

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Jones offered the following:

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3 **Amendment to Amendment (397883) (with title amendment)**

4 Between lines 181 and 182, insert:

5 Section 106. Section 400.0245, Florida Statutes, is  
6 created to read:

7 400.0245 Adverse action against employee for disclosing  
8 information of specified nature prohibited; employee remedy and  
9 relief.-

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

12 (2) LEGISLATIVE INTENT.-It is the intent of the  
13 Legislature to prevent nursing home facilities or independent  
14 contractors from taking retaliatory action against an employee  
15 who reports to an appropriate person or agency violations of law  
16 on the part of a facility or independent contractor that create

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17 a substantial and specific danger to a nursing home facility  
18 resident's health, safety, or welfare. It is further the intent  
19 of the Legislature to prevent nursing home facilities or  
20 independent contractors from taking retaliatory action against  
21 any person who discloses information to an appropriate agency  
22 alleging improper use of or gross waste of governmental funds,  
23 or any other abuse or gross neglect of duty on the part of a  
24 nursing home facility.

25 (3) DEFINITIONS.—As used in this section, the term:

26 (a) "Adverse personnel action" means the discharge,  
27 suspension, transfer, or demotion of any employee or the  
28 withholding of bonuses, the reduction in salary or benefits, or  
29 any other adverse action taken against an employee within the  
30 terms and conditions of employment by a nursing home facility or  
31 independent contractor.

32 (b) "Agency" means any state, regional, county, local, or  
33 municipal government entity, whether executive, judicial, or  
34 legislative, or any official, officer, department, division,  
35 bureau, commission, authority, or political subdivision thereof.

36 (c) "Employee" means a person who performs services for,  
37 and under the control and direction of, or contracts with, a  
38 nursing home facility or independent contractor for wages or  
39 other remuneration.

40 (d) "Gross mismanagement" means a continuous pattern of  
41 managerial abuses, wrongful or arbitrary and capricious actions,  
42 or fraudulent or criminal conduct which may have a substantial  
43 adverse economic impact.

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

47 (4) ACTIONS PROHIBITED.—

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

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

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

59 (5) NATURE OF INFORMATION DISCLOSED.—The information  
60 disclosed under this section must include:

61 (a) Any violation or suspected violation of any federal,  
62 state, or local law, rule, or regulation committed by an  
63 employee or agent of a nursing home facility or independent  
64 contractor which creates and presents a substantial and specific  
65 danger to the nursing home facility resident's health, safety,  
66 or welfare.

67 (b) Any act or suspected act of gross mismanagement,  
68 malfeasance, misfeasance, gross waste of public funds, or gross  
69 neglect of duty committed by an employee or agent of a nursing  
70 home facility or independent contractor.

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71 (6) TO WHOM INFORMATION DISCLOSED.—The information  
72 disclosed under this section must be disclosed to any agency or  
73 Federal Government entity or person designated in s.  
74 400.022(1)(c) having the authority to investigate, police,  
75 manage, or otherwise remedy the violation or act.

76 (7) EMPLOYEES AND PERSONS PROTECTED.—This section protects  
77 employees and persons who disclose information on their own  
78 initiative in a written and signed complaint; who are requested  
79 to participate in an investigation, hearing, or other inquiry  
80 conducted by any agency or Federal Government entity; who refuse  
81 to participate in any adverse action prohibited by this section;  
82 or who initiate a complaint through any appropriate complaint  
83 hotline. No remedy or other protection under this section  
84 applies to any person who has committed or intentionally  
85 participated in committing the violation or suspected violation  
86 for which protection under this section is being sought.

87 (8) REMEDIES.—Any person protected by this section may  
88 bring a civil action in any court of competent jurisdiction  
89 against a nursing home facility for any action prohibited by  
90 this section.

91 (9) RELIEF.—In any action brought under this section, the  
92 relief may include the following:

93 (a) Reinstatement of the employee to the same position  
94 held before the adverse action was commenced or to an equivalent  
95 position, or reasonable front pay as alternative relief.

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

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98       (c) Compensation, if appropriate, for lost wages, lost  
99 benefits, or other lost remuneration caused by the adverse  
100 action.

101       (d) Payment of reasonable costs, including attorney's  
102 fees, to a substantially prevailing employee, or to the  
103 prevailing employer if the employee filed a frivolous action in  
104 bad faith.

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

107       (f) Temporary reinstatement to the employee's former  
108 position or to an equivalent position, pending the final outcome  
109 on the complaint, if an employee complains of being discharged  
110 in retaliation for a protected disclosure and if a court of  
111 competent jurisdiction determines that the disclosure was not  
112 made in bad faith or for a wrongful purpose or occurred after a  
113 nursing home facility's or independent contractor's initiation  
114 of a personnel action against the employee that includes  
115 documentation of the employee's violation of a disciplinary  
116 standard or performance deficiency.

117       (10) PENALTIES.-

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

121       (b) In addition, a violation of subsection (4) constitutes  
122 a felony of the third degree, punishable as provided in s.  
123 775.082 or s. 775.083.

124       (11) REWARD.-Any person protected by this section who  
125 discloses information as provided in paragraph (5) (b) related to  
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126 gross waste of public funds shall be awarded \$10,000, which sum  
127 shall be paid from the Resident Protection Trust Fund.

128 (12) POSTING OF NOTICE.—Each facility licensed under this  
129 part shall prominently post notice of the protections, rewards,  
130 and remedies provided under this section, along with the  
131 telephone numbers for making reports, and shall provide such  
132 notice to all employees of the facility within 30 days after the  
133 effective date of this section and to all new employees hired  
134 subsequent to that date.

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

140 (14) EXISTING RIGHTS.—This section does not diminish the  
141 rights, privileges, or remedies of an employee under any other  
142 law or rule or under any collective bargaining agreement or  
143 employment contract.

144  
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147 **T I T L E A M E N D M E N T**

148 Remove line 209 and insert:  
149 entities; creating s. 400.0245, F.S.; creating the  
150 "Nursing Home Facility Whistleblower's Act"; prohibiting  
151 retaliatory actions from nursing home facilities and  
152 independent contractors against an employee for disclosing  
153 certain information; providing legislative intent;

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154 providing definitions; specifying prohibited actions for  
155 nursing home facilities and independent contractors;  
156 specifying the nature of information disclosed, to whom  
157 such information is disclosed, and employees and persons  
158 who are protected after disclosing certain information;  
159 authorizing civil actions for violations; providing for  
160 relief and civil and criminal penalties; providing a  
161 reward for information disclosed; requiring facilities to  
162 post notice of protections, rewards, and remedies;  
163 providing defenses to certain actions; protecting existing  
164 rights of employees; providing applicability; providing  
165 for