

1999 DRAFTING REQUEST

Bill

Received: **03/12/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Eric Defort**

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 04/12/99	jgeller 04/13/99		_____			S&L
/1			martykr 04/14/99	_____	lrb_docadmin 04/14/99	lrb_docadminS&L 04/27/99	
/2	malaigm 04/29/99	jgeller 04/29/99	martykr 04/30/99	_____	lrb_docadmin 04/30/99	lrb_docadmin 04/30/99	

- FE Sent For: ~~03/17/99~~ (04/27/99, 04/30/99.)
 (" / 1 ") (" / 2 ")

<END>

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/1		12 4/29 jlg	martykr 04/14/99	_____	lrb_docadmin 04/14/99	lrb_docadmin 04/27/99	

FE Sent For:

04-27-99
"/1"

4/30
4/30

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/?	malaigm	1 4/13 jug	km 4/13	km 4/14			

FE Sent For:

<END>

DAK
~

MEMORANDUM

March 3, 1999

To GRG

From EDD

Re: Meeting with WFNHP representative – Rich Brzeski on March 2, 1999.

Mr. Brzeski stopped by to ask that you support the Whistleblower Federal Law, but at a state level.

The federal law protects registered nurses from retaliation for blowing the whistle on wrongdoing that they might see committed at the hospital. This law only applies in federal buildings.

Registered nurses would like to see this exist for all hospitals, federal or not.

The attached sheet summarizes all of the instances of whistle-blowing for which nurses should not be subject to retaliation.



WISCONSIN FEDERATION OF NURSES & HEALTH PROFESSIONALS

9620 West Greenfield Avenue
West Allis, WI 53214-2645
414-475-6065
1-800-828-2256
FAX 414-475-5722

RICH BRZESKI RN

AFT, AFL-CIO

WHISTLEBLOWER FACT SHEET

The Wisconsin Federation of Nurses and Health Professionals calls for state legislation that would protect health care consumers by providing the following protections for health care workers who voice concerns regarding quality of care:

An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

- 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.
- The employee is requested by a public body or office to participate in an investigation, hearing, inquiry
- 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
- 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.

*Brockmeyer
113 wis 20 561 (1983)
Hanusman
214 wis 20 654 (1997)*

Sanctions for violating the law will include:

- Injunction to stop retaliation
- Reinstatement to the same or similar position
- Compensation for lost wages and benefits
- Reasonable costs and attorney fees
- Punitive damages or a civil fine not to exceed \$1000 for first offenses

Questions regarding this proposed legislation can be directed to WFNHP.

*In addition
to equitable relief*

February 1999



State of Wisconsin
1999 - 2000 LEGISLATURE

Soon

Draft

LRB-2490/P
GMM...:a:...

JL

gen cat

1 AN ACT ...; relating to: discharge or other retaliation or discrimination against
2 an employe of a health care facility or a health care provider who reports a
3 violation of the law or a violation of a clinical or ethical standard by the health
4 care facility or health care provider or by an employe of the health care facility
5 or health care provider and providing a 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 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 ~~in good faith~~ provided such information 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 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
19 infirmary, county hospital, county mental health complex, tuberculosis sanatorium
20 or other place licensed or approved by the [✓]department of health and family services

① under s. 49.70[✓], 49.71[✓], 49.72[✓], 50.03[✓], 50.35[✓], 51.08[✓], 51.09[✓], 58.06[✓], 252.073[✓] or 252.076[✓] or
2 a facility under s. 45.365[✓], 51.05[✓], 51.06[✓], 233.40[✓], 233.41[✓], 233.42[✓] or 252.10[✓].

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

4 1. A nurse licensed under ch. 441[✓].

5 2. A chiropractor licensed under ch. 446[✓].

6 3. A dentist licensed under ch. 447[✓].

7 4. A physician, podiatrist or physical therapist licensed under ch. 448[✓].

8 5. An occupational therapist, occupational therapy assistant, physician
9 assistant or respiratory care practitioner certified under ch. 448[✓].

10 6. A dietician certified under subch. V of ch. 448[✓].

11 7. An optometrist licensed under ch. 449[✓].

12 8. A pharmacist licensed under ch. 450[✓].

13 9. An acupuncturist certified under ch. 451[✓].

14 10. A psychologist licensed under ch. 455[✓].

15 11. A social worker, marriage and family therapist or professional counselor
16 certified under ch. 457[✓].

17 12. A speech-language pathologist or audiologist licensed under subch. II of ch.
18 459[✓] or a speech and language pathologist licensed by the department of public
19 instruction.

20 13. A massage therapist or bodyworker issued a license of registration under
21 subch. XI of ch. 440[✓].

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

24 15. A partnership of any providers specified under subds. 1. to 14.[✓]

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

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

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

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

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

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

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

20 2. That there exists any situation in which the quality of any health care service
21 provided by the health care facility or health care provider or by any employe of the
22 health care facility or health care provider violates any standard established by any
23 state law or rule or federal law or regulation or any clinical or ethical standard
24 established by a professionally recognized accrediting or standard-setting body and
25 poses a potential risk to public health or safety.

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

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

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

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

1 initiated, participated in or testified in, or may in good faith initiate, participate in
2 or testify in, any action or proceeding under sub. (2) (b) or provided or may provide
3 in good faith any information under sub. (2) (c) on that person's behalf.

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

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

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

20 (5) CIVIL PENALTY. Any health care facility or health care provider and any
21 employe of a health care facility or health care provider who discharges or otherwise
22 retaliates or discriminates against, or who threaten^s to discharge or otherwise
23 retaliate or discriminate against, any person in violation of sub. (3) may be required
24 to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a
25 violation committed within 12 months of a previous violation and not more than

1 \$10,000[✓] for a violation committed within 12[✓] months of 2[✓] or more previous violations.

2 The 12-month period shall be measured by using the dates of the violations that
3 resulted in convictions.

4 **SECTION 5.** 230.45 (1) (L)[✓] of the statutes is created to read:

5 230.45 (1) (L) Receive complaints of discharge, retaliation or discrimination
6 under s. 146.997 (4) (a)[✓] and, except as provided in sub. (1m)[✓], process the complaints
7 in the same manner that employment discrimination complaints are processed
8 under s. 111.39.[✓]

9 **SECTION 6. Nonstatutory provisions.**

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

15 **SECTION 7. Initial applicability.**

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

23 (END)

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

LRB-2490/1dn

GMM...:.....

JG

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-2490/1dn
GMM:jlg:km

April 13, 1999

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

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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

**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: 4/14/99

To: Senator George

Relating to LRB drafting number: LRB-2490

Topic

Whistleblower protection for health care workers

Subject(s)

Employ Priv - miscellaneous

Gayh. George

1. **JACKET** the draft for introduction _____
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.

Gayh. George

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

Gayh. George

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

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

NOTE: PLEASE RETURN THIS BILL DRAFT AND THIS TRANSMITTAL SHEET WITH YOUR FISCAL ESTIMATE FORMS

IF THERE IS A FISCAL EFFECT TO THE BILL, PLEASE SUBMIT THE FISCAL ESTIMATE WORKSHEET.

RECEIVED

APR 29 1999

PERSONNEL COMMISSION

TO: **Laurie McCallum**
Personnel Commission

FROM: Deborah Uecker
Division of Executive Budget and Finance
101 East Wilson Street
Administration Building, 10th Floor
Madison, WI 53702

SUBJECT: Fiscal Estimate - **LRB Number 2490/1**
1999 Bill Number

Handwritten notes in circles:
1. "Copy to Sen. George 05-04-99" with an arrow pointing to the subject line.
2. "FYI" with an arrow pointing to the subject line.
3. "Bill is now a '12' - fiscal for '12' to follow" with an arrow pointing to the subject line.

Please provide the necessary information on fiscal estimate forms and return two (2) copies to

Deborah Uecker, no later than: 04-May-99

If you cannot comply with the above deadline for any reason, please call Deborah at 267-0371.

Provide local government costs.

_____ is responsible for local government costs.

ALSO SENT TO:
Department of Workforce Development
Personnel Commission

DATE DOA SENT TO AGENCY:

27-Apr-99

DATE DOA RECEIVED FROM AGENCY:

5/4/99

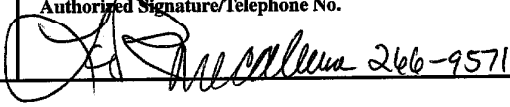
TO BE COMPLETED BY AGENCY:

Name and phone number of person who prepared the fiscal estimate.

KURT M STEGE
(Name)

608-266-9570
(Phone Number)

PLEASE SEND ORIGINAL COPIES OF THE FORMS THAT CAN BE REPRODUCED.

FISCAL ESTIMATE DOA-2048 N(R10/98)		<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	1999 Session LRB or Bill No./Adm. Rule No. LRB-2490/1 Amendment No. if Applicable
		Subject	
		Whistleblower law for health care employees	
Fiscal Effect			
State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs	
Local: <input type="checkbox"/> No local government costs			
1. Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
2. Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			
Assumptions Used in Arriving at Fiscal Estimate			
<p>The Commission assumes that this bill does not expand the Commission's jurisdiction to include authority to impose the civil penalties that are identified in the bill. This fiscal estimate does not analyze the fiscal effects on state agencies of those civil penalties.</p> <p><u>One-time costs</u> Passage of this bill would require about 20 hours of staff time for making changes to Personnel Commission forms and related materials. However, there would be no operating costs associated with these changes.</p> <p><u>Local fiscal effect</u> The Personnel Commission and the Department of Workforce Development were both asked to estimate local government costs associated with this bill.</p> <p>Local government costs associated with defending complaints filed by local government employees under this bill are better estimated by the Department of Workforce Development, whose Equal Rights Division would receive such complaints.</p>			
Long-Range Fiscal Implications			
Agency/Prepared by: (Name & Phone No.)		Authorized Signature/Telephone No.	Date
Personnel Commission/ Kurt M Stege 266-9570		 266-9571	5/4/99

FISCAL ESTIMATE DOA-2048 N(R10/98)		<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	1999 Session LRB or Bill No./Adm. Rule No. LRB-2490/1 Amendment No. if Applicable
		Subject	
		Whistleblower law for health care employees	
Fiscal Effect			
State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		<input checked="" type="checkbox"/> Increase Costs – May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs	
Local: <input type="checkbox"/> No local government costs			
1. Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
2. Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			
Assumptions Used in Arriving at Fiscal Estimate			
<p>This bill would provide certain protection to health care employees against retaliation. Those health care employees employed by the State of Wisconsin who engaged in one or more protected activities specified in the bill and who are subsequently retaliated against by their employer, could file a complaint of retaliation with the Personnel Commission. Health care employees not employed by the State of Wisconsin would file their complaints of retaliation with the Department of Workforce Development.</p> <p>The rights granted by this bill to employees of the State of Wisconsin fall, for the most part, within the scope of rights already held by them under subch. III, ch.230, Stats., which is commonly referred to as the "whistleblower law." However, the bill expands the Commission's jurisdiction in certain limited circumstances. For example, this bill would extend protection to executive salary group employees, as well as to employees that report to a supervisor assigned to an executive salary group. Those employees are currently excluded from whistleblower law coverage by §230.80(3)(b), Stats. The bill also increases the variety of protected activities that are currently protected by the whistleblower law.</p> <p>The Personnel Commission assumes that it would receive no more than one or two additional complaints per year for investigation and processing as a consequence of the bill. More than 200 complaints and 150 appeals are already filed with the Commission annually. Existing staff will be able to absorb this nominal estimated increase in caseload without additional expenditures.</p> <p style="text-align: center;">(continued on next page)</p>			
Long-Range Fiscal Implications			
Agency/Prepared by: (Name & Phone No.)		Authorized Signature/Telephone No.	Date
Personnel Commission/ Kurt M Stege 266-9570			

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No./Adm. Rule No. LRB-2490/1	Amendment No.
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Subject: Whistleblower law for health care employes

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

- 0 -

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category	\$	\$ -
State Operations – Salaries and Fringes		
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations – Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues – Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$	\$

Agency/Prepared by: (Name & Phone No.) Personnel Commission/Kurr M Stege 266-9570	Authorized Signature/Telephone No. <i>Kurr M Stege</i> 266-9571	Date 5/4/99
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NOTE: PLEASE RETURN THIS BILL DRAFT AND THIS TRANSMITTAL SHEET WITH YOUR FISCAL ESTIMATE FORMS

IF THERE IS A FISCAL EFFECT TO THE BILL, PLEASE SUBMIT THE FISCAL ESTIMATE WORKSHEET.

TO: **Kimberly Markham**
Department of Workforce Development

FROM: Deborah Uecker
Division of Executive Budget and Finance
101 East Wilson Street
Administration Building, 10th Floor
Madison, WI 53702

SUBJECT: Fiscal Estimate - **LRB Number 2490/1**
1999 Bill Number

*Un-introduced
copy to
Senator George
05-06-99*

*bill is
now a
"12"
2*

Please provide the necessary information on fiscal estimate forms and return two (2) copies to Deborah Uecker, no later than: 04-May-99 *extension to 11-May-99*

If you cannot comply with the above deadline for any reason, please call Deborah at 267-0371.

Provide local government costs.

_____ is responsible for local government costs.

ALSO SENT TO:
Department of Workforce Development
Personnel Commission

DATE DOA SENT TO AGENCY:

27-Apr-99

DATE DOA RECEIVED FROM AGENCY:

5/5/99

TO BE COMPLETED BY AGENCY:

Name and phone number of person who prepared the fiscal estimate.

Le Anna Ware
(Name)

266-1997
(Phone Number)

PLEASE SEND ORIGINAL COPIES OF THE FORMS THAT CAN BE REPRODUCED.

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	1999 Session LRB or Bill No. -- Adm. Rule No. LRB-2490/1 --2490/1
FISCAL ESTIMATE DOA-2048 N(R10/94)	Amendment No. if Applicable

Subject
 DISCHARGE OR OTHER RETALIATION OR DISCRIMINATION AGAINST AN EMPLOYEE OF A HEALTH CARE FACILITY OR A HEALTH CARE PROVIDER WHO REPORTS A VIOLATION OF THE LAW OR A VIOLATION OF A CLINICAL OR ETHICAL STANDARD BY THE HEALTH CARE FACILITY OR HEALTH CARE PROVIDER OR BY AN EMPLOYEE OF THE HEALTH CARE FACILITY OR HEALTH CARE PROVIDER AND PROVIDING A PENALTY.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
---	--

Local: <input type="checkbox"/> No local government costs		
1. <input checked="" type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected: <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations: 445(1)(a)
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Assumptions Used in Arriving at Fiscal Estimate

This bill provides retaliation protection for employees of health care providers who report violations of laws or clinical or ethical standards in the facility to any law enforcement organization. Passage of this legislation is likely to result in approximately the same number of complaints per year as are currently received under the elder abuse retaliation provisions of the law. In each of the last three fiscal years, the Equal Rights Division received less than ten (10) cases alleging retaliation because of a report of elder abuse. The number of employees covered under this retaliation provision is larger, however it is still likely that the Division will receive less than 20 cases per year under this statute. Since each Equal Rights Officer is expected to handle 132 cases per year, passage of this legislation is not likely to have a significant enough impact on the workload of the Division to necessitate the addition of staff.

The Division estimates a one-time cost of \$2,000 for printing and reprinting of educational materials about the change in the law.

Private employers and local governments who operate health care facilities will have a cost of notifying employees of their rights and remedies, as required in the law. In addition, local governments who violate the law may be subject to awards of back pay, attorney's fees and fines. The fines are not more than \$1,000 for a first violation, \$5,000 for a second violation within twelve months and \$10,000 if more than two violations within twelve months.

Long-Range Fiscal Implications

No long range fiscal effect anticipated, except for the costs discussed above.

Agency/Prepared by:(Name & Phone No.) DWD / Ware, LeAnna (Not Available)	Authorized Signature/Telephone No. 267-2979	Date 5/5/99
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FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047(R10/94)	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB or Bill No./Adm Rule No. LRB-2490/1 / 2490/1	Amendment No.
	<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental		

Subject
DISCHARGE OR OTHER RETALIATION OR DISCRIMINATION AGAINST AN EMPLOYE OF A HEALTH CARE FACILITY OR A HEALTH CARE PROVIDER WHO REPORTS A VIOLATION OF THE LAW OR A VIOLATION OF A CLINICAL OR ETHICAL STANDARD BY THE HEALTH CARE FACILITY OR HEALTH CARE PROVIDER OR BY AN EMPLOYE OF THE HEALTH CARE FACILITY OR HEALTH CARE PROVIDER AND PROVIDING A PENALTY.

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$2,000 for printing and reprinting of materials explaining the law.

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$0	- \$0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	\$0	- \$0
Local Assistance	\$0	- \$0
Aids to Individuals or Organizations	\$0	- \$0
TOTAL State Costs by Category	\$0	- \$0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	- \$0
FED	\$0	- \$0
PRO/PRS	\$0	- \$0
SEG/SEG-S	\$0	- \$0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	- \$0
GPR Earned	\$0	- \$0
FED	\$0	- \$0
PRO/PRS	\$0	- \$0
SEG/SEG-S	\$0	- \$0
TOTAL State Revenues:	\$0	- \$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
Net Change in Costs:	\$0	\$0
Net Change in Revenues:	\$0	\$0



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2490/1 (2)
GMM:jlg:km

RMR

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

representative; ✓
2
accrediting or
to any professionally recognized 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

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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).

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

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

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

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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)