

House File 212 - Introduced

HOUSE FILE _____
BY WISE

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

A BILL FOR

1 An Act concerning disclosures of information by state employees,
2 health care workers, employees of entities created for joint
3 exercise of governmental powers, and employees of entities
4 receiving public money from a service contract, and providing
5 penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1625YH 82
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1 1 Section 1. Section 8A.417, subsection 4, Code 2007, is
1 2 amended to read as follows:
1 3 4. A person shall not discharge an employee from or take
1 4 or fail to take action regarding an employee's appointment or
1 5 proposed appointment to, promotion or proposed promotion to,
1 6 or any advantage in, a position in a merit system administered
1 7 by, or subject to approval of, the director as a reprisal for
1 8 making a disclosure of information permitted by this section
1 9 or for a failure by that employee to inform the person that
1 10 the employee made a disclosure of information permitted by
1 11 this section, or for a disclosure of any information by that
~~1 12 employee to a member or employee of the general assembly, or~~
~~1 13 for a disclosure of information to any other public official~~
~~1 14 or law enforcement agency if the employee reasonably believes~~
~~1 15 the information evidences a violation of law or rule,~~
~~1 16 mismanagement, a gross abuse of funds, an abuse of authority,~~
~~1 17 or a substantial and specific danger to public health or~~
~~1 18 safety.~~ However, an employee may be required to inform the
1 19 person that the employee made a disclosure of information
1 20 permitted by this section if the employee represented that the
1 21 disclosure was the official position of the employee's
1 22 immediate supervisor or employer. This subsection does not
1 23 apply if the disclosure of the information is prohibited by
1 24 statute. For purposes of this subsection, "a disclosure of
1 25 information permitted by this section" includes any of the
1 26 following:
1 27 a. A disclosure of any information by the employee to a
1 28 member or employee of the general assembly if the information
1 29 can be used by the member or employee of the general assembly
1 30 in the performance of the member's or employee's duties,
1 31 regardless of whether the member or employee requested the
1 32 information.
1 33 b. A disclosure of information to any other public
1 34 official or law enforcement agency if the employee reasonably
1 35 believes the information evidences a violation of law or rule,
2 1 mismanagement, a gross abuse of funds, an abuse of authority,
2 2 or a substantial and specific danger to public health or
2 3 safety.
2 4 Sec. 2. Section 8F.3, subsection 1, paragraph d, Code
2 5 2007, is amended to read as follows:
2 6 d. Information regarding any policies adopted by the
2 7 governing body of the recipient entity that ensure compliance
2 8 with section 70A.29 and that prohibit taking adverse
2 9 employment action against employees of the recipient entity
2 10 who disclose information about a service contract to the
2 11 oversight agency, the auditor of state, or the office of
2 12 citizens' aide and that state whether those policies are
~~2 13 substantially similar to the protection provided to state~~
~~2 14 employees under section 70A.28.~~ The information provided
2 15 shall state whether employees of the recipient entity are
2 16 informed on a regular basis of their rights pursuant to
2 17 section 70A.29 and of their rights to disclose information to

2 18 the oversight agency, the office of citizens' aide, the
2 19 auditor of state, or the office of the attorney general and
2 20 the telephone numbers of those organizations.

2 21 Sec. 3. Section 70A.28, subsections 1 and 2, Code 2007,
2 22 are amended to read as follows:

2 23 1. A person who serves as the head of a state department
2 24 or agency or otherwise serves in a supervisory capacity within
2 25 the executive or legislative branch of state government shall
2 26 not prohibit an employee of the state from making a disclosure
2 27 of information permitted by this section or require an
2 28 employee of the state to inform the person that the employee
2 29 made a disclosure of information permitted by this section ~~and~~
2 30 ~~shall not prohibit an employee of the state from disclosing~~
2 31 ~~any information to a member or employee of the general~~
2 32 ~~assembly or from disclosing information to any other public~~
2 33 ~~official or law enforcement agency if the employee reasonably~~
2 34 ~~believes the information evidences a violation of law or rule,~~
2 35 ~~mismanagement, a gross abuse of funds, an abuse of authority,~~
3 1 ~~or a substantial and specific danger to public health or~~
3 2 ~~safety.~~ However, an employee may be required to inform the
3 3 person that the employee made a disclosure of information
3 4 permitted by this section if the employee represented that the
3 5 disclosure was the official position of the employee's
3 6 immediate supervisor or employer.

3 7 2. A person shall not discharge an employee from or take
3 8 or fail to take action regarding an employee's appointment or
3 9 proposed appointment to, promotion or proposed promotion to,
3 10 or any advantage in, a position in a state employment system
3 11 administered by, or subject to approval of, a state agency as
3 12 a reprisal for making a disclosure of information permitted by
3 13 this section or for a failure by that employee to inform the
3 14 person that the employee made a disclosure of information
3 15 permitted by this section, ~~or for a disclosure of any~~
3 16 ~~information by that employee to a member or employee of the~~
3 17 ~~general assembly, a disclosure of information to the office of~~
3 18 ~~citizens' aide, or a disclosure of information to any other~~
3 19 ~~public official or law enforcement agency if the employee~~
3 20 ~~reasonably believes the information evidences a violation of~~
3 21 ~~law or rule, mismanagement, a gross abuse of funds, an abuse~~
3 22 ~~of authority, or a substantial and specific danger to public~~
3 23 ~~health or safety.~~ However, an employee may be required to
3 24 inform the person that the employee made a disclosure of
3 25 information permitted by this section if the employee
3 26 represented that the disclosure was the official position of
3 27 the employee's immediate supervisor or employer.

3 28 2A. For purposes of this section, "a disclosure of
3 29 information permitted by this section" includes any of the
3 30 following:

3 31 a. A disclosure of any information by the employee to a
3 32 member or employee of the general assembly if the information
3 33 can be used by the member or employee of the general assembly
3 34 in the performance of the member's or employee's duties,
3 35 regardless of whether the member or employee requested the
4 1 information.

4 2 b. A disclosure of information to the office of citizens'
4 3 aide or to any other public official or law enforcement agency
4 4 if the employee reasonably believes the information evidences
4 5 a violation of law or rule, mismanagement, a gross abuse of
4 6 funds, an abuse of authority, or a substantial and specific
4 7 danger to public health or safety.

4 8 Sec. 4. Section 70A.29, Code 2007, is amended to read as
4 9 follows:

4 10 70A.29 REPRISALS PROHIBITED == POLITICAL SUBDIVISIONS ==
4 11 PENALTY == CIVIL REMEDIES.

4 12 1. For purposes of this section, unless the context
4 13 otherwise requires:

4 14 a. "Disclosure of information permitted by this section"
4 15 includes any of the following:

4 16 (1) A disclosure of any information by the employee to a
4 17 member or employee of the general assembly if the information
4 18 can be used by the member or employee of the general assembly
4 19 in the performance of the member's or employee's duties,
4 20 regardless of whether the member or employee requested the
4 21 information.

4 22 (2) A disclosure of information to any other public
4 23 official or law enforcement agency if the employee reasonably
4 24 believes the information evidences a violation of law or rule,
4 25 mismanagement, a gross abuse of funds, an abuse of authority,
4 26 or a substantial and specific danger to public health or
4 27 safety.

4 28 b. "Eligible employer" means any of the following:

4 29 (1) A political subdivision of this state.
4 30 (2) An entity organized under chapter 28E.
4 31 (3) A recipient entity as defined in section 8F.2.
4 32 1A. A person shall not discharge an employee from or take
4 33 or fail to take action regarding an employee's appointment or
4 34 proposed appointment to, promotion or proposed promotion to,
4 35 or any advantage in, a position in employment by a political
5 1 subdivision of this state an eligible employer as a reprisal
5 2 for a disclosure of any information by that employee to a
5 3 member or employee of the general assembly, or an official of
5 4 that political subdivision or a state official or for a
5 5 disclosure of information to any other public official or law
5 6 enforcement agency if the employee reasonably believes the
5 7 information evidences a violation of law or rule,
5 8 mismanagement, a gross abuse of funds, an abuse of authority,
5 9 or a substantial and specific danger to public health or
5 10 safety permitted by this section. This section does not apply
5 11 if the disclosure of the information is prohibited by statute.

5 12 2. A person who violates subsection ~~±~~ 1A commits a simple
5 13 misdemeanor.

5 14 3. Subsection ~~±~~ 1A may be enforced through a civil action.

5 15 a. A person who violates subsection ~~±~~ 1A is liable to an
5 16 aggrieved employee for affirmative relief including
5 17 reinstatement, with or without back pay, or any other
5 18 equitable relief the court deems appropriate, including
5 19 attorney fees and costs.

5 20 b. When a person commits, is committing, or proposes to
5 21 commit an act in violation of subsection ~~±~~ 1A, an injunction
5 22 may be granted through an action in district court to prohibit
5 23 the person from continuing such acts. The action for
5 24 injunctive relief may be brought by an aggrieved employee or
5 25 the county attorney.

5 26 Sec. 5. NEW SECTION. 147.105 PATIENT PROTECTION ==
5 27 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.

5 28 1. DEFINITIONS. As used in this section, unless the
5 29 context otherwise requires:

5 30 a. "Health care worker" means any individual employed by
5 31 or under contract with a hospital, health care provider, or
5 32 health care agency to provide health care services.

5 33 b. "Professional standards of care" means authoritative
5 34 statements that describe a level of care or performance common
5 35 to the profession by which the quality of professional
6 1 practice can be judged and which reflect the values and
6 2 priorities of the profession.

6 3 2. A health care worker, who reasonably believes a
6 4 particular practice the health care worker has observed
6 5 occurring at the health care worker's place of employment,
6 6 based on the health care worker's professional standards of
6 7 care or professional code of ethics, is a violation of health
6 8 and safety laws or a breach of public safety that may lead to
6 9 harm to patients, consumers, or citizens, may report the
6 10 information relating to the violation or breach within
6 11 fourteen days of its occurrence to the health care worker's
6 12 supervisor or employer, in order that corrective action can be
6 13 taken. The health care worker shall be protected against
6 14 reprisals or retaliatory or punitive action by the individual
6 15 or institution receiving such a report.

6 16 3. If, after a reasonable period of time for correction of
6 17 the violation or breach reported pursuant to subsection 2, the
6 18 health care worker continues to see the particular practice
6 19 occurring in the workplace giving rise to the report, the
6 20 health care worker may disclose information to the licensing
6 21 board, the department, the division of insurance in the
6 22 department of commerce, a member or employee of the general
6 23 assembly, the attorney general, a state-mandated health
6 24 information collection agency, any other public official or
6 25 law enforcement agency, federal government agency or program,
6 26 the governing board of the health care worker's employer or
6 27 institution, or the health care worker's professional
6 28 association, and shall be protected against reprisals or
6 29 retaliatory or punitive actions by the individual or
6 30 institution if disclosure of the information is not otherwise
6 31 prohibited by statute and if the information meets any of the
6 32 following requirements:

6 33 a. Constitutes state-mandated health data required to be
6 34 submitted to state agencies.

6 35 b. Informs state agencies or entities of violations of
7 1 state health, safety, occupational health, licensure, or
7 2 insurance laws.

7 3 c. Is reasonably believed by the health care worker to be
7 4 a violation of health and safety laws or a breach of public

7 5 safety that may lead to harm to patients, consumers, or
7 6 citizens, based upon the health care worker's professional
7 7 standards of care or professional code of ethics.
7 8 A health care worker making a disclosure which violates any
7 9 provision of the federal Health Insurance Portability and
7 10 Accountability Act, Pub. L. No. 104-191, shall not be entitled
7 11 to protection pursuant to this section nor entitled to civil
7 12 remedies which might otherwise be available pursuant to
7 13 subsection 7.

7 14 4. A health care worker disclosing in good faith the
7 15 information described in subsections 2 and 3 shall be presumed
7 16 to have established a prima facie case showing a violation of
7 17 subsection 2 or 3 by the health care worker's employer if the
7 18 individual or institution employing the health care worker
7 19 knows or has reason to know of the disclosure, and if
7 20 subsequent to and as a result of the disclosure, one or more
7 21 of the following actions were initiated by the employer:

7 22 a. Discharge of the health care worker from employment.

7 23 b. Failure by the employer to take action regarding a
7 24 health care worker's appointment to, promotion or proposed
7 25 promotion to, or receipt of any advantage or benefit in the
7 26 health care worker's position of employment.

7 27 c. Any adverse change to the health care worker's terms or
7 28 conditions of employment or any administrative, civil, or
7 29 criminal action or other effort that diminished the
7 30 professional competence, reputation, stature, or marketability
7 31 of the health care worker.

7 32 An employer shall have the burden of proof regarding any
7 33 attempt to show that actions taken pursuant to this subsection
7 34 were for a legitimate business purpose.

7 35 5. If an individual or institution employing a health care
8 1 worker is determined to have violated state health, safety, or
8 2 occupational health and health licensure laws or regulations,
8 3 or professional standards of care or a professional code of
8 4 ethics, after a disclosure pursuant to subsection 2 or 3
8 5 results in an action as described in subsection 4, such a
8 6 determination shall create a presumption of retaliation or
8 7 reprisal against the health care worker in violation of this
8 8 section. Disclosure of a reasonable belief that violations of
8 9 health and safety laws or breaches of public safety have
8 10 occurred that have caused or have a potential to cause harm to
8 11 patients, consumers, and citizens shall immediately trigger
8 12 the protection afforded by this section.

8 13 6. A person who violates this section commits a simple
8 14 misdemeanor and is subject to a civil action as follows:

8 15 a. A person who violates this section is liable to an
8 16 aggrieved health care worker for affirmative relief, including
8 17 reinstatement with or without back pay, or any other equitable
8 18 relief the court deems appropriate, including attorney fees
8 19 and costs, punitive or exemplary damages, and public notice of
8 20 the retaliation or reprisal undertaken against the health care
8 21 worker through publication in an official newspaper in the
8 22 city or county.

8 23 b. When a person commits, is committing, or proposes to
8 24 commit an act in violation of this section, an injunction may
8 25 be granted through an action in district court to prohibit the
8 26 person from continuing such acts. The action for injunctive
8 27 relief may be brought by an aggrieved health care worker or by
8 28 the county attorney.

8 29 7. In addition to any other penalties applicable to a
8 30 person who violates this section, an individual, institution,
8 31 or organization employing a person who violates this section
8 32 shall be subject to a civil penalty in the amount of one
8 33 thousand dollars per violation.

8 34 EXPLANATION

8 35 This bill provides protection for certain employees against
9 1 retaliation or reprisals resulting from the disclosure of
9 2 certain information.

9 3 Code sections 8A.417, 70A.28, and 70A.29, concerning
9 4 whistleblower protections for governmental employees, are
9 5 amended to prohibit taking adverse personnel action against a
9 6 covered employee who discloses any information to a member or
9 7 employee of the general assembly if the information can be
9 8 used by the member or employee in the performance of the
9 9 member's or employee's duties, regardless of whether the
9 10 member or employee requested the information.

9 11 Code section 70A.29, concerning disclosures of information
9 12 by employees of political subdivisions, is further amended to
9 13 extend the protections provided by that section to employees
9 14 of entities created under Code chapter 28E and employees of a
9 15 recipient entity as defined in Code chapter 8F. Under Code

9 16 chapter 8F, a recipient entity means an intergovernmental
9 17 entity or a private agency that enters into a service contract
9 18 with a governmental agency to provide services which will be
9 19 paid for with local governmental, state, or federal moneys.
9 20 The bill also creates new Code section 147.105 to provide
9 21 protection for health care workers against retaliation or
9 22 reprisals resulting from the disclosure of certain
9 23 information.
9 24 The new Code section provides that a health care worker who
9 25 discloses information to a state or federal board, department,
9 26 or agency, including the attorney general and law enforcement
9 27 personnel, as described in the bill, after a reasonable
9 28 opportunity to make a report and take corrective action has
9 29 transpired on the part of the individual or institution which
9 30 employs the health care worker and which is the subject of the
9 31 disclosure, shall be protected against reprisals or
9 32 retaliatory or punitive actions by the employer if disclosure
9 33 of the information is not otherwise prohibited by statute.
9 34 The bill provides that for this provision to apply, the
9 35 information disclosed shall constitute state-mandated health
10 1 data required to be submitted to a state agency, or inform a
10 2 state agency or entity of a violation of state health, safety,
10 3 occupational health, licensure, and insurance laws, or is
10 4 reasonably believed by the health care worker to be a
10 5 violation of health and safety laws or a breach of public
10 6 safety that may lead to harm to patients, consumers, or
10 7 citizens, based upon the health care worker's professional
10 8 standards of care and professional code of ethics. The bill
10 9 provides that this provision shall not be applicable to a
10 10 disclosure which constitutes a violation of the federal Health
10 11 Insurance Portability and Accountability Act.
10 12 The new Code section provides that a health care worker
10 13 disclosing in good faith this information shall be presumed to
10 14 have established a prima facie case if the employer knows or
10 15 has reason to know of the disclosure, and if following and as
10 16 a result of the disclosure the health care worker was
10 17 discharged from employment, or there was a failure by the
10 18 employer to take action regarding a health care worker's
10 19 appointment or promotion, or any adverse change to the health
10 20 care worker's terms or conditions of employment as well as any
10 21 administrative, civil, or criminal action or other effort that
10 22 diminishes the professional competence, reputation, stature,
10 23 or marketability of the health care worker. The bill provides
10 24 that the employer shall have the burden of proof regarding any
10 25 attempt to show that these actions were undertaken for a
10 26 legitimate business purpose.
10 27 The new Code section provides that if an employer is
10 28 determined to have violated state health, safety, or
10 29 occupational health or health licensure laws or regulations,
10 30 or professional standards of care or a professional code of
10 31 ethics, after a disclosure by a health care worker resulting
10 32 in an action taken against the worker as described in the
10 33 bill, this creates a presumption of retaliation or reprisal.
10 34 The bill provides that violations of health and safety laws or
10 35 breaches of public safety that have caused or have a potential
11 1 to cause harm to patients, consumers, and citizens immediately
11 2 trigger protection.
11 3 The new Code section provides that violations constitute a
11 4 simple misdemeanor, and may also be grounds for a civil
11 5 action. The bill provides that in such an action, an employer
11 6 may be liable to an aggrieved health care worker for
11 7 affirmative relief, including reinstatement with or without
11 8 back pay, and other equitable relief the court deems
11 9 appropriate, including attorney fees and costs, punitive or
11 10 exemplary damages, and public notice of the retaliation or
11 11 reprisal. The bill also provides for injunctive relief. The
11 12 bill provides that in addition to other penalties, an
11 13 individual, institution, or organization employing a person
11 14 found to be in violation of the bill's provisions shall be
11 15 subject to a civil penalty in the amount of \$1,000 per
11 16 violation.
11 17 LSB 1625YH 82
11 18 ec:nh/je/5