

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:

Amendment to Amendment (341895) (with title amendment)

On page 25, between lines 23 and 24, of the amendment

insert:

Section 13. Section 400.0245, Florida Statutes, is
created to read:

400.0245 Adverse action against employee for
disclosing information of specified nature prohibited;
employee remedy and relief.--

(1) SHORT TITLE.--This section may be cited as the
"Nursing Home Facility Whistleblower's Act."

(2) LEGISLATIVE INTENT.--It is the intent of the
Legislature to prevent nursing home facilities or independent
contractors from taking retaliatory action against an employee
who reports to an appropriate person or agency violations of
law on the part of a facility or independent contractor that
create a substantial and specific danger to a nursing home
facility resident's health, safety, or welfare. It is further

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

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

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

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

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

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

29 (e) "Independent contractor" means a person who is
30 engaged in any business and enters into a contract with a
31 nursing home facility.

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1 (4) ACTIONS PROHIBITED.--

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

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

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

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

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

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

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

30 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
31 protects employees and persons who disclose information on

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

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

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

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

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

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

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

30 (e) Issuance of an injunction, if appropriate, by a
31 court of competent jurisdiction.

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

12 (10) PENALTIES.--

13 (a) A nursing home facility determined by the agency
14 to have committed an action prohibited under subsection (4) is
15 subject to the penalties set forth in s. 400.23(8)(a).

16 (b) In addition, a violation of subsection (4)
17 constitutes a felony of the third degree, punishable as
18 provided in ss. 775.082 and 775.083.

19 (11) POSTING OF NOTICE.--Each facility licensed under
20 this part shall prominently post notice of the protections,
21 rewards, and remedies provided under this section, along with
22 the telephone numbers for making reports, and shall provide
23 such notice to all employees of the facility within 30 days
24 after the effective date of this section and to all new
25 employees hired subsequent to that date.

26 (12) DEFENSES.--It shall be an affirmative defense to
27 any action brought pursuant to this section that the adverse
28 action was predicated upon grounds other than, and would have
29 been taken absent, the employee's or person's exercise of
30 rights protected by this section.

31 (13) EXISTING RIGHTS.--This section does not diminish

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1 the rights, privileges, or remedies of an employee under any
2 other law or rule or under any collective bargaining agreement
3 or employment contract.

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

7 And the title is amended as follows:

8 On page 131, line 28, of the amendment

9

10 after the first semicolon insert:

11 creating s. 400.0245, F.S.; creating the
12 "Nursing Home Facility Whistleblower's Act";
13 prohibiting retaliatory actions from a facility
14 or independent contractor against an employee
15 for disclosure of certain information;
16 providing legislative intent; providing
17 definitions; specifying the nature of
18 information, to whom disclosed, and persons
19 protected; authorizing civil actions for
20 violation; providing forms of relief; providing
21 penalties; providing reward for information
22 disclosed; requiring facilities to post notice
23 of protections, and remedies; providing
24 defenses to certain actions; protecting
25 existing rights of employees;

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