

1999 DRAFTING REQUEST

Bill

Received: **04/6/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Whistleblower protection for health care workers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 04/14/99	jgeller 04/14/99		_____			S&L
/1			martykr 04/15/99	_____	lrb_docadmin 04/15/99		S&L
/2	malaigm 04/29/99	jgeller 04/29/99	martykr 04/30/99	_____	lrb_docadmin 04/30/99	lrb_docadmin 05/11/99	

FE Sent For:

G 06-10-98

<END>

1999 DRAFTING REQUEST

Bill

Received: **04/6/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Whistleblower protection for health care workers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 04/14/99	jgeller 04/14/99		_____			S&L
/1			martykr 04/15/99	_____	lrb_docadmin 04/15/99		S&L
/2	malaigm 04/29/99	jgeller 04/29/99	martykr 04/30/99	_____	lrb_docadmin 04/30/99		

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **04/6/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Whistleblower protection for health care workers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 04/14/99	jgeller 04/14/99		_____			S&L
/1		<i>1/2</i> <i>4/29 jlg</i> martykr 04/15/99		_____	lrb_docadmin 04/15/99		
FE Sent For:			<i>km 4/30</i>	<i>JB</i> <i>km 4/30</i>			

<END>

1999 DRAFTING REQUEST

Bill

Received: **04/6/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Whistleblower protection for health care workers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm	1/ 4/4 JG	Am 4/5	CP 4/5	Am 4/5		

FE Sent For:

<END>

Patient Safety Act

Core Elements of Legislation

Purpose: Support state legislation that would protect health care consumers by providing the following protections for health care workers who voice concerns regarding quality of care:

1. An employer may not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment benefits because:
 - a. the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official
 - b. the employee is requested by a public body or office to participate in an investigation, hearing or inquiry
 - c. the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason
 - d. the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm

2. Sanctions for violating the law would include:
 - a. Injunction to stop retaliation;
 - b. reinstatement to same or similar position;
 - c. compensation for lost wages and benefits;
 - d. reasonable costs and attorney fees;
 - e. punitive damages or civil fine not to exceed \$1000 for first offenses.

3. A name badge must be worn whenever a health care provider is rendering health services to a patient, unless wearing the name badge would create a safety or health risk to the patient. The name badge would include:
 - a. first name of the provider and the first initial of the last name,
 - b. the credentials of the health care provider if applicable;
 - c. position or department for which the provider is hired

Dvate
soon

2793/1
↑
stays

1999 BILL

Reger

1 AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06
2 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** discharge or other
3 retaliation or discrimination against an employe of a health care facility or a
4 health care provider who reports a violation of the law or a violation of a clinical
5 or ethical standard by the health care facility or health care provider or by an
6 employe of the health care facility or health care provider and providing a
7 penalty.

Analysis by the Legislative Reference Bureau

Under current law, certain employes who report certain information may not be discharged or otherwise discriminated against in retaliation for reporting that information. Specifically, a state employe, subject to certain exceptions, may, subject to certain conditions, disclose information relating to a violation of the law, mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health or safety to anyone, and the employe's appointing authority or supervisor may not retaliate against the employe for reporting that information. Similarly, any person who is aware of any facts or circumstances that would lead a reasonable person to believe or suspect that abuse or neglect of an elder person has occurred may report those facts or circumstances to any state official or to an agency designated by the county board to receive such

BILL

reports, and no person may discharge or otherwise retaliate or discriminate against the person for making such a report in good faith. In addition, a state or local government employe who believes that an occupational safety or health standard is being violated may request the department of commerce to conduct an inspection, and the employe's employer may not discharge or otherwise discriminate against the employe for making that request.

This bill permits any employe of a health care facility, including a health care facility operated by the state, or a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that a violation of the law or a violation of a clinical or ethical standard established by a professionally recognized accrediting or standard-setting body that poses a potential risk to public health or safety has been committed by the health care facility or health care provider or by an employe of the health care facility or health care provider to report that information to any appropriate law enforcement agency, district attorney, U.S. attorney or state agency; to the employe's collective bargaining agent; or to any officer, director or other employe of the health care facility or health care provider. The bill also permits any employe of a health care facility or health care provider to initiate, participate in or testify in any action or proceeding in which such a violation is alleged and to provide any information relating to such an alleged violation to any legislator or legislative committee.

The bill prohibits any health care facility or health care provider and any employe of a health care facility or health care provider from discharging or otherwise retaliating or discriminating against, and from threatening to discharge or otherwise retaliate or discriminate against, any person because the person made such a report in good faith, in good faith initiated, participated in or testified in such an action or proceeding or provided such information in good faith to a legislator or legislative committee, or because the health care facility, health care provider or employe believes that the person made or may make such a report in good faith, in good faith initiated, participated in or testified in, or may in good faith initiate, participate or testify in, any such action or proceeding or provided or may provide such information in good faith to a legislator or legislative committee. The bill also prohibits such retaliation or discrimination against a person on whose behalf another person reports as permitted under the bill, initiates, participates in or testifies in an action or proceeding as permitted under the bill or provides information to a legislator or legislative committee as permitted under the bill.

An employe, other than a state employe, who is discharged or otherwise retaliated or discriminated against in violation of the bill may file a complaint with the department of workforce development (DWD) and, if DWD finds a violation, DWD may order such action, such as reinstatement, back pay, compensation in lieu of reinstatement, costs and attorney fees, as will effectuate the purpose of the bill. A state employe who is discharged or otherwise retaliated or discriminated against in violation of the bill may file a complaint with the personnel commission and, if the personnel commission finds a violation, the personnel commission may order similar action. In addition, a health care facility, health care provider or employe of a health

BILL

care facility or health care provider who discharges or otherwise retaliates or discriminates against, or who threatens to discharge or otherwise retaliate or discriminate against, any person in violation of the bill may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of two or more previous violations.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 106.06 (6) of the statutes is created to read:

2 106.06 (6) The division shall receive complaints of discharge, retaliation or
3 discrimination under s. 146.997 (4) (a) and shall process the complaints in the same
4 manner that employment discrimination complaints are processed under s. 111.39.

5 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
7 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,
8 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

9 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

10 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
11 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
12 103.455, 103.50, 104.12, 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to
13 101.599 or 103.64 to 103.82.

14 **SECTION 4.** 146.997 of the statutes is created to read:

15 **146.997 Health care worker protection. (1) DEFINITIONS.** In this section:

16 (a) “Department” means the department of workforce development.

17 (b) “Health care facility” means a facility, as defined in s. 647.01 (4), or any
18 hospital, nursing home, community-based residential facility, county home, county

BILL

1 infirmary, county hospital, county mental health complex, tuberculosis sanatorium
2 or other place licensed or approved by the department of health and family services
3 under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or
4 a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

5 (c) "Health care provider" means any of the following:

- 6 1. A nurse licensed under ch. 441.
- 7 2. A chiropractor licensed under ch. 446.
- 8 3. A dentist licensed under ch. 447.
- 9 4. A physician, podiatrist or physical therapist licensed under ch. 448.
- 10 5. An occupational therapist, occupational therapy assistant, physician
11 assistant or respiratory care practitioner certified under ch. 448.
- 12 6. A dietician certified under subch. V of ch. 448.
- 13 7. An optometrist licensed under ch. 449.
- 14 8. A pharmacist licensed under ch. 450.
- 15 9. An acupuncturist certified under ch. 451.
- 16 10. A psychologist licensed under ch. 455.
- 17 11. A social worker, marriage and family therapist or professional counselor
18 certified under ch. 457.
- 19 12. A speech–language pathologist or audiologist licensed under subch. II of ch.
20 459 or a speech and language pathologist licensed by the department of public
21 instruction.
- 22 13. A massage therapist or bodyworker issued a license of registration under
23 subch. XI of ch. 440.
- 24 14. An emergency medical technician licensed under s. 146.50 (5) or a first
25 responder.

BILL

- 1 15. A partnership of any providers specified under subsds. 1. to 14.
- 2 16. A corporation or limited liability company of any providers specified under
3 subsds. 1. to 14. that provides health care services.
- 4 17. An operational cooperative sickness care plan organized under ss. 185.981
5 to 185.985 that directly provides services through salaried employes in its own
6 facility.
- 7 18. A hospice licensed under subch. IV of ch. 50
- 8 19. A rural medical center, as defined in s. 50.50 (11).
- 9 20. A home health agency, as defined in s. 50.49 (1) (a).
- 10 **(2) REPORTING PROTECTED.** (a) Any employe of a health care facility or of a health
11 care provider who is aware of any information, the disclosure of which is not
12 expressly prohibited by any state law or rule or any federal law or regulation, that
13 would lead a reasonable person to believe any of the following may report that
14 information to any appropriate law enforcement agency, district attorney, U.S.
15 attorney or agency, as defined in s. 111.32 (6) (a) of the state; to the employe's
16 collective bargaining representative; or to any officer, director or other employe of the
17 health care facility or health care provider:
- 18 1. That the health care facility or health care provider or any employe of the
19 health care facility or health care provider has violated any state law or rule or
20 federal law or regulation.
- 21 2. That there exists any situation in which the quality of any health care service
22 provided by the health care facility or health care provider or by any employe of the
23 health care facility or health care provider violates any standard established by any
24 state law or rule or federal law or regulation or any clinical or ethical standard

BILL

1 established by a professionally recognized accrediting or standard-setting body and
2 poses a potential risk to public health or safety.

3 (b) Any employe of a health care facility or health care provider may initiate,
4 participate in or testify in any action or proceeding in which a violation specified in
5 par. (a) 1. or 2. is alleged.

6 (c) Any employe of a health care facility or health care provider may provide
7 any information relating to an alleged violation specified in par. (a) 1. or 2. to any
8 legislator or legislative committee.

9 **(3) RETALIATION PROHIBITED.** (a) No health care facility or health care provider
10 and no employe of a health care facility or health care provider may discharge or
11 otherwise retaliate or discriminate against, or threaten to discharge or otherwise
12 retaliate or discriminate against, any person because the person reported in good
13 faith under sub. (2) (a), in good faith initiated, participated in or testified in any
14 action or proceeding under sub. (2) (b) or provided in good faith any information
15 under sub. (2) (c) or because the health care facility, health care provider or employe
16 believes that the person reported or may report in good faith under sub. (2) (a), in
17 good faith initiated, participated in or testified in, or may in good faith initiate,
18 participate in or testify in, any action or proceeding under sub. (2) (b) or provided or
19 may provide in good faith any information under sub. (2) (c).

20 (b) No health care facility or health care provider and no employe of a health
21 care facility or health care provider may discharge or otherwise retaliate or
22 discriminate against, or threaten to discharge or otherwise retaliate or discriminate
23 against, any person on whose behalf another person reported in good faith under sub.
24 (2) (a), in good faith initiated, participated in or testified in any action or proceeding
25 under sub. (2) (b) or provided in good faith any information under sub. (2) (c) or

BILL

1 because the health care facility, health care provider or employe believes that
2 another person reported or may report in good faith under sub. (2) (a), in good faith
3 initiated, participated in or testified in, or may in good faith initiate, participate in
4 or testify in, any action or proceeding under sub. (2) (b) or provided or may provide
5 in good faith any information under sub. (2) (c) on that person's behalf.

6 (4) ENFORCEMENT. (a) Subject to par. (b), any employe of a health care facility
7 or health care provider who is discharged or otherwise retaliated or discriminated
8 against, or who is threatened with discharge, retaliation or discrimination, in
9 violation of sub. (3) may file a complaint with the department under s. 106.06 (6).
10 If the department finds that a violation of sub. (3) has been committed, the
11 department may take such action under s. 111.39 as will effectuate the purpose of
12 this section.

13 (b) Any employe of a health care facility operated by an agency, as defined in
14 s. 111.32 (6) (a), of the state who is discharged or otherwise retaliated or
15 discriminated against, or who is threatened with discharge, retaliation or
16 discrimination, in violation of sub. (3) may file a complaint with the personnel
17 commission under s. 230.45 (1) (L). If the personnel commission finds that a violation
18 of sub. (3) has been committed, the personnel commission may take such action
19 under s. 111.39 as will effectuate the purpose of this section.

20 (c) Section 111.322 (2m) applies to a discharge or other retaliatory or
21 discriminatory acts arising in connection with any proceeding under par. (a) or (b).

22 (5) CIVIL PENALTY. Any health care facility or health care provider and any
23 employe of a health care facility or health care provider who discharges or otherwise
24 retaliates or discriminates against, or who threatens to discharge or otherwise
25 retaliate or discriminate against, any person in violation of sub. (3) may be required

BILL

1 to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a
2 violation committed within 12 months of a previous violation and not more than
3 \$10,000 for a violation committed within 12 months of 2 or more previous violations.
4 The 12-month period shall be measured by using the dates of the violations that
5 resulted in convictions.

6 **SECTION 5.** 230.45 (1) (L) of the statutes is created to read:

7 230.45 (1) (L) Receive complaints of discharge, retaliation or discrimination
8 under s. 146.997 (4) (a) and, except as provided in sub. (1m), process the complaints
9 in the same manner that employment discrimination complaints are processed
10 under s. 111.39.

11 **SECTION 6. Nonstatutory provisions.**

12 (1) EMPLOYE NOTIFICATION. Within 90 days after the effective date of this
13 subsection, each health care facility, as defined in section 146.997 (1) (b) of the
14 statutes, as created by this act, and each health care provider, as defined in section
15 146.997 (1) (c) of the statutes, as created by this act, shall inform its employes of their
16 rights and remedies under this act.

17 **SECTION 7. Initial applicability.**

18 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employe of
19 a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created
20 by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the
21 statutes, as created by this act, who is affected by a collective bargaining agreement
22 that contains provisions inconsistent with this act on the day on which the collective
23 bargaining agreement expires or is extended, modified or renewed, whichever occurs
24 first.

25 (END)

D/106

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

2793
LRB-2400/1dn
GMM:jlg:km

↳ stays

April 13, 1999 } new date

This draft addresses the concerns that were raised at our recent meeting as follows:

1. The draft refers to "clinical or ethical standards established by a professionally recognized accrediting or standard-setting body." There is ample precedent for such a reference in the Wisconsin Statutes. See, for example, s. 231.01 (5) (a) 2., stats.

2. The draft includes state-operated facilities, such as the UW Hospital and Clinics, in the definition of "health care facility." This inclusion addresses the concern that all health care workers, whether state or private, receive the same protection under the bill. There is statutory precedent for protecting state employees under both a specific law and the general whistleblower law. Specifically, a state employee who is discharged for reporting a law violation relating to long-term care for the aged or disabled is protected under both s. 16.009, stats., and the whistleblower law, ss. 230.80 to 230.89, stats.

3. The draft specifies that an employee of a health care facility or a health care provider may provide any information relating to an alleged violation to any legislator or legislative committee.

If you have any questions about this draft, please do not hesitate to contact me directly.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2793/1dn
GMM:jlg:km

April 15, 1999

This draft addresses the concerns that were raised at our recent meeting as follows:

1. The draft refers to "clinical or ethical standards established by a professionally recognized accrediting or standard-setting body." There is ample precedent for such a reference in the Wisconsin Statutes. See, for example, s. 231.01 (5) (a) 2., stats.

2. The draft includes state-operated facilities, such as the UW Hospital and Clinics, in the definition of "health care facility." This inclusion addresses the concern that all health care workers, whether state or private, receive the same protection under the bill. There is statutory precedent for protecting state employees under both a specific law and the general whistleblower law. Specifically, a state employee who is discharged for reporting a law violation relating to long-term care for the aged or disabled is protected under both s. 16.009, stats., and the whistleblower law, ss. 230.80 to 230.89, stats.

3. The draft specifies that an employee of a health care facility or a health care provider may provide any information relating to an alleged violation to any legislator or legislative committee.

If you have any questions about this draft, please do not hesitate to contact me directly.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

Malaise, Gordon

From: Defort, Eric
Sent: Thursday, April 29, 1999 2:22 PM
To: Malaise, Gordon
Subject: FW: Whistleblower Language

This is the change that Underheim, Robson, the Nurse group, and we would like to see... Let me know when you need the jacket.

Thank you,
Eric
6.2500

-----Original Message-----

From: Soderbloom, Kathy
Sent: Thursday, April 29, 1999 1:56 PM
To: Defort, Eric
Subject: Whistleblower Language

Eric,

Add on Page 5, line 16, after representative; "to any professionally recognized accrediting or standard-setting body;" I will also let Gina know we have agreed with the addition.

Thanks,

Kathy



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2793/1⁽²⁾ RMR
GMM:jlg:km

1999 BILL

Regen

1 AN ACT to amend 111.322 (2m) (a) and 111.322 (2m) (b); and to create 106.06
2 (6), 146.997 and 230.45 (1) (L) of the statutes; relating to: discharge or other
3 retaliation or discrimination against an employe of a health care facility or a
4 health care provider who reports a violation of the law or a violation of a clinical
5 or ethical standard by the health care facility or health care provider or by an
6 employe of the health care facility or health care provider and providing a
7 penalty.

Analysis by the Legislative Reference Bureau

Under current law, certain employes who report certain information may not be discharged or otherwise discriminated against in retaliation for reporting that information. Specifically, a state employe, subject to certain exceptions, may, subject to certain conditions, disclose information relating to a violation of the law, mismanagement or abuse of authority in state or local government, a substantial waste of public funds or a danger to public health or safety to anyone, and the employe's appointing authority or supervisor may not retaliate against the employe for reporting that information. Similarly, any person who is aware of any facts or circumstances that would lead a reasonable person to believe or suspect that abuse or neglect of an elder person has occurred may report those facts or circumstances to any state official or to an agency designated by the county board to receive such

BILL: representatives; to any professionally recognized
accrediting or standard-setting body;

reports, and no person may discharge or otherwise retaliate or discriminate against the person for making such a report in good faith. In addition, a state or local government employe who believes that an occupational safety or health standard is being violated may request the department of commerce to conduct an inspection, and the employe's employer may not discharge or otherwise discriminate against the employe for making that request.

This bill permits any employe of a health care facility, including a health care facility operated by the state, or a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that a violation of the law or a violation of a clinical or ethical standard established by a professionally recognized accrediting or standard-setting body that poses a potential risk to public health or safety has been committed by the health care facility or health care provider or by an employe of the health care facility or health care provider to report that information to any appropriate law enforcement agency, district attorney, U.S. attorney or state agency; to the employe's collective bargaining agent; or to any officer, director or other employe of the health care facility or health care provider. The bill also permits any employe of a health care facility or health care provider to initiate, participate in or testify in any action or proceeding in which such a violation is alleged and to provide any information relating to such an alleged violation to any legislator or legislative committee.

The bill prohibits any health care facility or health care provider and any employe of a health care facility or health care provider from discharging or otherwise retaliating or discriminating against, and from threatening to discharge or otherwise retaliate or discriminate against, any person because the person made such a report in good faith, in good faith initiated, participated in or testified in such an action or proceeding or provided such information in good faith to a legislator or legislative committee, or because the health care facility, health care provider or employe believes that the person made or may make such a report in good faith, in good faith initiated, participated in or testified in, or may in good faith initiate, participate or testify in, any such action or proceeding or provided or may provide such information in good faith to a legislator or legislative committee. The bill also prohibits such retaliation or discrimination against a person on whose behalf another person reports as permitted under the bill, initiates, participates in or testifies in an action or proceeding as permitted under the bill or provides information to a legislator or legislative committee as permitted under the bill.

An employe, other than a state employe, who is discharged or otherwise retaliated or discriminated against in violation of the bill may file a complaint with the department of workforce development (DWD) and, if DWD finds a violation, DWD may order such action, such as reinstatement, back pay, compensation in lieu of reinstatement, costs and attorney fees, as will effectuate the purpose of the bill. A state employe who is discharged or otherwise retaliated or discriminated against in violation of the bill may file a complaint with the personnel commission and, if the personnel commission finds a violation, the personnel commission may order similar action. In addition, a health care facility, health care provider or employe of a health

BILL

care facility or health care provider who discharges or otherwise retaliates or discriminates against, or who threatens to discharge or otherwise retaliate or discriminate against, any person in violation of the bill may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of two or more previous violations.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 106.06 (6) of the statutes is created to read:

2 106.06 (6) The division shall receive complaints of discharge, retaliation or
3 discrimination under s. 146.997 (4) (a) and shall process the complaints in the same
4 manner that employment discrimination complaints are processed under s. 111.39.

5 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
7 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,
8 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

9 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

10 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
11 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
12 103.455, 103.50, 104.12, 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to
13 101.599 or 103.64 to 103.82.

14 **SECTION 4.** 146.997 of the statutes is created to read:

15 **146.997 Health care worker protection. (1) DEFINITIONS.** In this section:

16 (a) “Department” means the department of workforce development.

17 (b) “Health care facility” means a facility, as defined in s. 647.01 (4), or any
18 hospital, nursing home, community-based residential facility, county home, county

BILL

1 infirmary, county hospital, county mental health complex, tuberculosis sanatorium
2 or other place licensed or approved by the department of health and family services
3 under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or
4 a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

5 (c) "Health care provider" means any of the following:

- 6 1. A nurse licensed under ch. 441.
- 7 2. A chiropractor licensed under ch. 446.
- 8 3. A dentist licensed under ch. 447.
- 9 4. A physician, podiatrist or physical therapist licensed under ch. 448.
- 10 5. An occupational therapist, occupational therapy assistant, physician
11 assistant or respiratory care practitioner certified under ch. 448.
- 12 6. A dietician certified under subch. V of ch. 448.
- 13 7. An optometrist licensed under ch. 449.
- 14 8. A pharmacist licensed under ch. 450.
- 15 9. An acupuncturist certified under ch. 451.
- 16 10. A psychologist licensed under ch. 455.
- 17 11. A social worker, marriage and family therapist or professional counselor
18 certified under ch. 457.
- 19 12. A speech–language pathologist or audiologist licensed under subch. II of ch.
20 459 or a speech and language pathologist licensed by the department of public
21 instruction.
- 22 13. A massage therapist or bodyworker issued a license of registration under
23 subch. XI of ch. 440.
- 24 14. An emergency medical technician licensed under s. 146.50 (5) or a first
25 responder.

BILL

1 15. A partnership of any providers specified under subds. 1. to 14.

2 16. A corporation or limited liability company of any providers specified under
3 subds. 1. to 14. that provides health care services.

4 17. An operational cooperative sickness care plan organized under ss. 185.981
5 to 185.985 that directly provides services through salaried employes in its own
6 facility.

7 18. A hospice licensed under subch. IV of ch. 50

8 19. A rural medical center, as defined in s. 50.50 (11).

9 20. A home health agency, as defined in s. 50.49 (1) (a).

✓ To any professionally recognized
accrediting or standard-setting
body;

10 (2) REPORTING PROTECTED. (a) Any employe of a health care facility or of a health
11 care provider who is aware of any information, the disclosure of which is not
12 expressly prohibited by any state law or rule or any federal law or regulation, that
13 would lead a reasonable person to believe any of the following may report that
14 information to any appropriate law enforcement agency, district attorney, U.S.
15 attorney or agency, as defined in s. 111.32 (6) (a) of the state; to the employe's
16 collective bargaining representative; or to any officer, director or other employe of the
17 health care facility or health care provider:

18 1. That the health care facility or health care provider or any employe of the
19 health care facility or health care provider has violated any state law or rule or
20 federal law or regulation.

21 2. That there exists any situation in which the quality of any health care service
22 provided by the health care facility or health care provider or by any employe of the
23 health care facility or health care provider violates any standard established by any
24 state law or rule or federal law or regulation or any clinical or ethical standard

BILL

1 established by a professionally recognized accrediting or standard-setting body and
2 poses a potential risk to public health or safety.

3 (b) Any employe of a health care facility or health care provider may initiate,
4 participate in or testify in any action or proceeding in which a violation specified in
5 par. (a) 1. or 2. is alleged.

6 (c) Any employe of a health care facility or health care provider may provide
7 any information relating to an alleged violation specified in par. (a) 1. or 2. to any
8 legislator or legislative committee.

9 **(3) RETALIATION PROHIBITED.** (a) No health care facility or health care provider
10 and no employe of a health care facility or health care provider may discharge or
11 otherwise retaliate or discriminate against, or threaten to discharge or otherwise
12 retaliate or discriminate against, any person because the person reported in good
13 faith under sub. (2) (a), in good faith initiated, participated in or testified in any
14 action or proceeding under sub. (2) (b) or provided in good faith any information
15 under sub. (2) (c) or because the health care facility, health care provider or employe
16 believes that the person reported or may report in good faith under sub. (2) (a), in
17 good faith initiated, participated in or testified in, or may in good faith initiate,
18 participate in or testify in, any action or proceeding under sub. (2) (b) or provided or
19 may provide in good faith any information under sub. (2) (c).

20 (b) No health care facility or health care provider and no employe of a health
21 care facility or health care provider may discharge or otherwise retaliate or
22 discriminate against, or threaten to discharge or otherwise retaliate or discriminate
23 against, any person on whose behalf another person reported in good faith under sub.
24 (2) (a), in good faith initiated, participated in or testified in any action or proceeding
25 under sub. (2) (b) or provided in good faith any information under sub. (2) (c) or

BILL

1 because the health care facility, health care provider or employe believes that
2 another person reported or may report in good faith under sub. (2) (a), in good faith
3 initiated, participated in or testified in, or may in good faith initiate, participate in
4 or testify in, any action or proceeding under sub. (2) (b) or provided or may provide
5 in good faith any information under sub. (2) (c) on that person's behalf.

6 (4) ENFORCEMENT. (a) Subject to par. (b), any employe of a health care facility
7 or health care provider who is discharged or otherwise retaliated or discriminated
8 against, or who is threatened with discharge, retaliation or discrimination, in
9 violation of sub. (3) may file a complaint with the department under s. 106.06 (6).
10 If the department finds that a violation of sub. (3) has been committed, the
11 department may take such action under s. 111.39 as will effectuate the purpose of
12 this section.

13 (b) Any employe of a health care facility operated by an agency, as defined in
14 s. 111.32 (6) (a), of the state who is discharged or otherwise retaliated or
15 discriminated against, or who is threatened with discharge, retaliation or
16 discrimination, in violation of sub. (3) may file a complaint with the personnel
17 commission under s. 230.45 (1)(L). If the personnel commission finds that a violation
18 of sub. (3) has been committed, the personnel commission may take such action
19 under s. 111.39 as will effectuate the purpose of this section.

20 (c) Section 111.322 (2m) applies to a discharge or other retaliatory or
21 discriminatory acts arising in connection with any proceeding under par. (a) or (b).

22 (5) CIVIL PENALTY. Any health care facility or health care provider and any
23 employe of a health care facility or health care provider who discharges or otherwise
24 retaliates or discriminates against, or who threatens to discharge or otherwise
25 retaliate or discriminate against, any person in violation of sub. (3) may be required

BILL

1 to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a
2 violation committed within 12 months of a previous violation and not more than
3 \$10,000 for a violation committed within 12 months of 2 or more previous violations.
4 The 12-month period shall be measured by using the dates of the violations that
5 resulted in convictions.

6 **SECTION 5.** 230.45 (1) (L) of the statutes is created to read:

7 230.45 (1) (L) Receive complaints of discharge, retaliation or discrimination
8 under s. 146.997 (4) (a) and, except as provided in sub. (1m), process the complaints
9 in the same manner that employment discrimination complaints are processed
10 under s. 111.39.

11 **SECTION 6. Nonstatutory provisions.**

12 (1) EMPLOYE NOTIFICATION. Within 90 days after the effective date of this
13 subsection, each health care facility, as defined in section 146.997 (1) (b) of the
14 statutes, as created by this act, and each health care provider, as defined in section
15 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their
16 rights and remedies under this act.

17 **SECTION 7. Initial applicability.**

18 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employe of
19 a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created
20 by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the
21 statutes, as created by this act, who is affected by a collective bargaining agreement
22 that contains provisions inconsistent with this act on the day on which the collective
23 bargaining agreement expires or is extended, modified or renewed, whichever occurs
24 first.

25 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 4/30/99

To: Representative Underheim

Relating to LRB drafting number: LRB-2793

Topic

Whistleblower protection for health care workers

Subject(s)

Employ Priv - miscellaneous

1. **JACKET** the draft for introduction Lyell
in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction Lyell.
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738