

321E.2 PRIMARY ROAD EXTENSIONS PERMIT-ISSUING AUTHORITIES.

Annual permits and single-trip permits shall be issued by the authority responsible for the maintenance of such the system of highways or streets except that. However, the department shall have authority to may issue permits on primary road extensions in cities in conjunction with movements on the rural primary road system. The department may issue an all-system permit under section 321E.8 which is valid for movements on all highways or streets under the jurisdiction of either the state or those local authorities which have indicated in writing to the department those streets or highways for which an all-system permit is not valid.

Sec. 8. Section 321E.14, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The annual fee for an all-system permit is two hundred fifty dollars which shall be deposited in the road use tax fund.

Approved May 22, 1986

CHAPTER 1211**LIABILITY AND LIABILITY INSURANCE**

S.F. 2265

AN ACT relating to liability and liability insurance, providing penalties, and providing for publication and effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 18.164, subsection 2, unnumbered paragraph 1, Code 1985, is amended to read as follows:

The division may shall develop programs for the management of loss and loss exposures of governmental subdivisions which may include, but shall not be limited to, the following:

Sec. 2. Section 18.164, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 3. The division shall develop and implement a market assistance program to facilitate, arrange, or provide for the acquisition of insurance coverage for all public entities deemed to be essential to the public welfare and for which it is determined that present coverage is unavailable, unreasonable, or unacceptable.

NEW SUBSECTION. 4. The division shall provide technical advice and assistance, upon request, to governmental subdivisions and public and private entities identified under subsection 3 seeking to utilize alternative financing methods to develop a stable pool of funds with which to insure and reinsure risk exposures, including administrative and personnel support for entities seeking to utilize state financing, or combination financing under chapter 28E.

Sec. 3. Section 18.165, subsection 1, paragraph b, Code 1985, is amended to read as follows:

b. Bonding of state employees shall be re-evaluated, and uniform standards shall be adopted for the purchase of all fidelity bonds recommended for state employees. To the extent possible, all bonded state employees shall be covered under one or more blanket bonds or position schedule bonds. In carrying out the requirements of section 64.6, the state may purchase an individual or a blanket surety bond insuring the fidelity of state officers subject to the minimum surety bond requirements of section 64.6. A state officer listed in section 64.6 is deemed to have furnished surety if the officer is covered by a blanket bond purchased as provided in this paragraph. The risk management division may self-assume or self-insure fidelity exposures for state officials and employees. A state official is deemed to have furnished surety if the official has been covered by any program of insurance or self-insurance established by the risk management division.

Sec. 4. Section 18.165, subsection 2, Code 1985, is amended to read as follows:

2. The division ~~may~~ shall develop programs relating to governmental subdivisions which shall be subject to the following guidelines:

a. Participation by a governmental subdivision in any risk management program offered by the division shall be by contract or on a voluntary basis.

b. The division shall not be required to negotiate or purchase insurance coverage for any governmental subdivision, as permitted by sections 18.160 to 18.169, which fails to comply with standards adopted by the division and may cancel coverage already negotiated or purchased upon determination of such failure.

c. Risk management programs may treat loss and risk exposures of governmental subdivisions individually, or on a group basis, or both.

Sec. 5. Section 18.166, Code 1985, is amended to read as follows:

18.166 PURCHASE OF INSURANCE.

1. The department shall be the exclusive contracting agency for the purchase of insurance coverage for state loss and risk exposure except for revenue producing facilities under the state board of regents which have to comply with bond covenants.

2. The ~~department~~ division may upon request negotiate with insurers on behalf of governmental subdivisions unable to obtain reasonable or acceptable insurance coverage for the purchase of insurance coverage.

3. The department may purchase such contracts of insurance, and may contract with such insurers, as are within the standards prescribed by the risk management division. Funding for the purchase of insurance shall be provided by a specific and separate appropriation provided solely for this purpose.

4. The ~~department~~ division may acquire, facilitate, arrange, or provide for the acquisition of insurance coverage on behalf of one or more governmental subdivisions upon request. Any insurance contract negotiated by the department may include coverage or coverages for state loss or risk exposures and for the loss or risk exposures of one or more governmental subdivisions, or for any combination thereof.

5. The director of the department of general services may act as attorney in fact under section 520.2 for governmental subdivisions executing reciprocal or interinsurance contracts under chapter 520.

6. The department of general services or the division shall not charge governmental subdivisions for risk management services. ~~However, the department shall not expend state funds for the purchase of insurance coverage for any governmental subdivision, but may charge for the reimbursement of expenses incurred in facilitating, arranging, or acquiring insurance coverage.~~

Sec. 6. Section 18.168, Code 1985, is amended to read as follows:

18.168 ACCESS TO STATE RECORDS.

1. The division shall be given full assistance and co-operation by every state agency and its officers and employees. Each agency shall provide to the division all requested loss and loss exposure information, and shall comply with all standards and directives of the division and of the department relating to the administration of sections 18.160 to 18.169 except as herein provided.

2. A governmental subdivision or other public or private entity requesting the assistance of the division shall, as a prerequisite to the assistance, provide the division with full cooperation and all requested loss and loss exposure information, and shall comply with all standards and directives of the division relating to the administration of sections 18.160 through 18.169.

3. Information provided pursuant to this section shall be maintained in a separate confidential file, notwithstanding chapter 22.

Sec. 7. Section 18.169, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

18.169 ANNUAL REPORT — LONG-RANGE PLANNING.

The division shall:

1. Annually submit to the general assembly a report containing the findings and recommendations of the division, setting out the standards adopted, and making recommendations for those statutory changes which are necessary to implement or permit the implementation of standards proposed by the division. The report shall include a summary of the division's annual costs of operation, the risks covered, and the premiums paid.
2. Initiate continuing discussion and programming with public and private financing agencies and other interested entities regarding the feasibility and establishment of a continuing source of funds to serve as a reinsurance pool for public and private entities essential to the public welfare.

Sec. 8. Section 25A.14, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to Titles XIX through XXIII.

Sec. 9. Section 25A.14, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Subsection 11 of this section applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

Sec. 10. Section 64.6, Code Supplement 1985, is amended by striking the section and inserting in lieu thereof the following:

64.6 STATE OFFICERS — BONDS.

State officials are not required to obtain bonds, but may be covered under a blanket bond for state employees. The blanket bond purchases shall be made in an amount and with the level of assumption of risk by the state that is determined by the risk management division of the department of general services. The state shall pay the reasonable cost of bonds under this section.

Sec. 11. Section 123.49, subsection 1, Code Supplement 1985, is amended to read as follows:

1. A person shall not sell, dispense, or give to any an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of Clark v. Mincks, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

Sec. 12. Section 123.92, Code Supplement 1985, is amended to read as follows:

123.92 CIVIL LIABILITY FOR SALE ~~OR~~ GIFT AND SERVICE OF BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).

~~Every husband, wife, child, parent, guardian, employer or other person~~ Any person who is injured in person or property or means of support by ~~any an~~ intoxicated person or resulting from the intoxication of ~~any a~~ person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, who ~~sells or gives sold and served any~~ beer, wine, or intoxicating liquor to a the intoxicated person while the person is when the

licensee or permittee knew or should have known the person was intoxicated, or serves a who sold to and served the person to a point where the person is licensee or permittee knew or should have known the person would become intoxicated. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department.

Sec. 13. Section 147.1, subsection 6, Code Supplement 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. e. The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

Sec. 14. Section 147.135, Code 1985, is amended by numbering the current unnumbered paragraph as subsection 1 and by adding the following new subsections:

NEW SUBSECTION. 2. As used in this subsection, "peer review records" means all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee. As used in this subsection, "peer review committee" does not include examining boards. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue. A person shall not be liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee. A person present at a meeting of a peer review committee shall not be permitted to testify as to the findings, recommendations, evaluations, or opinions of the peer review committee in any judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review committee meeting and whose competence is at issue. Information or documents discoverable from sources other than the peer review committee do not become nondiscoverable from the other sources merely because they are made available to or are in the possession of a peer review committee. However, such information relating to licensee discipline may be disclosed to an appropriate licensing authority in any jurisdiction in which the licensee is licensed or has applied for a license. If such information indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. This subsection shall not preclude the discovery of the identification of witnesses or documents known to a peer review committee. Any final written decision and finding of fact by a licensing board in a disciplinary proceeding is a public record. Upon appeal by a licensee of a decision of a licensing board, the entire case record shall be submitted to the reviewing court. In all cases where privileged and confidential information under this subsection becomes discoverable, admissible, or part of a court record the identity of an individual whose privilege has been involuntarily waived shall be withheld.

NEW SUBSECTION. 3. A full and confidential report concerning any final hospital disciplinary action approved by a hospital board of trustees that results in a limitation, suspension, or revocation of a physician's privilege to practice for reasons relating to the physician's professional competence or concerning any voluntary surrender or limitation of privileges for reasons relating to professional competence shall be made to the board of medical examiners by the hospital administrator or chief of medical staff within ten days of such action. The board of medical examiners shall investigate the report and take appropriate action. These reports shall be privileged and confidential as though included in and subject to the requirements for peer review committee information in subsection 2. Persons making these

reports and persons participating in resulting proceedings related to these reports shall be immune from civil liability with respect to the making of the report or participation in resulting proceedings. As used in this subsection, "physician" means a person licensed pursuant to chapter 148, chapter 150, or chapter 150A.

Sec. 15. Section 258A.6, subsection 4, unnumbered paragraph 1, Code 1985, is amended to read as follows:

In order to assure a free flow of information for accomplishing the purposes of this section, and notwithstanding section 622.10, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of a licensing board or peer review committee acting under the authority of a licensing board or its employees or agents which relates to licensee discipline are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the licensee and the boards, their employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact of a licensing board in a disciplinary proceeding, including a decision referred to in section 258A.3, subsection 4, is a public record.

Sec. 16. NEW SECTION. 147.139 EXPERT WITNESS STANDARDS.

If the standard of care given by a physician and surgeon licensed pursuant to chapter 148, or osteopathic physician and surgeon licensed pursuant to chapter 150A, or a dentist licensed pursuant to chapter 153, is at issue, the court shall only allow a person to qualify as an expert witness and to testify on the issue of the appropriate standard of care if the person's medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.

Sec. 17. NEW SECTION. 148.12 VOLUNTARY AGREEMENTS.

The medical examiners, after due notice and hearing, may direct the commissioner of health to issue an order to revoke, suspend, or restrict a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or to issue a restricted license on application if, after a hearing, the medical examiners determine that a physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or an applicant for licensure has entered into a voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in another state, district, territory, or country. A certified copy of the voluntary agreement shall be considered conclusive or prima facie evidence.

Sec. 18. NEW SECTION. 296.7 INDEBTEDNESS FOR INSURANCE AUTHORIZED - TAX LEVY.

A school district or merged area school corporation is authorized to contract indebtedness and to issue general obligation bonds or enter into insurance agreements obligating the school district or corporation to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the school district or corporation from tort liability, loss of property, or any other risk associated with the operation of the school district or corporation. Taxes for the payment of the principal, premium, or interest on such a bond, the payment of such an insurance policy,

the payment of the costs of such a self-insurance program, the payment of the costs of such a local government risk pool, and the payment of any amounts payable under any such insurance agreement may be levied in excess of any tax limitation imposed by statute. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

Sec. 19. Section 331.301, Code Supplement 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

NEW SUBSECTION. 12. The board of supervisors may credit funds to a reserve for the purposes authorized by section 331.301, subsection 11; section 331.424, subsection 1, paragraph "1"; and section 331.441, subsection 2, paragraph "b". Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized by section 331.301, subsection 11; section 331.424, subsection 1, paragraph "1"; or section 331.441, subsection 2, paragraph "b".

Sec. 20. Section 331.424, subsection 1, paragraph 1, Code 1985, is amended by striking the paragraph and inserting in lieu thereof the following:

1. Tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the county, costs of a self-insurance program, costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

Sec. 21. Section 331.441, subsection 2, paragraph b, Code 1985, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

Sec. 22. Section 364.4, Code Supplement 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Enter into insurance agreements obligating the city to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the city against tort liability, loss of property, or any other risk associated with the operation of the city. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

Sec. 23. Section 384.12, subsection 18, Code Supplement 1985, is amended by striking the subsection and inserting in lieu thereof the following:

18. A tax to pay the premium costs on tort liability insurance, property insurance, and any other insurance that may be necessary in the operation of the city, the costs of a self-insurance

program, the costs of a local government risk pool and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

Sec. 24. Section 384.24, subsection 3, Code 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. s. The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the establishment of reserve funds for claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

Sec. 25. **NEW SECTION. 384.110 INSURANCE, SELF-INSURANCE, AND RISK POOLING FUNDS.**

A city may credit funds to a fund or funds for the purposes authorized by section 364.4, subsection 5; section 384.12, subsection 18; or section 384.24, subsection 3, paragraph "s". Moneys credited to the fund or funds, and interest earned on such moneys, shall remain in the fund or funds until expended for purposes authorized by section 364.4, subsection 5; section 384.12, subsection 18; or section 384.24, subsection 3, paragraph "s".

Sec. 26. **NEW SECTION. 507D.1 SHORT TITLE.**

This Act shall be known as the "Insurance Assistance Act".

Sec. 27. **NEW SECTION. 507D.2 COLLECTION AND ANALYSIS OF INFORMATION.**

The commissioner of insurance may adopt rules pursuant to chapter 17A for the collection of necessary additional information relating to the availability, obtainability, costs, profits, and losses associated with the provision of property, casualty, product, professional, or other liability insurance within the state, and relating to the feasibility and implementation of market assistance programs, mandatory risk allocation programs, risk-sharing programs, risk management programs, or any other authorized program under section 507D.3.

The commissioner shall provide for the analysis of such information gathered pursuant to this or any other section and shall make such analysis available to the general assembly on an annual basis.

Sec. 28. **NEW SECTION. 507D.3 AUTHORIZED ASSISTANCE PROGRAMS.**

The commissioner of insurance is authorized to institute programs, order the institution of programs within the private sector, or to contract with or delegate authority to the risk management division of the department of general services for the institution of programs relating to insurance assistance including, but not limited to, the following:

1. The development and implementation of a market assistance program to facilitate, arrange, or provide for the acquisition of property, casualty, product, professional, or other liability insurance coverage for all persons or entities seeking such coverage but for which the coverage is presently unavailable or unobtainable to the person or entity.

2. The development and implementation of a mandatory risk allocation system for property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, in order to assure that all persons or entities for which such insurance is essential may obtain such insurance from insurers authorized to do business within this state.

3. The development and implementation of a risk-sharing program to assist and advise persons or entities seeking property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, on the most efficient manner in which to share or pool similar risks in order to obtain essential insurance coverage at the minimum cost.

4. The development and implementation of a risk management program for persons or entities to which property, casualty, product, professional, or other liability insurance is essential, such program to include at a minimum the following:

a. Assistance in developing and maintaining loss and loss exposure data on such liability risks.

b. Recommendations regarding risk reduction and risk elimination programs.

c. Recommendations of those practices which will permit protection against such losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

5. Subsections 2 and 3 shall have no application or effect after July 1, 1991.

Sec. 29. NEW SECTION. 507D.4 FINANCING OF ASSISTANCE PROGRAMS.

The insurance commissioner may, by rule, provide for the financing, as necessary, for any or all programs under sections 507D.2 and 507D.3 by the assessment of fees to insurers authorized to write property, casualty, product, professional, or other liability insurance within this state. The commissioner of insurance may assess fees and charges against persons or entities for costs incurred in providing assistance to the person or entity pursuant to section 507D.3. Fees collected pursuant to such rules shall be used solely for the purposes of the program for which assessed, and are not to be transmitted to the general fund or used for any other purposes.

Sec. 30. NEW SECTION. 507D.5 RATE ADJUSTMENT REVIEW.

The commissioner of insurance shall conduct a rate adjustment review for all insurers authorized to write property, casualty, product, professional, or other liability insurance within this state and who make a request for rate adjustment regarding such insurance. The commissioner of insurance may employ or contract with actuarial consultants as necessary to review the request. The person conducting the review shall report to the commissioner as to the advisability of the adjustment requested.

The reasonable fees and expenses of an actuarial consultant employed or contracted by the commissioner of insurance for purposes of a rate adjustment review shall be assessed against and paid by the person requesting such rate adjustment.

Sec. 31. NEW SECTION. 507D.6 CONTINUING STUDIES.

The commissioner of insurance is authorized to conduct such further surveys, market reviews, data collection and analysis, studies of a mandatory risk allocation system and a risk-sharing program and such other studies as the commissioner deems necessary for the proper implementation of this chapter.

Sec. 32. NEW SECTION. 613.18 LIMITATION ON PRODUCTS LIABILITY OF NON-MANUFACTURERS.

1. A person who is not the assembler, designer, or manufacturer, and who wholesales, retails, distributes, or otherwise sells a product is:

a. Immune from any suit based upon strict liability in tort or breach of implied warranty of merchantability which arises solely from an alleged defect in the original design or manufacture of the product.

b. Not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability for the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.

2. A person who is a retailer of a product and who assembles a product, such assembly having no causal relationship to the injury from which the claim arises, is not liable for damages based upon strict liability in tort or breach of implied warranty of merchantability which arises from an alleged defect in the original design or manufacture of the product upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent.

3. An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, tolls the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer.

Sec. 33. Section 613A.4, Code 1985, is amended by adding the following new subsections:

NEW SUBSECTION. 9. Any claim based upon an act or omission by an officer or employee of the municipality or the municipality's governing body, in the granting, suspension, or revocation of a license or permit, where the damage was caused by the person to whom the license or permit was issued, unless the act of the officer or employee constitutes actual malice or a criminal offense.

NEW SUBSECTION. 10. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

Sec. 34. Section 613A.7, Code 1985, is amended to read as follows:

613A.7 INSURANCE.

The governing body of any municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by such municipality or its officers, employees and agents under the provisions of section 613A.2 and section 613A.8 and may similarly purchase insurance covering torts specified in section 613A.4. The governing body of any municipality may adopt a self-insurance program, including but not limited to the investigation and defense of claims, the establishment of a reserve fund for claims, the payment of claims, and the administration and management of the self-insurance program, to cover all or any part of the liability. The governing body of any municipality may join and pay funds into a local government risk pool to protect itself against any or all liability. The governing body of any municipality may enter into insurance agreements obligating the municipality to make payments beyond its current budget year to provide or procure such policies of insurance, self-insurance program, or local government risk pool. The premium costs of such insurance, the costs of such a self-insurance program, the costs of a local government risk pool, and the amounts payable under any such insurance agreements may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly enter into insurance agreements, procure liability insurance, adopt a self-insurance program, or join a local government risk pool within the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section 613A.4 to the extent stated in such policy but shall have no further effect on the liability of the municipality beyond the scope of this chapter, but if a municipality adopts a self-insurance program or joins and pays funds into a local government risk pool such action does not constitute a waiver of the defense of governmental immunity as to the exceptions listed in section 613A.4. The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of any municipality, or their officers, employees or agents and any reference to such insurance, or lack of same, shall be grounds for a mistrial. A self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C.

Sec. 35. Section 613A.12, Code 1985, is amended to read as follows:

613A.12 OFFICERS AND EMPLOYEES — PERSONAL LIABILITY.

All officers and employees of municipalities are not personally liable for any claim claims which is are exempted under section 613A.4, except a claim claims for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a law enforcement or emergency duty, unless actual malice or willful, wanton and reckless misconduct is proven.

Sec. 36. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.

If a party commencing an action has in the preceding five-year period unsuccessfully prosecuted three or more actions, the court may, if it deems the actions to have been frivolous, stay the proceedings until that party furnishes an undertaking secured by cash or approved sureties to pay all costs resulting to opposing parties to the action including a reasonable attorney fee.

Sec. 37. Section 619.18, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

619.18 MONEY DAMAGES NOT TO BE STATED.

In an action for personal injury or wrongful death, the amount of money damages demanded shall not be stated in the petition, original notice, or any counterclaim or cross-petition. However, a party filing the petition, original notice, counterclaim, or cross-petition shall certify to the court that the action meets applicable jurisdictional requirements for amount in controversy.

Sec. 38. NEW SECTION. 619.19 VERIFICATION NOT REQUIRED — AFFIDAVITS.

Pleadings need not be verified unless otherwise required by statute. Where a pleading is verified, it is not necessary that subsequent pleadings be verified unless otherwise required by statute.

The signature of a party, the party's legal counsel, or any other person representing the party, to a motion, pleading, or other paper is a certificate that:

1. The person has read the motion, pleading, or other paper.
2. To the best of the person's knowledge, information, and belief, formed after reasonable inquiry, it is grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.
3. It is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.

If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

If a motion, pleading, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person signing, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

Sec. 39. Section 668.3, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 7. When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other nonlump-sum payments. Structured, periodic, or other nonlump-sum payments may include appropriate interest if such interest was not included in the determination of the initial judgment or award. However, the court shall not order a structured, periodic, or other nonlump-sum payment method if it finds that any of the following are true:

- a. The payment method would be inequitable.
- b. The payment method provides insufficient guarantees of future collectibility of the judgment or award.

c. Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer.

Sec. 40. NEW SECTION. 668.11 DISCLOSURE OF EXPERT WITNESSES IN LIABILITY CASES INVOLVING LICENSED PROFESSIONALS.

1. A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:

a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure.

b. The defendant within ninety days of plaintiff's certification.

2. If a party fails to disclose an expert pursuant to subsection 1 or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown.

3. This section does not apply to court appointed experts or to rebuttal experts called with the approval of the court.

Sec. 41. NEW SECTION. 668.12 LIABILITY FOR PRODUCTS — STATE OF THE ART DEFENSE.

In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled. Nothing contained in this section shall diminish the duty of an assembler, designer, supplier of specifications, distributor, manufacturer or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn.

Sec. 42. NEW SECTION. 668A.1 PUNITIVE OR EXEMPLARY AWARDS.

1. In a trial of a claim involving the request for punitive or exemplary damages, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. Whether the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.

b. Whether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived.

2. An award for punitive or exemplary damages shall not be made unless the answer or finding pursuant to subsection 1, paragraph "a", is affirmative. If such answer or finding is affirmative, the jury, or court if there is no jury, shall fix the amount of punitive or exemplary damages to be awarded, and such damages shall be ordered paid as follows:

a. If the answer or finding pursuant to subsection 1, paragraph "b", is affirmative, the full amount of the punitive or exemplary damages awarded shall be paid to the claimant.

b. If the answer or finding pursuant to subsection 1, paragraph "b", is negative, after payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator. Funds placed in the civil reparations trust shall be under the control and supervision of the executive council, and shall be disbursed only for purposes of indigent civil litigation programs or insurance assistance programs.

3. The mere allegation or assertion of a claim for punitive damages shall not form the basis for discovery of the wealth or ability to respond in damages on behalf of the party from whom punitive damages are claimed until such time as the claimant has established that sufficient admissible evidence exists to support a prima facie case establishing the requirements of subsection 1, paragraph "a".

Sec. 43. Section 321.445, Code 1985, as amended by 1986 Iowa Acts, Senate File 499, section 2, is amended by adding the following new subsection:

NEW SUBSECTION. 4. a. The nonuse of a safety belt or safety harness by a person is not admissible or material as evidence in a civil action brought for damages in a cause of action arising prior to July 1, 1986.

b. In a cause of action arising on or after July 1, 1986, brought to recover damages arising out of the ownership or operation of a motor vehicle, the failure to wear a safety belt or safety harness in violation of this section shall not be considered evidence of comparative fault under section 668.3, subsection 1, Code 1985. However, except as provided in section 321.446, subsection 6, the failure to wear a safety belt or safety harness in violation of this section may be admitted to mitigate damages, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt or safety harness in violation of this section must first introduce substantial evidence that the failure to wear a safety belt or safety harness contributed to the injury or injuries claimed by the plaintiff.

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt or safety harness in violation of this section contributed to the plaintiff's claimed injury or injuries, and may reduce the amount of plaintiff's recovery by an amount not to exceed five percent of the damages awarded after any reductions for comparative fault.

Sec. 44. STUDY COMMISSION CREATED.

1. There is established a commission to study the issues involved in liability and liability insurance concerns. The commission shall be composed of twelve voting members and two ex officio members who shall be appointed as follows:

- a. Two members of the house of representatives, by the speaker of the house.
- b. Two members of the senate, by the senate majority leader.
- c. Two members of the house of representatives, by the house minority leader.
- d. Two members of the senate, by the senate minority leader.

e. Four members of the public as representatives of the public or private sector for industries, professions, local governments, or other particularly affected groups, appointed by the chairperson and vice chairperson of the legislative council, in consultation with the senate and house minority leaders and with the approval of the legislative council.

f. The attorney general or the attorney general's designee, who shall be an ex officio member.

g. The commissioner of insurance or the commissioner's designee, who shall be an ex officio member.

2. The commission's study shall include, but is not limited to, the following:

- a. The implementation of maximum caps on liability payments.
- b. The elimination of the collateral source rule.
- c. The review of present insurance practices, including:

(1) A review and report on the feasibility and advisability of enacting a mandatory insurance disclosure Act.

(2) A review and report on the present level of industry regulation and the potential for increasing such regulation. This report should approximate the cost of any recommendations made.

(3) A review and report on the present powers, authority, and staffing of the insurance department.

(4) A review and report on the feasibility and advisability of enacting insurance assistance and risk management programs.

(5) Review and report on the advisability of implementing a claims-made form of insurance practice.

d. The review of alternative methods of litigating actions.

e. The review of alternatives to reduce nonmeritorious suits.

f. Review and report on the advisability of limiting tort liability of the state and municipalities arising from regulatory and licensing activities.

g. Review and report on the advisability of enacting a statute of repose for actions arising from improvements to real property.

h. Monitor and report on any operation savings in the insurance industry due to tort liability reform for the period from July 1, 1983 to present, including the effects of this Act, and the feasibility of mandatory rate adjustments for insurers to reflect such cost savings.

i. Other issues necessary to ensure fairness in the operation of the tort liability system.

3. The legislative council shall authorize the legislative fiscal bureau and the legislative service bureau to provide assistance to the study commission and may authorize funds for the study commission, which may be used for the following commission purposes:

a. Employment of a full-time staff person for the commission.

b. Employment of actuarial, insurance, and legal consultants.

c. Compilation, printing, and distribution of materials prepared by the commission.

d. Necessary expenses of travel, attendance, and participation in regional or national programs.

4. Public members of the study commission shall receive a per diem of forty dollars and be reimbursed for their travel and other necessary expenses actually incurred in the performance of their official duties. Public employees who are members of the study commission shall be reimbursed for travel and other expenses actually incurred in the performance of their official duties.

5. The study commission shall hold its first meeting within sixty days of its formation and shall transmit copies of its final report to the legislative council by December 15, 1986.

Sec. 45. A county which has levied a tax pursuant to section 331.424, subsection 1, paragraph "I", or a city which has levied a tax pursuant to section 384.12, subsection 18, for the fiscal year July 1, 1985 through June 30, 1986, may use any unexpended proceeds of this tax to pay the costs of a self-insurance program or the costs of a local government risk pool.

Sec. 46. Section 64.7, Code 1985, is repealed.

Sec. 47. This Act, being deemed of immediate importance, takes effect from and after its publication in *The Sioux City Journal*, a newspaper published in Sioux City, Iowa, and in the *Ad-Express and Daily Iowegian and Citizen*, a newspaper published in Centerville, Iowa, and unless otherwise specifically provided, applies to all cases filed on or after July 1, 1986.

Approved May 22, 1986

I hereby certify that the foregoing Act, Senate File 2265, was published in the *Ad-Express and Daily Iowegian and Citizen*, Centerville, Iowa, on May 28, 1986, and in *The Sioux City Journal*, Sioux City, Iowa, on June 7, 1986.

MARY JANE ODELL, *Secretary of State*