

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing a prohibition against reprisals relating to  
2 health care workers disclosing specified information, and  
3 providing penalties.

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

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HF 2375

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 A health care worker making a disclosure which violates any  
9 provision of the federal Health Insurance Portability and  
10 Accountability Act, Pub. L. No. 104-191, shall not be entitled  
11 to protection pursuant to this section nor entitled to civil  
12 remedies which might otherwise be available pursuant to  
13 subsection 5.

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

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

23 b. Failure by the employer to take action regarding a  
24 health care worker's appointment or proposed appointment to,  
25 promotion or proposed promotion to, or receipt of any  
26 advantage in the health care worker's position of employment.

27 c. Any adverse change to the health care worker's terms or  
28 conditions of employment or any administrative, civil, or  
29 criminal action or other effort that diminishes the  
30 professional competence, reputation, stature, or marketability  
31 of the health care worker.

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

35 4. If an individual or institution employing a health care

1 worker is determined to have violated state health, safety, or  
2 occupational health and health licensure laws or regulations,  
3 or professional standards of care or a professional code of  
4 ethics, after a disclosure pursuant to subsection 2 results in  
5 an action as described in subsection 3, such a determination  
6 shall create a presumption of retaliation or reprisal against  
7 the health care worker in violation of this section.

8 Violations of health and safety laws or breaches of public  
9 safety that have caused or have a potential to cause harm to  
10 patients, consumers, and citizens shall immediately trigger  
11 the protection afforded by this section.

12 5. A person who violates this section commits a simple  
13 misdemeanor. Additionally, a civil action may be undertaken,  
14 as follows:

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

23 b. When a person commits, is committing, or proposes to  
24 commit an act in violation of this section, an injunction may  
25 be granted through an action in district court to prohibit the  
26 person from continuing such acts. The action for injunctive  
27 relief may be brought by an aggrieved health care worker or by  
28 the county attorney.

29 6. In addition to any other penalties applicable to a  
30 person who violates this section, an individual, institution,  
31 or organization employing a person who violates this section  
32 shall be subject to a civil penalty in the amount of one  
33 thousand dollars per violation.

34 EXPLANATION

35 This bill provides protection for health care workers

1 against retaliation or reprisals resulting from the disclosure  
2 of certain information.

3 The bill provides that a health care worker who discloses  
4 information to a state or federal board, department, or  
5 agency, including the attorney general and law enforcement  
6 personnel, as described in the bill, after a reasonable  
7 opportunity to make a report and take corrective action has  
8 transpired on the part of the individual or institution which  
9 employs the health care worker and which is the subject of the  
10 disclosure, shall be protected against reprisals or  
11 retaliatory or punitive actions by the employer if disclosure  
12 of the information is not otherwise prohibited by statute.

13 The bill provides that for this provision to apply, the  
14 information disclosed shall constitute state-mandated health  
15 data required to be submitted to a state agency, or inform a  
16 state agency or entity of a violation of state health, safety,  
17 occupational health, licensure, and insurance laws, or is  
18 reasonably believed by the health care worker to be a  
19 violation of health and safety laws or a breach of public  
20 safety that may lead to harm to patients, consumers, or  
21 citizens, based upon the health care worker's professional  
22 standards of care and professional code of ethics. The bill  
23 provides that this provision shall not be applicable to a  
24 disclosure which constitutes a violation of the federal Health  
25 Insurance Portability and Accountability Act.

26 The bill provides that a health care worker disclosing in  
27 good faith this information shall be presumed to have  
28 established a prima facie case if the employer knows or has  
29 reason to know of the disclosure, and if following and as a  
30 result of the disclosure the health care worker was discharged  
31 from employment, or there was a failure by the employer to  
32 take action regarding a health care worker's appointment or  
33 promotion, or any adverse change to the health care worker's  
34 terms or conditions of employment as well as any  
35 administrative, civil, or criminal action or other effort that

1 diminishes the professional competence, reputation, stature,  
2 or marketability of the health care worker. The bill provides  
3 that the employer shall have the burden of proof regarding any  
4 attempt to show that these actions were undertaken for a  
5 legitimate business purpose.

6 The bill provides that if an employer is determined to have  
7 violated state health, safety, or occupational health or  
8 health licensure laws or regulations, or professional  
9 standards of care or a professional code of ethics, after a  
10 disclosure by a health care worker resulting in an action  
11 taken against the worker as described in the bill, this  
12 creates a presumption of retaliation or reprisal. The bill  
13 provides that violations of health and safety laws or breaches  
14 of public safety that have caused or have a potential to cause  
15 harm to patients, consumers, and citizens immediately trigger  
16 protection.

17 The bill provides that violations constitute a simple  
18 misdemeanor, and may also be grounds for a civil action. The  
19 bill provides that in such an action, an employer may be  
20 liable to an aggrieved health care worker for affirmative  
21 relief, including reinstatement with or without back pay, and  
22 other equitable relief the court deems appropriate, including  
23 attorney fees and costs, punitive or exemplary damages, and  
24 public notice of the retaliation or reprisal. The bill also  
25 provides for injunctive relief. The bill provides that in  
26 addition to other penalties, an individual, institution, or  
27 organization employing a person found to be in violation of  
28 the bill's provisions shall be subject to a civil penalty in  
29 the amount of one thousand dollars per violation.

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