

FEB 12 2004
HUMAN RESOURCES

HOUSE FILE 2247
BY MASCHER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act prohibiting reprisals against health care workers for
2 disclosure of specified information, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2247

1 Section 1. NEW SECTION. 147.105 REPRISALS PROHIBITED --
2 HEALTH CARE WORKERS -- PENALTY -- CIVIL REMEDIES.

3 1. DEFINITIONS. As used in this section, unless the
4 context otherwise requires:

5 a. "Health care worker" means any individual employed by
6 or under contract with a hospital, health care facility,
7 insurance company, health care provider, or health care agency
8 to provide health care services.

9 b. "Professional standards of care" means authoritative
10 statements that describe a level of care or performance common
11 to the profession by which the quality of professional
12 practice can be judged and which reflect the values and
13 priorities of the profession.

14 c. "Reasonable opportunity to make a report and take
15 corrective action" means the amount of time normally taken by
16 or granted to an institution to make a report and to effect
17 corrective action, when sanctioned or given notice by an
18 appropriate government agency.

19 2. A health care worker disclosing information to the
20 state board of nursing, the department, the division of
21 insurance in the department of commerce, a member or employee
22 of the general assembly, the attorney general, a state-
23 mandated health information collection agency, any other
24 public official or law enforcement agency, federal government
25 agency or program, or the media, after a reasonable
26 opportunity to make a report and take corrective action on the
27 part of the individual or institution which employs the health
28 care worker and which is the subject of the disclosure, shall
29 be protected against reprisals or retaliatory or punitive
30 actions by the individual or institution if disclosure of the
31 information is not otherwise prohibited by statute and if the
32 information meets any of the following requirements:

33 a. Constitutes state-mandated health data required to be
34 submitted to state agencies.

35 b. Informs state agencies or entities of violations of

1 state health, safety, occupational health, licensure, or
2 insurance laws.

3 c. Is reasonably believed by the health care worker to be
4 a violation of health and safety laws or a breach of public
5 safety that may lead to harm to patients, consumers, or
6 citizens, based upon the health care worker's professional
7 standards of care and professional code of ethics.

8 3. A health care worker disclosing in good faith the
9 information described in subsection 2 shall be presumed to
10 have established a prima facie case showing a violation of
11 subsection 2 by the health care worker's employer if the
12 individual or institution employing the health care worker
13 knows or has reason to know of the disclosure, and if
14 subsequent to and as a result of the disclosure, one or more
15 of the following actions were initiated by the employer:

16 a. Discharge of the health care worker from employment.

17 b. Failure by the employer to take action regarding a
18 health care worker's appointment or proposed appointment to,
19 promotion or proposed promotion to, or receipt of any
20 advantage in the health care worker's position of employment.

21 c. Any adverse change to the health care worker's terms or
22 conditions of employment or any administrative, civil, or
23 criminal action or other effort that diminishes the
24 professional competence, reputation, stature, or marketability
25 of the health care worker.

26 An employer shall have the burden of proof regarding any
27 attempt to show that actions taken pursuant to this subsection
28 were for a legitimate business purpose.

29 4. If an individual or institution employing a health care
30 worker is determined to have violated state health, safety, or
31 occupational health and health licensure laws or regulations,
32 or professional standards of care or a professional code of
33 ethics, after a disclosure pursuant to subsection 2 results in
34 an action as described in subsection 3, such a determination
35 shall create a presumption of retaliation or reprisal against

1 the health care worker in violation of this section.
2 Violations of health and safety laws or breaches of public
3 safety that have caused or have a potential to cause harm to
4 patients, consumers, and citizens shall immediately trigger
5 the protection afforded by this section.

6 5. A person who violates this section commits a simple
7 misdemeanor. Additionally, a civil action may be undertaken,
8 as follows:

9 a. A person who violates this section is liable to an
10 aggrieved health care worker for affirmative relief, including
11 reinstatement with or without back pay, or any other equitable
12 relief the court deems appropriate, including attorney fees
13 and costs, punitive or exemplary damages, and public notice of
14 the retaliation or reprisal undertaken against the health care
15 worker through publication in an official newspaper in the
16 city or county.

17 b. When a person commits, is committing, or proposes to
18 commit an act in violation of this section, an injunction may
19 be granted through an action in district court to prohibit the
20 person from continuing such acts. The action for injunctive
21 relief may be brought by an aggrieved health care worker or by
22 the county attorney.

23 EXPLANATION

24 This bill provides protection for health care workers
25 against retaliation or reprisals resulting from the disclosure
26 of certain information.

27 The bill provides that a health care worker who discloses
28 information to a state or federal board, department, or
29 agency, including the attorney general and law enforcement
30 personnel, as described in the bill, after a reasonable
31 opportunity to make a report and take corrective action has
32 transpired on the part of the individual or institution which
33 employs the health care worker and which is the subject of the
34 disclosure, shall be protected against reprisals or
35 retaliatory or punitive actions by the employer if disclosure

1 of the information is not otherwise prohibited by statute.
2 The bill provides that for this provision to apply, the
3 information disclosed shall constitute state-mandated health
4 data required to be submitted to a state agency, or inform a
5 state agency or entity of a violation of state health, safety,
6 occupational health, licensure, and insurance laws, or is
7 reasonably believed by the health care worker to be a
8 violation of health and safety laws or a breach of public
9 safety that may lead to harm to patients, consumers, or
10 citizens, based upon the health care worker's professional
11 standards of care and professional code of ethics.

12 The bill provides that a health care worker disclosing in
13 good faith this information shall be presumed to have
14 established a prima facie case if the employer knows or has
15 reason to know of the disclosure, and if following and as a
16 result of the disclosure the health care worker was discharged
17 from employment, or there was a failure by the employer to
18 take action regarding a health care worker's appointment or
19 promotion, or any adverse change to the health care worker's
20 terms or conditions of employment as well as any
21 administrative, civil, or criminal action or other effort that
22 diminishes the professional competence, reputation, stature,
23 or marketability of the health care worker. The bill provides
24 that the employer shall have the burden of proof regarding any
25 attempt to show that these actions were undertaken for a
26 legitimate business purpose.

27 The bill provides that if an employer is determined to have
28 violated state health, safety, or occupational health or
29 health licensure laws or regulations, or professional
30 standards of care or a professional code of ethics, after a
31 disclosure by a health care worker resulting in an action
32 taken against the worker as described in the bill, this
33 creates a presumption of retaliation or reprisal. The bill
34 provides that violations of health and safety laws or breaches
35 of public safety that have caused or have a potential to cause

1 harm to patients, consumers, and citizens immediately trigger
2 protection.

3 The bill provides that violations constitute a simple
4 misdemeanor, and may also be grounds for a civil action. The
5 bill provides that in such an action, an employer may be
6 liable to an aggrieved health care worker for affirmative
7 relief, including reinstatement with or without back pay, and
8 other equitable relief the court deems appropriate, including
9 attorney fees and costs, punitive or exemplary damages, and
10 public notice of the retaliation or reprisal. The bill also
11 provides for injunctive relief.

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