

HCS HB 1846 -- ABORTION

SPONSOR: Cox

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Health Care Policy by a vote of 8 to 3.

This bill creates the "Abortion Misconduct Whistleblower Protection Act." The bill defines "retaliate" as any act or omission, whether within or without the workplace, that is adverse treatment of an employee and that is reasonably likely to deter an employee from engaging in conduct protected under these provisions.

The bill prohibits an abortion facility or any individual who has administrative authority at or on behalf of the abortion facility from making, adopting, or enforcing any rule, regulation, or policy that prevents an employee from disclosing information to a governmental or law enforcement agency, or in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, if the employee has reasonable cause to believe that the information discloses unprofessional conduct, improper patient care, or a violation of a federal, state, or local law, rule, or regulation. An abortion facility or any individual who has administrative authority at or on behalf of an abortion facility must not retaliate or threaten to retaliate against an employee who disclosed or attempts to disclose information to a governmental or law enforcement agency, or in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, if the employee had or has reasonable cause to believe that the information disclosed or would disclose unprofessional conduct, improper patient care, or a violation of a federal, state, or local law, rule, or regulation.

The bill prohibits an abortion facility or any individual who has administrative authority at or on behalf of the abortion facility from retaliating or threatening to retaliate against an employee for refusing to participate in any activity that the employee has reasonable cause to believe would result in unprofessional conduct, improper patient care, or would be a violation of a federal, state, or local law, rule, or regulation. If an abortion facility or any individual who has administrative authority at or on behalf of the abortion facility takes any action against an employee in violation of these provisions, the employee may bring a civil action against the abortion facility or the individual who has administrative authority at or on behalf of the abortion facility, or both. The employee may seek the following relief:

- (1) Reinstatement with the same seniority status that the employee

would have had, but for a violation of these provisions; or in the alternative and if agreed to by the employee, no reinstatement but instead payment of the equivalent of one year of wages, benefits, and other remuneration that the employee previously had received;

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

(3) Any appropriate injunctive or other relief; and

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

Nothing in these provisions must prohibit an employee or other individual from also receiving an award or compensation under the federal False Claims Act, 31 U.S.C. Section 3729, or Section 191.900, RSMO, relating to false statements, false representation and fraud in order to receive a health care payment, or any other law or policy that allows for an award or compensation to an individual for disclosing unprofessional conduct, improper patient care, or a violation of a federal, state, or local law, rule, or regulation. These provisions do not apply to disclosures that would constitute a violation of the attorney-client privilege.

Currently, any licensed health care professional who delivers a baby or performs an abortion and has prima facie evidence that a patient has been the victim of statutory rape in the first degree or statutory rape in the second degree or if the patient is under the age of 18, that the patient has been a victim of sexual abuse, including rape in the first or second degree, or incest, is required to report the offenses to the Children's Division within the Department of Social Services. This bill requires that, upon receipt of a report required by these provisions, the department must send a summary of the report made, including all of the facts reported, to the licensed health care professional who made the report. The licensed health care professional who made the report must include the summary as part of the patient's medical records.

Currently, specified written information must be provided to a woman considering an abortion. The bill requires the specified written information to also be provided to a woman who is referred for an abortion that will be performed or induced outside of the state of Missouri. If the referral is not made in person, the specified written materials must be sent to the woman at no cost to her the same day or as soon as possible. The department is required to furnish the specified written materials at no cost and in sufficient quantities to abortion facilities and family planning agencies within Missouri.

Currently, any person who knowingly performs, induces, or aids in the performance or inducing of any abortion or knowingly fails to perform any action required by Sections 188.010 to 188.085, must be guilty of a class A misdemeanor. The bill increases the penalty to a class D felony and specifies that a violation of the provisions of Sections 188.010 to 188.085 must be deemed to occur either in the county in which the woman upon whom the abortion was performed or induced resides or in the county in which the abortion occurs. The Attorney General may enforce these provisions in addition to county prosecutors. Any person who knowingly causes, aids, or assists a minor to obtain an abortion without the required consent will be guilty of a class D felony.

The bill requires every hospital in Missouri to publish and maintain a current list of all physicians holding clinical privileges with the hospital. This list must be reviewed and updated as necessary, but no less frequently than once per month.

The bill requires the Department of Health and Senior Services to annually inspect and investigate each ambulatory surgical center operated for the purpose of performing or inducing any second or third trimester abortions or five or more first trimester abortions per month and must make or cause to be made any other inspections and investigations as it deems necessary. The department must make the inspection and investigation reports available to the public and any portion of a report may be redacted when made publicly available if the portion would disclose information that is not subject to disclosure under these provisions.

**PROPOSERS:** Supporters say that the bill protects women. The bill would strengthen abortion laws in Missouri and would stop women from traveling to Kansas to receive faulty medical service. Supporters say over half of the abortions performed in Kansas are performed on Missouri citizens. There are whistleblower protections for nursing homes and other entities and abortion clinic employees need these protections as well.

Testifying for the bill were Representative Cox; Troy Newman, Operation Rescue; Amanda Durbin; Brian Westbrook, Coalition for Life; Kathy Foric; Missouri Right to Life; Pro-Life Missouri; Americans United for Life; and Joann Schrader.

**OPPOSERS:** Those who oppose the bill say that the bill language insinuates that medical professionals do not report serious cases of abuse which is not true. Under current law all medical professionals are mandatory reporters who are required to report abuse to the proper state authorities. Those who oppose the bill say that the bill imposes burdensome and medically inappropriate

requirements on women who are only seeking information.

Testifying against the bill were Planned Parenthood Advocates in Missouri and ACLU of Eastern Missouri.