

By Representative Weissman

1 A bill to be entitled
2 An act relating to long-term care; creating ss.
3 400.0245 and 400.455, F.S.; creating the
4 "Nursing Home Facility Whistleblower's Act" and
5 the "Assisted Living Facility Whistleblower's
6 Act," respectively; prohibiting retaliatory
7 actions from a facility or independent
8 contractor against an employee for disclosure
9 of certain information; providing legislative
10 intent; providing definitions; specifying the
11 nature of information, to whom disclosed, and
12 persons protected; authorizing civil actions
13 for violation; providing forms of relief;
14 providing penalties; providing reward for
15 initial disclosure of certain information;
16 requiring facilities to post notice of
17 protections, rewards, and remedies; providing
18 defenses to certain actions; protecting
19 existing rights of employees; providing an
20 effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 400.0245, Florida Statutes, is
25 created to read:

26 400.0245 Adverse action against employee for
27 disclosing information of specified nature prohibited;
28 employee remedy and relief.--

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

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1 (2) LEGISLATIVE INTENT.--It is the intent of the
2 Legislature to prevent nursing home facilities or independent
3 contractors from taking retaliatory action against an employee
4 who reports to an appropriate person or agency violations of
5 law on the part of a facility or independent contractor that
6 create a substantial and specific danger to a nursing home
7 facility resident's health, safety, or welfare. It is further
8 the intent of the Legislature to prevent nursing home
9 facilities or independent contractors from taking retaliatory
10 action against any person who discloses information to an
11 appropriate agency alleging improper use of or gross waste of
12 governmental funds, or any other abuse or gross neglect of
13 duty on the part of a nursing home facility.

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

17 (a) "Adverse personnel action" means the discharge,
18 suspension, transfer, or demotion of any employee or the
19 withholding of bonuses, the reduction in salary or benefits,
20 or any other adverse action taken against an employee within
21 the terms and conditions of employment by a nursing home
22 facility or independent contractor.

23 (b) "Agency" means any state, regional, county, local,
24 or municipal government entity, whether executive, judicial,
25 or legislative; or any official, officer, department,
26 division, bureau, commission, authority, or political
27 subdivision thereof.

28 (c) "Employee" means a person who performs services
29 for, and under the control and direction of, or contracts
30 with, a nursing home facility or independent contractor for
31 wages or other remuneration.

1 (d) "Gross mismanagement" means a continuous pattern
2 of managerial abuses, wrongful or arbitrary and capricious
3 actions, or fraudulent or criminal conduct which may have a
4 substantial adverse economic impact.

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

8 (4) ACTIONS PROHIBITED.--

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

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

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

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

22 (a) Any violation or suspected violation of any
23 federal, state, or local law, rule, or regulation committed by
24 an employee or agent of a nursing home facility or independent
25 contractor which creates and presents a substantial and
26 specific danger to the nursing home facility resident's
27 health, safety, or welfare.

28 (b) Any act or suspected act of gross mismanagement,
29 malfeasance, misfeasance, gross waste of public funds, or
30 gross neglect of duty committed by an employee or agent of a
31 nursing home facility or independent contractor.

- 1 (6) TO WHOM INFORMATION DISCLOSED.--The information
2 disclosed under this section must be disclosed to any agency
3 or Federal Government entity or person designated in s.
4 400.022(1)(c) having the authority to investigate, police,
5 manage, or otherwise remedy the violation or act.
- 6 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
7 protects employees and persons who disclose information on
8 their own initiative in a written and signed complaint; who
9 are requested to participate in an investigation, hearing, or
10 other inquiry conducted by any agency or Federal Government
11 entity; who refuse to participate in any adverse action
12 prohibited by this section; or who initiate a complaint
13 through any appropriate complaint hotline. No remedy or other
14 protection under this section applies to any person who has
15 committed or intentionally participated in committing the
16 violation or suspected violation for which protection under
17 this section is being sought.
- 18 (8) REMEDIES.--Any person protected by this section
19 may bring a civil action in any court of competent
20 jurisdiction against a nursing home facility for any action
21 prohibited by this section.
- 22 (9) RELIEF.--In any action brought under this section,
23 the relief may include the following:
- 24 (a) Reinstatement of the employee to the same position
25 held before the adverse action was commenced or to an
26 equivalent position, or reasonable front pay as alternative
27 relief.
- 28 (b) Reinstatement of the employee's full fringe
29 benefits and seniority rights, as appropriate.
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1 (c) Compensation, if appropriate, for lost wages, lost
2 benefits, or other lost remuneration caused by the adverse
3 action.

4 (d) Payment of reasonable costs, including attorney's
5 fees, to a substantially prevailing employee, or to the
6 prevailing employer if the employee filed a frivolous action
7 in bad faith.

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

10 (f) Temporary reinstatement to the employee's former
11 position or to an equivalent position, pending the final
12 outcome on the complaint, if an employee complains of being
13 discharged in retaliation for a protected disclosure and if a
14 court of competent jurisdiction determines that the disclosure
15 was not made in bad faith or for a wrongful purpose or
16 occurred after a nursing home facility's or independent
17 contractor's initiation of a personnel action against the
18 employee which includes documentation of the employee's
19 violation of a disciplinary standard or performance
20 deficiency.

21 (10) PENALTIES.--

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

25 (b) In addition, a violation of subsection (4)
26 constitutes a felony of the third degree, punishable as
27 provided in s. 775.082 and s. 775.083.

28 (11) REWARD.--Any person protected by this section who
29 provides the initial disclosure of information as provided in
30 paragraph (5)(b) related to gross waste of public funds which
31 leads to a determination of liability under s. 400.0238 or

1 conviction for a criminal violation proceeding therefrom shall
2 be awarded \$10,000 or an amount equal to 10 percent of the
3 recovered public funds, whichever is less, which sum shall be
4 paid from the Resident Protection Trust Fund.

5 (12) POSTING OF NOTICE.--Each facility licensed under
6 this part shall prominently post notice of the protections,
7 rewards, and remedies provided under this section, along with
8 the telephone numbers for making reports, and shall provide
9 such notice to all employees of the facility within 30 days
10 after the effective date of this section and to all new
11 employees hired subsequent to that date.

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

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

21 Section 2. Section 400.455, Florida Statutes, is
22 created to read:

23 400.455 Adverse action against employee for disclosing
24 information of specified nature prohibited; employee remedy
25 and relief.--

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

28 (2) LEGISLATIVE INTENT.--It is the intent of the
29 Legislature to prevent assisted living facilities or
30 independent contractors from taking retaliatory action against
31 an employee who reports to an appropriate person or agency

1 violations of law on the part of a facility or independent
2 contractor that create a substantial and specific danger to an
3 assisted living facility resident's health, safety, or
4 welfare. It is further the intent of the Legislature to
5 prevent assisted living facilities or independent contractors
6 from taking retaliatory action against any person who
7 discloses information to an appropriate agency alleging
8 improper use of or gross waste of governmental funds, or any
9 other abuse or gross neglect of duty on the part of an
10 assisted living facility.

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

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

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

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

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

3 (e) "Independent contractor" means a person who is
4 engaged in any business and enters into a contract with an
5 assisted living facility.

6 (4) ACTIONS PROHIBITED.--

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

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

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

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

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

26 (b) Any act or suspected act of gross mismanagement,
27 malfeasance, misfeasance, gross waste of public funds, or
28 gross neglect of duty committed by an employee or agent of an
29 assisted living facility or independent contractor.

30 (6) TO WHOM INFORMATION DISCLOSED.--The information
31 disclosed under this section must be disclosed to any agency

1 or Federal Government entity or person designated in s.
2 400.022(1)(c) having the authority to investigate, police,
3 manage, or otherwise remedy the violation or act.

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

16 (8) REMEDIES.--Any person protected by this section
17 may bring a civil action in any court of competent
18 jurisdiction against an assisted living facility for any
19 action prohibited by this section.

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

22 (a) Reinstatement of the employee to the same position
23 held before the adverse action was commenced or to an
24 equivalent position, or reasonable front pay as alternative
25 relief.

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

28 (c) Compensation, if appropriate, for lost wages, lost
29 benefits, or other lost remuneration caused by the adverse
30 action.

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1 (d) Payment of reasonable costs, including attorney's
2 fees, to a substantially prevailing employee, or to the
3 prevailing employer if the employee filed a frivolous action
4 in bad faith.

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

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

18 (10) PENALTIES.--

19 (a) An assisted living facility determined by the
20 agency to have committed an action prohibited under subsection
21 (4) is subject to the penalties set forth in s. 400.23(8)(a).

22 (b) In addition, a violation of subsection (4)
23 constitutes a felony of the third degree, punishable as
24 provided in s. 775.082 and s. 775.083.

25 (11) REWARD.--Any person protected by this section who
26 provides the initial disclosure of information as provided in
27 paragraph (5)(b) related to gross waste of public funds which
28 leads to a determination of liability under s. 400.4298 or
29 conviction for a criminal violation proceeding therefrom shall
30 be awarded \$10,000 or the amount equal to 10 percent of the
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1 recovered funds, whichever is less, which sum shall be paid
2 from the Resident Protection Trust Fund.

3 (12) POSTING OF NOTICE.--Each facility licensed under
4 this part shall prominently post notice of the protections,
5 rewards, and remedies provided under this section, along with
6 the telephone numbers for making reports, and shall provide
7 such notice to all employees of the facility within 30 days
8 after the effective date of this section and to all new
9 employees hired subsequent to that date.

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

15 (14) EXISTING RIGHTS.--This section does not diminish
16 the rights, privileges, or remedies of an employee under any
17 other law or rule or under any collective bargaining agreement
18 or employment contract.

19 Section 3. This act shall take effect October 1,
20 2002.

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23 HOUSE SUMMARY

24 Establishes "whistleblower" protections prohibiting
25 retaliatory action by a nursing home or assisted living
26 facility against an employee who discloses certain
27 information concerning the facility. Specifies forms of
28 relief, rewards, and penalties. Requires facilities to
29 post notice of these protections, rewards, and remedies.
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