

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 788

90TH GENERAL ASSEMBLY

2000

3148S.11T

AN ACT

To repeal section 105.055, RSMo 1994, and section 105.058, RSMo Supp. 1999, relating to whistleblower and related protections for employees, and to enact in lieu thereof nine new sections relating to the same subject, with an effective date for a certain section and a termination date for a certain section.

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

Section A. Section 105.055, RSMo 1994, and section 105.058, RSMo Supp. 1999, are repealed and nine new sections enacted in lieu thereof, to be known as sections 105.055, 105.058, 197.285, 1, 2, 3, 4, 5 and 6, to read as follows:

105.055. 1. No supervisor or appointing authority of any state agency shall prohibit any employee of the agency from discussing the operations of the agency, either specifically or generally, with any member of the legislature or the state auditor.

2. No supervisor or appointing authority of any state agency shall:

(1) Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences:

(a) A violation of any law, rule or regulation; or

(b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law; or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

3. This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the employee to legislators on behalf of the agency;

(2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee;

(3) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) Restricting or precluding disciplinary action taken against a state employee if: the employee [knows the disclosure to be false or which the employee discloses with reckless disregard for its truth or falsity] **knew that the information was false**; the information is closed or is confidential under the provisions of the open meetings law or any other law; or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.

4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work, whether or not the withholding of work has affected or will affect the employee's compensation.

5. Any employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this section. The appeal shall be filed with the state personnel advisory board; provided that the appeal shall be filed with the appropriate agency review board or body of nonmerit agency employers which have established appeal procedures substantially similar to those provided for merit employees in subsection 5 of section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the board or appropriate review body finds that disciplinary action taken was unreasonable, the board or appropriate review body shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this section, it may review and recommend to the appointing authority that the violator be suspended on leave without pay for not more than thirty days or, in cases of willful or repeated violations, may review and recommend to the appointing authority that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The decision of the board or appropriate

review body in such cases may be appealed by any party pursuant to law.

6. Each state agency shall prominently post a copy of this section in locations where it can reasonably be expected to come to the attention of all employees of the agency.

105.058. No state agency and no state official, including the joint committee on legislative research and the oversight division, shall, by agency policy, executive order, ethics codes or any other means, prohibit any state employee from communicating with **the state auditor or** his or her state representative or state senator, nor shall such agency or official require any such employee to provide any record or other information regarding any communications with **the state auditor or** his or her state representative or state senator, except when such communications are directly related to the primary employment duties of such employee.

197.285. 1. Hospitals and ambulatory surgical centers shall establish and implement a written policy adopted by each hospital and ambulatory surgical center relating to the protections for employees who disclose information pursuant to subsection 2 of this section. This policy shall include a time frame for completion of investigations related to complaints, not to exceed thirty days, and a method for notifying the complainant of the disposition of the investigation. This policy shall be submitted to the department of health to verify implementation. At a minimum, such policy shall include the following provisions:

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

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

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

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

(1) Alleged facility mismanagement or fraudulent activity;

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

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

All information disclosed, collected and maintained pursuant to this subsection and pursuant to the written policy requirements of this section shall be accessible to the department of health at all times and shall be reviewed by the department of health at least annually. Complainants shall be notified of the department of health's access to such information and of the complainant's right to appeal to the department of health.

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

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

5. Reports made to the department of health shall be subject to the provisions of section 197.477; provided that the restrictions of section 197.477 shall not be construed to limit the employee's ability to subpoena from the original source the information reported to the department pursuant to this section.

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

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

Section 1. By July 1, 2001, all hospitals and ambulatory surgical centers shall provide training programs, with measurable minimal training outcomes relating to quality of patient care and patient safety, to all unlicensed staff providing patient care in their facility within ninety days of the beginning date of employment. Standards for such training shall be established by the department of health by rule. It shall be a requirement of hospital and ambulatory surgical center licensure pursuant to chapter 197, RSMo, that all hospitals and ambulatory surgical centers submit documentation to the department of health on the training program used.

Section 2. 1. All hospitals and ambulatory surgical centers shall develop and implement a methodology which ensures adequate nurse staffing that will meet the

needs of patients. At a minimum, there shall be on duty at all times a sufficient number of licensed registered nurses to provide patient care requiring the judgment and skills of a licensed registered nurse and to oversee the activities of all nursing personnel.

2. There shall be sufficient licensed and ancillary nursing personnel on duty on each nursing unit to meet the needs of each patient in accordance with accepted standards of quality patient care.

Section 3. 1. There is hereby established a "Technical Advisory Committee on the Quality of Patient Care and Nursing Practices" within the department of health. The committee shall be comprised of nine members appointed by the director of the department of health on or before December 1, 2000, one of whom shall be a representative of the department of health and one of whom shall be a representative of the general public. In addition, the director shall appoint three members representing licensed registered nurses from a list of recommended appointees provided by the Missouri nurses association, one member representing licensed practical nurses from a list of recommended appointees provided by the Missouri licensed practical nurses association, two members from a list of recommended appointees provided by the Missouri hospital association, and one member representing licensed physicians from a list of recommended appointees provided by the Missouri state medical association.

2. The committee shall work with hospitals, nurses, physicians, state agencies, community groups and academic researchers to develop specific recommendations related to staffing, improving the quality of patient care, and insuring the safe and appropriate employment of licensed nurses within hospitals and ambulatory surgical centers. The committee shall develop recommendations and submit an annual report based on such recommendations to the governor, chairpersons of standing health and appropriations committees of the general assembly and the department of health no later than December thirty-first of each year, beginning in 2001.

3. The department of health shall provide such support as the committee members require to aid it in the performance of its duties.

4. Committee members shall not be compensated for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

5. The provisions of this section shall expire on December 31, 2006.

Section 4. 1. In addition to the powers established in sections 197.070 and 197.220, RSMo, the department of health shall use the following standards for enforcing hospital and ambulatory surgical center licensure regulations promulgated to enforce the provisions of sections 197.010 to 197.120, RSMo, and sections 197.200 to 197.240, RSMo:

(1) Upon notification of a deficiency in meeting regulatory standards, the

hospital or ambulatory surgical center shall develop and implement a plan of correction approved by the department which includes, but is not limited to, the specific type of corrective action to be taken and an estimated time to complete such action;

(2) If the plan as implemented does not correct the deficiency, the department may either:

(a) Direct the hospital or ambulatory surgical center to develop and implement a plan of correction pursuant to subdivision (1) of this subsection; or

(b) Require the hospital or ambulatory surgical center to implement a plan of correction developed by the department;

(3) If there is a continuing deficiency after implementation of the plan of correction pursuant to subdivision (2) of this subsection and the hospital or ambulatory surgical center has had an opportunity to correct such deficiency, the department may restrict new inpatient admissions or outpatient entrants to the service or services affected by such deficiency;

(4) If there is a continuing deficiency after the department restricts new inpatient admissions or out-patient entrants to the service or services pursuant to subdivision (3) of this subsection and the hospital or ambulatory surgical center has had an opportunity to correct such deficiency, the department may suspend operations in all or part of the service or services affected by such deficiency;

(5) If there is a continuing deficiency after suspension of operations pursuant to subdivision (4) of this subsection, the department may deny, suspend or revoke the hospital's or ambulatory surgical center's license pursuant to section 197.070, RSMo, or section 197.220, RSMo.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, if a deficiency in meeting licensure standards presents an immediate and serious threat to the patients' health and safety, the department may, based on the scope and severity of the deficiency, restrict access to the service or services affected by the deficiency until the hospital or ambulatory surgical center has developed and implemented an approved plan of correction. Decisions as to whether a deficiency constitutes an immediate and serious threat to the patients' health and safety shall be made in accordance with guidelines established pursuant to regulation of the department of health and such decisions shall be approved by the bureau of health facility licensing in the department of health, or its successor agency, or by a person authorized by the regulations to approve such decisions in the absence of the director.

Section 5. 1. A hospital or ambulatory surgical center aggrieved by a decision of the department pursuant to the provisions of paragraph (b) of subdivision (2), and subdivisions (3), (4) and (5) of subsection 1 of section 4 of this act may appeal such

decision to the administrative hearing commission pursuant to section 197.071, RSMo, or section 197.221, RSMo, and seek judicial review pursuant to section 621.145, RSMo. An appeal of an action to restrict new inpatient admissions or outpatient entrants, suspend operations or revoke a license shall be heard on an expedited basis by the administrative hearing commission. The hospital or ambulatory surgical center may apply to the administrative hearing commission for an order to stay or suspend any such departmental action pending the commission's findings and ruling as authorized by section 621.035, RSMo.

2. If both the department and the hospital or ambulatory surgical center agree to do so, prior to an appeal to the administrative hearing commission pursuant to section 197.071, RSMo, or section 197.221, RSMo, an official action of the department made pursuant to sections 197.010 to 197.120, RSMo, or sections 197.200 to 197.240, RSMo, may be appealed to a departmental hearing officer. The department of health shall promulgate rules specifying the qualifications of such a hearing officer, establish procedures to ensure impartial decisions and provide for comparable appeal remedies when a departmental hearing officer is unavailable.

Section 6. 1. The department of health may adopt rules necessary to implement the provisions of sections 1 to 6 of this act.

2. No rule or portion of a rule promulgated pursuant to the authority of sections 1 to 6 of this act shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

Section B. The enactment of section 197.285 shall become effective January 1, 2001.