



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1374/1
MGD:cjs:cmh

**ASSEMBLY AMENDMENT 20,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55**

June 29, 2001 - Offered by Representatives SINICKI and BERCEAU.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 622, line 21: after that line insert:

3 **“SECTION 1770q.** 49.45 (6n) of the statutes is created to read:

4 49.45 **(6n)** USE OF FUNDS BY NURSING FACILITIES IN CONNECTION WITH UNION

5 ORGANIZING. (a) In this subsection:

6 1. “Labor organization” means any employee organization in which employees
7 participate and that exists primarily for the purpose of engaging in collective
8 bargaining with any employer concerning grievances, labor disputes, wages, hours
9 or conditions of employment, or the promotion and advancement of the professional
10 or occupational standards and the welfare of its members and families and any
11 organization established for the same purposes composed of individuals or affiliates
12 of any such employee organization.

1 2. “Nursing facility” means a nursing home, as defined in s. 50.01 (3), or a
2 community-based residential facility that is licensed under s. 50.03 and that is
3 certified by the department of health and family services to provide medical
4 assistance services equivalent to those provided by a nursing home.

5 (b) No nursing facility that has received money that is appropriated under s.
6 20.435 (4) (b), (o), or (w) may use any of that money to influence the decision of any
7 individual to support or oppose a labor organization that represents or seeks to
8 represent the individual or to become a member of a labor organization. This
9 paragraph does not prohibit a person, if otherwise permitted by law, to negotiate or
10 administer a collective bargaining agreement or to perform any action that is
11 required by law or the terms of a collective bargaining agreement. This paragraph
12 does not apply to any money received before January 1, 2002.

13 (c) 1. The department shall accept complaints from any individual who alleges
14 that a nursing facility is violating par. (b). The department shall notify the nursing
15 facility that is the subject of the complaint within 7 days after receiving it and shall
16 direct the nursing facility to provide the department, within 10 days after the
17 department notifies it of the complaint, records showing that it did not violate par.
18 (b).

19 2. Notwithstanding subd. 1., the department may not require a nursing facility
20 to maintain records relating to this subsection in any particular form.

21 (d) The attorney general may bring an action to enforce par. (b). If the court
22 determines that a nursing facility has violated par. (b), the court shall order the
23 nursing facility to repay to the state an amount equal to the amount that the nursing
24 facility received under s. 20.435 (4) (b), (o), or (w) and spent in connection with the
25 nursing facility’s violation. The nursing facility shall also forfeit an amount equal

1 to twice the total amount that the nursing facility spent in connection with the
2 nursing facility's violation. The court may also order injunctive relief and any other
3 equitable relief that is appropriate.

4 (e) 1. Any person other than the attorney general may bring an action to enforce
5 par. (b), but only if all of the following apply:

6 a. The person filed with the department a written complaint under par. (c)
7 alleging a violation of par. (b).

8 b. No earlier than 20 days after filing the complaint under par. (c) the person
9 filed with the attorney general a copy of that complaint, a written description of the
10 disposition of the complaint, and a written notice that the person intended to bring
11 an enforcement action under this paragraph.

12 c. At least 60 days have elapsed since the person complied with subd. 1. b.

13 d. The attorney general did not bring an action to enforce par. (b) against the
14 subject of the complaint filed under subd. 1. a. before the expiration of the time period
15 specified in subd. 1. c.

16 e. The complaint that the person files in his or her action is substantially based
17 on the complaint that the person filed under subd. 1. a.

18 2. If, in an action brought under this paragraph, the court determines that a
19 nursing facility violated par. (b), the court shall impose any penalty that would have
20 been required and may order any relief that would have been permitted if the action
21 had been brought under par. (d). Any forfeiture ordered under this subdivision shall
22 be paid to the state.

23 (f) Notwithstanding s. 803.09 (1), any person may intervene in an action
24 brought under par. (d) or (e).

1 (g) If the court determines that a nursing facility violated par. (b) in a case
2 brought under par. (d) or (e), the court shall order the nursing facility to pay the
3 plaintiff's reasonable litigation costs, including a reasonable attorney fee,
4 notwithstanding s. 814.04 (1). If a person has intervened in a case under par. (f), the
5 court shall order the nursing facility or to pay the intervenor's reasonable litigation
6 costs, including a reasonable attorney fee, notwithstanding s. 814.04 (1), if the court
7 determines that the intervenor made a substantial contribution to the plaintiffs in
8 prosecuting the action.

9 (h) 1. If an operator or owner of a nursing facility discharges, demotes,
10 threatens, or otherwise discriminates against an individual regarding compensation
11 or terms, conditions, or privileges of employment because the individual or anyone
12 acting at the request of the individual provided or attempted to provide information
13 to the department or the attorney general regarding possible violations of par. (b),
14 the individual may bring a civil action for any damages resulting from that
15 discharge, demotion, threat, or discrimination. The action shall be commenced
16 within 3 years after the discharge, demotion, threat, or discrimination or be barred.
17 If the plaintiff proves by a preponderance of the evidence that the discharge,
18 demotion, threat, or discrimination occurred, the court may grant any appropriate
19 relief, including the following:

- 20 a. Reinstatement of the individual to his or her former position.
21 b. Compensatory damages.
22 c. Costs, and notwithstanding s. 814.04 (1), reasonable attorney fees.
23 d. Other relief to remedy past discrimination.

24 (2) An individual may not bring an action under subd. 1. if he or she did any
25 of the following:

- 1 a. Deliberately caused or participated in the violation of par. (b).
- 2 b. Knowingly or recklessly provided substantially false information to the
- 3 department regarding a violation of par. (b).
- 4 (i) Any individual who knowingly authorizes the use of money received under
- 5 s. 20.435 (4) (b), (o), or (w) in conjunction with a violation of par. (b) shall forfeit all
- 6 of the following:
- 7 1. \$1,000 for each violation.
- 8 2. The amount of money that the person authorized to be used under sub. (1)
- 9 (intro.).”.

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(END)