

1 F.S.; prescribing procedures for investigation
2 of prohibited personnel actions, including such
3 actions against employees or former employees
4 of independent contractors; revising standards
5 for corrective action and termination of
6 investigations; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. Section 112.3187, Florida Statutes, is
11 amended to read:

12 112.3187 Adverse action against employee for
13 disclosing information of specified nature prohibited;
14 employee remedy and relief.--

15 (1) SHORT TITLE.--Sections 112.3187-112.31895 may be
16 cited as the "Whistle-blower's Act."

17 (2) LEGISLATIVE INTENT.--It is the intent of the
18 Legislature to prevent agencies or independent contractors
19 from taking retaliatory action against an employee who reports
20 to an appropriate agency violations of law on the part of a
21 public employer or independent contractor that create a
22 substantial and specific danger to the public's health,
23 safety, or welfare. It is further the intent of the
24 Legislature to prevent agencies or independent contractors
25 from taking retaliatory action against any person who
26 discloses information to an appropriate agency alleging any
27 act or suspected act of gross mismanagement, gross misconduct
28 ~~improper use of governmental office~~, gross waste of public
29 funds, or ~~any other abuse or~~ gross neglect of duty on the part
30 of an agency, public officer, or employee.
31

1 (3) DEFINITIONS.--As used in this act, unless
2 otherwise specified, the following words or terms shall have
3 the meanings indicated:

4 (a) "Agency" means any state, regional, county, local,
5 or municipal government entity, whether executive, judicial,
6 or legislative; any official, officer, department, division,
7 bureau, commission, authority, or political subdivision
8 therein; or any public school, community college, or state
9 university. For purposes of chapters 215 and 216, the term
10 includes, but is not limited to, state attorneys, public
11 defenders, the capital collateral regional counsels, the
12 Justice Administrative Commission, the Florida Housing Finance
13 Corporation, and the Florida Public Service Commission. Solely
14 for the purposes of implementing s. 19(h), Art. III of the
15 State Constitution, the term includes the judicial branch.

16 (b) "Employee" means a person who performs services
17 for, and under the control and direction of, or contracts
18 with, an agency or independent contractor for wages or other
19 remuneration.

20 (c) "Adverse personnel action" means the discharge,
21 suspension, transfer, or demotion of any employee or the
22 withholding of bonuses, the reduction in salary or benefits,
23 or any other adverse action taken against an employee within
24 the terms and conditions of employment by an agency or
25 independent contractor.

26 (d) "Independent contractor" means a person, other
27 than an agency, engaged in any business and who enters into a
28 contract, including a provider agreement, with an agency.

29 (e) "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 (f) "Gross misconduct" means a willful, wanton, or
4 flagrant transgression of law or established rule which is of
5 such a degree or recurrence as to show a substantial disregard
6 of the employer's interests or the employee's duties and
7 obligations to the public.

8 (g) "State agency" means any official, officer,
9 commission, board, authority, council, committee, or
10 department of the executive branch of state government. For
11 purposes of chapters 215 and 216, the term includes, but is
12 not limited to, state attorneys, public defenders, the capital
13 collateral regional counsels, the Justice Administrative
14 Commission, the Florida Housing Finance Corporation, and the
15 Florida Public Service Commission. Solely for the purposes of
16 implementing s. 19(h), Art. III of the State Constitution, the
17 term includes the judicial branch.

18 (4) ACTIONS PROHIBITED.--

19 (a) An agency or independent contractor shall not
20 dismiss, discipline, or take any other adverse personnel
21 action against an employee for disclosing information pursuant
22 to the provisions of this section.

23 (b) An agency or independent contractor shall not take
24 any adverse action that affects the rights or interests of a
25 person in retaliation for the person's disclosure of
26 information under this section.

27 (c) ~~The provisions of~~ This subsection ~~is shall not be~~
28 applicable when an employee or person discloses information
29 known, or which reasonably should be known, by the employee or
30 person to be false.

31

1 ~~(5) NATURE OF INFORMATION DISCLOSED.~~ The information
2 ~~disclosed under this section must include:~~

3 ~~(a) Any violation or suspected violation of any~~
4 ~~federal, state, or local law, rule, or regulation committed by~~
5 ~~an employee or agent of an agency or independent contractor~~
6 ~~which creates and presents a substantial and specific danger~~
7 ~~to the public's health, safety, or welfare.~~

8 ~~(b) Any act or suspected act of gross mismanagement,~~
9 ~~malfesance, misfeasance, gross waste of public funds,~~
10 ~~suspected or actual Medicaid fraud or abuse, or gross neglect~~
11 ~~of duty committed by an employee or agent of an agency or~~
12 ~~independent contractor.~~

13 ~~(5)(6)~~ TO WHOM INFORMATION DISCLOSED.--The information
14 disclosed under this section must be disclosed to one of the
15 following:

16 (a) Any agency or federal government entity, other
17 than as specified in paragraph (b), having the authority to
18 investigate, police, manage, or otherwise remedy the violation
19 or act except, if the individual disclosing the information is
20 employed by the agency to which the disclosure relates, the
21 disclosure must be made pursuant to paragraph (b), paragraph
22 (c), or paragraph (d);

23 ~~(b) , including, but not limited to,~~ The Office of the
24 Chief Inspector General, an agency inspector general or the
25 employee designated as agency inspector general under s.
26 112.3189(1), ~~or~~ inspectors general under s. 20.055;~~;~~

27 (c) The Florida Commission on Human Relations; or, and

28 (d) The whistle-blower's hotline created under s.
29 112.3189.

1 Information disclosed to any other person does not qualify for
2 protection under this act, except that ~~However, for~~
3 disclosures concerning a local governmental entity, including
4 any regional, county, or municipal entity, special district,
5 community college district, or school district or any
6 political subdivision of any of the foregoing, the information
7 must be disclosed to a chief executive officer as defined in
8 s. 447.203(9) or other appropriate local official.

9 (6) NATURE OF INFORMATION DISCLOSED.--The information
10 disclosed under this section must include one of the
11 following:

12 (a) Any violation or reasonably suspected violation of
13 any federal, state, or local law, rule, or regulation
14 committed by an employee or agent of an agency or independent
15 contractor which creates and presents a substantial and
16 specific danger to the public's health, safety, or welfare.

17 (b) Any act or reasonably suspected act of gross
18 mismanagement, gross misconduct, gross waste of public funds,
19 suspected or actual Medicaid fraud or abuse, or gross neglect
20 of duty committed by an employee or agent of an agency or
21 independent contractor.

22
23 Any information disclosed by an employee or former employee of
24 an independent contractor must pertain to the contract between
25 the agency and the independent contractor.

26 (7) EMPLOYEES AND PERSONS PROTECTED.--This section
27 protects employees and persons of a state agency or
28 independent contractor who disclose information pursuant to
29 subsections (5) and (6) by one or more of the following
30 methods:

1 (a) On their own initiative, submitting in a written
2 and signed complaint;

3 (b) Participating, as requested, ~~who are requested to~~
4 ~~participate~~ in an investigation, hearing, or other inquiry
5 relating to this act which is being conducted by any agency or
6 federal government entity;

7 (c) Refusing ~~who refuse~~ to participate in any adverse
8 action prohibited by this section; ~~or~~

9 (d) Initiating ~~who initiate~~ a complaint through the
10 whistle-blower's hotline ~~or the hotline of the Medicaid Fraud~~
11 ~~Control Unit of the Department of Legal Affairs; or~~

12 (e) Filing ~~employees who file~~ any written complaint to
13 their supervisory officials; or

14 (f) Submitting ~~employees who submit~~ a written and
15 signed complaint to the Chief Inspector General in the
16 Executive Office of the Governor, to the employee designated
17 as agency inspector general under s. 112.3189(1), or to the
18 Florida Commission on Human Relations. ~~The provisions of~~

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20 This section may not be used by a person while he or she is
21 under the care, custody, or control of the state correctional
22 system or, after release from the care, custody, or control of
23 the state correctional system, with respect to circumstances
24 that occurred during any period of incarceration. No remedy
25 or other protection under ss. 112.3187-112.31895 applies to
26 any person who has committed or intentionally participated in
27 committing the violation or suspected violation for which
28 protection under ss. 112.3187-112.31895 is being sought.

29 (8) REMEDIES.--

30 (a) Any employee of or applicant for employment with
31 any state agency, as ~~the term "state agency" is~~ defined in

1 this section ~~s. 216.011~~, or any employee of an independent
2 contractor with any state agency, as defined in this section,
3 who is discharged, disciplined, or subjected to other adverse
4 personnel action, or denied employment, because he or she
5 engaged in an activity protected by this section may file a
6 complaint, ~~which complaint must be made~~ in accordance with s.
7 112.31895. Upon receipt of notice from the Florida Commission
8 on Human Relations of termination of the investigation, the
9 complainant may elect to pursue the administrative remedy
10 available under s. 112.31895 or bring a civil action within
11 180 days after receipt of the notice.

12 (b) Within 60 days after the action prohibited by this
13 section, any local public employee protected by this section
14 may file a complaint with the appropriate local governmental
15 authority, if that authority has established by ordinance an
16 administrative procedure for handling such complaints or has
17 contracted with the Division of Administrative Hearings under
18 s. 120.65 to conduct hearings under this section. The
19 administrative procedure created by ordinance must provide for
20 the complaint to be heard by a panel of impartial persons
21 appointed by the appropriate local governmental authority.
22 Upon hearing the complaint, the panel must make findings of
23 fact and conclusions of law for a final decision by the local
24 governmental authority. Within 180 days after entry of a final
25 decision by the local governmental authority, the public
26 employee who filed the complaint may bring a civil action in
27 any court of competent jurisdiction. If the local governmental
28 authority has not established an administrative procedure by
29 ordinance or contract, a local public employee may, within 180
30 days after the action prohibited by this section, bring a
31 civil action in a court of competent jurisdiction. For the

1 | purpose of this paragraph, the term "local governmental
2 | authority" includes any regional, county, or municipal entity,
3 | special district, community college district, or school
4 | district or any political subdivision of any of the foregoing.

5 | (c) Any other person protected by this section may,
6 | after exhausting all available contractual or administrative
7 | remedies, bring a civil action in any court of competent
8 | jurisdiction within 180 days after the action prohibited by
9 | this section.

10 | (9) RELIEF.--In any action brought under this section,
11 | the relief may ~~must~~ include the following:

12 | (a) Reinstatement of the employee to the same position
13 | held before the adverse action was commenced, or to an
14 | equivalent position or reasonable front pay as alternative
15 | relief.

16 | (b) Reinstatement of the employee's full fringe
17 | benefits and seniority rights, as appropriate.

18 | (c) Compensation, if appropriate, for lost wages,
19 | benefits, or other lost remuneration caused by the adverse
20 | action.

21 | (d) Payment of reasonable costs, including attorney's
22 | fees, to a substantially prevailing employee, or to the
23 | prevailing employer if the employee filed a frivolous action
24 | in bad faith.

25 | (e) Issuance of an injunction, if appropriate, by a
26 | court of competent jurisdiction.

27 | (f) Temporary reinstatement to the employee's former
28 | position or to an equivalent position, pending the final
29 | outcome on the complaint, if an employee complains of being
30 | discharged in retaliation for a protected disclosure and if a
31 | court of competent jurisdiction or the Florida Commission on

1 Human Relations, as applicable under s. 112.31895, determines
2 that the disclosure was not made in bad faith or for a
3 wrongful purpose or occurred after an agency's initiation of a
4 personnel action against the employee which includes
5 documentation of the employee's violation of a disciplinary
6 standard or performance deficiency. This paragraph does not
7 apply to an employee of a municipality.

8 (10) DEFENSES.--It shall be an affirmative defense to
9 any action brought pursuant to this section that:

10 (a) The adverse action was predicated upon grounds
11 other than, and would have been taken absent, the employee's
12 or person's exercise of rights protected by this section.

13 (b) An employee or person discloses information known,
14 or which reasonably should have been known, by the employee or
15 person to be false.

16 (11) EXISTING RIGHTS.--Sections 112.3187-112.31895 do
17 not diminish the rights, privileges, or remedies of an
18 employee under any other law or rule or under any collective
19 bargaining agreement or employment contract; however, the
20 election of remedies in s. 447.401 also applies to
21 whistle-blower actions.

22 Section 2. Subsection (1) of section 112.3188, Florida
23 Statutes, is amended to read:

24 112.3188 Confidentiality of information given to the
25 Chief Inspector General, internal auditors, inspectors
26 general, local chief executive officers, or other appropriate
27 local officials.--

28 (1) The name or identity of any individual who
29 discloses in good faith to the Chief Inspector General or an
30 agency inspector general, a local chief executive officer, or
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1 other appropriate local official information that alleges that
2 an employee or agent of an agency or independent contractor:

3 (a) Has violated or is reasonably suspected of having
4 violated any federal, state, or local law, rule, or
5 regulation, thereby creating and presenting a substantial and
6 specific danger to the public's health, safety, or welfare; or

7 (b) Has committed an act of gross mismanagement, gross
8 misconduct ~~malfeasance, misfeasance~~, gross waste of public
9 funds, or gross neglect of duty

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11 may not be disclosed to anyone other than a member of the
12 Chief Inspector General's, agency inspector general's,
13 internal auditor's, Florida Commission on Human Relations',
14 local chief executive officer's, or other appropriate local
15 official's staff without the written consent of the
16 individual, unless the Chief Inspector General, internal
17 auditor, agency inspector general, local chief executive
18 officer, or other appropriate local official determines that:
19 the disclosure of the individual's identity is necessary to
20 prevent a substantial and specific danger to the public's
21 health, safety, or welfare or to prevent the imminent
22 commission of a crime; or the disclosure is unavoidable and
23 absolutely necessary during the course of the audit,
24 evaluation, or investigation.

25 Section 3. Section 112.3189, Florida Statutes, is
26 amended to read:

27 112.3189 Investigative procedures upon receipt of
28 whistle-blower information from certain state and independent
29 contractor employees.--

30 (1) This section only applies to the disclosure of
31 information as described in s. 112.3187(6) ~~s. 112.3187(5)~~ by

1 an employee or former employee of, or an applicant for
2 employment with, a state agency or by an employee or former
3 employee of an independent contractor, ~~as the term "state~~
4 ~~agency" is defined in s. 216.011,~~ to the Office of the Chief
5 Inspector General of the Executive Office of the Governor or
6 to the agency inspector general. If an agency does not have
7 an inspector general, the head of the state agency, ~~as defined~~
8 ~~in s. 216.011,~~ shall designate an employee, in consultation
9 with the Chief Inspector General, to receive information
10 described in s. 112.3187(6) ~~s. 112.3187(5)~~. For purposes of
11 this section and s. 112.3188 only, the employee designated by
12 the head of the state agency shall be deemed an agency
13 inspector general.

14 (2) To facilitate the receipt of information described
15 in subsection (1), the Chief Inspector General shall maintain
16 an in-state toll-free whistle-blower's hotline and shall
17 circulate among the various state agencies an advisory for all
18 employees which indicates the existence of the toll-free
19 number and its purpose and provides an address to which
20 written whistle-blower information may be forwarded.

21 (3) When a person alleges information described in s.
22 112.3187(6) ~~s. 112.3187(5)~~, the Chief Inspector General or
23 agency inspector general actually receiving such information
24 shall within 20 days of receiving such information determine:

25 (a) Whether the information disclosed is the type of
26 information described in s. 112.3187(6) ~~s. 112.3187(5)~~.

27 (b) Whether the source of the information is a person
28 who is an employee or former employee of, or an applicant for
29 employment with, a state agency or an employee or former
30 employee of an independent contractor with any state agency,
31 ~~as defined in s. 216.011.~~

1 (c) Whether the information actually disclosed
2 demonstrates reasonable cause to suspect that an employee or
3 agent of an agency or independent contractor has violated any
4 federal, state, or local law, rule, or regulation, thereby
5 creating and presenting a substantial and specific danger to
6 the public's health, safety, or welfare, or has committed an
7 act of gross mismanagement, gross misconduct ~~malfeasance,~~
8 ~~misfeasance~~, gross waste of public funds, or gross neglect of
9 duty.

10 (4) If the Chief Inspector General or agency inspector
11 general under subsection (3) determines that the information
12 disclosed is not the type of information described in s.
13 112.3187(6) ~~s. 112.3187(5)~~, or that the source of the
14 information is not a person who is an employee or former
15 employee of, or an applicant for employment with, a state
16 agency or an employee or former employee of an independent
17 contractor with any state agency, as defined in s. 216.011, or
18 that the information disclosed does not demonstrate reasonable
19 cause to suspect that an employee or agent of an agency or
20 independent contractor has violated any federal, state, or
21 local law, rule, or regulation, thereby creating and
22 presenting a substantial and specific danger to the public's
23 health, safety, or welfare, or has committed an act of gross
24 mismanagement, gross misconduct ~~malfeasance, misfeasance,~~
25 gross waste of public funds, or gross neglect of duty, the
26 Chief Inspector General or agency inspector general shall
27 notify the complainant of such fact and copy and return, upon
28 request of the complainant, any documents and other materials
29 that were provided by the complainant.

30 (5)(a) If the Chief Inspector General or agency
31 inspector general under subsection (3) determines that the

1 information disclosed is the type of information described in
2 s. 112.3187(6) ~~s. 112.3187(5)~~, that the source of the
3 information is from a person who is an employee or former
4 employee of, or an applicant for employment with, a state
5 agency or an employee or former employee of an independent
6 contractor with any state agency, as defined in s. 216.011,
7 and that the information disclosed demonstrates reasonable
8 cause to suspect that an employee or agent of an agency or
9 independent contractor has violated any federal, state, or
10 local law, rule, or regulation, thereby creating a substantial
11 and specific danger to the public's health, safety, or
12 welfare, or has committed an act of gross mismanagement, gross
13 misconduct ~~malfeasance, misfeasance~~, gross waste of public
14 funds, or gross neglect of duty, the Chief Inspector General
15 or agency inspector general making such determination shall
16 then conduct an investigation, unless the Chief Inspector
17 General or the agency inspector general determines, within 30
18 days after receiving the allegations from the complainant,
19 that such investigation is unnecessary. For purposes of this
20 subsection, the Chief Inspector General or the agency
21 inspector general shall consider the following factors, but is
22 not limited to only the following factors, when deciding
23 whether the investigation is not necessary:

- 24 1. The gravity of the disclosed information compared
25 to the time and expense of an investigation.
- 26 2. The potential for an investigation to yield
27 recommendations that will make state government more efficient
28 and effective.
- 29 3. The benefit to state government to have a final
30 report on the disclosed information.

31

1 4. Whether the alleged whistle-blower information
2 primarily concerns personnel practices that may be
3 investigated under chapter 110.

4 5. Whether another agency may be conducting an
5 investigation and whether any investigation under this section
6 could be duplicative.

7 6. The time that has elapsed between the alleged event
8 and the disclosure of the information.

9 (b) If the Chief Inspector General or agency inspector
10 general determines under paragraph (a) that an investigation
11 is not necessary, the Chief Inspector General or agency
12 inspector general making such determination shall:

13 1. Copy and return, upon request of the complainant,
14 any documents and other materials provided by the individual
15 who made the disclosure.

16 2. Inform in writing the head of the state agency for
17 the agency inspector general making the determination that the
18 investigation is not necessary and the individual who made the
19 disclosure of the specific reasons why an investigation is not
20 necessary and why the disclosure will not be further acted on
21 under this section.

22 (6) The agency inspector general may conduct an
23 investigation pursuant to paragraph (5)(a) only if the person
24 transmitting information to the agency inspector general is an
25 employee or former employee of, or an applicant for employment
26 with, the agency inspector general's agency or is an employee
27 or former employee of the agency's independent contractor. The
28 agency inspector general shall:

29 (a) Conduct an investigation with respect to the
30 information and any related matters.

31

1 (b) Submit to the complainant and the Chief Inspector
2 General, within 60 days after the date on which a
3 determination to conduct an investigation is made under
4 paragraph (5)(a), a final written report that sets forth the
5 agency inspector general's findings, conclusions, and
6 recommendations, except as provided under subsection (11).
7 The complainant shall be advised in writing by the agency
8 inspector general ~~head~~ that the complainant may submit to the
9 Chief Inspector General and agency inspector general comments
10 on the final report within 10 ~~20~~ days after ~~of~~ the date of the
11 report and that such comments will be attached to the final
12 report.

13 (7) If the Chief Inspector General decides an
14 investigation should be conducted pursuant to paragraph
15 (5)(a), the Chief Inspector General shall either:

16 (a) Promptly transmit to the appropriate ~~head of the~~
17 ~~state~~ agency inspector general the information with respect to
18 which the determination to conduct an investigation was made,
19 and such agency inspector general ~~head~~ shall conduct an
20 investigation and submit to the Chief Inspector General a
21 final written report that sets forth the agency inspector
22 general's ~~head's~~ findings, conclusions, and recommendations;
23 or

24 (b)1. Conduct an investigation with respect to the
25 information and any related matters; and

26 2. Submit to the complainant within 60 days after the
27 date on which a determination to conduct an investigation is
28 made under paragraph (5)(a), a final written report that sets
29 forth the Chief Inspector General's findings, conclusions, and
30 recommendations, except as provided under subsection (11). The
31 complainant shall be advised in writing by the Chief Inspector

1 General that the complainant may submit to the Chief Inspector
2 General comments on the final report within 10 ~~20~~ days after
3 ~~of~~ the date of the report and that such comments will be
4 attached to the final report.

5 (c) The Chief Inspector General may require an agency
6 inspector general or the employee designated as agency
7 inspector general under subsection (1) head to conduct an
8 investigation under paragraph (a) only if the information was
9 transmitted to the Chief Inspector General by:

10 1. An employee or former employee of, or an applicant
11 for employment with, the agency, or an employee or former
12 employee of the agency's independent contractor, affected by
13 ~~that~~ the information ~~concerns~~; or

14 2. An employee who obtained the information in
15 connection with the performance of the employee's duties and
16 responsibilities.

17 (8) Final reports required under this section must be
18 reviewed and signed by the person responsible for conducting
19 the investigation (agency inspector general, employee
20 designated as agency inspector general under subsection (1)
21 ~~agency head~~, or Chief Inspector General) and must include:

22 (a) A summary of the information with respect to which
23 the investigation was initiated.

24 (b) A description of the conduct of the investigation.

25 (c) A summary of any evidence obtained from the
26 investigation.

27 (d) A listing of any violation or apparent violation
28 of any law, rule, or regulation.

29 (e) A description of any action taken or planned as a
30 result of the investigation, such as:

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1 1. A change in an agency rule, regulation, or
2 practice.

3 2. The restoration of an aggrieved employee.

4 3. A disciplinary action against an employee.

5 4. The referral to the Department of Law Enforcement
6 of any evidence of a criminal violation.

7 (9)(a) A report required of the agency inspector
8 general head under paragraph (7)(a) shall be submitted to the
9 Chief Inspector General and the complainant within 60 days
10 after the agency inspector general head receives the complaint
11 from the Chief Inspector General, except as provided under
12 subsection (11). The complainant shall be advised in writing
13 by the agency inspector general head that the complainant may
14 submit to the Chief Inspector General comments on the report
15 within 10 ~~20~~ days after ~~of~~ the date of the report and that
16 such comments will be attached to the final report.

17 (b) Upon receiving a final report required under this
18 section, the Chief Inspector General shall review the report
19 and determine whether the report contains the information
20 required by subsection (8). If the report does not contain
21 the information required by subsection (8), the Chief
22 Inspector General shall determine why and note the reasons on
23 an addendum to the final report.

24 (c) The Chief Inspector General shall transmit any
25 final report under this section, any comments provided by the
26 complainant, and any appropriate comments or recommendations
27 by the Chief Inspector General to the Governor, to the ~~Joint~~
28 Legislative Auditing Committee, to the investigating agency,
29 and to the Chief Financial Officer.

30 (d) If the Chief Inspector General does not receive
31 the report of the agency head within the time prescribed in

1 paragraph (a), the Chief Inspector General may conduct the
2 investigation in accordance with paragraph (7)(b) or request
3 that another agency inspector general conduct the
4 investigation in accordance with subsection (6) and shall
5 report the complaint to the Governor, to the ~~Joint~~ Legislative
6 Auditing Committee, and to the investigating agency, together
7 with a statement noting the failure of the agency inspector
8 general head to file the required report.

9 (10) For any time period set forth in subsections (3),
10 (6), (7), and (9), such time period may be extended in writing
11 by the Chief Inspector General for good cause shown.

12 (11) If an investigation under this section produces
13 evidence of a criminal violation, the report shall not be
14 transmitted to the complainant, and the agency head or agency
15 inspector general shall notify the Chief Inspector General and
16 the Department of Law Enforcement.

17 Section 4. Subsection (1), paragraphs (b) and (c) of
18 subsection (2), and paragraphs (a), (d), (e), (h), (i), and
19 (j) of subsection (3) of section 112.31895, Florida Statutes,
20 are amended to read:

21 112.31895 Investigative procedures in response to
22 prohibited personnel actions.--

23 (1)(a) If a disclosure under s. 112.3187 includes or
24 results in alleged retaliation by an employer, the employee or
25 former employee of, or applicant for employment with, a state
26 agency or the employee or former employee of an independent
27 contractor with any state agency who, as defined in s.
28 ~~216.011, that~~ is so affected may file a complaint alleging a
29 prohibited personnel action, which complaint must be made by
30 filing a written and signed complaint with the Office of the
31 Chief Inspector General in the Executive Office of the

1 Governor or the Florida Commission on Human Relations, no
2 later than 60 days after the prohibited personnel action.

3 (b) Within 3 ~~three~~ working days after receiving a
4 complaint under this section, the office or officer receiving
5 the complaint shall acknowledge receipt of the complaint and
6 provide copies of the complaint and any other preliminary
7 information available concerning the disclosure of information
8 under s. 112.3187 to each of the other parties named in
9 paragraph (a), which parties shall each acknowledge receipt of
10 such copies to the complainant.

11 (2) FACT FINDING.--The Florida Commission on Human
12 Relations shall:

13 (b) Notify the complainant, within 15 days after
14 receiving a complaint, that the complaint has been received by
15 the commission ~~department~~.

16 (c) Within 90 days after receiving the complaint,
17 provide the agency head, the agency inspector general or, if
18 applicable, the independent contractor, and the complainant
19 with a fact-finding report that may include recommendations to
20 the parties or proposed resolution of the complaint. The
21 fact-finding report shall be presumed admissible in any
22 subsequent or related administrative or judicial review.

23 (3) CORRECTIVE ACTION AND TERMINATION OF
24 INVESTIGATION.--

25 (a) The Florida Commission on Human Relations, in
26 accordance with this act and for the sole purpose of this act,
27 is empowered to:

28 1. Receive and investigate complaints from employees
29 alleging retaliation by state agencies or from employees of
30 independent contractors with any state agency, ~~as the term~~
31 ~~"state agency" is defined in s. 216.011.~~

1 2. Protect employees and applicants for employment
2 with such state agencies or employees of independent
3 contractors ~~from prohibited personnel~~ practices under s.
4 112.3187.

5 3. Petition for stays and petition for corrective
6 actions, including, but not limited to, temporary
7 reinstatement.

8 4. Recommend disciplinary proceedings pursuant to
9 investigation and appropriate agency rules and procedures.

10 5. Coordinate with the Chief Inspector General in the
11 Executive Office of the Governor and the Florida Commission on
12 Human Relations to receive, review, and forward to appropriate
13 agencies, legislative entities, or the Department of Law
14 Enforcement disclosures of a violation of any law, rule, or
15 regulation, or disclosures of gross mismanagement, gross
16 misconduct ~~malfeasance, misfeasance, nonfeasance~~, gross
17 neglect of duty, or gross waste of public funds.

18 6. Review rules pertaining to personnel matters issued
19 or proposed by the Department of Management Services, the
20 Public Employees Relations Commission, and other agencies,
21 and, if the Florida Commission on Human Relations finds that
22 any rule or proposed rule, on its face or as implemented,
23 requires the commission of a prohibited personnel practice,
24 provide a written comment to the appropriate agency.

25 7. Investigate, request assistance from other
26 governmental entities, and, if appropriate, bring actions
27 concerning, allegations of retaliation by state agencies or
28 independent contractors of state agencies under subparagraph
29 1.

30 8. Administer oaths, examine witnesses, take
31 statements, issue subpoenas, order the taking of depositions,

1 order responses to written interrogatories, and make
2 appropriate motions to limit discovery, pursuant to
3 investigations under subparagraph 1.

4 9. Intervene or otherwise participate, as a matter of
5 right, in any appeal or other proceeding arising under this
6 section before the Public Employees Relations Commission or
7 any other appropriate agency, except that the Florida
8 Commission on Human Relations must comply with the rules of
9 the commission or other agency and may not seek corrective
10 action or intervene in an appeal or other proceeding without
11 the consent of the person protected under ss.
12 112.3187-112.31895.

13 10. Conduct an investigation, in the absence of an
14 allegation, to determine whether reasonable grounds exist to
15 believe that a prohibited action or a pattern of prohibited
16 action has occurred, is occurring, or is to be taken.

17 (d) If the Florida Commission on Human Relations is
18 unable to conciliate a complaint within 60 days after receipt
19 of the fact-finding report, the Florida Commission on Human
20 Relations shall terminate the investigation. Upon termination
21 of any investigation, the Florida Commission on Human
22 Relations shall notify the complainant and the agency head,
23 the agency inspector general, and, if applicable, the
24 independent contractor of the termination of the
25 investigation, providing a summary of relevant facts found
26 during the investigation and the reasons for terminating the
27 investigation. A written statement under this paragraph is
28 presumed admissible as evidence in any judicial or
29 administrative proceeding but is not admissible without the
30 consent of the complainant.

31

1 (e)1. The Florida Commission on Human Relations may
2 request an agency, independent contractor, or circuit court to
3 order a stay, on such terms as the court requires, of any
4 personnel action for 45 days if the Florida Commission on
5 Human Relations determines that reasonable grounds exist to
6 believe that a prohibited personnel action has occurred, is
7 occurring, or is to be taken. The Florida Commission on Human
8 Relations may request that such stay be extended for
9 appropriate periods of time.

10 2. If, in connection with any investigation, the
11 Florida Commission on Human Relations determines that
12 reasonable grounds exist to believe that a prohibited action
13 has occurred, is occurring, or is to be taken which requires
14 corrective action, the Florida Commission on Human Relations
15 shall report the determination together with any findings or
16 recommendations to the agency head, the agency inspector
17 general, and if applicable, the independent contractor and may
18 report that determination and those findings and
19 recommendations to the Governor and the Chief Financial
20 Officer. The Florida Commission on Human Relations may include
21 in the report recommendations for corrective action to be
22 taken.

23 3. If, after 20 days, the agency does not implement
24 the recommended action, the Florida Commission on Human
25 Relations shall terminate the investigation and notify the
26 complainant of the right to appeal under subsection (4), or
27 may petition the agency or independent contractor for
28 corrective action under this subsection.

29 4. If the Florida Commission on Human Relations finds,
30 in consultation with the individual subject to the prohibited
31 action, that the agency or independent contractor has

1 implemented the corrective action, the commission shall file
2 such finding with the agency head, agency inspector general,
3 and, if applicable, independent contractor, together with any
4 written comments that the individual provides, and terminate
5 the investigation.

6 (h) If, in connection with any investigation under
7 this section, the Florida Commission on Human Relations
8 determines that reasonable grounds exist to believe that a
9 violation of a law, rule, or regulation has occurred, other
10 than a criminal violation or a prohibited action under this
11 section, the commission may report such violation to the head
12 of the agency, inspector general of the agency, and, if
13 applicable, the independent contractor involved. Within 30
14 days after the agency receives the report, the agency head,
15 agency inspector general, and, if applicable, independent
16 contractor shall provide to the commission a certification
17 that states that the ~~head of the agency~~ or independent
18 contractor has personally reviewed the report and indicates
19 what action has been or is to be taken and when the action
20 will be completed.

21 (i) During any investigation under this section,
22 disciplinary action may not be taken against any employee of a
23 state agency or employee of an independent contractor of a
24 state agency, ~~as the term "state agency" is defined in s.~~
25 ~~216.011,~~ for reporting an alleged prohibited personnel action
26 that is under investigation, or for reporting any related
27 activity, or against any employee for participating in an
28 investigation without notifying the Florida Commission on
29 Human Relations.

30 (j) The Florida Commission on Human Relations may also
31 petition for an award of reasonable attorney's fees and

