

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1776

INTRODUCER: Commerce and Tourism Committee and Senator McClain

SUBJECT: Employment Rights

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dike	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1776 amends Florida’s whistleblower protections for employees of private employers. The bill states that an employer may not retaliate against an employee who:

- Disclosed a practice of the employer, which the employee had a good faith belief would be illegal, to a government agency under oath.
- Threatened to disclose an unlawful practice of the employer to a government agency.
- Objected to or refused to participate in an unlawful practice of the employer.

An employee is required to prove, by clear and convincing evidence, that they notified a supervisor or employer about the alleged violation, and the supervisor or employer was given an opportunity to correct the illegal activity. If the employer proffers evidence that the personnel action was taken for a reason other than the employee’s exercise of a right under this act, then the employee has the burden to prove otherwise.

Further, the bill alters provisions for definitions, attorney fees and costs, and remedies available to the employee.

The bill also modifies the public whistleblower provisions by excluding from the definition of “independent contractor” any private, individual, firm, partnership, institution, corporation, or association that employs ten or more people.

The bill takes effect July 1, 2025.

II. Present Situation:

Florida's Whistleblower's Act

Florida's Whistleblower's Act (FWA), ss. 112.3187-112.31895, F.S., provides protections for public employees who report an employer's violation of law to an appropriate government agency. Under state law, any government agency¹ or independent contractor² "shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing:

- Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor."³

The FWA allows employees who experience retaliation to obtain reinstatement of their position, compensation for lost wages, payment of reasonable cost and attorney fees, and issuance of an injunction by a court.

Ch. 448, F.S., provides general labor provisions for employers and employees in the state of Florida. More specifically, ss. 448.101-448.105, F.S., prohibit retaliatory attacks on employees in private workplaces who disclose illegal workplace practices and the remedies and rights that flow from that prohibition. While these statutes are not given a name, they are commonly known as Florida's Private Sector Whistleblower's Act.⁴

Case Law

Currently, there is an unresolved question of law arising from the provisions of FWA that has resulted in a certified conflict⁵ between the First and Fourth District Courts of Appeal (DCA).⁶ In 2013, the Fourth DCA determined that an employee is protected by the FWA if the employee has a good faith, objectively reasonable belief that their activity is protected by the statute.⁷ Even if the activity which the employee is refusing to take part in was legal, if the employee had a good faith belief the employer's activity was illegal, they are protected under the FWA.⁸ Meanwhile, the First and Second DCAs held that an employee must prove they objected to an actual violation

¹ "Agency" means any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university. Section 112.3187(3)(b), F.S.

² "Independent contractor" means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency. Section 112.3187(3)(e), F.S.

³ Section 112.3187, F.S.

⁴ *Golf Channel v. Jenkins*, 752 So. 2d 561, 562 (Fla. 2000).

⁵ The Florida Supreme Court gains jurisdiction to hear a case when a district court of appeal certifies that its decision is in direct conflict with another district court of appeal's decision. Fla. Const. art. V, sec. 3(b)(4).

⁶ *Gessner v. Southern Co.*, 396 So. 3d 908, 910 (Fla. 1st DCA 2024).

⁷ *Aery v. Wallace Lincoln-Mercury, LLC*, 118 So. 3d 904, 916 (Fla. 4th DCA 2013).

⁸ *Id.*

of law under s. 448.102(3), F.S., rather than relying on a good faith belief that there was a violation of law.⁹ The First DCA contends that “had the Legislature wished to provide the same whistleblower protections for private sector employees who disclose suspected violations of law... it could have done so.”¹⁰

Although the Florida Supreme Court has jurisdiction over the case, the Court has the authority to choose whether to hear an appeal on this issue. As a result, the issue of whether an employee’s good faith belief of a violation of law is sufficient to gain protection under the FWA, currently depends on which DCA governs the area of Florida in which the employee lives.

III. Effect of Proposed Changes:

Definitions

Section 2 amends s. 448.101, F.S., to provide the following definitions:

- “Appropriate governmental agency” means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, a policy, or a practice of an employer in which the employee objected to; refused to participate in; or testified, provided information, made a disclosure, or threatened to make a disclosure concerning an employer’s activity, policy, or practice.
- “Of the employer,” when used in reference to an actual or proposed activity, policy, practice, or proposal, does not include an activity, a policy, a practice, or a proposal of or by one or more employees acting outside the course and scope of their employment or which is contrary to the employer’s policies, practices, or directives.
- “Retaliatory personnel action” means the discharge, suspension, or demotion by an employer of an employee or any serious and material change by an employer in the terms and conditions of an employee’s employment.

This change narrows the government agencies to which an employee can disclose illegal activity to those which are charged with the enforcement of that particular policy or practice. The bill’s new definition “of the employer” narrows the type of illegal activities the employee can disclose or object to, to those activities within the scope of their employment. The bill also changes the definition of retaliation from “any other adverse employment actions” to “serious and material changes” to the terms and conditions of employment.

Prohibitions

Section 3 amends s. 448.102, F.S., to provide that a private employer may not take retaliatory personnel action against an employee because the employee has:

- Disclosed to any appropriate governmental agency, under oath in writing, an activity, policy, or practice of the employer which the employee has a good faith belief that such activity, policy, or practice has violated a statute or regulation, or if implemented would violate a statute or regulation.

⁹ *Gessner*, 396 So. 3d at 913; *Kearns v. Farmer Acquisition Co.*, 157 So. 3d 458, 465 (Fla. 2d DCA 2015).

¹⁰ *Gessner*, 396 So. 3d at 913.

- Threatened to disclose to any appropriate governmental agency, under oath, in writing, an activity, a policy, or a practice of the employer which actually violated a law, a rule, or a regulation, or any proposed course of action of the employer which, if implemented, would violate a law, a rule, or regulation.
- Objected to, or refused to participate in, an activity, a policy, or a practice of the employer which, at the time of the objection or refusal, was in violation of a law, a rule, or a regulation, or any proposed activity, policy, or practice of the employer which, if implemented, would actually violate a law, a rule, or a regulation.

Further, the bill sets out that these provisions do not apply unless the employee notifies the supervisor or employer in writing the activity, policy, or practice of the employer to which the employee objects or in which the employee refuses to participate. The employee must also give the supervisor or employer a reasonable opportunity to correct the actual or proposed activity, policy, or practice.

Remedies

Section 4 amends s. 448.103, F.S., to specify that an employee may not recover in a legal action brought against their employer for a violation of s. 448.102, F.S., unless:

- The employee proves by clear and convincing evidence that they notified a supervisor or employer about the alleged violation; and
- The supervisor or employer was afforded a reasonable opportunity to correct the actual or proposed illegal activity.

Additionally, the bill provides that an employee may not recover in a legal action claiming a violation if the retaliatory personnel action was based on a ground other than the employee's exercise of a right protected by this act. If the employer proffers an alternate reason for its personnel action than the employee's exercise of a right under this act, the burden shifts to the employee to prove each of the employer's proffered reasons are false.

Section 5 amends s. 448.104, F.S., mandating that courts award reasonable attorney fees, court costs, and expenses to the prevailing party in a case. This section also limits such attorney fees, costs, and expenses pursuant to s. 768.79, F.S., which requires courts to assess fees and costs based on offers and demands of judgment.

Rights

Section 6 amends s. 448.105, F.S., to specify if an employee has another available statutory remedy for conduct that would otherwise violate this chapter, the remedies under that statute preclude claims under this chapter.

Public Employer Whistleblowers

Section 1 amends s. 112.3187, F.S., to exclude "any private individual, firm, partnership, institution, corporation, or association that employs ten or more" people from the definition of "independent contractor" under the FWA.

Reenactment

Section 7 reenacts s. 448.111, F.S., for the purpose of incorporating the amendments to s. 448.103, F.S.

Effective Date

Section 8 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3187, 448.101, 448.102, 448.103, 448.104, 448.105, 448.111.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 17, 2025:

The amendment clarifies that the provision precluding claims under this chapter if other remedies are available applies to employees, not employers.

B. Amendments:

None.