

1999 SENATE BILL 172

May 25, 1999 – Introduced by Senators GEORGE, ROBSON, BAUMGART, BURKE, COWLES, DARLING, GROBSCHMIDT, MOEN, PLACHE, ROESSLER and ROSENZWEIG, cosponsored by Representatives UNDERHEIM, CARPENTER, ALBERS, BLACK, BOCK, BOYLE, COGGS, COLON, CULLEN, GOETSCH, HAHN, HEBL, KELSO, KREUSER, KRUSICK, LA FAVE, LADWIG, LASSA, J. LEHMAN, M. LEHMAN, MILLER, MUSSER, OLSEN, PETTIS, PLOUFF, POCAN, RICHARDS, SINICKI, STASKUNAS, WALKER, WASSERMAN, WAUKAU and ZIEGELBAUER. Referred to Committee on Judiciary and Consumer Affairs.

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

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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 representative; to any professionally recognized accrediting or standard-setting body; 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

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action. In addition, a health care facility, health care provider or employe of a health 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.

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

7 (c) “Health care provider” means any of the following:

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

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

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

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

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

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

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

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

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

21 1. That the health care facility or health care provider or any employe of the
22 health care facility or health care provider has violated any state law or rule or
23 federal law or regulation.

24 2. That there exists any situation in which the quality of any health care service
25 provided by the health care facility or health care provider or by any employe of the

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1 health care facility or health care provider violates any standard established by any
2 state law or rule or federal law or regulation or any clinical or ethical standard
3 established by a professionally recognized accrediting or standard-setting body and
4 poses a potential risk to public health or safety.

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

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

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

22 (b) No health care facility or health care provider and no employe of a health
23 care facility or health care provider may discharge or otherwise retaliate or
24 discriminate against, or threaten to discharge or otherwise retaliate or discriminate
25 against, any person on whose behalf another person reported in good faith under sub.

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

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

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

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

24 (5) CIVIL PENALTY. Any health care facility or health care provider and any
25 employe of a health care facility or health care provider who discharges or otherwise

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1 retaliates or discriminates against, or who threatens to discharge or otherwise
2 retaliate or discriminate against, any person in violation of sub. (3) may be required
3 to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a
4 violation committed within 12 months of a previous violation and not more than
5 \$10,000 for a violation committed within 12 months of 2 or more previous violations.
6 The 12-month period shall be measured by using the dates of the violations that
7 resulted in convictions.

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

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

13 **SECTION 6. Nonstatutory provisions.**

14 (1) EMPLOYE NOTIFICATION. Within 90 days after the effective date of this
15 subsection, each health care facility, as defined in section 146.997 (1) (b) of the
16 statutes, as created by this act, and each health care provider, as defined in section
17 146.997 (1) (c) of the statutes, as created by this act, shall inform its employes of their
18 rights and remedies under this act.

19 **SECTION 7. Initial applicability.**

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

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1 bargaining agreement expires or is extended, modified or renewed, whichever occurs
2 first.

3 (END)