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STATE GOVERNMENT

SENATE FILE 2199

BY BLACK of Jasper and REDWINE

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act providing for the confidentiality and protection from  
2 discovery of communications relating to and involved in the  
3 peer review process.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2199

1 Section 1. Section 139C.2, subsection 8, Code 1997, is  
2 amended to read as follows:

3 8. The expert review panel established by the department  
4 and individual members of the panel shall be immune from any  
5 liability, civil or criminal, for the good faith performance  
6 of functions authorized or required by this section. A  
7 hospital, an expert review panel established by the hospital,  
8 and individual members of the panel shall be immune from any  
9 liability, civil or criminal, for the good faith performance  
10 of functions authorized or required by this section.  
11 Complaints, investigations, reports, deliberations, and  
12 findings of the hospital and its panel with respect to a named  
13 health care provider suspected, alleged, or found to be in  
14 violation of the protocol required by this section, constitute  
15 peer review records communications under section 147.135, and  
16 are subject to the specific confidentiality requirements and  
17 limitations of this section.

18 Sec. 2. Section 147.135, subsections 2 and 3, Code 1997,  
19 are amended to read as follows:

20 2. As used in this subsection, "peer review records"  
21 communications" means all complaint files, investigation  
22 files, reports, faxes, and other written or computer-generated  
23 investigative information relating to licensee discipline or  
24 professional competence in the possession of a peer review  
25 committee or an employee of a peer review committee, and all  
26 nonwritten communications in the form of in-person or  
27 telephone conversations occurring in the course of the peer  
28 review process. As used in this subsection, "peer review  
29 committee" does not include examining boards. Peer review  
30 records communications are privileged and confidential, are  
31 not subject to discovery, subpoena, or other means of legal  
32 compulsion for release to a person other than an affected  
33 licensee or a peer review committee and are not admissible in  
34 evidence in a judicial or administrative proceeding other than  
35 a proceeding involving licensee discipline or a proceeding

1 brought by a licensee who is the subject of a peer review  
2 record communication and whose competence is at issue. A  
3 person shall not be liable as a result of filing a report or  
4 complaint with a peer review committee or providing  
5 information to such a committee, or for disclosure of  
6 privileged matter to a peer review committee. A person  
7 present at a meeting of a peer review committee, or a  
8 participant in a peer review communication as used in this  
9 subsection, shall not be permitted to testify as to the  
10 findings, recommendations, evaluations, or opinions of the  
11 peer review committee in any judicial or administrative  
12 proceeding other than a proceeding involving licensee  
13 discipline or a proceeding brought by a licensee who is the  
14 subject of a peer review committee meeting and whose  
15 competence is at issue. Information, or documents, or other  
16 communications discoverable from sources other than the peer  
17 review committee do not become nondiscoverable from the other  
18 sources merely because they are made available to or are in  
19 the possession of a peer review committee. However, such  
20 information relating to licensee discipline may be disclosed  
21 to an appropriate licensing authority in any jurisdiction in  
22 which the licensee is licensed or has applied for a license.  
23 If such information indicates a crime has been committed, the  
24 information shall be reported to the proper law enforcement  
25 agency. This subsection shall not preclude the discovery of  
26 the identification of witnesses or documents known to a peer  
27 review committee. Any final written decision and finding of  
28 fact by a licensing board in a disciplinary proceeding is a  
29 public record. Upon appeal by a licensee of a decision of a  
30 licensing board, the entire case record shall be submitted to  
31 the reviewing court. In all cases where privileged and  
32 confidential information under this subsection becomes  
33 discoverable, admissible, or part of a court record the  
34 identity of an individual whose privilege has been  
35 involuntarily waived shall be withheld.

1 3. A full and confidential report concerning any final  
2 hospital disciplinary action approved by a hospital board of  
3 trustees that results in a limitation, suspension, or  
4 revocation of a physician's privilege to practice for reasons  
5 relating to the physician's professional competence or  
6 concerning any voluntary surrender or limitation of privileges  
7 for reasons relating to professional competence shall be made  
8 to the board of medical examiners by the hospital  
9 administrator or chief of medical staff within ten days of  
10 such action. The board of medical examiners shall investigate  
11 the report and take appropriate action. These reports shall  
12 be privileged and confidential as though included in and  
13 subject to the requirements for peer review committee  
14 information communications in subsection 2. Persons making  
15 these reports and persons participating in resulting  
16 proceedings related to these reports shall be immune from  
17 civil liability with respect to the making of the report or  
18 participation in resulting proceedings. As used in this  
19 subsection, "physician" means a person licensed pursuant to  
20 chapter 148, chapter 150, or chapter 150A.

21 Notwithstanding subsection 2, if the board of medical  
22 examiners conducts an investigation based on a complaint  
23 received or upon its own motion, a hospital pursuant to  
24 subpoena shall make available information and documents  
25 requested by the board, specifically including reports or  
26 descriptions of any complaints or incidents concerning an  
27 individual who is the subject of the board's investigation,  
28 even though the information and documents are also kept for,  
29 are the subject of, or are being used in peer review by the  
30 hospital. However, the deliberations, testimony, decisions,  
31 conclusions, findings, recommendations, evaluations, work  
32 product, or opinions, or any other communications of a peer  
33 review committee or its members and those portions of any  
34 documents or records containing or revealing information  
35 relating thereto shall not be subject to the board's request

1 for information, subpoena, or other legal compulsion. All  
2 information and documents received by the board from a  
3 hospital under this section shall be confidential pursuant to  
4 section 272C.6, subsection 4.

5 Sec. 3. Section 147A.25, subsection 2, Code 1997, is  
6 amended to read as follows:

7 2. Proceedings, records, and reports developed pursuant to  
8 this section constitute peer review records communications  
9 under section 147.135, and are not subject to discovery by  
10 subpoena or admissible as evidence. All information and  
11 documents received from a hospital or emergency care facility  
12 under this subchapter shall be confidential pursuant to  
13 section 272C.6, subsection 4.

14 EXPLANATION

15 This bill provides that all peer review communications  
16 occurring within the course of a peer review proceeding shall  
17 be considered privileged and confidential, and not subject to  
18 discovery. Code section 147.135, subsection 2, currently  
19 provides that peer review records, defined as all complaint  
20 files, investigation files, reports, and other investigative  
21 information relating to licensee discipline or professional  
22 competence in the possession of a peer review committee or an  
23 employee of a peer review committee, are privileged and  
24 confidential, and not subject to discovery. The bill replaces  
25 the phrase "peer review records" with "peer review  
26 communications", which in addition to the information included  
27 in the definition of a peer review record includes faxes,  
28 computer-generated communications, and all nonwritten  
29 communications in the form of in-person or telephone  
30 conversations occurring in the course of the peer review  
31 process. The bill also provides that, in addition to a person  
32 present at a meeting of a peer review committee, an individual  
33 who has been a participant in a peer review communication  
34 shall not be permitted to testify as to the findings,  
35 recommendations, evaluations, or opinions of the peer review

1 committee in any judicial or administrative proceeding other  
2 than a proceeding involving licensee discipline or a  
3 proceeding brought by a licensee who is the subject of a peer  
4 review committee meeting and whose competence is at issue.

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