

State of Wisconsin



1997 Assembly Bill 500

Date of enactment: **April 17, 1998**

Date of publication*: **May 1, 1998**

1997 WISCONSIN ACT 131

AN ACT *to renumber and amend* 46.90 (4) (b) 1.; *to amend* 46.90 (4) (a) 1. and 2., 50.07 (1) (e), 106.06 (5) and 230.45 (1) (j); and *to create* 16.009 (5), 46.90 (4) (b) 1. b. and c., 46.90 (4) (b) 2. c., 46.90 (4) (d), 50.07 (1) (em) and 50.07 (3) of the statutes; **relating to:** protection against retaliation for reporting to any state official abuse or neglect in certain facilities, providing a cause of action and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.009 (5) of the statutes is created to read:

16.009 (5) (a) No person may do any of the following:

1. Discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with any representative of the board.

2. Discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with any representative of the board.

(b) Any person who violates par. (a) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(c) 1. In this paragraph, "agency" has the meaning given in s. 111.32 (6) (a).

2. Any employe of a state agency who is discharged or otherwise retaliated or discriminated against in violation of par. (a) may file a complaint with the personnel commission under s. 230.45 (1) (j).

(d) Any employe of an employer not described in par. (c) and who is discharged or otherwise retaliated or discriminated against in violation of par. (a) may file a com-

plaint with the department of workforce development under s. 106.06 (5).

(e) Any person not described in par. (c) or (d) who is retaliated or discriminated against in violation of par. (a) may commence an action in circuit court for damages incurred as a result of the violation.

SECTION 2. 46.90 (4) (a) 1. and 2. of the statutes are amended to read:

46.90 (4) (a) 1. Any person may report to the county agency or to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), that he or she believes that abuse, material abuse or neglect has occurred if the person is aware of facts or circumstances that would lead a reasonable person to believe or suspect that abuse, material abuse or neglect has occurred. The person shall indicate the facts and circumstances of the situation as part of the report.

2. Any person who believes that self-neglect has occurred may report that belief and the facts and circumstances contributing to the belief to the county agency or to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4).

SECTION 3. 46.90 (4) (b) 1. of the statutes is renumbered 46.90 (4) (b) 1. a. and amended to read:

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

46.90 (4) (b) 1. a. No ~~employer person~~ may discharge or otherwise retaliate or discriminate against any person for reporting in good faith under this subsection.

SECTION 4. 46.90 (4) (b) 1. b. and c. of the statutes are created to read:

46.90 (4) (b) 1. b. No person may discharge or otherwise retaliate or discriminate against any person on whose behalf another person has reported in good faith under this subsection.

c. Any person who violates this subdivision may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

SECTION 5. 46.90 (4) (b) 2. c. of the statutes is created to read:

46.90 (4) (b) 2. c. Any person not described in this subd. 2. a. or b. who is retaliated or discriminated against in violation of subd. 1. may commence an action in circuit court for damages incurred as a result of the violation.

SECTION 6. 46.90 (4) (d) of the statutes is created to read:

46.90 (4) (d) If a report under par. (a) is made to a state official, the state official shall refer the report to the appropriate county agency.

SECTION 7. 50.07 (1) (e) of the statutes is amended to read:

50.07 (1) (e) Intentionally retaliate or discriminate against any resident or employe for contacting or providing information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or for initiating, participating in, or testifying in an action for any remedy authorized under this subchapter.

SECTION 8. 50.07 (1) (em) of the statutes is created to read:

50.07 (1) (em) Intentionally retaliate or discriminate against any resident or employe on whose behalf another

person contacted or provided information to any state official, including any representative of the office of the long-term care ombudsman under s. 16.009 (4), or initiated, participated in or testified in an action for any remedy authorized under this subchapter.

SECTION 9. 50.07 (3) of the statutes is created to read:

50.07 (3) (a) 1. In this paragraph, “agency” has the meaning given in s. 111.32 (6) (a).

2. Any employe of a state agency who is discharged or otherwise retaliated or discriminated against in violation of sub. (1) (e) or (em) may file a complaint with the personnel commission under s. 230.45 (1) (j).

(b) Any employe of an employer not described in par. (a) who is discharged or otherwise retaliated or discriminated against in violation of sub. (1) (e) or (em) may file a complaint with the department of workforce development under s. 106.06 (5).

(c) Any person not described in par. (a) or (b) who is retaliated or discriminated against in violation of sub. (1) (e) or (em) may commence an action in circuit court for damages incurred as a result of the violation.

SECTION 10. 106.06 (5) of the statutes is amended to read:

106.06 (5) The division shall receive complaints of discharge, retaliation or discrimination under s. 16.009 (5) (d), 46.90 (4) (b) or 50.07 (3) (b) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 11. 230.45 (1) (j) of the statutes is amended to read:

230.45 (1) (j) Receive complaints of discharge, retaliation or discrimination under s. 16.009 (5) (c) 2., 46.90 (4) (b) or 50.07 (3) (a) 2. and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.