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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3405

02/14/2022 Authored by Winkler, Agbaje, Her, Bernardy, Hassan and others
The bill was read for the first time and referred to the Committee on Labor, Industry, Veterans and Military Affairs Finance and Policy
03/14/2022 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
03/17/2022 Adoption of Report: Re-referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to nursing homes; establishing the Minnesota Nursing Home Workforce
1.3 Standards Board; establishing duties for the board; requiring training for nursing
1.4 home workers; prohibiting retaliation against nursing home workers; providing
1.5 for enforcement; authorizing rulemaking; authorizing civil actions by nursing
1.6 home workers; amending Minnesota Statutes 2020, section 177.27, subdivision
1.7 4; proposing coding for new law in Minnesota Statutes, chapter 181.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. TITLE.

1.10 This act may be cited as the Minnesota Nursing Home Workforce Standards Board Act.

1.11 Sec. 2. Minnesota Statutes 2020, section 177.27, subdivision 4, is amended to read:

1.12 Subd. 4. Compliance orders. The commissioner may issue an order requiring an
1.13 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,
1.14 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.214
1.15 to 181.217, 181.275, subdivision 2a, 181.722, 181.79, and 181.939 to 181.943, or with any
1.16 rule promulgated under section 177.28 or 181.213. The commissioner shall issue an order
1.17 requiring an employer to comply with sections 177.41 to 177.435 if the violation is repeated.
1.18 For purposes of this subdivision only, a violation is repeated if at any time during the two
1.19 years that preceded the date of violation, the commissioner issued an order to the employer
1.20 for violation of sections 177.41 to 177.435 and the order is final or the commissioner and
1.21 the employer have entered into a settlement agreement that required the employer to pay
1.22 back wages that were required by sections 177.41 to 177.435. The department shall serve
1.23 the order upon the employer or the employer's authorized representative in person or by
1.24 certified mail at the employer's place of business. An employer who wishes to contest the

2.1 order must file written notice of objection to the order with the commissioner within 15
2.2 calendar days after being served with the order. A contested case proceeding must then be
2.3 held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being
2.4 served with the order, the employer fails to file a written notice of objection with the
2.5 commissioner, the order becomes a final order of the commissioner.

2.6 Sec. 3. Minnesota Statutes 2020, section 177.27, subdivision 7, is amended to read:

2.7 Subd. 7. **Employer liability.** If an employer is found by the commissioner to have
2.8 violated a section identified in subdivision 4, or any rule adopted under section 177.28 or
2.9 181.213, and the commissioner issues an order to comply, the commissioner shall order the
2.10 employer to cease and desist from engaging in the violative practice and to take such
2.11 affirmative steps that in the judgment of the commissioner will effectuate the purposes of
2.12 the section or rule violated. The commissioner shall order the employer to pay to the
2.13 aggrieved parties back pay, gratuities, and compensatory damages, less any amount actually
2.14 paid to the employee by the employer, and for an additional equal amount as liquidated
2.15 damages. Any employer who is found by the commissioner to have repeatedly or willfully
2.16 violated a section or sections identified in subdivision 4 shall be subject to a civil penalty
2.17 of up to \$1,000 for each violation for each employee. In determining the amount of a civil
2.18 penalty under this subdivision, the appropriateness of such penalty to the size of the
2.19 employer's business and the gravity of the violation shall be considered. In addition, the
2.20 commissioner may order the employer to reimburse the department and the attorney general
2.21 for all appropriate litigation and hearing costs expended in preparation for and in conducting
2.22 the contested case proceeding, unless payment of costs would impose extreme financial
2.23 hardship on the employer. If the employer is able to establish extreme financial hardship,
2.24 then the commissioner may order the employer to pay a percentage of the total costs that
2.25 will not cause extreme financial hardship. Costs include but are not limited to the costs of
2.26 services rendered by the attorney general, private attorneys if engaged by the department,
2.27 administrative law judges, court reporters, and expert witnesses as well as the cost of
2.28 transcripts. Interest shall accrue on, and be added to, the unpaid balance of a commissioner's
2.29 order from the date the order is signed by the commissioner until it is paid, at an annual rate
2.30 provided in section 549.09, subdivision 1, paragraph (c). The commissioner may establish
2.31 escrow accounts for purposes of distributing damages.

2.32 Sec. 4. **[181.211] DEFINITIONS.**

2.33 Subdivision 1. **Application.** The terms defined in this section apply to sections 181.211
2.34 to 181.217.

3.1 Subd. 2. **Board.** "Board" means the Minnesota Nursing Home Workforce Standards
3.2 Board established under section 181.212.

3.3 Subd. 3. **Certified worker organization.** "Certified worker organization" means a
3.4 worker organization that is certified by the board to conduct nursing home worker trainings
3.5 under section 181.214.

3.6 Subd. 4. **Commissioner.** "Commissioner" means the commissioner of labor and industry.

3.7 Subd. 5. **Employer organization.** "Employer organization" means:

3.8 (1) an organization that is exempt from federal income taxation under section 501(c)(6)
3.9 of the Internal Revenue Code and that represents nursing home employers; or

3.10 (2) an entity that employers, who together employ a majority of nursing home workers
3.11 in Minnesota, have selected as a representative.

3.12 Subd. 6. **Nursing home.** "Nursing home" means a nursing home licensed under chapter
3.13 144A, or a boarding care home licensed under sections 144.50 to 144.56.

3.14 Subd. 7. **Nursing home employer.** "Nursing home employer" means an employer of
3.15 nursing home workers.

3.16 Subd. 8. **Nursing home worker.** "Nursing home worker" means any worker who provides
3.17 services in a nursing home in Minnesota, including direct care staff, administrative staff,
3.18 and contractors.

3.19 Subd. 9. **Retaliatory personnel action.** "Retaliatory personnel action" means any form
3.20 of intimidation, threat, reprisal, harassment, discrimination, or adverse employment action,
3.21 including discipline, discharge, suspension, transfer, or reassignment to a lesser position in
3.22 terms of job classification, job security, or other condition of employment; reduction in pay
3.23 or hours or denial of additional hours; informing another employer that a nursing home
3.24 worker has engaged in activities protected under sections 181.211 to 181.217; or reporting
3.25 or threatening to report the actual or suspected citizenship or immigration status of a nursing
3.26 home worker, former nursing home worker, or family member of a nursing home worker
3.27 to a federal, state, or local agency.

3.28 Subd. 10. **Worker organization.** "Worker organization" means an organization that is
3.29 exempt from federal income taxation under section 501(c)(3), 501(c)(4), or 501(c)(5) of
3.30 the Internal Revenue Code, that is not dominated or controlled by any nursing home employer
3.31 within the meaning of United States Code, title 29, section 158a(2), and that has at least
3.32 five years of demonstrated experience engaging with and advocating for nursing home
3.33 workers.

4.1 Sec. 5. [181.212] MINNESOTA NURSING HOME WORKFORCE STANDARDS
4.2 BOARD; ESTABLISHMENT.

4.3 Subdivision 1. Board established; membership. The Minnesota Nursing Home
4.4 Workforce Standards Board is created with the powers and duties established by law. The
4.5 board is composed of the following members:

4.6 (1) the commissioner of human services or a designee;

4.7 (2) the commissioner of health or a designee;

4.8 (3) the commissioner of labor and industry or a designee;

4.9 (4) three members who represent nursing home employers or employer organizations,
4.10 appointed by the governor; and

4.11 (5) three members who represent nursing home workers or worker organizations,
4.12 appointed by the governor.

4.13 Subd. 2. Terms; vacancies. (a) Board members appointed under subdivision 1, clause
4.14 (4) or (5), shall serve four-year terms following the initial staggered-lot determination. The
4.15 initial terms of members appointed under subdivision 1, clauses (4) and (5), shall be
4.16 determined by lot by the secretary of state and shall be as follows:

4.17 (1) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve
4.18 a two-year term;

4.19 (2) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve
4.20 a three-year term; and

4.21 (3) one member appointed under each of subdivision 1, clauses (4) and (5), shall serve
4.22 a four-year term.

4.23 (b) For members appointed under subdivision 1, clause (4) or (5), the governor shall fill
4.24 vacancies occurring prior to the expiration of a member's term by appointment for the
4.25 unexpired term. A member appointed under subdivision 1, clause (4) or (5), shall not be
4.26 appointed to more than two consecutive four-year terms.

4.27 Subd. 3. Chairperson. The board shall elect a member by majority vote to serve as its
4.28 chairperson and shall determine the term to be served by the chairperson.

4.29 Subd. 4. Staffing. The board may employ an executive director and other personnel to
4.30 carry out duties of the board under sections 181.211 to 181.217.

5.1 Subd. 5. **Compensation.** Compensation of board members is governed by section
 5.2 15.0575.

5.3 Subd. 6. **Application of other laws.** Meetings of the board are subject to chapter 13D.
 5.4 The board is subject to chapter 13.

5.5 Subd. 7. **Voting.** The affirmative vote of five board members is required for the board
 5.6 to take any action, including action to establish minimum nursing home employment
 5.7 standards under section 181.213.

5.8 Subd. 8. **Hearings and investigations.** To carry out its duties, the board shall hold public
 5.9 hearings on, and conduct investigations into, working conditions in the nursing home
 5.10 industry.

5.11 Sec. 6. **[181.213] DUTIES OF THE BOARD; MINIMUM NURSING HOME**
 5.12 **EMPLOYMENT STANDARDS.**

5.13 Subdivision 1. **Authority to establish minimum nursing home employment**
 5.14 **standards.** (a) The board must adopt rules establishing minimum nursing home employment
 5.15 standards that are reasonably necessary and appropriate to protect the health and welfare
 5.16 of nursing home workers, to ensure that nursing home workers are properly trained and
 5.17 fully informed of their rights under sections 181.211 to 181.217, and to otherwise satisfy
 5.18 the purposes of sections 181.211 to 181.217. Standards established by the board must
 5.19 include, as appropriate, standards on compensation, working hours, and other working
 5.20 conditions for nursing home workers. Any standards established by the board under this
 5.21 section must be at least as protective of or beneficial to nursing home workers as any other
 5.22 applicable statute or rule or any standard previously established by the board. In establishing
 5.23 standards under this section, the board may establish statewide standards, standards that
 5.24 apply to specific nursing home occupations, standards that apply to specific geographic
 5.25 areas within the state, or any combination thereof.

5.26 (b) The board must adopt rules establishing initial standards for wages and working
 5.27 hours for nursing home workers no later than August 1, 2023. The board may use the
 5.28 authority in section 14.389 to adopt rules under this paragraph.

5.29 (c) To the extent that any minimum standards that the board finds are reasonably
 5.30 necessary and appropriate to protect the health and welfare of nursing home workers fall
 5.31 within the jurisdiction of chapter 182, the board shall not adopt rules establishing the
 5.32 standards but shall instead recommend the standards to the commissioner of labor and
 5.33 industry. The commissioner of labor and industry shall adopt nursing home health and safety

6.1 standards under section 182.655 as recommended by the board, unless the commissioner
6.2 determines that the recommended standard is outside the statutory authority of the
6.3 commissioner or is otherwise unlawful and issues a written explanation of this determination.

6.4 Subd. 2. **Investigation of market conditions.** The board must investigate market
6.5 conditions and the existing wages, benefits, and working conditions of nursing home workers
6.6 for specific geographic areas of the state and specific nursing home occupations. Based on
6.7 this information, the board must seek to adopt minimum nursing home employment standards
6.8 that meet or exceed existing industry conditions for a majority of nursing home workers in
6.9 the relevant geographic area and nursing home occupation. The board must consider the
6.10 following types of information in making wage rate determinations that are reasonably
6.11 necessary to protect the health and welfare of nursing home workers:

6.12 (1) wage rate and benefit data collected by or submitted to the board for nursing home
6.13 workers in the relevant geographic area and nursing home occupations;

6.14 (2) statements showing wage rates and benefits paid to nursing home workers in the
6.15 relevant geographic area and nursing home occupations;

6.16 (3) signed collective bargaining agreements applicable to nursing home workers in the
6.17 relevant geographic area and nursing home occupations;

6.18 (4) testimony and information from current and former nursing home workers, worker
6.19 organizations, nursing home employers, and employer organizations;

6.20 (5) local minimum nursing home employment standards;

6.21 (6) information submitted by or obtained from state and local government entities; and

6.22 (7) any other information pertinent to establishing minimum nursing home employment
6.23 standards.

6.24 Subd. 3. **Review of standards.** At least once every two years, the board shall:

6.25 (1) conduct a full review of the adequacy of the minimum nursing home employment
6.26 standards previously established by the board; and

6.27 (2) following that review, adopt new rules, amend or repeal existing rules, or make
6.28 recommendations to adopt new rules or amend or repeal existing rules, as appropriate to
6.29 meet the purposes of sections 181.211 to 181.217.

6.30 Subd. 4. **Conflict.** In the event of a conflict between a standard established by the board
6.31 in rule and a rule adopted by another state agency, the rule adopted by the board shall apply
6.32 to nursing home workers and nursing home employers, except where the conflicting rule

7.1 is issued after the board's standard, and the rule issued by the other state agency is more
 7.2 protective or more beneficial, then the subsequent more protective or more beneficial rule
 7.3 shall apply to nursing home workers and nursing home employers.

7.4 Subd. 5. **Effect on other agreements.** Nothing in sections 181.211 to 181.217 shall be
 7.5 construed to:

7.6 (1) limit the rights of parties to a collective bargaining agreement to bargain and agree
 7.7 with respect to nursing home employment standards; or

7.8 (2) diminish the obligation of a nursing home employer to comply with any contract,
 7.9 collective bargaining agreement, or employment benefit program or plan that meets or
 7.10 exceeds, and does not conflict with, the minimum standards and requirements in sections
 7.11 181.211 to 181.217 or established by the board.

7.12 Sec. 7. **[181.214] DUTIES OF THE BOARD; TRAINING FOR NURSING HOME**
 7.13 **WORKERS.**

7.14 Subdivision 1. **Certification of worker organizations.** The board shall certify worker
 7.15 organizations that it finds are qualified to provide training to nursing home workers according
 7.16 to this section. The board shall by rule establish certification criteria that a worker
 7.17 organization must meet in order to be certified. In adopting rules to establish initial
 7.18 certification criteria under this subdivision, the board may use the authority in section 14.389.
 7.19 The criteria must ensure that a worker organization, if certified, is able to provide:

7.20 (1) effective, interactive training on the information required by this section; and

7.21 (2) follow-up written materials and responses to inquiries from nursing home workers
 7.22 in the languages in which nursing home workers are proficient.

7.23 Subd. 2. **Curriculum.** (a) The board shall establish requirements for the curriculum for
 7.24 the nursing home worker training required by this section. A curriculum must at least provide
 7.25 the following information to nursing home workers:

7.26 (1) the applicable compensation, working hours, and working conditions in the minimum
 7.27 standards or local minimum standards established by the board;

7.28 (2) the antiretaliation protections established in section 181.216;

7.29 (3) information on how to enforce sections 181.211 to 181.217 and on how to report
 7.30 violations of sections 181.211 to 181.217 or of standards established by the board, including
 7.31 contact information for the Department of Labor and Industry, the board, and any local
 7.32 enforcement agencies, and information on the remedies available for violations;

8.1 (4) the purposes and functions of the board and information on upcoming hearings,
8.2 investigations, or other opportunities for nursing home workers to become involved in board
8.3 proceedings;

8.4 (5) other rights, duties, and obligations under sections 181.211 to 181.217;

8.5 (6) any updates or changes to the information provided according to clauses (1) to (5)
8.6 since the most recent training session;

8.7 (7) any other information the board deems appropriate to facilitate compliance with
8.8 sections 181.211 to 181.217; and

8.9 (8) information on other applicable local, state, and federal laws, rules, and ordinances
8.10 regarding nursing home working conditions or nursing home worker health and safety.

8.11 (b) Before establishing initial curriculum requirements, the board must hold at least one
8.12 public hearing to solicit input on the requirements.

8.13 Subd. 3. **Topics covered in training session.** A certified worker organization is not
8.14 required to cover all of the topics listed in subdivision 2 in a single training session. A
8.15 curriculum used by a certified worker organization may provide instruction on each topic
8.16 listed in subdivision 2 over the course of up to three training sessions.

8.17 Subd. 4. **Annual review of curriculum requirements.** The board must review the
8.18 adequacy of its curriculum requirements at least annually and must revise the requirements
8.19 as appropriate to meet the purposes of sections 181.211 to 181.217. As part of each annual
8.20 review of the curriculum requirements, the board must hold at least one public hearing to
8.21 solicit input on the requirements.

8.22 Subd. 5. **Duties of certified worker organizations.** A certified worker organization:

8.23 (1) must use a curriculum for its training sessions that meets requirements established
8.24 by the board;

8.25 (2) must provide trainings that are interactive and conducted in the languages in which
8.26 the attending nursing home workers are proficient;

8.27 (3) must, at the end of each training session, provide attending nursing home workers
8.28 with follow-up written or electronic materials on the topics covered in the training session,
8.29 in order to fully inform nursing home workers of their rights and opportunities under sections
8.30 181.211 to 181.217 and other applicable laws, rules, and ordinances governing nursing
8.31 home working conditions or worker health and safety;

9.1 (4) must make itself reasonably available to respond to inquiries from nursing home
 9.2 workers during and after training sessions; and

9.3 (5) may conduct surveys of nursing home workers who attend a training session to assess
 9.4 the effectiveness of the training session and industry compliance with sections 181.211 to
 9.5 181.217 and other applicable laws, rules, and ordinances governing nursing home working
 9.6 conditions or worker health and safety.

9.7 **Subd. 6. Nursing home employer duties regarding training.** (a) A nursing home
 9.8 employer must ensure, and must provide proof to the commissioner of labor and industry,
 9.9 that every six months each of its nursing home workers completes one hour of training that
 9.10 meets the requirements of this section and is provided by a certified worker organization.
 9.11 A nursing home employer may, but is not required to, host training sessions on the premises
 9.12 of the nursing home.

9.13 (b) If requested by a certified worker organization, a nursing home employer must, after
 9.14 a training session provided by the certified worker organization, provide the certified worker
 9.15 organization with the names and contact information of the nursing home workers who
 9.16 attended the training session, unless a nursing home worker opts out according to paragraph
 9.17 (c).

9.18 (c) A nursing home worker may opt out of having the worker's nursing home employer
 9.19 provide the worker's name and contact information to a certified worker organization that
 9.20 provided a training session attended by the worker by submitting a written statement to that
 9.21 effect to the nursing home employer.

9.22 **Subd. 7. Compensation.** A nursing home employer must compensate its nursing home
 9.23 workers at their regular hourly rate of wages and benefits for each hour of training completed
 9.24 as required by this section.

9.25 **Sec. 8. [181.215] REQUIRED NOTICES.**

9.26 **Subdivision 1. Provision of notice.** (a) Nursing home employers must provide notices
 9.27 informing nursing home workers of the rights and obligations provided under sections
 9.28 181.211 to 181.217 of applicable minimum nursing home employment standards or local
 9.29 minimum standards and that for assistance and information, nursing home workers should
 9.30 contact the Department of Labor and Industry. A nursing home employer must provide
 9.31 notice using the same means that the nursing home employer uses to provide other
 9.32 work-related notices to nursing home workers. Provision of notice must be at least as
 9.33 conspicuous as:

10.1 (1) posting a copy of the notice at each work site where nursing home workers work
 10.2 and where the notice may be readily observed and reviewed by all nursing home workers
 10.3 working at the site; or

10.4 (2) providing a paper or electronic copy of the notice to all nursing home workers and
 10.5 applicants for employment as a nursing home worker.

10.6 (b) The notice required by this subdivision must include text provided by the board that
 10.7 informs nursing home workers that they may request the notice to be provided in a particular
 10.8 language. The nursing home employer must provide the notice in the language requested
 10.9 by the nursing home worker. The board must assist nursing home employers in translating
 10.10 the notice in the languages requested by their nursing home workers.

10.11 Subd. 2. **Minimum content and posting requirements.** The board must adopt rules
 10.12 specifying the minimum content and posting requirements for the notices required in
 10.13 subdivision 1. The board must make available to nursing home employers a template or
 10.14 sample notice that satisfies the requirements of this section and rules adopted under this
 10.15 section.

10.16 **Sec. 9. [181.216] RETALIATION ON CERTAIN GROUNDS PROHIBITED.**

10.17 A nursing home employer must not retaliate against a nursing home worker, including
 10.18 taking retaliatory personnel action, for:

10.19 (1) exercising any right afforded to the nursing home worker under sections 181.211 to
 10.20 181.217;

10.21 (2) participating in any process or proceeding under sections 181.211 to 181.217,
 10.22 including but not limited to board hearings, investigations, or other proceedings; or

10.23 (3) attending or participating in the training required by section 181.214.

10.24 **Sec. 10. [181.217] ENFORCEMENT.**

10.25 Subdivision 1. **Minimum nursing home employment standards.** The minimum wages,
 10.26 maximum hours of work, and other working conditions established by the board in rule as
 10.27 minimum nursing home employment standards shall be the minimum wages, maximum
 10.28 hours of work, and standard conditions of labor for nursing home workers or a subgroup
 10.29 of nursing home workers as a matter of state law. It shall be unlawful for a nursing home
 10.30 employer to employ a nursing home worker for lower wages or for longer hours than those
 10.31 established as the minimum nursing home employment standards or under any other working
 10.32 conditions that violate the minimum nursing home employment standards.

11.1 Subd. 2. **Investigations.** The commissioner may investigate possible violations of sections
11.2 181.214 to 181.217 or of the minimum nursing home employment standards established by
11.3 the board whenever it has cause to believe that a violation has occurred, either on the basis
11.4 of a report of a suspected violation or on the basis of any other credible information, including
11.5 violations found during the course of an investigation.

11.6 Subd. 3. **Enforcement authority.** The Department of Labor and Industry shall enforce
11.7 sections 181.214 to 181.217 and compliance with the minimum nursing home employment
11.8 standards established by the board according to the authority in section 177.27, subdivisions
11.9 4 and 7.

11.10 Subd. 4. **Civil action by nursing home worker.** (a) One or more nursing home workers
11.11 may bring a civil action in district court seeking redress for violations of sections 181.211
11.12 to 181.217 or of any applicable minimum nursing home employment standards or local
11.13 minimum nursing home employment standards. Such an action may be filed in the district
11.14 court of the county where a violation or violations are alleged to have been committed or
11.15 where the nursing home employer resides, or in any other court of competent jurisdiction,
11.16 and may represent a class of similarly situated nursing home workers.

11.17 (b) Upon a finding of one or more violations, a nursing home employer shall be liable
11.18 to each nursing home worker for the full amount of the wages, benefits, and overtime
11.19 compensation, less any amount the nursing home employer is able to establish was actually
11.20 paid to each nursing home worker and for an additional equal amount as liquidated damages.
11.21 In an action under this subdivision, nursing home workers may seek damages and other
11.22 appropriate relief provided by section 177.27, subdivision 7, or otherwise provided by law,
11.23 including reasonable costs, disbursements, witness fees, and attorney fees. A court may also
11.24 issue an order requiring compliance with sections 181.211 to 181.217 or with the applicable
11.25 minimum nursing home employment standards or local minimum nursing home employment
11.26 standards. A nursing home worker found to have experienced a retaliatory personnel action
11.27 in violation of section 181.216 shall be entitled to reinstatement to the worker's previous
11.28 position, wages, benefits, hours, and other conditions of employment.

11.29 (c) An agreement between a nursing home employer and nursing home worker or labor
11.30 union that fails to meet the minimum standards and requirements in sections 181.211 to
11.31 181.217 or established by the board is not a defense to an action brought under this
11.32 subdivision.

12.1 Sec. 11. INITIAL APPOINTMENTS.

12.2 The governor shall make initial appointments to the Minnesota Nursing Home Workforce

12.3 Standards Board under Minnesota Statutes, section 181.212, no later than August 1, 2022.