

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 379**

March 7, 2000 – Offered by Representatives UNDERHEIM, CARPENTER, JOHNSRUD,
ZIEGELBAUER, PETTIS, MILLER, HAHN, LADWIG, STONE, F. LASEE and URBAN.

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:** disciplinary action
3 against an employe of a health care facility or a health care provider who
4 reports a violation of the law or a violation of a clinical or ethical standard by
5 the health care facility or health care provider or by an employe of the health
6 care facility or health care provider and providing a penalty.

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

7 **SECTION 1.** 106.06 (6) of the statutes is created to read:
8 106.06 **(6)** The division shall receive complaints under s. 146.997 (4) (a) of
9 disciplinary action taken in violation of s. 146.997 (3) and shall process the
10 complaints in the same manner that employment discrimination complaints are
11 processed under s. 111.39.

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

2 111.322 **(2m)** (a) The individual files a complaint or attempts to enforce any
3 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,
4 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

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

6 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
7 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
8 103.455, 103.50, 104.12, 109.03, 109.07 ~~or~~, 109.075 or 146.997 or ss. 101.58 to
9 101.599 or 103.64 to 103.82.

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

11 **146.997 Health care worker protection. (1) DEFINITIONS.** In this section:

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

13 (b) “Disciplinary action” has the meaning given in s. 230.80 (2).

14 (c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any
15 hospital, nursing home, community–based residential facility, county home, county
16 infirmary, county hospital, county mental health complex, tuberculosis sanatorium
17 or other place licensed or approved by the department of health and family services
18 under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or
19 a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

20 (d) “Health care provider” means any of the following:

21 1. A nurse licensed under ch. 441.

22 2. A chiropractor licensed under ch. 446.

23 3. A dentist licensed under ch. 447.

24 4. A physician, podiatrist or physical therapist licensed under ch. 448.

1 5. An occupational therapist, occupational therapy assistant, physician
2 assistant or respiratory care practitioner certified under ch. 448.

3 6. A dietician certified under subch. V of ch. 448.

4 7. An optometrist licensed under ch. 449.

5 8. A pharmacist licensed under ch. 450.

6 9. An acupuncturist certified under ch. 451.

7 10. A psychologist licensed under ch. 455.

8 11. A social worker, marriage and family therapist or professional counselor
9 certified under ch. 457.

10 12. A speech–language pathologist or audiologist licensed under subch. II of ch.
11 459 or a speech and language pathologist licensed by the department of public
12 instruction.

13 13. A massage therapist or bodyworker issued a license of registration under
14 subch. XI of ch. 440.

15 14. An emergency medical technician licensed under s. 146.50 (5) or a first
16 responder.

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

18 16. A corporation or limited liability company of any providers specified under
19 subs. 1. to 14. that provides health care services.

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

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

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

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

1 **(2) REPORTING PROTECTED.** (a) Any employe of a health care facility or of a health
2 care provider who is aware of any information, the disclosure of which is not
3 expressly prohibited by any state law or rule or any federal law or regulation, that
4 would lead a reasonable person to believe any of the following may report that
5 information to any agency, as defined in s. 111.32 (6) (a), of the state; to any
6 professionally recognized accrediting or standard–setting body that has accredited,
7 certified or otherwise approved the health care facility or health care provider; to any
8 officer or director of the health care facility or health care provider; or to any employe
9 of the health care facility or health care provider who is in a supervisory capacity or
10 in a position to take corrective action:

11 1. That the health care facility or health care provider or any employe of the
12 health care facility or health care provider has violated any state law or rule or
13 federal law or regulation.

14 2. That there exists any situation in which the quality of any health care service
15 provided by the health care facility or health care provider or by any employe of the
16 health care facility or health care provider violates any standard established by any
17 state law or rule or federal law or regulation or any clinical or ethical standard
18 established by a professionally recognized accrediting or standard–setting body and
19 poses a potential risk to public health or safety.

20 (b) An agency or accrediting or standard–setting body that receives a report
21 under par. (a) shall, within 5 days after receiving the report, notify the health care
22 facility or health provider that is the subject of the report, in writing, that a report
23 alleging a violation specified in par. (a) 1. or 2. has been received and provide the
24 health care facility or health care provider with a written summary of the contents
25 of the report, unless the agency, or accrediting or standard–setting body determines

1 that providing that notification and summary would jeopardize an ongoing
2 investigation of a violation alleged in the report. The notification and summary may
3 not disclose the identity of the person who made the report.

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

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

10 **(3) DISCIPLINARY ACTION PROHIBITED.** (a) No health care facility or health care
11 provider and no employe of a health care facility or health care provider may take
12 disciplinary action against, or threaten to take disciplinary action against, any
13 person because the person reported in good faith any information under sub. (2) (a),
14 in good faith initiated, participated in or testified in any action or proceeding under
15 sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the
16 health care facility, health care provider or employe believes that the person reported
17 in good faith any information under sub. (2) (a), in good faith initiated, participated
18 in or testified in any action or proceeding under sub. (2) (c) or provided in good faith
19 any information under sub. (2) (d).

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

1 health care provider or employe believes that another person reported in good faith
2 any information under sub. (2) (a), in good faith initiated, participated in or testified
3 in any action or proceeding under sub. (2) (c) or provided in good faith any
4 information under sub. (2) (d) on that person's behalf.

5 (c) For purposes of pars. (a) and (b), an employe is not acting in good faith if the
6 employe reports any information under sub. (2) (a) that the employe knows or should
7 know is false or misleading, initiates, participates in or testifies in any action or
8 proceeding under sub. (2) (c) based on information that the employe knows or should
9 know is false or misleading or provides any information under sub. (2) (d) that the
10 employe knows or should know is false or misleading.

11 **(4) ENFORCEMENT.** (a) Subject to par. (b), any employe of a health care facility
12 or health care provider who is subjected to disciplinary action, or who is threatened
13 with disciplinary action, in violation of sub. (3) may file a complaint with the
14 department under s. 106.06 (6). If the department finds that a violation of sub. (3)
15 has been committed, the department may take such action under s. 111.39 as will
16 effectuate the purpose of this section.

17 (b) Any employe of a health care facility operated by an agency, as defined in
18 s. 111.32 (6) (a), of the state who is subjected to disciplinary action, or who is
19 threatened with disciplinary action, in violation of sub. (3) may file a complaint with
20 the personnel commission under s. 230.45 (1) (L). If the personnel commission finds
21 that a violation of sub. (3) has been committed, the personnel commission may take
22 such action under s. 111.39 as will effectuate the purpose of this section.

23 (c) Section 111.322 (2m) applies to a disciplinary action arising in connection
24 with any proceeding under par. (a) or (b).

1 **(5) CIVIL PENALTY.** Any health care facility or health care provider and any
2 employe of a health care facility or health care provider who takes disciplinary action
3 against, or who threatens to take disciplinary action against, any person in violation
4 of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not
5 more than \$5,000 for a violation committed within 12 months of a previous violation
6 and not more than \$10,000 for a violation committed within 12 months of 2 or more
7 previous violations. The 12-month period shall be measured by using the dates of
8 the violations that resulted in convictions.

9 **(6) POSTING OF NOTICE.** Each health care facility and health care provider shall
10 post, in one or more conspicuous places where notices to employes are customarily
11 posted, a notice in a form approved by the department setting forth employes' rights
12 under this section. Any health care facility or health care provider that violates this
13 subsection shall forfeit not more than \$100 for each offense.

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

15 230.45 **(1)** (L) Receive complaints under s. 146.997 (4) (a) of disciplinary action
16 taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the
17 complaints in the same manner that employment discrimination complaints are
18 processed under s. 111.39.

19 **SECTION 6. Nonstatutory provisions.**

20 **(1) EMPLOYE NOTIFICATION.** Within 90 days after the effective date of this
21 subsection, each health care facility, as defined in section 146.997 (1) (b) of the
22 statutes, as created by this act, and each health care provider, as defined in section
23 146.997 (1) (c) of the statutes, as created by this act, shall inform its employes of their
24 rights and remedies under this act.

25 **SECTION 7. Initial applicability.**

