

MAR 1 2005
STATE GOVERNMENT

HOUSE FILE 500
BY SWAIM

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

A BILL FOR

1 An Act relating to disclosures of wrongdoing by government
2 employees.

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

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HF 500

1 Section 1. Section 8A.417, subsection 4, Code 2005, is
2 amended to read as follows:

3 4. a. A person shall not discharge an employee from or
4 take or fail to take action regarding an employee's
5 appointment or proposed appointment to, promotion or proposed
6 promotion to, or any advantage in, a position in a merit
7 system administered by, or subject to approval of, the
8 director as a reprisal for a failure by that employee to
9 inform the person that the employee made a disclosure of
10 information permitted by this section, or for a disclosure of
11 any information by that employee to a member or employee of
12 the general assembly, or for a disclosure of information to
13 any other public official or law enforcement agency if the
14 employee reasonably believes the information evidences a any
15 violation of law or rule, mismanagement, a gross abuse of
16 funds, an abuse of authority, or a substantial and specific
17 danger to public health or safety. However, an employee may
18 be required to inform the person that the employee made a
19 disclosure of information permitted by this section if the
20 employee represented that the disclosure was the official
21 position of the employee's immediate supervisor or employer.
22 This subsection does not apply if the disclosure of the
23 information is prohibited by statute.

24 b. For purposes of this subsection, any presumption
25 relating to the performance of a duty by a person who has
26 authority to take, direct others to take, recommend, or
27 approve any personnel action may be rebutted by substantial
28 evidence. For purposes of this subsection, a determination as
29 to whether an employee reasonably believes that the employee
30 has disclosed information that evidences any violation of law
31 or rule, mismanagement, a gross abuse of funds, an abuse of
32 authority, or a substantial and specific danger to public
33 health or safety shall be made by determining whether a
34 disinterested observer with knowledge of the essential facts
35 known to and readily ascertainable by the employee would

1 reasonably conclude that the actions disclosed evidence of
2 such violation, mismanagement, abuse, or danger.

3 Sec. 2. Section 70A.28, subsections 1 and 2, Code 2005,
4 are amended to read as follows:

5 1. A person who serves as the head of a state department
6 or agency or otherwise serves in a supervisory capacity within
7 the executive or legislative branch of state government shall
8 not require an employee of the state to inform the person that
9 the employee made a disclosure of information permitted by
10 this section and shall not prohibit an employee of the state
11 from disclosing any information to a member or employee of the
12 general assembly or from disclosing information to any other
13 public official or law enforcement agency if the employee
14 reasonably believes the information evidences a any violation
15 of law or rule, mismanagement, a gross abuse of funds, an
16 abuse of authority, or a substantial and specific danger to
17 public health or safety. However, an employee may be required
18 to inform the person that the employee made a disclosure of
19 information permitted by this section if the employee
20 represented that the disclosure was the official position of
21 the employee's immediate supervisor or employer.

22 2. A person shall not discharge an employee from or take
23 or fail to take action regarding an employee's appointment or
24 proposed appointment to, promotion or proposed promotion to,
25 or any advantage in, a position in a state employment system
26 administered by, or subject to approval of, a state agency as
27 a reprisal for a failure by that employee to inform the person
28 that the employee made a disclosure of information permitted
29 by this section, or for a disclosure of any information by
30 that employee to a member or employee of the general assembly,
31 or a disclosure of information to any other public official or
32 law enforcement agency if the employee reasonably believes the
33 information evidences a any violation of law or rule,
34 mismanagement, a gross abuse of funds, an abuse of authority,
35 or a substantial and specific danger to public health or

1 safety. However, an employee may be required to inform the
2 person that the employee made a disclosure of information
3 permitted by this section if the employee represented that the
4 disclosure was the official position of the employee's
5 immediate supervisor or employer.

6 Sec. 3. Section 70A.28, Code 2005, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 2A. For purposes of subsections 1 and 2,
9 any presumption relating to the performance of a duty by a
10 person who has authority to take, direct others to take,
11 recommend, or approve any personnel action may be rebutted by
12 substantial evidence. For purposes of subsections 1 and 2, a
13 determination as to whether an employee reasonably believes
14 that the employee has disclosed information that evidences any
15 violation of law or rule, mismanagement, a gross abuse of
16 funds, an abuse of authority, or a substantial and specific
17 danger to public health or safety shall be made by determining
18 whether a disinterested observer with knowledge of the
19 essential facts known to and readily ascertainable by the
20 employee would reasonably conclude that the actions disclosed
21 evidence of such violation, mismanagement, abuse, or danger.

22 Sec. 4. Section 70A.29, subsection 1, Code 2005, is
23 amended to read as follows:

24 1. a. A person shall not discharge an employee from or
25 take or fail to take action regarding an employee's
26 appointment or proposed appointment to, promotion or proposed
27 promotion to, or any advantage in, a position in employment by
28 a political subdivision of this state as a reprisal for a
29 disclosure of any information by that employee to a member or
30 employee of the general assembly, or an official of that
31 political subdivision or a state official or for a disclosure
32 of information to any other public official or law enforcement
33 agency if the employee reasonably believes the information
34 evidences a any violation of law or rule, mismanagement, a
35 gross abuse of funds, an abuse of authority, or a substantial

1 and specific danger to public health or safety. This section
2 does not apply if the disclosure of the information is
3 prohibited by statute.

4 b. For purposes of this subsection, any presumption
5 relating to the performance of a duty by a person who has
6 authority to take, direct others to take, recommend, or
7 approve any personnel action may be rebutted by substantial
8 evidence. For purposes of this subsection, a determination as
9 to whether an employee reasonably believes that the employee
10 has disclosed information that evidences any violation of law
11 or rule, mismanagement, a gross abuse of funds, an abuse of
12 authority, or a substantial and specific danger to public
13 health or safety shall be made by determining whether a
14 disinterested observer with knowledge of the essential facts
15 known to and readily ascertainable by the employee would
16 reasonably conclude that the actions disclosed evidence of
17 such violation, mismanagement, abuse, or danger.

18 EXPLANATION

19 This bill deals with establishing permissible disclosures
20 of government information relating to Iowa's whistleblower
21 statutes. Iowa law provides that disclosures of information
22 by a government employee are protected from adverse employment
23 action if the employee reasonably believes that the
24 information evidences a violation of law or rule,
25 mismanagement, a gross abuse of funds, an abuse of authority,
26 or a danger to public health or safety.

27 The bill provides that any presumption applicable to the
28 performance of duty by a supervisory person relating to an
29 employee's disclosure of information may be rebutted by
30 substantial evidence. In addition, the bill provides that a
31 determination as to whether an employee reasonably believes
32 that they have disclosed information that evidences wrongdoing
33 shall be made by determining whether a disinterested observer
34 with knowledge of the essential facts known to and readily
35 ascertainable by the employee would reasonably conclude that

1 the actions disclosed evidence of such violation,
2 mismanagement, abuse, or danger.

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