

By Representative Bendross-Mindingall

1 A bill to be entitled
2 An act relating to nursing home expenditures of
3 state funds; providing legislative findings,
4 declarations, and intent; prohibiting use of
5 state funds for certain purposes; providing
6 construction; providing for enforcement;
7 authorizing civil actions; providing procedures
8 and requirements; providing penalties;
9 providing application; providing protection for
10 certain persons; providing severability;
11 providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. (1) The Legislature finds and declares
16 that it is the policy of the state not to interfere with an
17 employee's choice about whether to join or to be represented
18 by a labor union. For this reason, the state should not
19 subsidize efforts by an employer to assist, promote, deter, or
20 discourage union organizing. It is also a policy of the state
21 to take reasonable steps, as a large purchaser of health care,
22 to ensure that health care funds deliver top-quality care to
23 those eligible for state assistance. It is therefore the
24 intent of the Legislature to prohibit a health care employer
25 from using state funds to assist, promote, deter, or
26 discourage union organizing. The Legislature also finds that,
27 as the single largest purchaser of nursing home services, the
28 state has a significant proprietary interest in the delivery
29 of care at these facilities. Because short staffing results
30 in poor care for residents of state-funded nursing homes and
31 because activities regarding unionization often take place

1 while employees are scheduled to provide services, the
2 Legislature also intends this act to prohibit activities
3 relating to unionization in nursing homes during the regularly
4 scheduled work hours of employees who provide services to
5 Medicaid beneficiaries.

6 (2) No funds from the state shall be used by any
7 nursing home provider for activities that assist, promote,
8 deter, or discourage union organizing.

9 (3) In order to apply the prohibition set forth in
10 subsection (2), and in order to ensure maximum staff
11 availability to care for Medicaid beneficiaries, subsection
12 (2) shall be interpreted to prohibit activities that assist,
13 promote, deter, or discourage an employee who provides
14 services, directly or indirectly, to Medicaid beneficiaries
15 regarding union organizing during a time when the employee is
16 regularly scheduled to provide such services.

17 (4)(a) Any person may file a complaint with the Agency
18 for Health Care Administration if the person believes that a
19 provider is expending funds in violation of this act. Upon
20 the filing of such a complaint, the agency shall, within one
21 week, notify the provider that the provider must provide
22 records, within 10 days after receiving such notice,
23 sufficient to show that no state funds were used in violation
24 of this act.

25 (b) A civil action for a violation of this act may be
26 brought by the Attorney General or any taxpayer for injunctive
27 relief, damages, civil penalties, and other appropriate
28 equitable relief. All damages and civil penalties collected
29 pursuant to this act shall be paid into the State Treasury.

30 (c) Before filing an action under this subsection, a
31 taxpayer shall give written notice to the Attorney General of

1 the alleged violation and the intent to bring suit. Such
2 notice may not be given until 20 days after a complaint is
3 filed with the Agency for Health Care Administration, and the
4 notice shall include a copy of the complaint filed with the
5 agency and its disposition, if any. If the Attorney General
6 commences a civil action for the same alleged violation within
7 60 days after receiving the notice, a separate action by the
8 taxpayer shall be barred.

9 (d) A taxpayer may intervene as a plaintiff in any
10 action brought under this subsection.

11 (e) A prevailing plaintiff in any action under this
12 subsection is entitled to recover reasonable attorney's fees
13 and costs. A prevailing taxpayer intervenor who makes a
14 substantial contribution to an action under this subsection is
15 entitled to recover reasonable attorney's fees and costs.

16 (5)(a) A provider is liable to the state for the
17 amount of any funds expended in violation of subsection (2)
18 plus a civil penalty equal to twice the amount of such funds.
19 If a nursing home violates subsection (3), the nursing home
20 shall be liable to the state for that proportion of the cost
21 of the campaign which represents the proportion of the nursing
22 home's revenues from Medicaid in the fiscal year of the
23 campaign and the civil penalty shall not apply.

24 (b) Any individual who knowingly authorizes the use of
25 state funds in violation of subsection (2) shall be liable to
26 the state for the amount of such funds. Any individual who
27 knowingly violates the prohibition set forth in subsection (2)
28 shall be personally liable to the state in the amount of
29 \$1,000 per violation.

30 (6) For purposes of this act, any expense, including
31 legal and consulting fees and salaries of supervisors and

1 employees, incurred for research for, preparation, planning,
2 or coordination of, or carrying out an activity to assist,
3 promote, deter, or discourage union organizing shall be
4 treated as paid or incurred for that activity.

5 (7) This act does not apply to an activity performed,
6 or to an expense incurred, in connection with:

7 (a) Addressing a grievance or negotiating or
8 administering a collective bargaining agreement; or

9 (b) Performing an activity required by federal or
10 state law or by a collective bargaining agreement.

11 (8) This act does not apply to an expenditure made
12 prior to January 1, 2002, or to a grant or contract awarded
13 prior to January 1, 2002, unless the grant or contract is
14 modified, extended, or renewed after January 1, 2002. Nothing
15 in this act requires employers to maintain records in any
16 particular form.

17 (9)(a) No person subject to the provisions of this act
18 may discharge, demote, threaten, or otherwise discriminate
19 against any person or employee with respect to compensation,
20 terms, conditions, or privileges of employment as a reprisal
21 because the person or employee, or any person acting pursuant
22 to the request of the employee, provided or attempted to
23 provide information to the Agency for Health Care
24 Administration or to the Attorney General or his or her
25 designee regarding possible violations of this act.

26 (b) Any person, employee, or former employee subject
27 to the provisions of this act who believes that he or she has
28 been discharged or discriminated against in violation of
29 paragraph (a) may file a civil action within 3 years after the
30 date of such discharge or discrimination.

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1 (c) If a court of competent jurisdiction finds by a
2 preponderance of the evidence that a violation of this
3 subsection has occurred, the court may grant such relief as it
4 may deem appropriate, including:
5 1. Reinstatement to the employee's former position.
6 2. Compensatory damages, costs, and reasonable
7 attorney's fees.
8 3. Other relief to remedy past discrimination.
9 (d) The protections of this subsection shall not apply
10 to any employee or person who:
11 1. Deliberately causes or participates in the alleged
12 violation of law or regulation; or
13 2. Knowingly or recklessly provides substantially
14 false information to the Agency for Health Care
15 Administration.
16 (10) If any provision of this act or the application
17 thereof to any person or circumstance is held invalid, the
18 invalidity shall not affect other provisions or applications
19 of the act which can be given effect without the invalid
20 provision or application, and to this end the provisions of
21 this act are declared severable.

22 Section 2. This act shall take effect January 1, 2002.

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25 HOUSE SUMMARY

26 Prohibits use of state funds by nursing home providers to
27 assist, promote, deter, or discourage union organizing,
28 especially with regard to care provided to Medicaid
29 beneficiaries. Provides for civil actions for violations
30 of the prohibition. Provides whistleblower protection.
31 See bill for details.