

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Jones offered the following:

Amendment (with title amendment)

Between lines 197 and 198, insert:

Section 3. Section 400.0245, Florida Statutes, is created to read:

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

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

(2) LEGISLATIVE INTENT.-It is the intent of the Legislature to prevent nursing home facilities or independent contractors from taking retaliatory action against an employee who reports to an appropriate person or agency violations of law 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.

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T I T L E A M E N D M E N T

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Remove line 16 and insert:

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certain entities; providing applicability; creating s.

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400.0245, F.S.; creating the "Nursing Home Facility

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Whistleblower's Act"; prohibiting retaliatory actions from

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nursing home facilities and independent contractors

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