

By the Committee on Commerce and Tourism; and Senator McClain

577-02494-25

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A bill to be entitled

An act relating to employment rights; amending s. 112.3187, F.S.; revising the definition of the term "independent contractor"; amending s. 448.101, F.S.; revising the definitions of the terms "appropriate governmental agency" and "retaliatory personnel action"; defining the term "of the employer"; amending s. 448.102, F.S.; revising the prohibitions against retaliatory personnel action against an employee by his or her employer; providing construction; amending s. 448.103, F.S.; providing that an employee may not recover in an action against an employer for a retaliatory personnel action unless the employee can prove certain claims by clear and convincing evidence; providing that an employee has the burden of proof if the employer proffers certain grounds for the retaliatory action; amending s. 448.104, F.S.; requiring, rather than authorizing, a court to award reasonable attorney fees and costs to the prevailing party for retaliatory personnel actions; amending s. 448.105, F.S.; providing that if an employee has another available statutory remedy for conduct that would otherwise violate the act, then the remedies under the other statute preclude a claim under the act; reenacting s. 448.111(2), F.S., relating to evidentiary standards for actions of a business during an emergency, to incorporate the amendment made to s. 448.103, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 112.3187, Florida Statutes, is amended to read:

112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—

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

(e) “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. For the purposes of this act, a person who is an employer as defined in s. 448.101 is not an independent contractor.

Section 2. Present subsections (5) and (6) of section 448.101, Florida Statutes, are redesignated as subsections (6) and (7), respectively, a new subsection (5) is added to that section, and subsection (1) and present subsection (5) of that section are amended, to read:

448.101 Definitions.—As used in ss. 448.101-448.105, the term:

(1) “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 an employee objected to; refused to participate in; or testified, provided information, made a disclosure, or threatened to make a disclosure concerning an

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59 employer's activity, policy, or practice.

60 (5) "Of the employer," when used in reference to an actual
61 or proposed activity, policy, practice, or proposal, does not
62 include an activity, a policy, a practice, or a proposal of or
63 by one or more employees acting outside the course and scope of
64 their employment or which is contrary to the employer's
65 policies, practices, or directives.

66 (6)~~(5)~~ "Retaliatory personnel action" means the discharge,
67 suspension, or demotion by an employer of an employee or any
68 serious and material change ~~other adverse employment action~~
69 ~~taken~~ by an employer ~~against an employee~~ in the terms and
70 conditions of an employee's employment.

71 Section 3. Section 448.102, Florida Statutes, is amended to
72 read:

73 448.102 Prohibitions.—An employer may not take any
74 retaliatory personnel action against an employee because the
75 employee has:

76 (1) ~~Disclosed, or threatened to disclose,~~ to any
77 appropriate governmental agency, under oath, in writing, an
78 activity, a policy, or a practice of the employer which the
79 employee has a good faith belief that such activity, policy, or
80 practice violated a law, a rule, or a regulation, or any
81 proposed course of action of the employer which, if implemented,
82 would actually violate a law, a rule, or a regulation.

83 (2) Threatened to disclose to any appropriate governmental
84 agency, under oath, in writing, an activity, a policy, or a
85 practice of the employer which actually violated a law, a rule,
86 or a regulation, or any proposed course of action of the
87 employer which, if implemented, would violate a law, a rule, or

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88 a regulation.

89 (3) Objected to, or refused to participate in, an activity,
90 a policy, or a practice of the employer which, at the time of
91 the objection or refusal, was ~~that is~~ in violation of a law, a
92 rule, or a regulation, or any proposed. ~~However, this subsection~~
93 ~~does not apply unless the employee has, in writing, brought the~~
94 activity, policy, or practice of the employer which, if
95 implemented, would actually violate a law, a rule, or a
96 regulation ~~to the attention of a supervisor or the employer and~~
97 ~~has afforded the employer a reasonable opportunity to correct~~
98 ~~the activity, policy, or practice.~~

99 (4) ~~(2)~~ Provided information to, or testified before, any
100 appropriate governmental agency, person, or entity conducting an
101 investigation, a hearing, or an inquiry into an alleged
102 violation of a law, a rule, or a regulation by the employer.

103
104 ~~(3)~~ Subsections (1), (2), and (3) do not apply unless the
105 employee brings to the attention of a supervisor or the
106 employer, in writing, the ~~Objected to, or refused to participate~~
107 ~~in, any activity, policy, or practice of the employer which the~~
108 employee objects to or refuses to participate in and affords the
109 supervisor or employer a reasonable opportunity to correct the
110 actual or proposed activity, policy, or practice ~~which is in~~
111 ~~violation of a law, rule, or regulation.~~

112 Section 4. Paragraph (c) of subsection (1) of section
113 448.103, Florida Statutes, is amended, and paragraph (d) is
114 added to that subsection, to read:

115 448.103 Employee's remedy; relief.—

116 (1)

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(c) An employee may not recover in any action brought claiming a violation of s. 448.102(1), (2), or (3), unless the employee proves, by clear and convincing evidence, that he or she notified a supervisor or an employer about the alleged violation, and the supervisor or employer was afforded a reasonable opportunity to correct the actual or proposed illegal activity.

(d) An employee may not recover in any action brought claiming a violation of this act pursuant to this subsection if he or she failed to notify the employer about the illegal activity, policy, or practice as required by s. 448.102(1) or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act. If the employer proffers one or more grounds for its personnel action other than the employee's exercise of a right protected by this act, the employee has the burden to prove each of the employer's proffered reasons are false.

Section 5. Section 448.104, Florida Statutes, is amended to read:

448.104 Attorney ~~Attorney's~~ fees and costs.—A court shall ~~may~~ award reasonable attorney ~~attorney's~~ fees, court costs, and expenses to the prevailing party, pursuant to s. 768.79.

Section 6. Section 448.105, Florida Statutes, is amended to read:

448.105 Existing rights.—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 ~~This act does not diminish the rights, privileges, or remedies of an employee or employer under any~~

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~~other law or rule or under any collective bargaining agreement
or employment contract.~~

Section 7. For the purpose of incorporating the amendment made by this act to section 448.103, Florida Statutes, in a reference thereto, subsection (2) of section 448.111, Florida Statutes, is reenacted to read:

448.111 Evidentiary standards for actions of a business during an emergency.—

(2) Notwithstanding any other law, the following actions of a business, if taken during a public health emergency declared by the State Health Officer under s. 381.00315 or a state of emergency declared by the Governor under s. 252.36, may not be used as evidence in a civil cause of action brought under s. 440.10, s. 440.192, s. 440.38, s. 440.381, s. 448.103, s. 448.110, s. 448.25, chapter 532, or s. 717.115, or in a civil cause of action, as provided for under general law, to recover lost wages, salary, employment benefits, or other compensation, because an individual has not been properly classified as an employee:

(a) Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.

(b) Directly providing benefits that are related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.

(c) Providing training or information related to the health and safety of engaged individuals or the public.

(d) Taking any action, including action required or

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175 suggested by any federal, state, or local law, ordinance, order,
176 or directive which is intended to protect public health and
177 safety.

178 Section 8. This act shall take effect July 1, 2025.