



Sen. Lakesia Collins

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10300SB3559sam001

LRB103 38350 CES 71941 a

1 AMENDMENT TO SENATE BILL 3559

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3559 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Nursing Home Care Act is amended by  
5 changing Section 3-810 as follows:

6 (210 ILCS 45/3-810)

7 Sec. 3-810. Whistleblower protection.

8 (a) In this Section, "retaliatory action" means (1) the  
9 reprimand, discharge, suspension, demotion, denial of  
10 promotion or transfer, or change in the terms and conditions  
11 of employment of any employee of a facility that is taken in  
12 retaliation for the employee's involvement in a protected  
13 activity as set forth in paragraphs (1) through (3) of  
14 subsection (b); or (2) reduced access to services, neglect,  
15 selective restrictions, adverse actions that interfere with  
16 the resident's quality of life at the facility, or threats of

1 such actions that are taken in retaliation for any resident's  
2 involvement in a protected activity as set forth in paragraph  
3 (1) through (8) of subsection (b-5).

4 (b) A facility shall not take any retaliatory action  
5 against an employee of the facility, including a nursing home  
6 administrator, because the employee does any of the following:

7 (1) Discloses or threatens to disclose to a supervisor  
8 or to a public body an activity, inaction, policy, or  
9 practice implemented by a facility that the employee  
10 reasonably believes is in violation of a law, rule, or  
11 regulation.

12 (2) Provides information to or testifies before any  
13 public body conducting an investigation, hearing, or  
14 inquiry into any violation of a law, rule, or regulation  
15 by a nursing home administrator.

16 (3) Assists or participates in a proceeding to enforce  
17 the provisions of this Act.

18 (b-5) A facility shall not take any retaliatory action  
19 against a resident of the facility because the resident does  
20 any of the following:

21 (1) complains, discloses, or threatens to disclose to  
22 a supervisor, a public body, including, but not limited  
23 to, the Office of the State Long Term Care Ombudsman, or  
24 any other person, an activity, inaction, policy, or  
25 practice implemented by a facility that the resident  
26 reasonably believes is in violation of a law, rule, or

1 regulation or that the resident believes to be  
2 problematic;

3 (2) provides information to or testifies before any  
4 public body conducting an investigation, hearing, or  
5 inquiry into any violation of a law, rule, or regulation  
6 by a nursing home administrator;

7 (3) assists or participates in a proceeding to enforce  
8 the provisions of this Act, including a grievance  
9 procedure under Section 2-112;

10 (4) seeks assistance for the resident or others to  
11 transition to independent living or another setting  
12 outside of the resident's current nursing home;

13 (5) makes a request of the facility related to the  
14 resident's care;

15 (6) becomes a member of a resident council described  
16 in Section 2-203, resident union, or similar organization;

17 (7) engages in protected activity under Section 3-608;  
18 or

19 (8) takes any other good faith action in support of  
20 any other right or remedy provided by law.

21 (c) A violation of this Section may be established only  
22 upon a finding that (i) the employee of the facility engaged in  
23 conduct described in subsection (b) of this Section and this  
24 conduct was a contributing factor in the retaliatory action  
25 alleged by the employee; or ~~and~~ (ii) the resident of the  
26 facility engaged in conduct described in subsection (b-5) of

1 this Section and this conduct was a contributing factor in the  
2 retaliatory action alleged by the resident. A resident or  
3 employee may allege retaliation as a prima facie case of  
4 retaliation, which can be overcome by the facility, within one  
5 year after a resident or employee engages in conduct described  
6 in subsections (b) or (b-5) ~~this conduct was a contributing~~  
7 ~~factor in the retaliatory action alleged by the employee.~~  
8 There is no violation of this Section, however, if the  
9 facility demonstrates by clear and convincing evidence that it  
10 would have taken the same unfavorable personnel action in the  
11 absence of that conduct.

12 (d) The employee of the facility may be awarded all  
13 remedies necessary to make the employee whole and to prevent  
14 future violations of this Section. Remedies imposed by the  
15 court may include, but are not limited to, all of the  
16 following:

17 (1) Reinstatement of the employee to either the same  
18 position held before the retaliatory action or to an  
19 equivalent position.

20 (2) Two times the amount of back pay.

21 (3) Interest on the back pay.

22 (4) Reinstatement of full fringe benefits and  
23 seniority rights.

24 (5) Payment of reasonable costs and attorney's fees.

25 (d-5) For each distinct act of retaliation, the resident  
26 of the facility may be awarded all remedies necessary to make

1 the resident whole and prevent future violations of this  
2 Section. Remedies imposed by the court or other administrative  
3 body with appropriate jurisdiction may include, but are not  
4 limited to, the following:

5 (1) injunctive relief;

6 (2) a minimum of 2 times the average monthly billing  
7 rate for Medicaid recipients in facilities, as calculated  
8 annually by the Director of Healthcare and Family  
9 Services, or the Director's designee; and

10 (3) payment of reasonable costs and attorney's fees.

11 (d-6) Monetary damages in excess of the minimum amount in  
12 subparagraph (2) of subsection (d-5) of this Section must be  
13 established by competent third party evidence.

14 (d-10) A claim of retaliation under this Act may be filed  
15 in any court of competent jurisdiction, any administrative  
16 hearing process conducted by the State and its agencies, or  
17 departments with jurisdiction to hear complaints by employees  
18 or residents against nursing homes, but the same affirmative  
19 claim may not be pending in 2 separate forums simultaneously.  
20 Affirmative defenses based on claims of retaliation under this  
21 Act may be permissively joined with an affirmative claim or  
22 may be pending separately at the election of the resident or  
23 employee. If a claim of retaliation under this Section is  
24 brought in a judicial forum and if that claim is resolved  
25 through settlement or final dispensation in favor of the  
26 plaintiff or defendant, the employee or resident is prohibited

1 from subsequently filing the same claim in an administrative  
2 forum.

3 (e) Nothing in this Section shall be deemed to diminish  
4 the rights, privileges, or remedies of an employee of a  
5 facility under any other federal or State law, rule, or  
6 regulation or under any employment contract.

7 (Source: P.A. 96-1372, eff. 7-29-10.)".