

hbd-08 Bill No. CS for CS for CS for SB 1202, 2nd Eng.
Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Heyman, Bucher, and Machek offered the
12 following:

14 **Amendment to Amendment (341895) (with title amendment)**

15 On page 105, between lines 12 & 13,

17 insert:

18 Section 48. Section 400.455, Florida Statutes, is
19 created to read:

20 400.455 Adverse action against employee for disclosing
21 information of specified nature prohibited; employee remedy
22 and relief.--

23 (1) SHORT TITLE.--This section may be cited as the
24 "Assisted Living Facility Whistleblower's Act."

25 (2) LEGISLATIVE INTENT.--It is the intent of the
26 Legislature to prevent assisted living facilities or
27 independent contractors from taking retaliatory action against
28 an employee who reports to an appropriate person or agency
29 violations of law on the part of a facility or independent
30 contractor that create a substantial and specific danger to an
31 assisted living facility resident's health, safety, or

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1 welfare. It is further the intent of the Legislature to
2 prevent assisted living facilities or independent contractors
3 from taking retaliatory action against any person who
4 discloses information to an appropriate agency alleging
5 improper use of or gross waste of governmental funds, or any
6 other abuse or gross neglect of duty on the part of an
7 assisted living facility.

8 (3) DEFINITIONS.--As used in this section, unless
9 otherwise specified, the following words or terms shall have
10 the meanings indicated:

11 (a) "Adverse personnel action" means the discharge,
12 suspension, transfer, or demotion of any employee or the
13 withholding of bonuses, the reduction in salary or benefits,
14 or any other adverse action taken against an employee within
15 the terms and conditions of employment by an assisted living
16 facility or independent contractor.

17 (b) "Agency" means any state, regional, county, local,
18 or municipal government entity, whether executive, judicial,
19 or legislative; or any official, officer, department,
20 division, bureau, commission, authority, or political
21 subdivision thereof.

22 (c) "Employee" means a person who performs services
23 for, and under the control and direction of, or contracts
24 with, an assisted living facility or independent contractor
25 for wages or other remuneration.

26 (d) "Gross mismanagement" means a continuous pattern
27 of managerial abuses, wrongful or arbitrary and capricious
28 actions, or fraudulent or criminal conduct which may have a
29 substantial adverse economic impact.

30 (e) "Independent contractor" means a person who is
31 engaged in any business and enters into a contract with an

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1 assisted living facility.

2 (4) ACTIONS PROHIBITED.--

3 (a) An assisted living facility or an independent
4 contractor shall not dismiss, discipline, or take any other
5 adverse personnel action against an employee for disclosing
6 information pursuant to the provisions of this section.

7 (b) An assisted living facility or an independent
8 contractor shall not take any adverse action that affects the
9 rights or interests of a person in retaliation for the
10 person's disclosure of information under this section.

11 (c) The provisions of this subsection shall not be
12 applicable when an employee or person discloses information
13 known by the employee or person to be false.

14 (5) NATURE OF INFORMATION DISCLOSED.--The information
15 disclosed under this section must include:

16 (a) Any violation or suspected violation of any
17 federal, state, or local law, rule, or regulation committed by
18 an employee or agent of an assisted living facility or
19 independent contractor which creates and presents a
20 substantial and specific danger to the assisted living
21 facility resident's health, safety, or welfare.

22 (b) Any act or suspected act of gross mismanagement,
23 malfeasance, misfeasance, gross waste of public funds, or
24 gross neglect of duty committed by an employee or agent of an
25 assisted living facility or independent contractor.

26 (6) TO WHOM INFORMATION DISCLOSED.--The information
27 disclosed under this section must be disclosed to any agency
28 or Federal Government entity or person designated in s.
29 400.022(1)(c) having the authority to investigate, police,
30 manage, or otherwise remedy the violation or act.

31 (7) EMPLOYEES AND PERSONS PROTECTED.--This section

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1 protects employees and persons who disclose information on
2 their own initiative in a written and signed complaint; who
3 are requested to participate in an investigation, hearing, or
4 other inquiry conducted by any agency or Federal Government
5 entity; who refuse to participate in any adverse action
6 prohibited by this section; or who initiate a complaint
7 through any appropriate complaint hotline. No remedy or other
8 protection under this section applies to any person who has
9 committed or intentionally participated in committing the
10 violation or suspected violation for which protection under
11 this section is being sought.

12 (8) REMEDIES.--Any person protected by this section
13 may bring a civil action in any court of competent
14 jurisdiction against an assisted living facility for any
15 action prohibited by this section.

16 (9) RELIEF.--In any action brought under this section,
17 the relief may include the following:

18 (a) Reinstatement of the employee to the same position
19 held before the adverse action was commenced or to an
20 equivalent position, or reasonable front pay as alternative
21 relief.

22 (b) Reinstatement of the employee's full fringe
23 benefits and seniority rights, as appropriate.

24 (c) Compensation, if appropriate, for lost wages, lost
25 benefits, or other lost remuneration caused by the adverse
26 action.

27 (d) Payment of reasonable costs, including attorney's
28 fees, to a substantially prevailing employee, or to the
29 prevailing employer if the employee filed a frivolous action
30 in bad faith.

31 (e) Issuance of an injunction, if appropriate, by a

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1 court of competent jurisdiction.

2 (f) Temporary reinstatement to the employee's former
3 position or to an equivalent position, pending the final
4 outcome on the complaint, if an employee complains of being
5 discharged in retaliation for a protected disclosure and if a
6 court of competent jurisdiction determines that the disclosure
7 was not made in bad faith or for a wrongful purpose or
8 occurred after an assisted living facility's or independent
9 contractor's initiation of a personnel action against the
10 employee which includes documentation of the employee's
11 violation of a disciplinary standard or performance
12 deficiency.

13 (10) DEFENSES.--It shall be an affirmative defense to
14 any action brought pursuant to this section that the adverse
15 action was predicated upon grounds other than, and would have
16 been taken absent, the employee's or person's exercise of
17 rights protected by this section.

18 (11) EXISTING RIGHTS.--This section does not diminish
19 the rights, privileges, or remedies of an employee under any
20 other law or rule or under any collective bargaining agreement
21 or employment contract.

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24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 137, line 31, of the amendment after the second
27 semicolon

28

29 insert:

30 creating s. 400.455, F.S.; creating the
31 "Assisted Living Facility Whistleblower's Act";

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1 prohibiting retaliatory actions from a facility
2 or independent contractor against an employee
3 for disclosure of certain information;
4 providing legislative intent; providing
5 definitions; specifying the nature of
6 information, to whom disclosed, and persons
7 protected; authorizing civil actions for
8 violation; providing forms of relief; providing
9 penalties; providing defenses to certain
10 actions; protecting existing rights of
11 employees;
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