

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1846**  
**97TH GENERAL ASSEMBLY**

5887H.02C

D. ADAM CRUMBLISS, Chief Clerk

---

**AN ACT**

To repeal sections 188.023, 188.075, 188.080, and 197.230, RSMo, and to enact in lieu thereof seven new sections relating to the protection of women's health by the regulation of abortion, with penalty provisions.

---

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

Section A. Sections 188.023, 188.075, 188.080, and 197.230, RSMo, are repealed and  
2 seven new sections enacted in lieu thereof, to be known as sections 188.017, 188.023, 188.034,  
3 188.075, 188.080, 197.115, and 197.230, to read as follows:

**188.017. 1. This section shall be known and may be cited as the "Abortion  
2 Misconduct Whistleblower Protection Act".**

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

**4 (1) "Employee", an individual who is or was compensated on a full-time, part-time,  
5 or contractual basis by an abortion facility. "Employee" also includes, but is not limited  
6 to, a physician, resident, intern, physician assistant, nurse, aide, pharmacist, emergency  
7 medical technician or dispatcher, first responder, psychologist, mental health professional,  
8 counselor, social worker, researcher, investigator, accountant, auditor, bookkeeper, or  
9 other similar practitioner or professional, or other person who practices or practiced his  
10 or her profession, in whole or in part, at or on behalf of an abortion facility;**

**11 (2) "Person who has administrative authority", an owner, operator, director,  
12 officer, administrator, manager, agent, or other similar person who has employment,  
13 supervisory, decision-making, or disciplinary authority over an employee;**

**14 (3) "Retaliate", any act or omission, whether within or without the workplace, that  
15 is adverse treatment of an employee and that is reasonably likely to deter an employee from**

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 engaging in conduct protected under any provision of this section.

17       **3. An abortion facility or any person who has administrative authority at or on**  
18 **behalf of such abortion facility shall not make, adopt, or enforce any rule, regulation, or**  
19 **policy preventing an employee from disclosing information to a governmental or law**  
20 **enforcement agency, or in a court, an administrative hearing, or before a legislative**  
21 **commission or committee, or in any other proceeding, if the employee has reasonable cause**  
22 **to believe that the information discloses unprofessional conduct, improper patient care, or**  
23 **a violation of a federal, state, or local law, rule, or regulation.**

24       **4. An abortion facility or any person who has administrative authority at or on**  
25 **behalf of such abortion facility shall not retaliate or threaten to retaliate against an**  
26 **employee who disclosed or attempts to disclose information to a governmental or law**  
27 **enforcement agency, or in a court, an administrative hearing, or before a legislative**  
28 **commission or committee, or in any other proceeding, if the employee had or has**  
29 **reasonable cause to believe that the information disclosed or would disclose unprofessional**  
30 **conduct, improper patient care, or a violation of a federal, state, or local law, rule, or**  
31 **regulation.**

32       **5. An abortion facility or any person who has administrative authority at or on**  
33 **behalf of such abortion facility shall not retaliate or threaten to retaliate against an**  
34 **employee for refusing to participate in any activity that the employee has reasonable cause**  
35 **to believe would result in unprofessional conduct, improper patient care, or would be a**  
36 **violation of a federal, state, or local law, rule, or regulation.**

37       **6. If an abortion facility or any person who has administrative authority at or on**  
38 **behalf of such abortion facility takes any action against an employee in violation of any**  
39 **provision of this section, the employee may bring a civil action against such abortion**  
40 **facility or such person who has administrative authority at or on behalf of such abortion**  
41 **facility, or both. The employee may seek the following relief:**

42           **(1) Reinstatement with the same seniority status that the employee would have had,**  
43 **but for a violation of this section; or in the alternative and if agreed to by the employee, no**  
44 **reinstatement but instead payment of the equivalent of one year of wages, benefits, and**  
45 **other remuneration that the employee previously had received;**

46           **(2) Back pay, lost wages, benefits, and other remuneration, with interest;**

47           **(3) Any appropriate injunctive or other relief; and**

48           **(4) Any other damages sustained as a result of the violation, including, but not**  
49 **limited to, compensatory and punitive damages, attorneys' fees, and all costs of litigation.**

50       **7. Nothing in this section shall prohibit an employee or other person from also**  
51 **receiving an award or compensation under the federal False Claims Act, 31 U.S.C. Section**

52 **3729 et seq., section 191.900 et seq., relating to false statements, false representation and**  
53 **fraud in order to receive a health care payment, or any other law or policy that allows for**  
54 **an award or compensation to a person for disclosing unprofessional conduct, improper**  
55 **patient care, or a violation of a federal, state, or local law, rule, or regulation.**

56 **8. This section does not apply to disclosures that would constitute a violation of the**  
57 **attorney-client privilege.**

188.023. Any licensed health care professional who delivers a baby or **any physician**  
2 **who performs or induces** an abortion, who has prima facie evidence that a patient has been the  
3 victim of statutory rape in the first degree or statutory rape in the second degree, or if the patient  
4 is under the age of eighteen, that [he or she] **the patient** has been a victim of sexual abuse,  
5 including rape in the first or second degree, or incest, shall be required to report such offenses  
6 in the same manner as provided for by section 210.115, **relating to the reporting of child abuse**  
7 **or neglect. A record of the date and time such report was made, the person who made such**  
8 **report, and the entity or entities to which such report was made, together with any**  
9 **identification number or numbers provided by the entity or entities receiving the report,**  
10 **shall be made a part of the patient's permanent medical record.**

188.034. Whenever an abortion facility or a family planning agency or any of its  
2 **agents or employees acting within the scope of their authority or employment, refers a**  
3 **woman for an abortion that would be performed or induced outside of the state, such**  
4 **abortion facility or family planning agency or its agents or employees shall present such**  
5 **woman the printed materials provided by the department under section 188.027. If the**  
6 **referral is not made to such woman in person, such printed materials shall be sent to such**  
7 **woman at no cost to her the same day or as soon as possible by United States mail**  
8 **overnight delivery service or by other overnight or same-day delivery service to an address**  
9 **of such woman's choosing. The department shall furnish such printed materials at no cost**  
10 **and in sufficient quantities to abortion facilities and family planning agencies located**  
11 **within the state.**

188.075. 1. Any person who contrary to the provisions of sections 188.010 to 188.085  
2 knowingly performs, induces, or aids in the performance or inducing of any abortion or  
3 knowingly fails to perform any action required by sections 188.010 to 188.085 shall be guilty of  
4 a class [A misdemeanor] **D felony**, unless a different penalty is provided for in state law, and,  
5 upon conviction, shall be punished as provided by law.

6 2. It shall be an affirmative defense for any person alleged to have violated any provision  
7 of this chapter that the person performed an action or did not perform an action because of a  
8 medical emergency. This affirmative defense shall be available in criminal, civil, and  
9 administrative actions or proceedings. The defendant shall have the burden of persuasion that

10 the defense is more probably true than not.

11 **3. The attorney general shall have concurrent original jurisdiction with a**  
12 **prosecuting or circuit attorney having jurisdiction to commence actions for a violation of**  
13 **any provision of this chapter or any other provision of state law relating to the regulation**  
14 **of abortion. The attorney general or prosecuting or circuit attorney having jurisdiction**  
15 **may seek injunctive or other relief against any person who or entity which is in violation**  
16 **of this chapter or any other provision of state law relating to the regulation of abortion.**

188.080. Any person who is not a physician who performs or induces or attempts to  
2 perform or induce an abortion on another is guilty of a class B felony, and, upon conviction, shall  
3 be punished as provided by law. Any physician performing or inducing an abortion who does  
4 not have clinical privileges at a hospital which offers obstetrical or gynecological care located  
5 within thirty miles of the location at which the abortion is performed or induced shall be guilty  
6 of a class [A misdemeanor] **D felony**, and, upon conviction shall be punished as provided by law.

**197.115. Every hospital shall maintain and make available to the public a list of all**  
2 **physicians currently having clinical privileges at such hospital. Such hospital may publish**  
3 **such list on its website to satisfy the requirements of this section. Such list shall be reviewed**  
4 **and updated as necessary, but no less frequently than once a month.**

197.230. The department of health and senior services shall make, or cause to be made,  
2 such inspections and investigations as it deems necessary. **In the case of any ambulatory**  
3 **surgical center operated for the purpose of performing or inducing any second or third**  
4 **trimester abortions or five or more first trimester abortions per month, the department**  
5 **shall make, or cause to be made, an on-site inspection and investigation at least annually.**  
6 The department may delegate its powers and duties to investigate and inspect ambulatory  
7 surgical centers to an official of a political subdivision having a population of at least four  
8 hundred fifty thousand if such political subdivision is deemed qualified by the department to  
9 inspect and investigate ambulatory surgical centers. The official so designated shall submit a  
10 written report of his **or her** findings to the department and the department may accept the  
11 recommendations of such official if it determines that the facility inspected meets minimum  
12 standards established pursuant to sections 197.200 to 197.240. **Inspection and investigation**  
13 **reports shall be made available to the public. Any portion of a report may be redacted**  
14 **when made publicly available, if such portion would disclose information that is not**  
15 **subject to disclosure under the law.**

✓