of the complaint, but may extend the investigation period by no more than fifteen days if
152 necessitated by the complexity of the complaint.

153 5. Within one business day of the conclusion of a department investigation, the
154 department shall comply with all of the following:

155 (1) Make the original complaint, factual record of the investigation, and
156 investigative conclusions a matter of public record subject to disclosure, after redacting
157 protected health information under the federal Health Insurance Portability and
158 Accountability Act (HIPAA);

159 (2) **Maintain a log of all complaint forms and assignment despite objection forms,**
160 **providing a summary of all complaints, department and hospital or ambulatory surgical**
161 **center responses, documenting the date the complaint is received and the date the**
162 **investigation is concluded;**

163 (3) **Notify the complainant or the designee of the complainant in the case of an**
164 **anonymous complaint, and the hospital or ambulatory surgical center of the outcome of**
165 **the investigation;**

166 (4) **Forward to the attorney general the factual record of the investigation and the**
167 **department's investigative conclusions; and**

168 (5) **If the investigation concludes that an employee was subject to adverse action in**
169 **retaliation for protected activity in violation of subsection 1 of this section, the department**
170 **shall order the hospital or ambulatory surgical center to make the employee whole,**
171 **consistent with the remedies set forth in subsection 7 of this section, within five business**
172 **days.**

173 **6. Upon receipt of materials from the department under subdivision (5) of**
174 **subsection 5 of this section, the attorney general shall undertake an independent and de**
175 **novo review of the complaint and factual record. As part of such investigation and review,**
176 **the attorney general may issue civil investigative demands, notices, or subpoenas to a**
177 **hospital or ambulatory surgical center, or any other entity that may have relevant**
178 **evidence. The attorney general shall render an enforcement decision within sixty calendar**
179 **days, but may extend such time period by no more than thirty days if necessitated by the**
180 **complexity of the complaint. The attorney general's enforcement decision may include any**
181 **of the remedies set forth in subsection 7 of this section.**

182 **7. Any hospital or ambulatory surgical center that violates subsection 1 of this**
183 **section shall be subject to any or all of the following civil remedies sought by an aggrieved**
184 **employee:**

185 (1) **An injunction to restrain continued violation of this section;**

186 (2) **The reinstatement of the employee to the same position held before the**
187 **retaliatory action, or to an equivalent position;**

188 (3) **The reinstatement of full fringe benefits and seniority rights;**

189 (4) **Compensation for lost wages, benefits, and other remuneration;**

190 (5) **Payment by the employer of reasonable costs and attorney's fees;**

191 (6) **Punitive damages;**

192 (7) **An assessment of a civil fine not to exceed one thousand dollars for the first**
193 **violation and not more than five thousand dollars for each subsequent violation of this**
194 **section. Any moneys collected under this subdivision shall be distributed to the schools of**

195 this state in the same manner that proceeds of all penalties, forfeitures, and fines collected
196 for any breach of the penal laws of this state are distributed.

197 8. Nothing in this section shall be construed to diminish an employee's rights under
198 federal or state law, or under a collective bargaining agreement or employment contract.

199 197.525. 1. This section shall be known and may be cited as the "Health Care
2 Whistleblower Protection Act".

3 2. No employer shall take any retaliatory action against an employee because the
4 employee does any of the following:

5 (1) Discloses or threatens to disclose to a supervisor or to a public body an activity,
6 policy, or practice of the employer of another employer with whom there is a business
7 relationship that the employee reasonably believes is in violation of a law or a rule adopted
8 thereunder, or in the case of an employee who is a licensed or certified health care
9 professional, reasonably believes constitutes improper quality of patient care;

10 (2) Provides information to or testifies before any public body conducting an
11 investigation, hearing, or inquiry into any violation of law or rule adopted thereunder by
12 the employer or another employer with whom there is a business relationship, or in the
13 case of an employee who is a licensed or certified health care professional, provides
14 information to or testifies before any public body conducting an investigation, hearing, or
15 inquiry into the quality of patient care; or

16 (3) Objects to or refuses to participate in any activity, policy, or practice which the
17 employee reasonably believes:

18 (a) Is in violation of a law or rule adopted thereunder, or if the employee is a
19 licensed or certified health care professional, constitutes improper quality of patient care;

20 (b) Is fraudulent or criminal; or

21 (c) Is incompatible with a clear mandate of public policy concerning the public
22 health, safety, or welfare or protection of the environment.

23 3. Upon violation of any of the provisions of this section, an aggrieved employee or
24 former employee may, within one year, institute a civil action in a court of competent
25 jurisdiction. Upon the application of any party, a jury shall be directed to try the validity
26 of any claim under this section specified in the suit. All remedies available in common law
27 tort actions shall be available to prevailing plaintiffs. Such remedies shall be in addition
28 to any legal or equitable relief provided by this section or any other state law. The court
29 may also order:

30 (1) An injunction to restrain continued violation of this section;

31 (2) The reinstatement of the employee to the same position held before the
32 retaliatory action, or to an equivalent position;

- 33 **(3) The reinstatement of full fringe benefits and seniority rights;**
- 34 **(4) The compensation for lost wages, benefits, and other remuneration;**
- 35 **(5) The payment by the employer of reasonable costs and attorney's fees;**
- 36 **(6) Punitive damages; or**
- 37 **(7) An assessment of a civil fine of not more than one thousand dollars for the first**
- 38 **violation of this section and not more than five thousand dollars for each subsequent**
- 39 **violation, which shall be distributed to the schools of this state in the same manner that**
- 40 **proceeds of all penalties, forfeitures, and fines collected for any breach of the penal laws**
- 41 **of the state are distributed.**

42 **4. A court may also order that reasonable attorney's fees and court costs be**
43 **awarded to an employer if the court determines that an action brought by an employee**
44 **under this section was without basis in law or in fact; except that, an employee shall not**
45 **be assessed attorney's fees under this section if, after exercising reasonable and diligent**
46 **efforts after filing a suit, the employee files a voluntary dismissal concerning the employer**
47 **within a reasonable time after determining that the employer would not be found to be**
48 **liable for damages.**

49 **5. An employer shall conspicuously display notices of its employees' protections and**
50 **obligations under this section, and use other appropriate means to keep its employees so**
51 **informed. Each notice posted under this section shall include the name of the person or**
52 **persons the employer has designated to receive written notification.**

53 **6. Nothing in this section shall be deemed to diminish the rights, privileges, or**
54 **remedies of any employee under any federal or state law or regulation, or under any**
55 **collective bargaining agreement or employment contract; except that, the institution of an**
56 **action in accordance with this section shall be deemed a waiver of the rights and remedies**
57 **available under any other contract, collective bargaining agreement, state law or regulation**
58 **thereunder, or under the common law.**

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