Judiciary 3/10

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Senate File 2265

JUDICIARY: Small, Chair; Doyle and Drake

Commerce 3/18 Amend (5297) + Do Pass 3/19 (p. 793)
State Gov. 3/21 Do Pass 3/21 (p. 822)
Ways + Means 3/21 Do Pass 3/21 (p. 823)

MAR 6 1986

SENATE FILE 2265

BY COMMITTEE ON COMMERCE

(Approved (p. 602))

Passed Senate, Date 3-21-86 (p. 823) Passed House, Date _____

Vote: Ayes 40 Nays 5 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to civil liability by exempting claims based upon
2 regulatory functions or license action from coverage under the
3 state tort claims Act, modifying statutory language relating
4 to the civil liability for sale of alcohol, requiring the
5 qualification and certification of expert witnesses in certain
6 actions, limiting the liability of nonmanufacturers for claims
7 based upon strict liability in tort or breach of implied
8 warranty, providing sanctions for the filing or commencing of
9 frivolous actions, limiting the conditions under which
10 punitive or exemplary damages may be awarded, providing for
11 the payment of judgments or awards by structured, periodic, or
12 other nonlump-sum payment methods, creating a liability and
13 liability insurance study commission, providing penalties, and
14 providing an effective date.
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 2265

TLSB 8069SF 71
dl/jw/5

S.F. 2265 H.F. _____

1 Section 1. Section 25A.14, Code 1985, is amended by adding
2 the following new subsection:
3 NEW SUBSECTION. 11. Any claim for financial or economic
4 loss based upon an act or omission relating to inspections,
5 audits, or other regulatory functions, and all claims based
6 upon an act or omission relating to licensing.
7 Sec. 2. Section 123.92, Code Supplement 1985, is amended
8 to read as follows:
9 123.92 CIVIL LIABILITY FOR SALE ~~OR GIFT~~ AND SERVICE OF
10 BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).
11 ~~Every husband, wife, child, parent, guardian, employer or~~
12 ~~other person~~ Any person who is injured in person or property
13 or means of support by ~~any~~ an intoxicated person or resulting
14 from the intoxication of ~~any~~ a person, has a right of action
15 for all damages actually sustained, severally or jointly,
16 against any licensee or permittee, who ~~sells or gives~~ sold and
17 served any beer, wine, or intoxicating liquor to ~~a~~ the
18 intoxicated person ~~while the person is~~ when the licensee or
19 permittee knew or should have known the person was
20 intoxicated, or ~~serves a~~ who sold to and served the person to
21 a point where the ~~person is~~ licensee or permittee knew or
22 should have known the person would become intoxicated. If the
23 injury was caused by an intoxicated person, a permittee or
24 licensee may establish as an affirmative defense that the
25 intoxication did not contribute to the injurious action of the
26 person.
27 Every liquor control licensee and class "B" beer permittee
28 shall furnish proof of financial responsibility either by the
29 existence of a liability insurance policy or by posting bond
30 in such amount as determined by the department.
31 Sec. 3. NEW SECTION. 147.139 EXPERT WITNESS STANDARDS.
32 If the standard of care given by a physician and surgeon
33 licensed pursuant to chapter 148, or osteopathic physician and
34 surgeon licensed pursuant to chapter 150A is at issue, the
35 court shall only allow a person to qualify as an expert wit-

1 ness and to testify on the issue of the appropriate standard
2 of care if the person meets all of the following qualifica-
3 tions:
4 1. The person's medical specialities relate directly to
5 the medical problem or problems at issue and the type of
6 treatment administered in the case.
7 2. The person has devoted at least three-fourths of the
8 person's professional time to the practice of medicine,
9 teaching, or university-based research related to the medical
10 care and type of treatment which gave rise to the medical
11 problem of which the plaintiff complains.
12 3. The person has been licensed as a physician and surgeon
13 or osteopathic physician and surgeon in Iowa or a contiguous
14 state for at least five years.
15 Sec. 4. NEW SECTION. 613.18 LIMITATION ON PRODUCTS
16 LIABILITY OF NONMANUFACTURERS.
17 1. A person who is not the assembler, designer, or
18 original manufacturer, and who wholesales, retails,
19 distributes, or otherwise sells a product is:
20 a. Immune from any suit based upon strict liability in
21 tort or breach of implied warranty which arises solely from an
22 alleged defect in the original design or manufacture of the
23 product.
24 b. Not liable for damages based upon strict liability in
25 tort or breach of implied warranty for the product unless the
26 original manufacturer is not subject to service within the
27 state or has been judicially declared insolvent.
28 2. A person who is a retailer of a product and who
29 assembles a product, such assembly having no causal
30 relationship to the injury from which the claim arises, is not
31 liable for damages based upon strict liability in tort or
32 breach of implied warranty which arises from an alleged defect
33 in the original design or manufacture of the product.
34 Sec. 5. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.
35 If a party commencing an action has in the preceding five-

1 year period unsuccessfully prosecuted three or more actions,
2 the court may, if it deems the actions to have been frivolous,
3 stay the proceedings until that party furnishes an undertaking
4 secured by cash or approved sureties to pay all costs re-
5 sulting to opposing parties to the action including a rea-
6 sonable attorney fee.
7 Sec. 6. NEW SECTION. 619.19 VERIFICATION NOT REQUIRED --
8 AFFIDAVITS.
9 Pleadings need not be verified unless otherwise required by
10 statute. Where a pleading is verified, it is not necessary
11 that subsequent pleadings be verified unless otherwise re-
12 quired by statute.
13 The signature of a party, the party's legal counsel, or any
14 other person representing the party, to a motion, pleading, or
15 other paper is a certificate that:
16 1. The person has read the motion, pleading, or other
17 paper.
18 2. To the best of the person's knowledge, information, and
19 belief, formed after reasonable inquiry, it is grounded in
20 fact and is warranted by existing law or a good faith argument
21 for the extension, modification, or reversal of existing law.
22 3. It is not interposed for any improper purpose, such as
23 to harass or cause an unnecessary delay or needless increase
24 in the cost of litigation.
25 If a motion, pleading, or other paper is not signed, it
26 shall be stricken unless it is signed promptly after the
27 omission is called to the attention of the pleader or movant.
28 If a motion, pleading, or other paper is signed in viola-
29 tion of this section, the court, upon motion or upon its own
30 initiative, shall impose upon the person signing, the
31 represented party, or both, an appropriate sanction, which may
32 include an order to pay the other party or parties the amount
33 of the reasonable expenses incurred because of the filing of
34 the motion, pleading, or other paper, including a reasonable
35 attorney fee.

1 Sec. 7. NEW SECTION. 624.39 PUNITIVE OR EXEMPLARY
2 DAMAGES.
3 1. In a civil action where a claim for punitive or
4 exemplary damages is made, the trial shall be conducted in two
5 phases.
6 a. In the trial's first phase, the trier of fact shall
7 determine, concurrent with all other issues presented, whether
8 punitive or exemplary damages may be assessed. However,
9 punitive or exemplary damages shall not be assessed unless the
10 claimant pleads and proves that the defendant's actions
11 constituted actual malice.
12 b. If liability for punitive or exemplary damages is found
13 in the trial's first phase, the judge shall then assess the
14 amount of punitive or exemplary damages in the trial's second
15 phase.
16 Sec. 8. Section 668.3, Code 1985, is amended by adding the
17 following new subsection:
18 NEW SUBSECTION. 7. When a final judgment or award is
19 entered, any party may petition the court for a determination
20 of the appropriate payment method of the judgment or award.
21 The court may order that the payment method be by structured,
22 periodic, or other nonlump-sum payments unless it determines
23 that such a method would be inequitable or could result in the
24 security of the judgment or award being impaired.
25 Sec. 9. NEW SECTION. 668.11 DISCLOSURE OF EXPERT
26 WITNESSES.
27 1. A party in an action pursuant to this chapter who
28 intends to call an expert witness of their own selection,
29 shall certify to the court and all other parties the expert's
30 name, qualifications and the purpose for calling the expert
31 within the following time period:
32 a. The plaintiff within one hundred eighty days of the
33 defendant's answer unless the court for good cause not ex
34 parte extends the time of disclosure.
35 b. The defendant within ninety days of plaintiff's

1 certification.
2 2. If a party fails to disclose an expert pursuant to
3 subsection 1 or does not make the expert available for
4 discovery, the expert shall be prohibited from testifying in
5 the action unless leave for the expert's testimony is given by
6 the court for good cause shown.
7 3. This section does not apply to court appointed experts.
8 Sec. 10. STUDY COMMISSION CREATED.
9 1. There is established a commission to study the issues
10 involved in liability and liability insurance. The commission
11 shall be composed of fourteen members as follows:
12 a. The chairperson of the commission shall be the attorney
13 general.
14 b. The vice chairperson of the commission shall be the
15 insurance commissioner.
16 c. Six members of the legislature, appointed by the
17 legislative council.
18 d. Six public members, three appointed by the governor and
19 three appointed by the attorney general.
20 2. The commission's study shall include, but is not
21 limited to, the following:
22 a. The implementation of maximum caps on liability
23 payments.
24 b. The elimination of the collateral source rule.
25 c. The review of present insurance practices, including:
26 (1) A review and report on the feasibility and
27 advisability of enacting a mandatory insurance disclosure Act.
28 (2) A review and report on the present level of industry
29 regulation and the potential for increasing such regulation.
30 This report should approximate the cost of any recommendations
31 made.
32 (3) A review and report on the present powers, authority,
33 and staffing of the insurance department.
34 (4) A review and report on the feasibility and
35 advisability of enacting insurance assistance and risk

1 management programs.
2 d. The review of alternative methods of litigating
3 actions.
4 e. The review of alternatives to reduce nonmeritorious
5 suits.
6 f. Other issues necessary to ensure fairness in the
7 operation of the tort liability system.
8 3. The legislative council may authorize funds for and
9 accept gifts and grants on behalf of the study commission,
10 which may be used for the following commission purposes.
11 a. Employment of a full-time staff person for the
12 commission.
13 b. Employment of actuarial, insurance, and legal
14 consultants.
15 c. Compilation, printing, and distribution of materials
16 prepared by the commission.
17 d. Necessary expenses of travel, attendance, and
18 participation in regional or national programs.
19 4. The study commission shall hold its first meeting
20 within sixty days of its formation and shall transmit copies
21 of its final report to the legislative council by December 15,
22 1986.
23 Sec. 11. This Act, except for section 1, applies to all
24 cases filed on or after July 1, 1986. Section 1 of this Act
25 applies to all cases tried on or after July 1, 1986.
26 EXPLANATION
27 This bill relates to the bringing of civil actions for
28 damages as follows:
29 Section 1 of the bill provides that regulatory functions or
30 responsibilities and actions regarding licenses taken by the
31 state are exempted claims for purposes of liability under the
32 state tort claims Act.
33 Section 2 includes the requirement that the licensee or
34 permittee knew or should have known a person was intoxicated
35 before holding them liable under the dram shop Act.

1 Section 3 provides that before an expert witness will be
2 allowed to testify in a medical malpractice case, the witness
3 must first meet a set of minimum qualifications.
4 Section 4 limits the liability of nonmanufacturers for
5 damages arising from an alleged defect in a product by:
6 1. Making them immune from suit based upon strict
7 liability in tort or breach of implied warranty based solely
8 upon an alleged defect in the original design or manufacture.
9 2. Making them liable for damages based upon strict li-
10 ability in tort or breach of implied warranty only where the
11 original manufacturer is not subject to service or has been
12 judicially declared insolvent.
13 3. Providing that a retailer who performs assembly, such
14 assembly having no causal relationship to the injury, is not
15 liable for damages for strict liability in tort or breach of
16 implied warranty based solely upon an alleged defect in the
17 original design or manufacture of the product.
18 Section 5 authorizes the court to stay an action until
19 sufficient surety to pay all costs and attorney fees is posted
20 where the action is filed by a person who has unsuccessfully
21 filed three or more actions in the previous five years, which
22 actions are deemed frivolous by the court.
23 Section 6 requires that all motions, pleadings, or other
24 papers be signed by a party, or person representing a party,
25 and that such signature constitutes a certification that:
26 1. The person has read the motion, pleading, or other
27 paper.
28 2. The motion, pleading, or other paper is warranted by
29 law.
30 3. The motion, pleading, or other paper is not interposed
31 for improper purposes.
32 The section also provides that motions, pleadings, or other
33 papers which are not signed will be stricken, and that signa-
34 tures in violation of this statute will be grounds for the
35 court to impose appropriate sanctions.

Section 7 limits the awarding of punitive or exemplary damages by:

1. Prohibiting their assessment unless actual malice is found.

2. Requiring the trial to be bifurcated, with the trier of fact determining whether they can be assessed in the first phase and the court setting their amount in the second phase.

Section 8 provides that awards may be paid by structured, periodic, or other nonlump-sum payment methods unless the court determines such methods to be inequitable or finds that such methods could jeopardize the security of the award.

Section 9 provides that a party seeking to have an expert witness testify must certify that intention within a specified period after the case is begun.

Section 10 creates a commission to study the issues involved in the liability and liability insurance areas. It also sets out the composition and appointment procedures for the commission's formation, provides time requirements for its first hearing and final report, sets out the issues which must be studied, authorizes the legislative council to provide funds to and accept gifts and grants on behalf of the study commission, and sets out the purposes for which the funds can be used.

Section 11 provides that the Act takes effect July 1 following its enactment and that section 1 applies to all cases tried on or after that date. All other sections apply to cases filed on or after that date.

SENATE FILE 2265

S-5397

Amend Senate File 2265 as follows:

1. By striking everything after the enacting clause and inserting the following:

"Section 1. Section 64.6, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

Unless covered by a higher limit blanket bond purchased as provided in section ~~18.165~~ 505.26, subsection 1, paragraph "b", state officers shall give bonds, the premiums being paid by the state, in an amount as follows:

Sec. 2. 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. 3. 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 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 meets both of the following qualifications:

1. The person's medical specialities relate directly to the medical problem or problems at issue and the type of treatment administered in the case.

1 2. The person has devoted at least one-half of the
2 person's professional time to the practice of
3 medicine, teaching, or university-based research
4 related to the medical care and type of treatment
5 which gave rise to the medical problem of which the
6 plaintiff complains.
7 Sec. 4. NEW SECTION. 296.7 INDEBTEDNESS FOR
8 INSURANCE AUTHORIZED -- TAX LEVY.
9 A school district is authorized to contract
10 indebtedness and to issue general obligation bonds or
11 enter into insurance agreements obligating the school
12 district to make payments beyond its current budget
13 year to procure or provide for a policy of insurance,
14 a self insurance program, or a local government risk
15 pool to protect the school district from tort
16 liability associated with the operation of the school
17 district. Taxes for the payment of the principal,
18 premium, or interest on such a bond, the payment of
19 such an insurance policy, the payment of the costs of
20 such a self insurance program, the payment of the
21 costs of such a local government risk pool, and the
22 payment of any amounts payable under any such
23 insurance agreement may be levied in excess of any tax
24 limitation imposed by statute. Such a self insurance
25 program or local government risk pool is not insurance
26 and is not subject to regulation under chapters 505
27 through 523C.
28 Sec. 5. Section 298.20, Code 1985, is amended to
29 read as follows:
30 298.20 FUNDING OR REFUNDING BONDS.
31 For the purpose of providing for the payment of any
32 indebtedness or anticipated indebtedness of ~~any~~ a
33 school corporation represented by ~~judgments or~~ bonds
34 or judgments or anticipated judgments, the board of
35 directors of ~~such~~ the school corporation~~, at any time~~
36 ~~or times,~~ may provide by resolution for the issuance
37 of bonds of ~~such~~ the school corporation, to be known
38 as funding or refunding bonds. The proceeds derived
39 from the negotiation of ~~such~~ the funding or refunding
40 bonds shall be applied in payment of ~~such~~ the
41 indebtedness or held for an anticipated indebtedness;
42 or ~~said~~ the funding bonds or refunding bonds may be
43 issued in exchange for the evidences of ~~such~~
44 indebtedness, par for par.
45 Sec. 6. Section 331.301, Code Supplement 1985, is
46 amended by adding the following new subsection:
47 NEW SUBSECTION. 11. A county may enter into
48 insurance agreements obligating the county to make
49 payments beyond its current budget year to procure or
50 provide for a policy of insurance, a self insurance

1 program, or a local government risk pool to protect
2 the county against tort liability associated with the
3 operation of the county. Such a self insurance
4 program or local government risk pool is not insurance
5 and is not subject to regulation under chapters 505
6 through 523C.
7 Sec. 7. Section 331.424, subsection 1, paragraph
8 1, Code 1985, is amended by striking the paragraph and
9 inserting in lieu thereof the following:
10 1. Tort liability insurance that may be necessary
11 in the operation of the county, costs of a self
12 insurance program, costs of a local government risk
13 pool, and amounts payable under any insurance
14 agreements to provide or procure such insurance, self
5437 15 insurance program, or local government risk pool.
16 Sec. 8. Section 331.441, subsection 2, paragraph
17 b, Code 1985, is amended by adding the following new
18 subparagraph:
19 NEW SUBPARAGRAPH. (8) The provision of insurance,
20 or funding a self insurance program or local
21 government risk pool, including but not limited to the
22 investigation and defense of claims, the payment of
23 claims, and the administration and management of such
24 self insurance program or local government risk pool.
25 Sec. 9. Section 364.4, Code Supplement 1985, is
26 amended by adding the following new subsection:
27 NEW SUBSECTION. 5. Enter into insurance
28 agreements obligating the city to make payments beyond
29 its current budget year to procure or provide for a
30 policy of insurance, a self insurance program, or a
31 local government risk pool to protect the city against
32 tort liability associated with the operation of the
33 city. Such a self insurance program or local
34 government risk pool is not insurance and is not
35 subject to regulation under chapters 505 through 523C.
36 Sec. 10. Section 384.12, subsection 18, Code Sup-
37 plement 1985, is amended by striking the subsection
38 and inserting in lieu thereof the following:
39 18. A tax to pay the premium costs on tort
40 liability insurance that may be necessary in the
41 operation of the city, the costs of a self insurance
42 program, the costs of a local government risk pool and
43 amounts payable under any insurance agreements to pro-
44 vide or procure such insurance, self insurance
5427 45 program, or local government risk pool.
46 Sec. 11. Section 384.24, subsection 3, Code 1985,
47 is amended by adding the following new paragraph:
48 NEW PARAGRAPH. s. The provision of insurance, or
49 funding a self insurance program or local government
50 risk pool, including but not limited to the

1 investigation and defense of claims, the establishment
2 of reserve funds for claims, the payment of claims,
3 and the administration and management of such self
4 insurance program or local government risk pool.
5 Sec. 12. Section 442.5, subsection 1, paragraph b,
6 subparagraph (3), Code 1985, is amended by striking
7 the subparagraph and inserting in lieu thereof the
8 following:
9 (3) Tort liability insurance that may be necessary
10 in the operation of a school district, the costs of a
11 self insurance program, the costs of a local
12 government risk pool, and amounts payable under any
13 insurance agreements to provide or procure such in-
14 surance, self insurance program, or local government
15 risk pool.
16 Sec. 13. NEW SECTION. 505.21 DEFINITIONS.
17 As used in sections 505.21 through 505.31, unless
18 the context otherwise requires:
19 1. "Department" means the department of insurance.
20 2. "Division" means the division of risk
21 management created by section 505.23.
22 3. "Insurance coverage" means any contract whereby
23 loss exposure or risk exposure is transferred to or
24 shared by an insurer.
25 4. "Governmental subdivision" means a city,
26 county, township, school district, area education
27 agency, area vocational school, area community
28 college, an entity created by agreement under chapter
29 28E, or another political subdivision. The term does
30 not include any unit or agency of state government.
31 Sec. 14. NEW SECTION. 505.22 SCOPE OF ACT.
32 Sections 505.21 through 505.31 apply to all
33 property and casualty loss exposures, but do not apply
34 to any exposure covered by life, accident and health,
35 or workers compensation insurance, and do not apply to
36 any retirement plan or system.
37 The duties of the department and the division under
38 sections 505.21 through 505.31 extend to and encompass
39 the personnel and property of the state board of
40 regents and the state department of transportation in
41 the same manner and to the same extent as other
42 agencies of state government. Sections 505.21 through
43 505.31 do not apply to losses and loss exposures for
44 revenue producing facilities under the state board of
45 regents which are required to carry insurance under a
46 bond covenant.
47 Sec. 15. NEW SECTION. 505.23 RISK MANAGEMENT
48 DIVISION.
49 A division of risk management is created within the
50 insurance department. The division is the agency

which administers sections 505.21 through 505.31. The division is supervised by a risk manager who shall be appointed and subject to removal by the insurance commissioner.

5423 Sec. 16. NEW SECTION. 505.24 PERSONNEL.

The risk manager shall employ other permanent full-time personnel as necessary to administer this chapter. All permanent full-time personnel other than the risk manager are subject to chapter 19A. The risk manager is authorized to hire as independent contractors other persons as necessary to assist the risk manager in establishing standards and procedures under sections 505.21 through 505.31.

5424 Sec. 17. NEW SECTION. 505.25 DUTIES OF DIVISION.

1. The risk management division, with respect to losses and loss exposures of state government, shall:

a. Develop and maintain loss and exposure data on all state property and liability risks.

b. Develop risk reduction or elimination programs.

c. Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state.

d. Review the insurance purchasing practices of the state.

e. Establish standards for the purchase of necessary insurance coverage at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

f. Recommend to the general assembly legislation as necessary from time to time to carry out the purposes of sections 505.21 through 505.31.

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

a. To assist subdivisions in the development and maintenance of loss and loss exposure data on property and liability risks of governmental subdivisions.

b. To recommend risk reduction or risk elimination programs to governmental subdivisions.

c. To recommend to governmental subdivisions those practices which will permit protection against losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

d. To negotiate or acquire insurance coverage for governmental subdivisions, subject to the limitations contained in sections 505.21 through 505.31.

e. To recommend to the general assembly and governmental subdivisions, changes in statutes, ordinances, and policies as necessary to enable

1 governmental subdivisions to develop and implement
2 risk management programs and to acquire insurance
3 coverage.
4 3. The division shall develop and implement a
5 market assistance program to facilitate, arrange, or
6 provide for the acquisition of insurance coverage for
7 all public or private entities deemed to be essential
8 to the public welfare and for which it is determined
9 that present coverage is unavailable, unreasonable, or
10 unacceptable.
11 4. The division shall provide technical advice and
12 assistance to governmental subdivisions and public and
13 private entities identified under subsection 3 seeking
14 to utilize alternative financing methods to develop a
15 stable pool of funds with which to insure and reinsure
16 risk exposures, including administrative and personnel
17 support for entities seeking to utilize state
18 financing, or combination financing under chapter 28E.
5424 19 Sec. 18. NEW SECTION. 505.26 GUIDELINES.
20 1. The risk management division shall carry out
21 its duties relating to state government loss and risk
22 exposures pursuant to the following guidelines:
23 a. To the extent possible, all insurance coverage
24 which is purchased for vehicles owned by the state
25 shall be under fleet policies.
26 b. Bonding of state employees shall be
27 reevaluated, and uniform standards shall be adopted
28 for the purchase of all fidelity bonds recommended for
29 state employees. To the extent possible, all bonded
30 state employees shall be covered under one or more
31 blanket bonds or position schedule bonds. In carrying
32 out section 64.6, the state may purchase an individual
33 or a blanket surety bond insuring the fidelity of
34 state officers subject to the minimum surety bond
35 requirements of section 64.6. A state officer listed
36 in section 64.6 is deemed to have furnished surety if
37 the officer is covered by a blanket bond purchased as
38 provided in this paragraph.
39 c. The management of state property loss exposures
40 and state liability risk exposures shall be
41 accomplished for state government as a whole, and
42 without regard to the branch of government or the
43 agency within which the loss exposure or risk exposure
44 arises, except that the state board of regents shall
45 share in the management of property loss exposures and
46 liability risk exposures involving institutions under
47 the jurisdiction of the board.
48 d. Insurance coverage may include any type of
49 insurance protection sold by insurers, including but
50 not limited to, full coverage, partial coverage,

1 coinsurance, reinsurance, and deductible insurance.
2 2. The division shall develop programs relating to
3 governmental subdivisions which are subject to the
4 following guidelines:
5 a. Participation by a governmental subdivision in
6 any risk management program offered by the division
7 shall be by contract or on a voluntary basis.
8 b. The division is not required to negotiate or
9 purchase insurance coverage for any governmental
10 subdivision, as permitted by sections 505.21 through
11 505.31, which fails to comply with standards adopted
12 by the division, and may cancel coverage already
13 negotiated or purchased upon determination of such
14 failure.
15 c. Risk management programs may treat loss and
16 risk exposures of governmental subdivisions
17 individually, or on a group basis, or both.
5424 18 Sec. 19. NEW SECTION. 505.27 PURCHASE OF
19 INSURANCE.
20 1. The division, in consultation with the director
21 of the department of general services, is the
22 exclusive contracting agency for the purchase of
23 insurance coverage for state loss and risk exposure
24 except for revenue producing facilities under the
25 state board of regents which have to comply with bond
26 covenants.
27 2. The division shall negotiate with insurers on
28 behalf of governmental subdivisions unable to obtain
29 reasonable or acceptable insurance coverage, for the
30 purchase of insurance coverage.
31 3. The division may purchase contracts of
32 insurance, and may contract with insurers, within the
33 standards prescribed by the risk management division.
34 Funding for the purchase of insurance for state loss
35 and risk exposure shall be provided by a specific and
36 separate appropriation provided solely for this
37 purpose.
38 4. The division may facilitate, arrange, or
39 provide for the acquisition of insurance coverage on
40 behalf of one or more governmental subdivisions. Any
41 insurance contract negotiated by the division may
42 include coverage or coverages for state loss or risk
43 exposures and for the loss or risk exposures of one or
44 more governmental subdivisions, or for any combination
45 of these exposures.
46 5. The risk manager may act as attorney in fact
47 under section 520.2 for governmental subdivisions
48 executing reciprocal or interinsurance contracts under
49 chapter 520.
50 6. The division shall not charge governmental

1 subdivisions for risk management services, but may
2 charge for the reimbursement of expenses incurred in
3 facilitating, arranging, or acquiring insurance
4 coverage.
5 Sec. 20. NEW SECTION. 505.28 EXECUTIVE COUNCIL
6 SUPERVISION.
7 All standards adopted by the division under
8 sections 505.21 through 505.31 are subject to review
9 and approval or disapproval by the executive council.
10 However, each standard proposed by the division shall
11 be effective on the date specified in the standard
12 unless specifically disapproved by the executive
13 council within thirty days after a copy of the
14 proposed standard is delivered to the secretary of the
15 executive council.
16 Sec. 21. NEW SECTION. 505.29 ACCESS TO STATE
17 RECORDS.
18 The division shall be given full assistance and
19 cooperation by every state agency and its officers and
20 employees. Each agency shall provide to the division
21 all requested loss and loss exposure information, and
22 shall comply with all standards and directives of the
23 division and of the department of insurance relating
24 to the administration of sections 505.21 through
25 505.31 except as otherwise provided in those sections.
26 Sec. 22. NEW SECTION. 505.30 ACCESS TO RECORDS
27 OF GOVERNMENTAL SUBDIVISIONS AND OTHER ENTITIES.
28 A governmental subdivision or other public or
29 private entity requesting the assistance of the
30 division shall, as a prerequisite to the assistance,
31 provide the division with full cooperation and all
32 requested loss and loss exposure information, and
33 shall comply with all standards and directives of the
34 division and the department of insurance relating to
35 the administration of sections 505.21 through 505.31.
36 Sec. 23. NEW SECTION. 505.31 ANNUAL REPORT --
37 LONG RANGE PLANNING.
38 The division, in conjunction with the commissioner
39 of insurance, shall:
40 1. Annually submit to the general assembly a
41 report containing the findings and recommendations of
42 the division, setting out the standards adopted, and
43 making recommendations for those statutory changes
44 which are necessary to implement or permit the
45 implementation of standards proposed by the division.
46 The report shall include a summary of the division's
47 annual costs of operation, the risks covered, and the
48 premiums paid.
49 2. Initiate continuing discussion and programming
50 with public and private financing agencies and other

1 interested entities regarding the feasibility and
2 establishment of a continuing source of funds to serve
3 as a reinsurance pool for public and private entities
5426 4 essential to the public welfare.
5419 5 Sec. 24. NEW SECTION. 613.18 LIMITATION ON
5402 6 PRODUCTS LIABILITY OF NONMANUFACTURERS.
7 1. A person who is not the assembler, designer, or
8 original manufacturer, and who wholesales, retails,
9 distributes, or otherwise sells a product is:
10 a. Immune from any suit based upon strict
11 liability in tort or breach of implied warranty of
12 merchantability which arises solely from an alleged
13 defect in the original design or manufacture of the
14 product.
15 b. Not liable for damages based upon strict
16 liability in tort or breach of implied warranty of
17 merchantability for the product unless the original
18 manufacturer is not subject to service within the
5401 19 state or has been judicially declared insolvent.
20 2. A person who is a retailer of a product and who
21 assembles a product, such assembly having no causal
22 relationship to the injury from which the claim
23 arises, is not liable for damages based upon strict
24 liability in tort or breach of implied warranty of
25 merchantability which arises from an alleged defect in
26 the original design or manufacture of the product.
27 Sec. 25. Section 613A.7, Code 1985, is amended to
28 read as follows:
29 613A.7 INSURANCE.
30 The governing body of any municipality may purchase
31 a policy of liability insurance insuring against all
32 or any part of liability which might be incurred by
33 such municipality or its officers, employees and
34 agents under the provisions of section 613A.2 and
35 section 613A.8 and may similarly purchase insurance
36 covering torts specified in section 613A.4. The
37 governing body of any municipality may adopt a self
38 insurance program, including but not limited to the
39 investigation and defense of claims, the establishment
40 of a reserve fund for claims, the payment of claims,
41 and the administration and management of the self
42 insurance program, to cover all or any part of the
43 liability. The governing body of any municipality may
44 join and pay funds into a local government risk pool
45 to protect itself against any or all liability. The
46 governing body of any municipality may enter into
47 insurance agreements obligating the municipality to
48 make payments beyond its current budget year to
49 provide or procure such policies of insurance, self
50 insurance program, or local government risk pool. The

1 premium costs of such insurance, the costs of such a
2 self insurance program, the costs of a local
3 government risk pool, and the amounts payable under
4 any such insurance agreements may be paid out of the
5 general fund or any available funds or may be levied
5427, 5423 6 in excess of any tax limitation imposed by statute.
7 Any independent or autonomous board or commission in
8 the municipality having authority to disburse funds
9 for a particular municipal function without approval
10 of the governing body may similarly enter into
11 insurance agreements, procure liability insurance,
12 adopt a self insurance program, or join a local
13 government risk pool within the field of its
14 operation. The procurement of such insurance
15 constitutes a waiver of the defense of governmental
16 immunity as to those exceptions listed in section
17 613A.4 to the extent stated in such policy but shall
18 have no further effect on the liability of the
19 municipality beyond the scope of this chapter, but if
20 a municipality adopts a self insurance program or
21 joins and pays funds into a local government risk pool
22 such action does not constitute a waiver of the
23 defense of governmental immunity as to the exceptions
24 listed in section 613A.4. The existence of any
25 insurance which covers in whole or in part any
26 judgment or award which may be rendered in favor of
27 the plaintiff, or lack of any such insurance, shall
28 not be material in the trial of any action brought
29 against the governing body of any municipality, or
30 their officers, employees or agents and any reference
31 to such insurance, or lack of same, shall be grounds
5427 32 for a mistrial. A self insurance program or local
33 government risk pool is not insurance and is not
34 subject to regulation under chapters 505 through 523C.
35 Sec. 26. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.
36 If a party commencing an action has in the
37 preceding five-year period unsuccessfully prosecuted
38 three or more actions, the court may, if it deems the
39 actions to have been frivolous, stay the proceedings
40 until that party furnishes an undertaking secured by
41 cash or approved sureties to pay all costs resulting
42 to opposing parties to the action including a rea-
43 sonable attorney fee.
5427 44 Sec. 27. Section 619.18, Code 1985, is amended by
45 striking the section and inserting in lieu thereof the
46 following:
47 619.18 MONEY DAMAGES NOT TO BE STATED.
48 In an action for personal injury or wrongful death,
49 the amount of money damages demanded shall not be
50 stated in the petition, original notice, or any

1 counterclaim or cross-petition.
2 Sec. 28. NEW SECTION. 619.19 VERIFICATION NOT
3 REQUIRED -- AFFIDAVITS.
4 Pleadings need not be verified unless otherwise
5 required by statute. Where a pleading is verified, it
6 is not necessary that subsequent pleadings be verified
7 unless otherwise required by statute.
8 The signature of a party, the party's legal
9 counsel, or any other person representing the party,
10 to a motion, pleading, or other paper is a certificate
11 that:
12 1. The person has read the motion, pleading, or
13 other paper.
14 2. To the best of the person's knowledge, informa-
15 tion, and belief, formed after reasonable inquiry, it
16 is grounded in fact and is warranted by existing law
17 or a good faith argument for the extension,
18 modification, or reversal of existing law.
19 3. It is not interposed for any improper purpose,
20 such as to harass or cause an unnecessary delay or
21 needless increase in the cost of litigation.
22 If a motion, pleading, or other paper is not
23 signed, it shall be stricken unless it is signed
24 promptly after the omission is called to the attention
25 of the pleader or movant.
26 If a motion, pleading, or other paper is signed in
27 violation of this section, the court, upon motion or
28 upon its own initiative, shall impose upon the person
29 signing, the represented party, or both, an
30 appropriate sanction, which may include an order to
31 pay the other party or parties the amount of the
32 reasonable expenses incurred because of the filing of
33 the motion, pleading, or other paper, including a
34 reasonable attorney fee.
35 Sec. 29. NEW SECTION. 624.39 PUNITIVE OR
36 EXEMPLARY AWARDS.
37 1. In a trial of a claim involving the request for
38 punitive or exemplary damages, the court shall
39 instruct the jury to answer special interrogatories
40 or, if there is no jury, shall make findings,
41 indicating all of the following:
42 a. Whether the conduct of the defendant from which
43 the claim arose constituted willful and wanton
44 disregard for the rights or safety of another.
45 b. Whether the conduct of the defendant was
46 directed specifically at the claimant, or at the
47 person from which the claimant's claim is derived.
48 2. An award for punitive or exemplary damages
49 shall not be made unless the answer or finding
50 pursuant to subsection 1, paragraph "a", is

1 affirmative. If such answer or finding is
2 affirmative, the jury, or court if there is no jury,
3 shall fix the amount of punitive or exemplary damages
4 to be awarded, and such damages shall be ordered paid
5 as follows:
6 a. If the answer or finding pursuant to subsection
7 1, paragraph "b", is affirmative, the full amount of
8 the punitive or exemplary damages awarded shall be
9 paid to the claimant.
10 b. If the answer or finding pursuant to subsection
11 1, paragraph "b", is negative, after payment of all
12 applicable costs and fees, an amount not to exceed
13 twenty-five percent of the punitive or exemplary
14 damages awarded may be ordered paid to the claimant,
15 with the remainder of the award to be ordered paid
16 into a civil reparations trust fund administered by
17 the state court administrator. Funds placed in the
18 civil reparations trust shall be under the control and
19 supervision of the executive council, and shall be
20 disbursed only for purposes of indigent civil
21 litigation programs or insurance assistance programs.
22 Sec. 30. Section 668.3, Code 1985, is amended by
23 adding the following new subsection:
24 NEW SUBSECTION. 7. When a final judgment or award
25 is entered, any party may petition the court for a
26 determination of the appropriate payment method of the
27 judgment or award. The court may order that the
28 payment method for all or part of the judgment or
29 award be by structured, periodic, or other nonlump-sum
30 payments. Structured, periodic, or other nonlump-sum
31 payments may include appropriate interest if such
32 interest was not included in the determination of the
33 initial judgment or award. However, the court shall
34 not order a structured, periodic, or other nonlump-sum
35 payment method if it finds that any of the following
36 are true:
37 a. The payment method would be inequitable.
38 b. The payment method provides insufficient
39 guarantees of future collectibility of the judgment or
40 award.
41 c. Payments made under the payment method could be
42 subject to other claims, past or future, against the
43 defendant.
44 Sec. 31. NEW SECTION. 668.11 DISCLOSURE OF
45 EXPERT WITNESSES.
46 1. A party in an action pursuant to this chapter
47 who intends to call an expert witness of their own
48 selection, shall certify to the court and all other
49 parties the expert's name, qualifications and the
50 purpose for calling the expert within the following

1 time period:
2 a. The plaintiff within one hundred eighty days of
3 the defendant's answer unless the court for good cause
4 not ex parte extends the time of disclosure.
5 b. The defendant within ninety days of plaintiff's
6 certification.
7 2. If a party fails to disclose an expert pursuant
8 to subsection 1 or does not make the expert available
9 for discovery, the expert shall be prohibited from
10 testifying in the action unless leave for the expert's
11 testimony is given by the court for good cause shown.
12 3. This section does not apply to court appointed
13 experts.
14 Sec. 32. NEW SECTION. 668.12 LIABILITY FOR
15 PRODUCTS -- STATE OF THE ART DEFENSE.
16 In any action brought pursuant to this chapter
17 against an assembler, designer, supplier of
18 specifications, distributor, manufacturer or seller
19 for damages arising from an alleged defect in the
20 design, testing, manufacturing, formulation,
21 marketing, packaging, warning, or labeling of a
22 product, a percentage of fault shall not be assigned
23 to such persons if they plead and prove that the
24 product or such person's actions in regard to the
25 product, conformed to the state of the art in
26 existence at the time the product was designed,
27 tested, manufactured, formulated, marketed, packaged,
28 provided with a warning, or labeled. Nothing
29 contained in this section shall diminish the duty of
30 an assembler, designer, supplier of specifications,
31 distributor, manufacturer or seller to warn concerning
32 subsequently acquired knowledge of a defect or
33 dangerous condition that would render the product
34 unreasonably dangerous for its foreseeable use.
5413 > 5425 35 Sec. 33. STUDY COMMISSION CREATED.
36 1. There is established a commission to study the
37 issues involved in liability and liability insurance
38 concerns. The commission shall be composed of twelve
39 voting members and two ex officio members, appointed
40 as follows:
41 a. Two members of the house of representatives, by
42 the speaker of the house.
43 b. Two members of the senate, by the senate
44 majority leader.
45 c. Two members of the house of representatives, by
46 the house minority leader.
47 d. Two members of the senate, by the senate
48 minority leader.
49 e. Four members of the public as representatives
50 of the private sector for industries, professions, or

5412 1 other particularly affected groups, appointed by the
2 chairperson and vice chairperson of the legislative
3 council, in consultation with the senate and house
4 minority leaders and with the approval of the
5 legislative council.
6 f. The attorney general or the attorney general's
7 designee, who shall be an ex officio member.
8 g. The commissioner of insurance or the
9 commissioner's designee, who shall be an ex officio
10 member.
5413 11 2. The commission's study shall include, but is
12 not limited to, the following:
13 a. The implementation of maximum caps on liability
14 payments.
15 b. The elimination of the collateral source rule.
16 c. The review of present insurance practices,
17 including:
18 (1) A review and report on the feasibility and
19 advisability of enacting a mandatory insurance
20 disclosure Act.
21 (2) A review and report on the present level of
22 industry regulation and the potential for increasing
23 such regulation. This report should approximate the
24 cost of any recommendations made.
25 (3) A review and report on the present powers,
26 authority, and staffing of the insurance department.
27 (4) A review and report on the feasibility and
28 advisability of enacting insurance assistance and risk
29 management programs.
30 d. The review of alternative methods of litigating
31 actions.
32 e. The review of alternatives to reduce
33 nonmeritorious suits.
34 f. Review and report on the advisability of
5417 35 limiting tort liability of the state arising from
36 regulatory and licensing activities.
37 g. Monitor and report on any operation savings in
38 the insurance industry due to tort liability reform
39 for the period from July 1, 1983 to present, including
40 the effects of this Act, and the feasibility of
41 mandatory rate adjustments for insurers to reflect
42 such cost savings.
43 h. Other issues necessary to ensure fairness in
44 the operation of the tort liability system.
45 3. The legislative council may authorize funds for
46 the study commission, which may be used for the
47 following commission purposes.
48 a. Employment of a full-time staff person for the
49 commission.
50 b. Employment of actuarial, insurance, and legal

1 consultants.
2 c. Compilation, printing, and distribution of ma-
3 terials prepared by the commission.
4 d. Necessary expenses of travel, attendance, and
5 participation in regional or national programs.
6 4. Public members of the study commission shall
7 receive a per diem of forty dollars and be reimbursed
8 for their travel and other necessary expenses actually
9 incurred in the performance of their official duties.
10 Public employees who are members of the study
11 commission shall be reimbursed for travel and other
12 expenses actually incurred in the performance of their
13 official duties.
14 5. The study commission shall hold its first
15 meeting within sixty days of its formation and shall
16 transmit copies of its final report to the legislative
17 council by December 15, 1986.
18 Sec. 34. A county which has levied a tax pursuant
19 to section 331.424, subsection 1, paragraph 1, or a
20 city which has levied a tax pursuant to section
21 384.12, subsection 18, for the fiscal year July 1,
22 1985 through June 30, 1986, may use any unexpended
23 proceeds of this tax to pay the costs of a self
24 insurance program or the costs of a local government
25 risk pool.
26 Sec. 35. Sections 18.160 through 18.169, Code
27 1985, are repealed.
28 Sec. 36. Sections 2, 3, 24, and 26 through 32 of
29 this Act take effect July 1 following their enactment
30 and apply to all cases filed on or after that date.
31 Sec. 37. Sections 1, 4 through 12, 25, 33, and 34
32 of this Act, being deemed of immediate importance,
33 take effect from and after their publication in The
34 Sioux City Journal, a newspaper published in Sioux
35 City, Iowa, and in The Iowegian and Citizen, a
36 newspaper published in Centerville, Iowa."
37 2. Title page, by striking lines 1 through 14,
38 and inserting the following: "An Act relating to
39 civil liability by modifying statutory language
40 relating to civil liability for sale of alcohol,
41 setting expert witness standards for certain medical
42 malpractice actions, making statutory modifications to
43 allow governmental subdivisions to take certain
44 actions regarding insurance, self-insurance, or risk
45 pooling, providing risk management and insurance
46 coverage assistance to the state, governmental
47 subdivisions, and other entities deemed essential to
48 the public welfare, limiting the liability of
49 nonmanufacturers for claims based upon strict
50 liability in tort or breach of implied warranty of

1 merchantability, authorizing the court to stay an
2 action until sufficient surety to cover costs is
3 posted by a claimant who has previously been involved
4 in frivolous suits, prohibiting the stating of money
5 damages demanded, providing sanctions for the filing
6 of unwarranted motions, pleadings, or other papers,
7 modifying the conditions under which punitive or
8 exemplary damages may be awarded and the use of such
9 punitive or exemplary damages, requiring the payment
10 of awards or judgments by structured, periodic, or
11 other nonlump-sum payment methods, prohibiting the
12 assignment of a percentage of fault to an assembler,
13 designer, supplier of specifications, manufacturer,
14 distributor or seller who can plead and prove that the
15 product or the person's actions in regard to the
16 product conformed to the state of the art in existence
17 at that time, requiring a party to disclose and
18 register an expert witness of their own selection with
19 the court within one hundred eighty days of the filing
20 of an action, creating a liability and liability
21 insurance study commission, providing penalties, and
22 providing for publication and effective dates."

S-5397 Filed March 20, 1986 BY COMM. ON COMMERCE, KINLEY, CHAIR

Adopted as amended by 5405, 5423, 5424, + 5427 3/21 (p. 821)

SENATE FILE 2265

S-5408

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 4, by striking lines 49 and 50 and
4 inserting the following: "There is created a division
5 of risk management, which shall be attached to the
6 department of insurance for the receipt of routine
7 administrative and support services. The division is
8 the agency".
9 2. Page 5, lines 3 and 4, by striking the words
10 "insurance commissioner" and inserting the word
11 "governor".

S-5408 Filed March 20, 1986
BY WALDSTEIN
Placed o/a 3/21 (p. 819)

SENATE FILE 2265

S-5409

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:

A

3 1. Page 2, line 6, by inserting after the word
4 "complains" the following: ", or the person has
5 obtained at least a postgraduate doctoral degree and
6 has a minimum of five years research experience in a
7 field related to such medical care or treatment".

B

8 2. Page 5, by striking line 26 and inserting the
9 following: "necessary insurance coverage at a
10 competitive cost from insurers who have been proven
11 financially sound,".

C

12 3. Page 9, by striking line 19 and inserting the
13 following: "state."

D

14 4. Page 10, line 32, by inserting after the word
15 "mistrial" the following: ", unless the court
16 determines that such information is not prejudicial".

S-5409 Filed March 21, 1986 DIVISIONS A, B, C lost, DIVISION D
withdrawn (p. 805) BY WALDSTEIN, HOLDEN, TIEDEN

SENATE FILE 2265

S-5405

1 Amend the amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 2, line 9, by inserting after the word
4 "district" the words "or merged area school
5 corporation".
6 2. Page 2, line 12, by inserting after the word
7 "district" the words "or corporation".
8 3. Page 2, line 15, by inserting after the word
9 "district" the words "or corporation".
10 4. Page 2, line 17, by inserting after the word
11 "district" the words "or corporation".

S-5405 Filed and adopted March 20, 1986 BY HORN
(p. 805)

SENATE FILE 2265

S-5406

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 9, line 6, by striking the words "OF
4 NONMANUFACTURERS".
5 2. Page 9, by inserting after line 26 the following:
6 "3. A civil action against a manufacturer, a distributor,
7 or a seller of a product for the recovery of damages for
8 personal injury, death, or property damages, sustained
9 by reason of an alleged defect in the design, testing,
10 manufacturing, formulation, marketing, packaging,
11 warning or labeling of the product based on the theories
12 of strict liability in tort or breach of an implied
13 warranty shall not be commenced more than ten years after
14 the product was first purchased, leased, bailed, or
15 installed for use or consumption. This subsection does
16 not affect the time during which a person found liable
17 may seek and obtain contribution or indemnity from another
18 person whose actual fault caused a product to be
19 defective."

S-5406 Filed and ruled out of order March 20, 1986
BY HOLDEN, PRIEBE (p. 806)

SENATE FILE 2265

S-5407

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. By striking page 10, line 44 through page 11,
4 line 1.
5 2. By renumbering as necessary.

S-5407 Filed and withdrawn March 20, 1986 BY WALDSTEIN
(p. 806)

SENATE FILE 2265

S-5414

1 Amend the amendment S-5397 to Senate File 2265 as
2 follows:
3 1. By striking page 11, line 35, through page 12,
4 line 21, and inserting the following:
5 "Sec. ___. NEW SECTION. 624.39 PUNITIVE OR
6 EXEMPLARY DAMAGES.
7 1. In the trial of a claim involving a request for
8 punitive or exemplary damages, the court shall
9 instruct the jury to answer special interrogatories
10 or, if there is no jury, shall make findings,
11 indicating all of the following:
12 a. Whether the conduct of the defendant from which
13 the claim arose constituted willful and wanton
14 disregard for the rights or safety of another.
15 b. If so, whether the defendant has previously
16 been assessed punitive or exemplary damages for the
17 same conduct serving as the basis for this claim.
18 c. Whether the defendant has previously been
19 criminally or civilly punished by fine or
20 imprisonment, or proceedings for criminal or civil
21 punishment have been instituted or are pending, which
22 arose from the same conduct for which punitive or
23 exemplary damages are sought.
24 2. An award for punitive or exemplary damages
25 shall not be made unless the answer or finding
26 pursuant to subsection 1, paragraph "a" is
27 affirmative, and the answers or findings pursuant to
28 subsection 1, paragraphs "b" and "c" are negative.
29 All answers and findings shall be by clear and
30 convincing evidence.
31 3. If punitive or exemplary damages are to be
32 awarded, the jury, or court if there is no jury, shall
33 receive evidence relevant to the amount of such
34 punitive or exemplary damages. Evidence relevant only
35 to the amount of punitive or exemplary damages to be
36 awarded shall not be introduced at trial until after a
37 finding or answer is made that punitive or exemplary
38 damages are to be awarded.
39 Evidence which may be introduced by the defendant
40 includes, but is not limited to, evidence of remedial
41 measures undertaken by the defendant relating to the
42 conduct from which the present claims arise, and
43 evidence of subsequent effects which the award of
44 punitive or exemplary damages would have on the
45 defendant's ability to pay subsequent or anticipated
46 awards arising from the same conduct from which the
47 present claims arise.
48 4. If punitive or exemplary damages are awarded,
49 they shall be distributed as follows:
50 a. First, an amount to the plaintiff not to exceed

S-5414 Page 2

1 ten percent of all compensatory damages awarded.
2 b. Second, an amount to the crime victim
3 reparation program, established pursuant to chapter
4 912, not to exceed fifteen percent of the punitive or
5 exemplary damages.
6 c. The remainder, if any, to be paid into the
7 general fund of the state."

S-5414 Filed and lost March 20, 1986 BY RITSEMA
(p. 807)

SENATE FILE 2265

S-5413

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 12, by inserting after line 21 the
4 following:
5 "Sec. ___. NEW SECTION. 624.42 LIMITATION ON
6 NONECONOMIC DAMAGES.
7 In a civil action for the recovery of damages for
8 death of or injury to person or property, the court
9 shall not award an amount exceeding two hundred
10 thousand dollars for noneconomic damages to or on
11 behalf of any one person."
12 2. Page 13, by inserting after line 34 the
13 following:
14 "Sec. ___. NEW SECTION. 668.13 REDUCTIONS FOR
15 COLLATERAL SOURCE PAYMENTS.
16 In an action brought pursuant to this chapter, the
17 recovery awarded pursuant to section 668.3 shall be
18 reduced by the amount, and in proportion to the
19 percentages of assigned fault, of any losses replaced
20 by insurance or benefit programs or any other source
21 except the claimant's assets and family."
22 3. Page 14, by striking lines 13 through 15.
23 4. By numbering, renumbering, and relettering as
24 necessary.

S-5413 Filed and ruled out of order March 20, 1986
BY GENTLEMAN (p. 807)

SENATE FILE 2265

S-5412

1 Amend amendment S-5397 to Senate File 2265 as follows:
2 1. Page 13, line 38, by striking the word "twelve"
3 and inserting the word "fifteen".
4 2. Page 14, line 1, by inserting after the word
5 "groups," the following: "and three members as
6 representatives of municipal entities within the state,".
7 3. Page 14, line 35, by inserting after the word
8 "state" the following: "and municipalities".

S-5412 Filed March 20, 1986
BY GENTLEMAN
Lost 3/21 (p. 821)

SENATE FILE 2265

S-5419

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 9, by inserting after line 4 the
4 following:
5 "Sec. 24. NEW SECTION. 507B.14 LIABILITY
6 INSURANCE POLICY STANDARDS.
7 1. As used in this section unless the context
8 otherwise requires:
9 a. "Claims-made policy" means an insurance policy
10 under which an insurer assumes liability for injury or
11 damage that the insured is legally obligated to pay,
12 including injury or damage occurring prior to the
13 effective date of the policy but subsequent to any
14 retroactive date, arising out of incidents, acts, or
15 omissions of the insured if the claim is first made
16 during the policy period.
17 b. A claim is "first made" when an insurer first
18 receives notice of a claim against an insurance policy
19 from the insured or a third party, subject to any
20 requirement of written notice which may be included in
21 the policy.
22 c. "Extended reporting period" means the period of
23 time specified in the policy during which claims first
24 made after the termination date of the policy for
25 injury or damage that occurred during the policy term,
26 including injury or damage that occurred after any
27 retroactive date included in the policy, will be
28 considered to have been made during the policy period.
29 d. "Policy period" means the period of time for
30 which an insurer agrees to assume liability for the
31 incidents, acts, or omissions of the insured under an
32 insurance policy.
33 e. "Retroactive date" means a date prior to the
34 effective date of the insurance policy for which an
35 insurer agrees to extend coverage for incidents, acts,
36 and omissions of the insured under the insurance
37 policy.
38 f. "Termination" or "termination date" means the
39 date an insurance policy lapses or the date that
40 cancellation of the policy is effective, but does not
41 include any extended reporting period.
42 2. A claims-made policy shall not be issued unless
43 the policy and the issuing insurer conform to the
44 following:
45 a. The policy application and the declaration page
46 of each policy must have a notice conspicuously
47 printed that the policy is a claims-made policy.
48 b. If the policy includes a retroactive date, the
49 retroactive date may not be changed by the insurer
50 without the consent of the insured.

1 c. The insurer shall not cancel a policy for any
2 reason other than failure of the insured to pay the
3 policy premium unless the insured is given written
4 notice forty-five days in advance of the cancellation
5 date.
6 d. Sixty days of extended reporting period
7 coverage shall be provided upon termination of a
8 policy by either the insured or insurer for any
9 reason.
10 e. The insurer shall offer a minimum of three
11 years of extended reporting period coverage on all
12 policies and shall allow the insured thirty days after
13 termination of the policy in which to submit written
14 acceptance of the extended reporting period coverage.
15 3. An insurer shall not issue a claims-made policy
16 for any motor vehicle.
17 4. As a condition to including a retroactive date
18 in a claims-made policy, an insurer may require the
19 insured to submit an affidavit affirming that no
20 incident, act, or omission on the part of the insured
21 which could reasonably be expected to serve as the
22 basis of a claim occurred on or after the retroactive
23 date.
24 5. Within ten calendar days of termination, the
25 insurer shall advise the insured in writing of the
26 availability, the premium for, and the importance of
27 purchasing extended reporting period coverage in the
28 event of cancellation or nonrenewal of a claims-made
29 policy.
30 6. A violation of this section shall subject the
31 insurer to the penalties for deceptive acts under this
32 chapter.

S-5419 Filed and ruled out of order March 20, 1986
BY GENTLEMAN (p. 806)

SENATE FILE 2265

S-5418
1 **Amend amendment S-5397 to Senate File 2265 as**
2 follows:
3 1. Page 1, by inserting after line 3 the
4 following:
5 "Sec. ___. Section 25A.14, Code 1985, is amended
6 by adding the following new subsections:
7 NEW SUBSECTION. 11. Any claim for financial or
8 economic loss not incurred as a result of physical
9 injuries based upon an act or omission relating to the
10 examinations, inspections, audits, or other regulatory
11 functions.
12 NEW SUBSECTION. 12. Any claim based upon an act
13 or omission relating to insurance regulation.
14 Sec. ___. Section 25A.14, Code 1985, is amended by
15 adding the following new unnumbered paragraph:
16 NEW UNNUMBERED PARAGRAPH. Subsections 11 and 12 of
17 this section apply to all cases filed on or after July
18 1, 1986."
19 2. By renumbering as necessary.

S-5418 Filed and lost March 20, 1986 BY DRAKE
(p. 804)

SENATE FILE 2265

S-5421

1 Amend the amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 1, line 21, by striking the words ",
4 severally or jointly," and inserting the following:
5 "~~, severally or jointly,~~".

S-5421 Filed March 20, 1986
BY RITSEMA
Lost 3/21 (p. 819)

SENATE FILE 2265

S-5422

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 1, by inserting after line 38 the
4 following: "However, noneconomic damages awarded
5 under this section shall not exceed two hundred
6 thousand dollars to or on behalf of any one person."
7 2. Page 12, by inserting after line 21 the
8 following:
9 "3. Punitive or exemplary damages awarded pursuant
10 to this section shall not exceed two hundred thousand
11 dollars to or on behalf of any one person."

S-5422 Filed March 20, 1986
BY GENTLEMAN
Ruled not germane 3/21 (p. 820)

SENATE FILE 2265

S-5423

1 Amend the amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 10, line 6, by inserting after the word
4 "statute." the following: "It is the intent of the
5 general assembly that the governing body of a
6 municipality carefully assess the needs of the
7 municipality for moneys required under this section
8 prior to levying a property tax under this section.
9 It is also the intent of the general assembly that the
10 governing body of a municipality against which a judg-
11 ment has been rendered, and where the amount of the
12 judgment exceeds the amount of the funds available to
13 pay the judgment, shall consider petitioning the court
14 under section 668.3, subsection 7, for structured,
15 periodic, or other nonlump-sum payments."

S-5423 Filed March 20, 1986
BY HOLDEN, PRIEBE
Adopted 3/21 (p. 821)

SENATE FILE 2265

S-5411

1 Amend the amendment S-5397 to Senate File 2265 as
2 follows:
3 1. By striking page 11, line 35 through page 12,
4 line 21.
5 2. Page 12, by inserting before line 22, the
6 following:
7 "Sec. ___. NEW SECTION. 624.39 PUNITIVE OR
8 EXEMPLARY AWARDS.
9 1. In an civil action where a claim for punitive
10 or exemplary damages is made, the trial shall be
11 conducted in two phases.
12 a. In the trial's first phase, the trier of fact
13 shall determine, concurrent with all other issues
14 presented, whether punitive or exemplary damages may
15 be assessed. However, punitive or exemplary damages
16 shall not be assessed unless the claimant pleads and
17 proves that the defendant's actions constituted actual
18 malice.
19 b. If liability for punitive or exemplary damages
20 is found in the trial's first phase, the judge shall
21 then assess the amount or punitive or exemplary
22 damages in the trial's second phase.
23 2. No award of punitive or exemplary damages shall
24 be made except upon the evidence which is clear and
25 convincing.
26 3. In any action for punitive or exemplary
27 damages, the amount of the punitive or exemplary
28 damages claimed shall not be stated in the petition,
29 original notice, or any counterclaim or cross-
30 petition.
31 4. Notwithstanding section 535.3, prejudgment
32 interest shall not accrue with regard to punitive or
33 exemplary damages."

S-5411 Filed and lost March 20, 1986 BY DRAKE
(p. 807)

March 21, 1986

SENATE FILE 2265

S-5424

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 1, by inserting after line 3 the
4 following:
5 "Sec. ___. NEW SECTION. 18.190 DEFINITIONS.
6 As used in sections 18.190 through 18.200 unless
7 the context otherwise requires:
8 1. "Division" means the division of risk
9 management created by section 18.192.
10 2. "Insurance coverage" means any contract whereby
11 loss exposure or risk exposure is transferred to or
12 shared by an insurer.
13 3. "Governmental subdivision" means a city,
14 county, township, school district, area education
15 agency, area vocational school, area community
16 college, an entity created by agreement under chapter
17 28E, or another political subdivision. The term does
18 not include any unit or agency of state government.
19 Sec. ___. NEW SECTION. 18.191 SCOPE OF ACT.
20 Sections 18.190 through 18.200 apply to all
21 property and casualty loss exposures, but do not apply
22 to any exposure covered by life, accident and health,
23 or workers compensation insurance, and do not apply to
24 any retirement plan or system.
25 The duties of the department of general services
26 and the division under sections 18.190 through 18.200
27 extend to and encompass the personnel and property of
28 the state board of regents and the state department of
29 transportation in the same manner and to the same
30 extent as other agencies of state government.
31 Sections 18.190 through 18.200 do not apply to losses
32 and loss exposures for revenue producing facilities
33 under the state board of regents which are required to
34 carry insurance under a bond covenant.
35 Sec. ___. NEW SECTION. 18.192 RISK MANAGEMENT
36 DIVISION.
37 A division of risk management is created within the
38 department of general services. The division is the
39 agency which administers sections 18.190 through
40 18.200. The division is supervised by a risk manager
41 who shall be appointed and subject to removal by the
42 director of general services.
43 Sec. ___. NEW SECTION. 18.193 PERSONNEL.
44 The risk manager shall employ other permanent full-
45 time personnel as necessary to administer this
46 chapter. All permanent full-time personnel other than
47 the risk manager are subject to chapter 19A. The risk
48 manager is authorized to hire as independent
49 contractors other persons as necessary to assist the
50 risk manager in establishing standards and procedures

1 under sections 18.190 through 18.200.
2 Sec. ___. NEW SECTION. 18.194 DUTIES OF
3 DIVISION.
4 1. The risk management division, with respect to
5 losses and loss exposures of state government, shall:
6 a. Develop and maintain loss and exposure data on
7 all state property and liability risks.
8 b. Develop risk reduction or elimination programs.
9 c. Determine which risk exposures shall be insured
10 and which risk exposures shall be self-insured or
11 assumed by the state.
12 d. Review the insurance purchasing practices of
13 the state.
14 e. Establish standards for the purchase of
15 necessary insurance coverage at the lowest costs,
16 consistent with good underwriting practices and sound
17 risk management techniques.
18 f. Recommend to the general assembly legislation
19 as necessary from time to time to carry out the
20 purposes of sections 18.190 through 18.200.
21 2. The division shall develop programs for the
22 management of losses and loss exposures of
23 governmental subdivisions which may include, but are
24 not limited to, the following:
25 a. To assist subdivisions in the development and
26 maintenance of loss and loss exposure data on property
27 and liability risks of governmental subdivisions.
28 b. To recommend risk reduction or risk elimination
29 programs to governmental subdivisions.
30 c. To recommend to governmental subdivisions those
31 practices which will permit protection against losses
32 at the lowest costs, consistent with good underwriting
33 practices and sound risk management techniques.
34 d. To negotiate or acquire insurance coverage for
35 governmental subdivisions, subject to the limitations
36 contained in sections 18.190 through 18.200.
37 e. To recommend to the general assembly and
38 governmental subdivisions, changes in statutes,
39 ordinances, and policies as necessary to enable
40 governmental subdivisions to develop and implement
41 risk management programs and to acquire insurance
42 coverage.
43 3. The division shall develop and implement a
44 market assistance program to facilitate, arrange, or
45 provide for the acquisition of insurance coverage for
46 all public or private entities deemed to be essential
47 to the public welfare and for which it is determined
48 that present coverage is unavailable, unreasonable, or
49 unacceptable.
50 4. The division shall provide technical advice and

1 assistance to governmental subdivisions and public and
2 private entities identified under subsection 3 seeking
3 to utilize alternative financing methods to develop a
4 stable pool of funds with which to insure and reinsure
5 risk exposures, including administrative and personnel
6 support for entities seeking to utilize state
7 financing, or combination financing under chapter 28E.
8 Sec. ___. NEW SECTION. 18.195 GUIDELINES.
9 1. The risk management division shall carry out
10 its duties relating to state government loss and risk
11 exposures pursuant to the following guidelines:
12 a. To the extent possible, all insurance coverage
13 which is purchased for vehicles owned by the state
14 shall be under fleet policies.
15 b. Bonding of state employees shall be
16 reevaluated, and uniform standards shall be adopted
17 for the purchase of all fidelity bonds recommended for
18 state employees. To the extent possible, all bonded
19 state employees shall be covered under one or more
20 blanket bonds or position schedule bonds. In carrying
21 out section 64.6, the state may purchase an individual
22 or a blanket surety bond insuring the fidelity of
23 state officers subject to the minimum surety bond
24 requirements of section 64.6. A state officer listed
25 in section 64.6 is deemed to have furnished surety if
26 the officer is covered by a blanket bond purchased as
27 provided in this paragraph.
28 c. The management of state property loss exposures
29 and state liability risk exposures shall be
30 accomplished for state government as a whole, and
31 without regard to the branch of government or the
32 agency within which the loss exposure or risk exposure
33 arises, except that the state board of regents shall
34 share in the management of property loss exposures and
35 liability risk exposures involving institutions under
36 the jurisdiction of the board.
37 d. Insurance coverage may include any type of
38 insurance protection sold by insurers, including but
39 not limited to, full coverage, partial coverage,
40 coinsurance, reinsurance, and deductible insurance.
41 2. The division shall develop programs relating to
42 governmental subdivisions which are subject to the
43 following guidelines:
44 a. Participation by a governmental subdivision in
45 any risk management program offered by the division
46 shall be by contract or on a voluntary basis.
47 b. The division is not required to negotiate or
48 purchase insurance coverage for any governmental
49 subdivision, as permitted by sections 18.190 through
50 18.200, which fails to comply with standards adopted

1 by the division, and may cancel coverage already
2 negotiated or purchased upon determination of such
3 failure.
4 c. Risk management programs may treat loss and
5 risk exposures of governmental subdivisions
6 individually, or on a group basis, or both.
7 Sec. ___. NEW SECTION. 18.196 PURCHASE OF
8 INSURANCE.
9 1. The division, in consultation with the director
10 of the department of general services, is the
11 exclusive contracting agency for the purchase of
12 insurance coverage for state loss and risk exposure
13 except for revenue producing facilities under the
14 state board of regents which have to comply with bond
15 covenants.
16 2. The division shall negotiate with insurers on
17 behalf of governmental subdivisions unable to obtain
18 reasonable or acceptable insurance coverage, for the
19 purchase of insurance coverage.
20 3. The division may purchase contracts of
21 insurance, and may contract with insurers, within the
22 standards prescribed by the risk management division.
23 Funding for the purchase of insurance for state loss
24 and risk exposure shall be provided by a specific and
25 separate appropriation provided solely for this
26 purpose.
27 4. The division may facilitate, arrange, or
28 provide for the acquisition of insurance coverage on
29 behalf of one or more governmental subdivisions. Any
30 insurance contract negotiated by the division may
31 include coverage or coverages for state loss or risk
32 exposures and for the loss or risk exposures of one or
33 more governmental subdivisions, or for any combination
34 of these exposures.
35 5. The risk manager may act as attorney in fact
36 under section 520.2 for governmental subdivisions
37 executing reciprocal or interinsurance contracts under
38 chapter 520.
39 6. The division shall not charge governmental
40 subdivisions for risk management services, but may
41 charge for the reimbursement of expenses incurred in
42 facilitating, arranging, or acquiring insurance
43 coverage.
44 Sec. ___. NEW SECTION. 18.197 EXECUTIVE COUNCIL
45 SUPERVISION.
46 All standards adopted by the division under
47 sections 18.190 through 18.200 are subject to review
48 and approval or disapproval by the executive council.
49 However, each standard proposed by the division shall
50 be effective on the date specified in the standard

1 unless specifically disapproved by the executive
2 council within thirty days after a copy of the
3 proposed standard is delivered to the secretary of the
4 executive council.
5 Sec. ___. NEW SECTION. 18.198 ACCESS TO STATE
6 RECORDS.
7 The division shall be given full assistance and
8 cooperation by every state agency and its officers and
9 employees. Each agency shall provide to the division
10 all requested loss and loss exposure information, and
11 shall comply with all standards and directives of the
12 division and of the department of insurance relating
13 to the administration of sections 18.190 through
14 18.200 except as otherwise provided in those sections.
15 Sec. ___. NEW SECTION. 18.199 ACCESS TO RECORDS
16 OF GOVERNMENTAL SUBDIVISIONS AND OTHER ENTITIES.
17 A governmental subdivision or other public or
18 private entity requesting the assistance of the
19 division shall, as a prerequisite to the assistance,
20 provide the division with full cooperation and all
21 requested loss and loss exposure information, and
22 shall comply with all standards and directives of the
23 division relating to the administration of sections
24 18.190 through 18.200.
25 Sec. ___. NEW SECTION. 18.200 ANNUAL REPORT --
26 LONG RANGE PLANNING.
27 The division shall:
28 1. Annually submit to the general assembly a
29 report containing the findings and recommendations of
30 the division, setting out the standards adopted, and
31 making recommendations for those statutory changes
32 which are necessary to implement or permit the
33 implementation of standards proposed by the division.
34 The report shall include a summary of the division's
35 annual costs of operation, the risks covered, and the
36 premiums paid.
37 2. Initiate continuing discussion and programming
38 with public and private financing agencies and other
39 interested entities regarding the feasibility and
40 establishment of a continuing source of funds to serve
41 as a reinsurance pool for public and private entities
42 essential to the public welfare."
43 2. Page 1, line 7, by striking the figure
44 "505.26" and inserting the figure "18.195".
45 3. By striking page 4, line 16, through page 9,
46 line 4.
47 4. By numbering, renumbering, and changing
48 internal references as necessary.
49
50
S-5424 Filed March 20, 1986 BY WALDSTEIN, PALMER, DRAKE
Adopted 3/21 (p. 819)

SENATE FILE 2265

S-5425 1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 13, by inserting after line 34 the
4 following:
5 "Sec. ___. NEW SECTION. 668.13 ATTORNEY FEES.
6 1. In an action under this chapter, an attorney
7 representing a party pursuant to a contingent fee
8 arrangement is entitled to a reasonable fee as
9 determined by the court. However, the fee shall not
10 exceed the following:
11 a. For the amount of the judgment not exceeding
12 one hundred thousand dollars, thirty-five percent of
13 the amount.
14 b. For the amount of a judgment exceeding one
15 hundred thousand dollars but not exceeding five
16 hundred thousand dollars, twenty percent of the
17 amount.
18 c. For the amount of the judgment exceeding five
19 hundred thousand dollars but not exceeding one million
20 dollars, ten percent of the amount.
21 d. For the amount of the judgment exceeding one
22 million dollars, five percent of the amount.
23 2. Notwithstanding subsection 1, an attorney fee
24 may exceed an applicable maximum if either of the
25 following is true:
26 a. The court determines that extraordinary
27 expenses or services were provided by the attorney.
28 b. Appeal is taken and heard. However, any
29 additional fees allowed under this paragraph shall not
30 exceed the applicable maximum by more than twenty
31 percent.
32 Any fee allowed pursuant to this subsection shall
33 be a reasonable fee as determined by the court."
34 2. Renumber as necessary.

S-5425 Filed March 20, 1986 BY WALDSTEIN, HOLDEN, TIEDEN, PRIEBE

Ruled not germane 3/21 (p. 818)

DON'T MISS NEXT WEEK'S SMASH RELEASE "CLIP SHEET III: THE BRIDE OF CLIP SHEET"

S-5431

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 9, by inserting after line 26, the
4 following:
5 "Sec. ___. Section 613A.5, Code 1985, is amended
6 to read as follows:
7 613A.5 LIMITATION OF ACTIONS.
8 Every person who claims damages from any
9 municipality or any officer, employee or agent of a
10 municipality for or on account of any wrongful death,
11 loss or injury within the scope of section 613A.2 or
12 section 613A.8 or under common law shall commence an
13 action therefor within six months, unless said person
14 shall cause to be presented to the governing body of
15 the municipality within sixty days after the alleged
16 wrongful death, loss or injury a written notice
17 stating the time, place, and circumstances thereof ~~and~~
18 ~~the-amount-of-compensation-or-other-relief-demanded.~~
19 Failure to state time or place or circumstances ~~or-the~~
20 ~~amount-of-compensation-or-other-relief-demanded~~ shall
21 not invalidate the notice; providing, the claimant
22 shall furnish full information within fifteen days
23 after demand by the municipality. No action therefor
24 shall be maintained unless such notice has been given
25 and unless the action is commenced within two years
26 after such notice. The time for giving such notice
27 shall include a reasonable length of time, not to
28 exceed ninety days, during which the person injured is
29 incapacitated by the injury from giving such notice."
30 2. By renumbering as necessary.

S-5431 Filed and withdrawn March 21, 1986 BY MANN

(p. 821)

SENATE FILE 2265

S-5426

1 Amend amendment S-5397 to Senate File 2265 as
2 follows:
3 1. Page 1, by striking lines 2 through 10 and in-
4 serting the following:
5 "1. Page 1, by inserting after line 6 the following:".
6 2. Page 4, by inserting after line 15 the following:
7 "2. Page 2, by inserting after line 14 the following:".
8 3. Page 9, by inserting after line 4 the following:
9 "3. By striking page 2, line 15 through page 6, line
10 25, and inserting in lieu thereof the following:".

S-5426 Filed and lost March 21, 1986 BY HULTMAN
(p. 819)

SENATE FILE 2265

S-5427

1 **Amend the amendment S-5397 to Senate File 2265 as**
2 follows:
3 **1. Page 2, line 24, by inserting after the word**
4 "statute" the following: "pursuant to section
5 613A.7".
6 2. Page 3, line 15, by inserting after the word
7 "pool" the following: "pursuant to section 613A.7".
8 3. Page 3, line 45, by inserting after the word
9 "pool" the following: "pursuant to section 613A.7".
10 4. Page 10, line 6, by inserting after the word
11 "statute." the following: "<u>However, if a muni-</u>
12 <u>cipality, except a school district, used moneys from</u>
13 <u>taxes levied for the general operating fund of the</u>
14 <u>municipality to pay tort liability costs during any</u>
15 <u>fiscal year between July 1, 1981 and June 30, 1986, or</u>
16 <u>any fiscal year after the effective date of this Act,</u>
17 <u>and reduces the amount of tort liability costs paid</u>
18 <u>from the general operating funds for any fiscal year</u>
19 <u>beginning after the effective date of this Act below</u>
20 <u>that amount, the amount of the property tax levied for</u>
21 <u>the general operating fund of the municipality in</u>
22 <u>fiscal years beginning after the effective date of</u>
23 <u>this Act, or after the reduction occurs, shall be</u>
24 <u>reduced by an amount that will reduce the</u>
25 <u>municipality's general operating fund budget by the</u>
26 <u>amount by which there is a reduction in tort liability</u>
27 <u>costs paid from the general operating fund. For</u>
28 <u>school districts, the state comptroller shall reduce</u>
29 <u>the unspent balance from the preceding year under</u>
30 <u>chapter 442 by the amount by which there is a</u>
31 <u>reduction in tort liability costs paid from funds</u>
32 <u>available under chapter 442.</u>"

S-5427 Filed and adopted March 21, 1986 BY PRIEBE
(p. 826)

Hse Judiciary 3/24 Amend (5515) + Do Pass 3/27 (p.1071)
Small Business 3/27 Amend (5602) + Do Pass 3/27 (p.1079)

SENATE FILE 2265
BY COMMITTEE ON COMMERCE

(AS AMENDED AND PASSED BY THE SENATE MARCH 21, 1986)
ALL NEW LANGUAGE BY THE SENATE

Re Passed Senate, Date 4-22-86 (p.1332) Passed House, Date 4-9-86 (p.1360)
Vote: Ayes 41 Nays 6 Vote: Ayes 82 Nays 12
Approved _____
Repassed House 4-29-86 (p.1905) 81-12

A BILL FOR

1 An Act relating to civil liability by modifying statutory
2 language relating to civil liability for sale of alcohol,
3 setting expert witness standards for certain medical
4 malpractice actions, making statutory modifications to allow
5 governmental subdivisions to take certain actions regarding
6 insurance, self-insurance, or risk pooling, providing risk
7 management and insurance coverage assistance to the state,
8 governmental subdivisions, and other entities deemed essential
9 to the public welfare, limiting the liability of
10 nonmanufacturers for claims based upon strict liability in
11 tort or breach of implied warranty of merchantability,
12 authorizing the court to stay an action until sufficient
13 surety to cover costs is posted by a claimant who has
14 previously been involved in frivolous suits, prohibiting the
15 stating of money damages demanded, providing sanctions for the
16 filing of unwarranted motions, pleadings, or other papers,
17 modifying the conditions under which punitive or exemplary
18 damages may be awarded and the use of such punitive or
19 exemplary damages, requiring the payment of awards or
20 judgments by structured, periodic, or other nonlump-sum
21 payment methods, prohibiting the assignment of a percentage of
22 fault to an assembler, designer, supplier of specifications,

S.F. 2265

manufacturer, distributor or seller who can plead and prove that the product or the person's actions in regard to the product conformed to the state of the art in existence at that time, requiring a party to disclose and register an expert witness of their own selection with the court within one hundred eighty days of the filing of an action, creating a liability and liability insurance study commission, providing penalties, and providing for publication and effective dates.

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

1 Section 1. NEW SECTION. 18.190 DEFINITIONS.
2 As used in sections 18.190 through 18.200 unless the
3 context otherwise requires:
4 1. "Division" means the division of risk management
5 created by section 18.192.
6 2. "Insurance coverage" means any contract whereby loss
7 exposure or risk exposure is transferred to or shared by an
8 insurer.
9 3. "Governmental subdivision" means a city, county,
10 township, school district, area education agency, area
11 vocational school, area community college, an entity created
12 by agreement under chapter 28E, or another political
13 subdivision. The term does not include any unit or agency of
14 state government.
15 Sec. 2. NEW SECTION. 18.191 SCOPE OF ACT.
16 Sections 18.190 through 18.200 apply to all property and
17 casualty loss exposures, but do not apply to any exposure
18 covered by life, accident and health, or workers compensation
19 insurance, and do not apply to any retirement plan or system.
20 The duties of the department of general services and the
21 division under sections 18.190 through 18.200 extend to and
22 encompass the personnel and property of the state board of
23 regents and the state department of transportation in the same
24 manner and to the same extent as other agencies of state
25 government. Sections 18.190 through 18.200 do not apply to
26 losses and loss exposures for revenue producing facilities
27 under the state board of regents which are required to carry
28 insurance under a bond covenant.
29 Sec. 3. NEW SECTION. 18.192 RISK MANAGEMENT DIVISION.
30 A division of risk management is created within the
31 department of general services. The division is the agency
32 which administers sections 18.190 through 18.200. The
33 division is supervised by a risk manager who shall be
34 appointed and subject to removal by the director of general
35 services.

1 Sec. 4. NEW SECTION. 18.193 PERSONNEL.
2 The risk manager shall employ other permanent full-time
3 personnel as necessary to administer this chapter. All
4 permanent full-time personnel other than the risk manager are
5 subject to chapter 19A. The risk manager is authorized to
6 hire as independent contractors other persons as necessary to
7 assist the risk manager in establishing standards and
8 procedures under sections 18.190 through 18.200.
9 Sec. 5. NEW SECTION. 18.194 DUTIES OF DIVISION.
10 1. The risk management division, with respect to losses
11 and loss exposures of state government, shall:
12 a. Develop and maintain loss and exposure data on all
13 state property and liability risks.
14 b. Develop risk reduction or elimination programs.
15 c. Determine which risk exposures shall be insured and
16 which risk exposures shall be self-insured or assumed by the
17 state.
18 d. Review the insurance purchasing practices of the state.
19 e. Establish standards for the purchase of necessary
20 insurance coverage at the lowest costs, consistent with good
21 underwriting practices and sound risk management techniques.
22 f. Recommend to the general assembly legislation as
23 necessary from time to time to carry out the purposes of
24 sections 18.190 through 18.200.
25 2. The division shall develop programs for the management
26 of losses and loss exposures of governmental subdivisions
27 which may include, but are not limited to, the following:
28 a. To assist subdivisions in the development and
29 maintenance of loss and loss exposure data on property and
30 liability risks of governmental subdivisions.
31 b. To recommend risk reduction or risk elimination
32 programs to governmental subdivisions.
33 c. To recommend to governmental subdivisions those
34 practices which will permit protection against losses at the
35 lowest costs, consistent with good underwriting practices and

1 sound risk management techniques.
2 d. To negotiate or acquire insurance coverage for
3 governmental subdivisions, subject to the limitations
4 contained in sections 18.190 through 18.200.
5 e. To recommend to the general assembly and governmental
6 subdivisions, changes in statutes, ordinances, and policies as
7 necessary to enable governmental subdivisions to develop and
8 implement risk management programs and to acquire insurance
9 coverage.
10 3. The division shall develop and implement a market
11 assistance program to facilitate, arrange, or provide for the
12 acquisition of insurance coverage for all public or private
13 entities deemed to be essential to the public welfare and for
14 which it is determined that present coverage is unavailable,
15 unreasonable, or unacceptable.
16 4. The division shall provide technical advice and
17 assistance to governmental subdivisions and public and private
18 entities identified under subsection 3 seeking to utilize
19 alternative financing methods to develop a stable pool of
20 funds with which to insure and reinsure risk exposures,
21 including administrative and personnel support for entities
22 seeking to utilize state financing, or combination financing
23 under chapter 28E.
24 Sec. 6. NEW SECTION. 18.195 GUIDELINES.
25 1. The risk management division shall carry out its duties
26 relating to state government loss and risk exposures pursuant
27 to the following guidelines:
28 a. To the extent possible, all insurance coverage which is
29 purchased for vehicles owned by the state shall be under fleet
30 policies.
31 b. Bonding of state employees shall be reevaluated, and
32 uniform standards shall be adopted for the purchase of all
33 fidelity bonds recommended for state employees. To the extent
34 possible, all bonded state employees shall be covered under
35 one or more blanket bonds or position schedule bonds. In

1 carrying out section 64.6, the state may purchase an
2 individual or a blanket surety bond insuring the fidelity of
3 state officers subject to the minimum surety bond requirements
4 of section 64.6. A state officer listed in section 64.6 is
5 deemed to have furnished surety if the officer is covered by a
6 blanket bond purchased as provided in this paragraph.
7 c. The management of state property loss exposures and
8 state liability risk exposures shall be accomplished for state
9 government as a whole, and without regard to the branch of
10 government or the agency within which the loss exposure or
11 risk exposure arises, except that the state board of regents
12 shall share in the management of property loss exposures and
13 liability risk exposures involving institutions under the
14 jurisdiction of the board.
15 d. Insurance coverage may include any type of insurance
16 protection sold by insurers, including but not limited to,
17 full coverage, partial coverage, coinsurance, reinsurance, and
18 deductible insurance.
19 2. The division shall develop programs relating to
20 governmental subdivisions which are subject to the following
21 guidelines:
22 a. Participation by a governmental subdivision in any risk
23 management program offered by the division shall be by
24 contract or on a voluntary basis.
25 b. The division is not required to negotiate or purchase
26 insurance coverage for any governmental subdivision, as
27 permitted by sections 18.190 through 18.200, which fails to
28 comply with standards adopted by the division, and may cancel
29 coverage already negotiated or purchased upon determination of
30 such failure.
31 c. Risk management programs may treat loss and risk
32 exposures of governmental subdivisions individually, or on a
33 group basis, or both.
34 Sec. 7. NEW SECTION. 18.196 PURCHASE OF INSURANCE.
35 1. The division, in consultation with the director of the

1 department of general services, is the exclusive contracting
2 agency for the purchase of insurance coverage for state loss
3 and risk exposure except for revenue producing facilities
4 under the state board of regents which have to comply with
5 bond covenants.
6 2. The division shall negotiate with insurers on behalf of
7 governmental subdivisions unable to obtain reasonable or
8 acceptable insurance coverage, for the purchase of insurance
9 coverage.
10 3. The division may purchase contracts of insurance, and
11 may contract with insurers, within the standards prescribed by
12 the risk management division. Funding for the purchase of
13 insurance for state loss and risk exposure shall be provided
14 by a specific and separate appropriation provided solely for
15 this purpose.
16 4. The division may facilitate, arrange, or provide for
17 the acquisition of insurance coverage on behalf of one or more
18 governmental subdivisions. Any insurance contract negotiated
19 by the division may include coverage or coverages for state
20 loss or risk exposures and for the loss or risk exposures of
21 one or more governmental subdivisions, or for any combination
22 of these exposures.
23 5. The risk manager may act as attorney in fact under
24 section 520.2 for governmental subdivisions executing
25 reciprocal or interinsurance contracts under chapter 520.
26 6. The division shall not charge governmental subdivisions
27 for risk management services, but may charge for the
28 reimbursement of expenses incurred in facilitating, arranging,
29 or acquiring insurance coverage.
30 Sec. 8. NEW SECTION. 18.197 EXECUTIVE COUNCIL
31 SUPERVISION.
32 All standards adopted by the division under sections 18.190
33 through 18.200 are subject to review and approval or
34 disapproval by the executive council. However, each standard
35 proposed by the division shall be effective on the date

1 specified in the standard unless specifically disapproved by
2 the executive council within thirty days after a copy of the
3 proposed standard is delivered to the secretary of the
4 executive council.
5 Sec. 9. NEW SECTION. 18.198 ACCESS TO STATE RECORDS.
6 The division shall be given full assistance and cooperation
7 by every state agency and its officers and employees. Each
8 agency shall provide to the division all requested loss and
9 loss exposure information, and shall comply with all standards
10 and directives of the division and of the department of
11 insurance relating to the administration of sections 18.190
12 through 18.200 except as otherwise provided in those sections.
13 Sec. 10. NEW SECTION. 18.199 ACCESS TO RECORDS OF
14 GOVERNMENTAL SUBDIVISIONS AND OTHER ENTITIES.
15 A governmental subdivision or other public or private
16 entity requesting the assistance of the division shall, as a
17 prerequisite to the assistance, provide the division with full
18 cooperation and all requested loss and loss exposure
19 information, and shall comply with all standards and
20 directives of the division relating to the administration of
21 sections 18.190 through 18.200.
22 Sec. 11. NEW SECTION. 18.200 ANNUAL REPORT --LONG RANGE
23 PLANNING.
24 The division shall:
25 1. Annually submit to the general assembly a report
26 containing the findings and recommendations of the division,
27 setting out the standards adopted, and making recommendations
28 for those statutory changes which are necessary to implement
29 or permit the implementation of standards proposed by the
30 division. The report shall include a summary of the
31 division's annual costs of operation, the risks covered, and
32 the premiums paid.
33 2. Initiate continuing discussion and programming with
34 public and private financing agencies and other interested
35 entities regarding the feasibility and establishment of a

1 continuing source of funds to serve as a reinsurance pool for
2 public and private entities essential to the public welfare.
3 "Sec. 12. Section 64.6, unnumbered paragraph 1, Code
4 Supplement 1985, is amended to read as follows:
5 Unless covered by a higher limit blanket bond purchased as
6 provided in section ~~18.165~~ 18.195, subsection 1, paragraph
7 "b", state officers shall give bonds, the premiums being paid
8 by the state, in an amount as follows:
9 Sec. 13. Section 123.92, Code Supplement 1985, is amended
10 to read as follows:
11 123.92 CIVIL LIABILITY FOR SALE ~~OR GIFT~~ AND SERVICE OF
12 BEER, WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).
13 ~~Every husband, wife, child, parent, guardian, employer or~~
14 ~~other person~~ Any person who is injured in person or property
15 or means of support by ~~any~~ an intoxicated person or resulting
16 from the intoxication of ~~any~~ a person, has a right of action
17 for all damages actually sustained, severally or jointly,
18 against any licensee or permittee, who ~~sells or gives~~ sold and
19 served any beer, wine, or intoxicating liquor to ~~a~~ the
20 intoxicated person ~~while the person is~~ when the licensee or
21 permittee knew or should have known the person was
22 intoxicated, or ~~serves a~~ who sold to and served the person to
23 a point where the ~~person is~~ licensee or permittee knew or
24 should have known the person would become intoxicated. If the
25 injury was caused by an intoxicated person, a permittee or
26 licensee may establish as an affirmative defense that the
27 intoxication did not contribute to the injurious action of the
28 person.
29 Every liquor control licensee and class "B" beer permittee
30 shall furnish proof of financial responsibility either by the
31 existence of a liability insurance policy or by posting bond
32 in such amount as determined by the department.
33 Sec. 14. NEW SECTION. 147.139 EXPERT WITNESS STANDARDS.
34 If the standard of care given by a physician and surgeon
35 licensed pursuant to chapter 148, or osteopathic physician and

1 surgeon licensed pursuant to chapter 150A is at issue, the
2 court shall only allow a person to qualify as an expert
3 witness and to testify on the issue of the appropriate
4 standard of care if the person meets both of the following
5 qualifications:
6 1. The person's medical specialities relate directly to
7 the medical problem or problems at issue and the type of
8 treatment administered in the case.
9 2. The person has devoted at least one-half of the
10 person's professional time to the practice of medicine,
11 teaching, or university-based research related to the medical
12 care and type of treatment which gave rise to the medical
13 problem of which the plaintiff complains.
14 Sec. 15. NEW SECTION. 296.7 INDEBTEDNESS FOR INSURANCE
15 AUTHORIZED -- TAX LEVY.
16 A school district or merged area school corporation is
17 authorized to contract indebtedness and to issue general
18 obligation bonds or enter into insurance agreements obligating
19 the school district or corporation to make payments beyond its
20 current budget year to procure or provide for a policy of
21 insurance, a self insurance program, or a local government
22 risk pool to protect the school district or corporation from
23 tort liability associated with the operation of the school
24 district or corporation. Taxes for the payment of the
25 principal, premium, or interest on such a bond, the payment of
26 such an insurance policy, the payment of the costs of such a
27 self insurance program, the payment of the costs of such a
28 local government risk pool, and the payment of any amounts
29 payable under any such insurance agreement may be levied in
30 excess of any tax limitation imposed by statute pursuant to
31 section 613A.7. Such a self insurance program or local
32 government risk pool is not insurance and is not subject to
33 regulation under chapters 505 through 523C.
34 Sec. 16. Section 298.20, Code 1985, is amended to read as
35 follows:

1 298.20 FUNDING OR REFUNDING BONDS.
2 For the purpose of providing for the payment of any
3 indebtedness or anticipated indebtedness of ~~any~~ a school
4 corporation represented by ~~judgments or~~ bonds or judgments or
5 anticipated judgments, the board of directors of ~~such~~ the
6 school corporation~~, at any time or times,~~ may provide by
7 resolution for the issuance of bonds of ~~such~~ the school
8 corporation, to be known as funding or refunding bonds. The
9 proceeds derived from the negotiation of ~~such~~ the funding or
10 refunding bonds shall be applied in payment of ~~such~~ the
11 indebtedness or held for an anticipated indebtedness; or ~~said~~
12 the funding bonds or refunding bonds may be issued in exchange
13 for the evidences of ~~such~~ indebtedness, par for par.
14 Sec. 17. Section 331.301, Code Supplement 1985, is amended
15 by adding the following new subsection:
16 NEW SUBSECTION. 11. A county may enter into insurance
17 agreements obligating the county to make payments beyond its
18 current budget year to procure or provide for a policy of
19 insurance, a self insurance program, or a local government
20 risk pool to protect the county against tort liability
21 associated with the operation of the county. Such a self
22 insurance program or local government risk pool is not
23 insurance and is not subject to regulation under chapters 505
24 through 523C.
25 Sec. 18. Section 331.424, subsection 1, paragraph 1, Code
26 1985, is amended by striking the paragraph and inserting in
27 lieu thereof the following:
28 1. Tort liability insurance that may be necessary in the
29 operation of the county, costs of a self insurance program,
30 costs of a local government risk pool, and amounts payable
31 under any insurance agreements to provide or procure such
32 insurance, self insurance program, or local government risk
33 pool pursuant to section 613A.7.
34 Sec. 19. Section 331.441, subsection 2, paragraph b, Code
35 1985, is amended by adding the following new subparagraph:

1 NEW SUBPARAGRAPH. (8) The provision of insurance, or
2 funding a self insurance program or local government risk
3 pool, including but not limited to the investigation and
4 defense of claims, the payment of claims, and the
5 administration and management of such self insurance program
6 or local government risk pool.
7 Sec. 20. Section 364.4, Code Supplement 1985, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. 5. Enter into insurance agreements
10 obligating the city to make payments beyond its current budget
11 year to procure or provide for a policy of insurance, a self
12 insurance program, or a local government risk pool to protect
13 the city against tort liability associated with the operation
14 of the city. Such a self insurance program or local
15 government risk pool is not insurance and is not subject to
16 regulation under chapters 505 through 523C.
17 Sec. 21. Section 384.12, subsection 18, Code Supplement
18 1985, is amended by striking the subsection and inserting in
19 lieu thereof the following:
20 18. A tax to pay the premium costs on tort liability
21 insurance that may be necessary in the operation of the city,
22 the costs of a self insurance program, the costs of a local
23 government risk pool and amounts payable under any insurance
24 agreements to provide or procure such insurance, self
25 insurance program, or local government risk pool pursuant to
26 section 613A.7.
27 Sec. 22. Section 384.24, subsection 3, Code 1985, is
28 amended by adding the following new paragraph:
29 NEW PARAGRAPH. s. The provision of insurance, or funding
30 a self insurance program or local government risk pool,
31 including but not limited to the investigation and defense of
32 claims, the establishment of reserve funds for claims, the
33 payment of claims, and the administration and management of
34 such self insurance program or local government risk pool.
35 Sec. 23. Section 442.5, subsection 1, paragraph b,

1 subparagraph (3), Code 1985, is amended by striking the
2 subparagraph and inserting in lieu thereof the following:
3 (3) Tort liability insurance that may be necessary in the
4 operation of a school district, the costs of a self insurance
5 program, the costs of a local government risk pool, and
6 amounts payable under any insurance agreements to provide or
7 procure such insurance, self insurance program, or local
8 government risk pool.
9 Sec. 24. NEW SECTION. 613.18 LIMITATION ON PRODUCTS
10 LIABILITY OF NONMANUFACTURERS.
11 1. A person who is not the assembler, designer, or
12 original manufacturer, and who wholesales, retails,
13 distributes, or otherwise sells a product is:
14 a. Immune from any suit based upon strict liability in
15 tort or breach of implied warranty of merchantability which
16 arises solely from an alleged defect in the original design or
17 manufacture of the product.
18 b. Not liable for damages based upon strict liability in
19 tort or breach of implied warranty of merchantability for the
20 product unless the original manufacturer is not subject to
21 service within the state or has been judicially declared
22 insolvent.
23 2. A person who is a retailer of a product and who
24 assembles a product, such assembly having no causal
25 relationship to the injury from which the claim arises, is not
26 liable for damages based upon strict liability in tort or
27 breach of implied warranty of merchantability which arises
28 from an alleged defect in the original design or manufacture
29 of the product.
30 Sec. 25. Section 613A.7, Code 1985, is amended to read as
31 follows:
32 613A.7 INSURANCE.
33 The governing body of any municipality may purchase a
34 policy of liability insurance insuring against all or any part
35 of liability which might be incurred by such municipality or

1 its officers, employees and agents under the provisions of
2 section 613A.2 and section 613A.8 and may similarly purchase
3 insurance covering torts specified in section 613A.4. The
4 governing body of any municipality may adopt a self insurance
5 program, including but not limited to the investigation and
6 defense of claims, the establishment of a reserve fund for
7 claims, the payment of claims, and the administration and
8 management of the self insurance program, to cover all or any
9 part of the liability. The governing body of any municipality
10 may join and pay funds into a local government risk pool to
11 protect itself against any or all liability. The governing
12 body of any municipality may enter into insurance agreements
13 obligating the municipality to make payments beyond its
14 current budget year to provide or procure such policies of
15 insurance, self insurance program, or local government risk
16 pool. The premium costs of such insurance, the costs of such
17 a self insurance program, the costs of a local government risk
18 pool, and the amounts payable under any such insurance
19 agreements may be paid out of the general fund or any
20 available funds or may be levied in excess of any tax
21 limitation imposed by statute. However, if a municipality,
22 except a school district, used moneys from taxes levied for
23 the general operating fund of the municipality to pay tort
24 liability costs during any fiscal year between July 1, 1981
25 and June 30, 1986, or any fiscal year after the effective date
26 of this Act, and reduces the amount of tort liability costs
27 paid from the general operating funds for any fiscal year
28 beginning after the effective date of this Act below that
29 amount, the amount of the property tax levied for the general
30 operating fund of the municipality in fiscal years beginning
31 after the effective date of this Act, or after the reduction
32 occurs, shall be reduced by an amount that will reduce the
33 municipality's general operating fund budget by the amount by
34 which there is a reduction in tort liability costs paid from
35 the general operating fund. For school districts, the state

1 comptroller shall reduce the unspent balance from the
2 preceding year under chapter 442 by the amount by which there
3 is a reduction in tort liability costs paid from funds
4 available under chapter 442. It is the intent of the general
5 assembly that the governing body of a municipality carefully
6 assess the needs of the municipality for moneys required under
7 this section prior to levying a property tax under this
8 section. It is also the intent of the general assembly that
9 the governing body of a municipality against which a judgment
10 has been rendered, and where the amount of the judgment
11 exceeds the amount of the funds available to pay the judgment,
12 shall consider petitioning the court under section 668.3,
13 subsection 7, for structured, periodic, or other nonlump-sum
14 payments. Any independent or autonomous board or commission
15 in the municipality having authority to disburse funds for a
16 particular municipal function without approval of the
17 governing body may similarly enter into insurance agreements,
18 procure liability insurance, adopt a self insurance program,
19 or join a local government risk pool within the field of its
20 operation. The procurement of such insurance constitutes a
21 waiver of the defense of governmental immunity as to those
22 exceptions listed in section 613A.4 to the extent stated in
23 such policy but shall have no further effect on the liability
24 of the municipality beyond the scope of this chapter, but if a
25 municipality adopts a self insurance program or joins and pays
26 funds into a local government risk pool such action does not
27 constitute a waiver of the defense of governmental immunity as
28 to the exceptions listed in section 613A.4. The existence of
29 any insurance which covers in whole or in part any judgment or
30 award which may be rendered in favor of the plaintiff, or lack
31 of any such insurance, shall not be material in the trial of
32 any action brought against the governing body of any
33 municipality, or their officers, employees or agents and any
34 reference to such insurance, or lack of same, shall be grounds
35 for a mistrial. A self insurance program or local government

1 risk pool is not insurance and is not subject to regulation
2 under chapters 505 through 523C.
3 Sec. 26. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.
4 If a party commencing an action has in the preceding five-
5 year period unsuccessfully prosecuted three or more actions,
6 the court may, if it deems the actions to have been frivolous,
7 stay the proceedings until that party furnishes an undertaking
8 secured by cash or approved sureties to pay all costs
9 resulting to opposing parties to the action including a rea-
10 sonable attorney fee.
11 Sec. 27. Section 619.18, Code 1985, is amended by striking
12 the section and inserting in lieu thereof the following:
13 619.18 MONEY DAMAGES NOT TO BE STATED.
14 In an action for personal injury or wrongful death, the
15 amount of money damages demanded shall not be stated in the
16 petition, original notice, or any counterclaim or cross-
17 petition.
18 Sec. 28. NEW SECTION. 619.19 VERIFICATION NOT REQUIRED -
19 -AFFIDAVITS.
20 Pleadings need not be verified unless otherwise required by
21 statute. Where a pleading is verified, it is not necessary
22 that subsequent pleadings be verified unless otherwise
23 required by statute.
24 The signature of a party, the party's legal counsel, or any
25 other person representing the party, to a motion, pleading, or
26 other paper is a certificate that:
27 1. The person has read the motion, pleading, or other
28 paper.
29 2. To the best of the person's knowledge, information, and
30 belief, formed after reasonable inquiry, it is grounded in
31 fact and is warranted by existing law or a good faith argument
32 for the extension, modification, or reversal of existing law.
33 3. It is not interposed for any improper purpose, such as
34 to harass or cause an unnecessary delay or needless increase
35 in the cost of litigation.

1 If a motion, pleading, or other paper is not signed, it
2 shall be stricken unless it is signed promptly after the
3 omission is called to the attention of the pleader or movant.
4 If a motion, pleading, or other paper is signed in
5 violation of this section, the court, upon motion or upon its
6 own initiative, shall impose upon the person signing, the
7 represented party, or both, an appropriate sanction, which may
8 include an order to pay the other party or parties the amount
9 of the reasonable expenses incurred because of the filing of
10 the motion, pleading, or other paper, including a reasonable
11 attorney fee.
12 Sec. 29. NEW SECTION. 624.39 PUNITIVE OR EXEMPLARY
13 AWARDS.
14 1. In a trial of a claim involving the request for
15 punitive or exemplary damages, the court shall instruct the
16 jury to answer special interrogatories or, if there is no
17 jury, shall make findings, indicating all of the following:
18 a. Whether the conduct of the defendant from which the
19 claim arose constituted willful and wanton disregard for the
20 rights or safety of another.
21 b. Whether the conduct of the defendant was directed
22 specifically at the claimant, or at the person from which the
23 claimant's claim is derived.
5628 24 2. An award for punitive or exemplary damages shall not be
25 made unless the answer or finding pursuant to subsection 1,
5624 26 paragraph "a", is affirmative. If such answer or finding is
27 affirmative, the jury, or court if there is no jury, shall fix
28 the amount of punitive or exemplary damages to be awarded, and
29 such damages shall be ordered paid as follows:
30 a. If the answer or finding pursuant to subsection 1,
31 paragraph "b", is affirmative, the full amount of the punitive
32 or exemplary damages awarded shall be paid to the claimant.
33 b. If the answer or finding pursuant to subsection 1,
34 paragraph "b", is negative, after payment of all applicable
35 costs and fees, an amount not to exceed twenty-five percent of

1 the punitive or exemplary damages awarded may be ordered paid
2 to the claimant, with the remainder of the award to be ordered
3 paid into a civil reparations trust fund administered by the
4 state court administrator. Funds placed in the civil
5 reparations trust shall be under the control and supervision
6 of the executive council, and shall be disbursed only for
7 purposes of indigent civil litigation programs or insurance
8 assistance programs.
9 Sec. 30. Section 668.3, Code 1985, is amended by adding
10 the following new subsection:
11 NEW SUBSECTION. 7. When a final judgment or award is
12 entered, any party may petition the court for a determination
13 of the appropriate payment method of the judgment or award.
14 The court may order that the payment method for all or part of
15 the judgment or award be by structured, periodic, or other
16 nonlump-sum payments. Structured, periodic, or other nonlump-
17 sum payments may include appropriate interest if such interest
18 was not included in the determination of the initial judgment
19 or award. However, the court shall not order a structured,
20 periodic, or other nonlump-sum payment method if it finds that
21 any of the following are true:
22 a. The payment method would be inequitable.
23 b. The payment method provides insufficient guarantees of
24 future collectibility of the judgment or award.
25 c. Payments made under the payment method could be subject
26 to other claims, past or future, against the defendant.
27 Sec. 31. NEW SECTION. 668.11 DISCLOSURE OF EXPERT
28 WITNESSES.
29 1. A party in an action pursuant to this chapter who
30 intends to call an expert witness of their own selection,
31 shall certify to the court and all other parties the expert's
32 name, qualifications and the purpose for calling the expert
33 within the following time period:
34 a. The plaintiff within one hundred eighty days of the
35 defendant's answer unless the court for good cause not ex

1 parte extends the time of disclosure.
2 b. The defendant within ninety days of plaintiff's
3 certification.
4 2. If a party fails to disclose an expert pursuant to
5 subsection 1 or does not make the expert available for
6 discovery, the expert shall be prohibited from testifying in
7 the action unless leave for the expert's testimony is given by
8 the court for good cause shown.
9 3. This section does not apply to court appointed experts.
10 Sec. 32. NEW SECTION. 668.12 LIABILITY FOR PRODUCTS --
11 STATE OF THE ART DEFENSE.
12 In any action brought pursuant to this chapter against an
13 assembler, designer, supplier of specifications, distributor,
14 manufacturer or seller for damages arising from an alleged
15 defect in the design, testing, manufacturing, formulation,
16 marketing, packaging, warning, or labeling of a product, a
17 percentage of fault shall not be assigned to such persons if
18 they plead and prove that the product or such person's actions
19 in regard to the product, conformed to the state of the art in
20 existence at the time the product was designed, tested,
21 manufactured, formulated, marketed, packaged, provided with a
22 warning, or labeled. Nothing contained in this section shall
23 diminish the duty of an assembler, designer, supplier of
24 specifications, distributor, manufacturer or seller to warn
25 concerning subsequently acquired knowledge of a defect or
26 dangerous condition that would render the product unreasonably
27 dangerous for its foreseeable use.
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28 Sec. 33. STUDY COMMISSION CREATED.
29 1. There is established a commission to study the issues
30 involved in liability and liability insurance concerns. The
31 commission shall be composed of twelve voting members and two
32 ex officio members, appointed as follows:
33 a. Two members of the house of representatives, by the
34 speaker of the house.
35 b. Two members of the senate, by the senate majority

1 leader.
2 c. Two members of the house of representatives, by the
3 house minority leader.
4 d. Two members of the senate, by the senate minority
5 leader.
6 e. Four members of the public as representatives of the
7 private sector for industries, professions, or other
8 particularly affected groups, appointed by the chairperson and
9 vice chairperson of the legislative council, in consultation
10 with the senate and house minority leaders and with the
11 approval of the legislative council.
12 f. The attorney general or the attorney general's
13 designee, who shall be an ex officio member.
14 g. The commissioner of insurance or the commissioner's
15 designee, who shall be an ex officio member.
16 2. The commission's study shall include, but is not
17 limited to, the following:
18 a. The implementation of maximum caps on liability
19 payments.
20 b. The elimination of the collateral source rule.
21 c. The review of present insurance practices, including:
22 (1) A review and report on the feasibility and
23 advisability of enacting a mandatory insurance disclosure Act.
24 (2) A review and report on the present level of industry
25 regulation and the potential for increasing such regulation.
26 This report should approximate the cost of any recommendations
27 made.
28 (3) A review and report on the present powers, authority,
29 and staffing of the insurance department.
30 (4) A review and report on the feasibility and
31 advisability of enacting insurance assistance and risk
32 management programs.
33 d. The review of alternative methods of litigating
34 actions.
35 e. The review of alternatives to reduce nonmeritorious

1 suits.
2 f. Review and report on the advisability of limiting tort
3 liability of the state arising from regulatory and licensing
4 activities.
5 g. Monitor and report on any operation savings in the
6 insurance industry due to tort liability reform for the period
7 from July 1, 1983 to present, including the effects of this
8 Act, and the feasibility of mandatory rate adjustments for
9 insurers to reflect such cost savings.
10 h. Other issues necessary to ensure fairness in the
11 operation of the tort liability system.
12 3. The legislative council may authorize funds for the
13 study commission, which may be used for the following
14 commission purposes.
15 a. Employment of a full-time staff person for the
16 commission.
17 b. Employment of actuarial, insurance, and legal
18 consultants.
19 c. Compilation, printing, and distribution of materials
20 prepared by the commission.
21 d. Necessary expenses of travel, attendance, and
22 participation in regional or national programs.
23 4. Public members of the study commission shall receive a
24 per diem of forty dollars and be reimbursed for their travel
25 and other necessary expenses actually incurred in the
26 performance of their official duties. Public employees who
27 are members of the study commission shall be reimbursed for
28 travel and other expenses actually incurred in the performance
29 of their official duties.
30 5. The study commission shall hold its first meeting
31 within sixty days of its formation and shall transmit copies
32 of its final report to the legislative council by December 15,
33 1986.
34 Sec. 34. A county which has levied a tax pursuant to
35 section 331.424, subsection 1, paragraph 1, or a city which

1 has levied a tax pursuant to section 384.12, subsection 18,
2 for the fiscal year July 1, 1985 through June 30, 1986, may
3 use any unexpended proceeds of this tax to pay the costs of a
4 self insurance program or the costs of a local government risk
5 pool.
6 Sec. 35. Sections 18.160 through 18.169, Code 1985, are
7 repealed.
8 Sec. 36. Sections 13, 14, 24, and 26 through 32 of this
9 Act take effect July 1 following their enactment and apply to
10 all cases filed on or after that date.
11 Sec. 37. Sections 12, 15 through 23, 25, 33, and 34 of
12 this Act, being deemed of immediate importance, take effect
13 from and after their publication in The Sioux City Journal, a
14 newspaper published in Sioux City, Iowa, and in The Iowegian
15 and Citizen, a newspaper published in Centerville, Iowa.
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SENATE FILE 2265

H-5756

1 Amend H-5575 to Senate File 2265 as amended,
2 passed, and reprinted by the Senate as follows:
3 1. Page 8, line 35, by inserting after the figure
4 "523C." the following: "However, those self-insurance
5 plans regulated pursuant to section 509A.14 shall
6 remain subject to the requirements of section 509A.14
7 and rules adopted pursuant to that section."
8 2. Page 8, line 47, by inserting after the figure
9 "523C." the following: "However, those self-insurance
10 plans regulated pursuant to section 509A.14 shall
11 remain subject to the requirements of section 509A.14
12 and rules adopted pursuant to that section."
13 3. Page 9, line 39, by inserting after the figure
14 "523C." the following: "However, those self-insurance
15 plans regulated pursuant to section 509A.14 shall
16 remain subject to the requirements of section 509A.14
17 and rules adopted pursuant to that section."

H-5756 FILED APRIL 8, 1986 BY SWARTZ of Marshall

adopted 4/9 (p. 1356)

SENATE FILE 2265

H-5757

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. By striking page 5, lines 42 through 50, and
6 inserting the following:
7 "Sec. ___. Section 25A.14, Code 1985, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. 11. Any claim for financial loss
10 based upon an act or omission in financial regulation,
11 including but not limited to examinations,
12 inspections, audits, or other financial oversight
13 responsibilities, pursuant to titles XIX through
14 XXIII. This subsection does not apply to acts or
15 omissions which constitute gross negligence amounting
16 to a willful and wanton disregard for the rights or
17 safety of others. However, an act or omission shall
18 not be deemed to constitute gross negligence amounting
19 to a willful and wanton disregard for the rights or
20 safety of others if the state has made all reasonable
21 efforts to meet its policy or level of service for
22 such financial regulation, considering the availability
23 or unavailability of fiscal or personnel resources."

BY HAVERLAND of Polk
JAY of Appanoose

H-5757 FILED APRIL 8, 1986

W/D 4/9 (p. 1353)

SENATE FILE 2265

H-5747

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 11, by inserting after line 4 the
6 following:
7 "Sec. ___. Section 613A.4, Code 1985, is amended
8 by adding the following new subsections:
9 NEW SUBSECTION. 9. Any claim based upon an act or
10 omission by an officer or employee of the municipality
11 or the municipality's governing body, in the granting,
12 suspension, or revocation of a license or permit,
13 where the damage was caused by the person to whom the
14 license or permit was issued, unless the act of the
15 officer or employee constitutes actual malice or a
16 criminal offense.
17 NEW SUBSECTION. 10. Any claim based upon an act
18 or omission of an officer or employee of the
19 municipality, whether by issuance of permit,
20 inspection, investigation, or otherwise, and whether
21 the statute, ordinance, or regulation is valid, if the
22 damage was caused by a third party, event, or property
23 not under the supervision or control of the
24 municipality, unless the act or omission of the
25 officer or employee constitutes actual malice or a
26 criminal offense."
27 2. By numbering and renumbering as necessary.

BY VARN of Johnson
OLLIE of Clinton
COOPER of Lu as
PLATT of Muscatine

H-5747 FILED APRIL 8, 1986
ADOPTED (p. 1318) Motion to reconsider (p. 1320)

SENATE FILE 2265

H-5748

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 8, lines 32 and 33, by striking the words
6 and figure "pursuant to section 613A.7".
7 2. Page 9, lines 17 and 18, by striking the words
8 and figure "pursuant to section 613A.7".
9 3. Page 9, line 50, by striking the words and
10 figure "pursuant to section 613A.7".
11 4. Page 10, line 16, by inserting after the
12 figure "18;" the word "or".
13 5. Page 10, line 17, by striking the words and
14 figure "; or section 613A.7".
15 6. Page 10, line 22, by inserting after the
16 figure "18;" the word "or".
17 7. Page 10, line 23, by striking the words and
18 figure "; or section 613A.7".

H-5748 FILED APRIL 8, 1986 BY O'KANE of Woodbury
ADOPTED (p. 1310)

SENATE FILE 2265

H-5763

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 12, by inserting after line 12, the
6 following:
7 "Sec. ___. Section 613A.12, Code 1985, is amended
8 to read as follows:
9 613A.12 OFFICERS AND EMPLOYEES -- PERSONAL
10 LIABILITY.
11 All officers and employees of municipalities are
12 not personally liable for ~~any claim~~ claims which ~~is~~
13 are exempted under section 613A.4, except ~~a claim~~
14 claims for punitive damages, and actions permitted
15 under section 85.20. An officer or employee of a
16 municipality is not liable for punitive damages as a
17 result of acts in the performance of a ~~law-enforcement~~
18 ~~or emergency~~ duty, unless actual malice or willful,
19 wanton and reckless misconduct is proven."

BY O'KANE of Woodbury
JAY of Appanoose
SWARTZ of Marshall
CARPENTER of Polk

H-5763 FILED APRIL 9, 1986
ADOPTED (p. 1355)

SENATE FILE 2265

H-5760

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by striking lines 42 through 50 and
6 inserting the following:
7 "Sec. ___. Section 321.445, Code 1985, as amended
8 by 1986 Iowa Acts, Senate File 499, section 2, is
9 amended by adding the following new subsection:
10 NEW SUBSECTION. 4. a. The nonuse of a safety
11 belt or safety harness by a person is not admissible
12 or material as evidence in a civil action brought for
13 damages in a cause of action arising prior to July 1,
14 1986.
15 b. In a cause of action arising on or after July
16 1, 1986, brought to recover damages arising out of the
17 ownership or operation of a motor vehicle, the failure
18 to wear a safety belt or safety harness in violation
19 of this section shall not be considered evidence of
20 comparative fault. However, except as provided in
21 section 321.446, subsection 6, the failure to wear a
22 safety belt or safety harness in violation of this
23 section may be admitted to mitigate damages, but only
24 under the following circumstances:
25 (1) Parties seeking to introduce evidence of the
26 failure to wear a safety belt or safety harness in
27 violation of this section must first introduce
28 substantial evidence that the failure to wear a safety
29 belt or safety harness contributed to the injury or
30 injuries claimed by the plaintiff.
31 (2) If the evidence supports such a finding, the
32 trier of fact may find that the plaintiff's failure to
33 wear a safety belt or safety harness in violation of
34 this section contributed to the plaintiff's claimed
35 injury or injuries, and may reduce the amount of
36 plaintiff's recovery by an amount not to exceed five
37 percent of the damages awarded after any reductions
38 for comparative fault."

H-5760 FILED APRIL 9, 1986 BY PETERSON of Carroll
ADOPTED, MOTION TO RECONSIDER FAILED (p. 1360)
(p. 1350)

SENATE FILE 2265

H-5762

1 Amend the Committee on Judiciary and Law
2 Enforcement Amendment, H-5575, to Senate File 2265, as
3 amended, passed and reprinted by the Senate, as
4 follows:
5 1. Page 16, line 4, by striking the word "twelve"
6 and inserting the word "sixteen".
7 2. Page 16, by striking line 5, and inserting the
8 following: "members who shall be appointed".

H-5762 FILED APRIL 9, 1986 BY GRONINGA of Cerro Gordo
ADOPTED (p. 1351)

SENATE FILE 2265

H-5765

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 13, by striking lines 14 through 49, and
6 inserting the following:
7 "Sec. ___. NEW SECTION. 624.39 PUNITIVE OR
8 EXEMPLARY AWARDS.
9 1. In a trial of a claim involving the request for
10 punitive or exemplary damages, the court shall
11 instruct the jury to answer special interrogatories
12 or, if there is no jury, shall make findings,
13 indicating all of the following:
14 a. Whether the conduct of the defendant from which
15 the claim arose constituted willful and wanton
16 disregard for the rights or safety of another.
17 b. Whether the conduct of the defendant was
18 directed specifically at the claimant, or at the
19 person from which the claimant's claim is derived.
20 2. An award for punitive or exemplary damages
21 shall not be made unless the answer or finding
22 pursuant to subsection 1, paragraph "a", is
23 affirmative. If such answer or finding is
24 affirmative, the jury, or court if there is no jury,
25 shall fix the amount of punitive or exemplary damages
26 to be awarded, and such damages shall be ordered paid
27 as follows:
28 a. If the answer or finding pursuant to subsection
29 1, paragraph "b", is affirmative, the full amount of
30 the punitive or exemplary damages awarded shall be
31 paid to the claimant.
32 b. If the answer or finding pursuant to subsection
33 1, paragraph "b", is negative, after payment of all
34 applicable costs and fees, an amount not to exceed
35 twenty-five percent of the punitive or exemplary
36 damages awarded may be ordered paid to the claimant,
37 with the remainder of the award to be ordered paid
38 into a civil reparations trust fund administered by
39 the state court administrator. Funds placed in the
40 civil reparations trust shall be under the control and
41 supervision of the executive council, and shall be
42 disbursed only for purposes of indigent civil
43 litigation programs or insurance assistance programs."

H-5765 FILED APRIL 9, 1986 BY SHOULTZ of Black Hawk
OUT OF ORDER (p. 1356)

SENATE FILE 2265

H-5760

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by striking lines 42 through 50 and
6 inserting the following:
7 "Sec. ___. Section 321.445, Code 1985, as amended
8 by 1986 Iowa Acts, Senate File 499, section 2, is
9 amended by adding the following new subsection:
10 NEW SUBSECTION. 4. a. The nonuse of a safety
11 belt or safety harness by a person is not admissible
12 or material as evidence in a civil action brought for
13 damages in a cause of action arising prior to July 1,
14 1986.
15 b. In a cause of action arising on or after July
16 1, 1986, brought to recover damages arising out of the
17 ownership or operation of a motor vehicle, the failure
18 to wear a safety belt or safety harness in violation
19 of this section shall not be considered evidence of
20 comparative fault. However, except as provided in
21 section 321.446, subsection 6, the failure to wear a
22 safety belt or safety harness in violation of this
23 section may be admitted to mitigate damages, but only
24 under the following circumstances:
25 (1) Parties seeking to introduce evidence of the
26 failure to wear a safety belt or safety harness in
27 violation of this section must first introduce
28 substantial evidence that the failure to wear a safety
29 belt or safety harness contributed to the injury or
30 injuries claimed by the plaintiff.
31 (2) If the evidence supports such a finding, the
32 trier of fact may find that the plaintiff's failure to
33 wear a safety belt or safety harness in violation of
34 this section contributed to the plaintiff's claimed
35 injury or injuries, and may reduce the amount of
36 plaintiff's recovery by an amount not to exceed five
37 percent of the damages awarded after any reductions
38 for comparative fault."

H-5760 FILED APRIL 9, 1986 BY PETERSON of Carroll
ADOPTED, MOTION TO RECONSIDER FAILED (p. 1360)

SENATE FILE 2265

H-5762

1 Amend the Committee on Judiciary and Law
2 Enforcement Amendment, H-5575, to Senate File 2265, as
3 amended, passed and reprinted by the Senate, as
4 follows:
5 1. Page 16, line 4, by striking the word "twelve"
6 and inserting the word "sixteen".
7 2. Page 16, by striking line 5, and inserting the
8 following: "members who shall be appointed".

H-5762 FILED APRIL 9, 1986 BY GRONINGA of Cerro Gordo
ADOPTED

SENATE FILE 2265

H-5776

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate, as
4 follows:
A 5 1. Page 16, line 4, by striking the word "twelve"
6 and inserting the word "eighteen".
7 2. Page 16, line 11, by striking the word "Two"
B 8 and inserting the word "Three".
9 3. Page 16, line 13, by striking the word "Two"
10 and inserting the word "Three".

H-5776 FILED APRIL 9, 1986 BY VAN CAMP of Scott
DIVISION A - WITHDRAWN, DIVISION B - LOST (p. 1356)

SENATE FILE 2265

H-5780

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed and reprinted by the Senate, as
4 follows:
5 1. Page 17, by inserting after line 36, the
6 following:
7 "Sec. ___. The supreme court shall, by January 1,
8 1987, develop and convey to the Seventy-second General
9 Assembly a system of mandatory arbitration, and may
10 develop and convey a system of mandatory mediation,
11 for actions brought pursuant to chapter 668, as the
12 court deems appropriate in order to expedite in a less
13 costly manner any action wherein a party asserts a
14 claim not exceeding fifteen thousand dollars, or a
15 judge of the district court at a pretrial conference
16 determines that no greater amount is genuinely in
17 controversy. The court shall include an estimate of
18 fiscal and personnel resources necessary for the
19 implementation of any system developed.
20 The court may, prior to January 1, 1987, begin
21 implementation of any arbitration or mediation system
22 developed pursuant to this section."

BY BENNETT of Ida
JAY of Appanoose
TEAFORD of Black Hawk
ROSENBERG of Story
SWARTZ of Marshall

H-5780 FILED APRIL 9, 1986
ADOPTED (p. 1357)

SENATE FILE 2265

H-5770

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. By striking page 5, lines 42 through 50, and
6 inserting the following:
7 "Sec. ___. Section 25A.14, Code 1985, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. 11. Any claim for financial loss
10 based upon an act or omission in financial regulation,
11 including but not limited to examinations,
12 inspections, audits, or other financial oversight
13 responsibilities, pursuant to titles XIX through
14 XXIII. This subsection does not apply to acts or
15 omissions which constitute gross negligence amounting
16 to a willful and wanton disregard for the rights or
17 safety of others. However, an act or omission shall
18 not be deemed to constitute gross negligence amounting
19 to a willful and wanton disregard for the rights or
20 safety of others if the state has made all reasonable
21 efforts to meet its policy or level of service for
22 such financial regulation, considering the
23 availability or unavailability of fiscal or personnel
24 resources. The state entity responsible for financial
25 regulation, pursuant to titles XIX through XXIII,
26 shall take all reasonable measures to inform all
27 persons who may rely upon such regulation of the
28 immunity for negligent acts or omissions for such
29 regulation bestowed upon the entity pursuant to this
30 subsection."

H-5770 FILED APRIL 9, 1986 BY HAVERLAND of Polk
OUT OF ORDER (p. 1354)

SENATE FILE 2265

H-5774

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate as
4 follows:
5 1. Page 6, by inserting after line 6, the
6 following:
7 "The state entity responsible for financial
8 regulation, pursuant to titles XIX through XXIII,
9 shall take all reasonable measures to inform all
10 persons who may rely upon such regulation of the
11 immunity for negligent acts or omissions relating to
12 such regulation bestowed upon the entity pursuant to
13 this subsection."

H-5774 FILED APRIL 9, 1986 BY HAVERLAND of Polk
LOST (p. 1355)

SENATE FILE 2265

H-5745

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed, and reprinted by the Senate as
4 follows:
5 1. Page 13, by striking lines 14 through 49.
6 2. Page 15, by inserting after line 41, the
7 following:
8 "Sec. ___. NEW SECTION. 669.1 PUNITIVE OR
9 EXEMPLARY DAMAGES.
10 1. In a civil action where a claim for punitive or
11 exemplary damages is made, the trial shall be
12 conducted in two phases.
13 a. In the trial's first phase, the trier of fact
14 shall determine, concurrent with all other issues
15 presented, whether punitive or exemplary damages may
16 be assessed. However, in making this determination,
17 all of the following apply:
18 (1) If the trier of fact is a jury, the verdict
19 must be unanimous on the issue of liability for
20 punitive or exemplary damages.
21 (2) Evidence of the defendant's wealth or
22 financial condition is not admissible and discovery of
23 the defendant's financial condition shall not be
24 allowed.
25 (3) Punitive or exemplary damages shall not be
26 assessed in a case where any of the following are
27 true:
28 (a) There is no finding of actual damages,
29 compensatory damages are not awarded, or only nominal
30 damages are awarded.
31 (b) The defendant has previously been assessed
32 punitive or exemplary damages for the same conduct
33 serving as the basis for the claim.
34 (c) The defendant has previously been criminally
35 or civilly punished by fine or imprisonment, or
36 proceedings for criminal or civil punishment have been
37 instituted or are pending, which arose from the same
38 conduct for which punitive or exemplary damages are
39 sought.
40 (d) The defendant was acting in good faith that
41 the actions were proper, or was acting in good faith
42 reliance on the advice of legal counsel.
43 (e) Against a principal or employer for the acts
44 of an employee or agent, unless the principal or
45 employer authorized or ratified the conduct of the
46 employee or agent serving as the basis for the claim.
47 However, this authorization or ratification must have
48 been made by a person expressly empowered to do so.
49 (f) For tortious breach of contract, unless it is
50 first determined that the contract involves a subject

1 matter of great public interest.
2 (4) The plaintiff must have proven the defendant's
3 culpability, as defined in subsection 2, and each
4 element authorizing the imposition of punitive or
5 exemplary damages beyond a reasonable doubt.
6 Presumptions shall not be used to shift this burden of
7 proof.
8 b. If liability for punitive or exemplary damages
9 is found in the trial's first phase, the judge shall
10 then assess the amount of punitive or exemplary
11 damages in the trial's second phase. During the
12 second phase, the judge may consider evidence not
13 formally admitted during the first phase, including
14 evidence of an economic or social policy nature, and
15 hear any evidence outside the record that would aid in
16 determining the amount of punitive or exemplary
17 damages to be assessed including any evidence of
18 remedial measures undertaken by the defendant relating
19 to the conduct from which the present claims arise.
20 The defendant may introduce expert testimony
21 concerning the assessment of punitive or exemplary
22 damages which may include testimony regarding the
23 subsequent effects which the award of punitive or
24 exemplary damages would have on the defendant's
25 ability to pay subsequent or anticipated awards
26 arising from the same conduct from which the present
27 claims arise.
28 2. A defendant shall not be held liable for
29 punitive or exemplary damages unless the plaintiff has
30 proven that the defendant acted with oppression,
31 fraud, or malice toward the plaintiff. For purposes
32 of this subsection:
33 a. "Oppression" means a specific intent to subject
34 a person to cruel and unjust hardship.
35 b. "Fraud" means an intentional misrepresentation,
36 deceit or concealment of a material fact known to the
37 defendant with the intention on the part of the
38 defendant to deprive a person of property or legal
39 right, or otherwise cause injury.
40 c. "Malice" means conduct which is specifically
41 intended by the defendant to cause tangible or
42 intangible injury to another, or an act that is
43 carried out with flagrant indifference to the rights
44 of others and with a subjective awareness that the act
45 could result in death or serious injury.
46 3. If punitive or exemplary damages are awarded,
47 they shall be distributed as follows:
48 a. An amount shall be awarded to the plaintiff not
49 to exceed ten percent of all compensatory damages
50 awarded.

1 b. An amount shall be awarded to the crime victim
2 reparation program, established pursuant to chapter
3 912, not to exceed fifteen percent of the punitive or
4 exemplary damages.
5 c. The remainder, if any, shall be paid to the
6 general fund of the state.
7 This established distribution scheme shall not be
8 introduced as evidence and is not a proper subject
9 matter on voir dire. This subsection shall not be
10 construed as granting the state a cause of action to
11 seek punitive damages or be a party to an action in
12 which punitive or exemplary damages are sought, except
13 the right to collect punitive or exemplary damages
14 after they have been assessed and determined.
15 However, the state may seek punitive or exemplary
16 damages in its own right where authorized by statute.
17 4. At any time during the trial and upon motion of
18 the defendant, the court may hold a hearing on the
19 merit of the claim for punitive or exemplary damages.
20 The court may award costs, expenses, and reasonable
21 attorney's fees, as it deems equitable and
22 appropriate, to the defendant and against the
23 plaintiff or the plaintiff's attorney if the court
24 determines that either of the following is true:
25 a. The claim for punitive or exemplary damages was
26 brought without sufficient facts and evidence to
27 reasonably entitle the plaintiff to a judgment for
28 such damages.
29 b. The claim for punitive or exemplary damages was
30 maintained after it was reasonably evident that there
31 were insufficient facts and evidence to reasonably
32 entitle the plaintiff to a judgment for such damages."

BY SKOW of Guthrie
PETERSEN of Muscatine
MUHLBAUER of Crawford
H-5745 FILED APRIL 8, 1986

HARBOR of Mills
FOGARTY of Palo Alto
COOPER of Lucas
DE GROOT of Lyon

Adopted 4/9 (J. 1334) Motion to reconsider lost (J. 1359)

SENATE FILE 2265

H-5746

1 Amend amendment H-5575 to Senate File 2265 as amended,
2 passed and reprinted by the Senate as follows:
3 1. By striking page 13, line 16 through page 14,
4 line 22, and inserting the following:
5 "Punitive or exemplary damages shall not be
6 available."

BY HUMMEL of Benton
CLARK of Cerro Gordo

H-5746 FILED APRIL 8, 1986
Placed o/o 4/9 (J. 1334)

SENATE FILE 2265

H-5782

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 5, by inserting after line 50 the
6 following:
7 "This subsection does not apply to acts or
8 omissions which constitute gross negligence amounting
9 to a willful and wanton disregard for the rights or
10 safety of others. However, an act or omission shall
11 not be deemed to constitute gross negligence amounting
12 to a willful and wanton disregard for the rights or
13 safety of others if the state has made all reasonable
14 efforts to meet its policy or level of service for
15 such financial regulation, considering the
16 availability or unavailability of fiscal or personnel
17 resources."

H-5782 FILED APRIL 9, 1986 BY JAY of Appanoose

LOST (p. 1359)

SENATE FILE 2265

S-5713

Amend the House amendment, S-5684, to Senate File 2265 as amended, passed, and reprinted by the Senate, as follows:

1. Page 1, line 17, by striking the words "or private".

2. Page 4, by inserting after line 26, the following:

"Sec. ___. 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."

4. Page 4, line 39, by striking the words "or sold and delivered".

5. Page 5, by striking lines 5 through 12.

6. Page 10, line 34, by striking the word "DISCLOSURE" and inserting the words "COLLECTION AND ANALYSIS".

7. Page 10, line 36, by striking the word "shall" and inserting the word "may".

8. Page 10, line 37, by inserting after the word "of" the words "necessary additional".

9. Page 10, line 46, by inserting after the figure "507D.3." the following:

"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."

10. Page 11, line 48, by striking the word "section" and inserting the words and figure "sections 507D.2 and".

11. Page 12, by striking lines 33 through 45.

12. By striking page 12, line 46, through page

13, line 2.

13. By striking page 13, line 35, through page 14, line 4.

14. Page 15, by striking lines 13 through 25.

15. Page 15, by striking lines 42 and 43, and inserting the following: "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."

16. Page 16, line 30, by striking the words "for future damages".

17. Page 16, line 33, by striking the word "shall" and inserting the word "may".

18. Page 16, lines 34 and 35, by striking the words "for future damages".

19. By striking page 17, line 43, through page 18, line 19.

20. By striking page 18, line 20, through page 20, line 44, and inserting the following:

"Sec. ___. 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

1 damages awarded may be ordered paid to the claimant,
2 with the remainder of the award to be ordered paid
3 into a civil reparations trust fund administered by
4 the state court administrator. Funds placed in the
5 civil reparations trust shall be under the control and
6 supervision of the executive council, and shall be
7 disbursed only for purposes of indigent civil
8 litigation programs or insurance assistance programs.
9 3. The mere allegation or assertion of a claim for
10 punitive damages shall not form the basis for
11 discovery of the wealth or ability to respond in
12 damages on behalf of the party from whom punitive
13 damages are claimed until such time as the claimant
14 has established that sufficient admissible evidence
15 exists to support a prima facie case establishing the
16 requirements of subsection 1, paragraph "a"."
17 21. Page 21, by inserting before line 27 the
18 following:
19 "Sec. ___. 1986 Iowa Acts, House File 2442, is
20 amended by adding the following new section:
21 Sec. 2. This Act takes effect July 1, 1987."
22 22. Page 21, line 30, by striking the word
23 "sixteen" and inserting the words "twelve voting
24 members and two ex officio".
25 23. Page 21, line 32, by striking the word
26 "Three" and inserting the word "Two".
27 24. Page 21, line 34, by striking the word
28 "Three" and inserting the word "Two".
29 25. Page 21, line 49, by inserting after the word
30 "designee" the words ", who shall be an ex officio
31 member".
32 26. Page 22, line 1, by inserting after the word
33 "designee" the words ", who shall be an ex officio
34 member".
35 27. Page 22, line 21, by striking the word
36 "litigation" and inserting the word "litigating".
37 28. Page 22, by striking lines 38 through 44.
38 29. Page 22, line 47, by inserting after the word
39 "council" the following: "shall authorize the
40 legislative fiscal bureau and the legislative service
41 bureau to provide assistance to the study commission
42 and".
43 30. Page 23, by striking lines 20 through 47.
44 31. By numbering, renumbering, and relettering as
45 necessary.

S-5713 Filed April 18, 1986 BY PALMER, SMALL, DOYLE, MANN

A- Lost 4/21/86 (p. 1312)
B- Adopted (p. 1312)
C- Adopted (p. 1313)
D- Adopted (p. 1313)
E- Ruled not germane 4/21 (p. 1314)

SENATE 5
April 23, 1986

SENATE FILE 2265

S-5726

1 Amend the House amendment S-5684 to Senate File
2 2265 as amended, passed and reprinted by the Senate
3 as follows:
4 1. Page 13, by striking lines 42 through 44, and
5 inserting in lieu thereof the following: "license or
6 permit was issued, unless the officer or employee com-
7 mitted a criminal offense, or knew of the danger to be
8 apprehended, and knew that there was a high probability
9 that persons would be injured if the condition were not
10 remedied, and still willfully failed to act to have the
11 condition remedied."
12 2. Page 14, by striking lines 2 through 4, and in-
13 serting in lieu thereof the following: "municipality,
14 license or permit was issued, unless the officer or
15 employee committed a criminal offense, or knew of the
16 danger to be apprehended, and knew that there was a high
17 probability that persons would be injured if the condition
18 were not remedied, and still willfully failed to act to
19 have the condition remedied."

S-5726 Filed April 22, 1986
BY SMALL
x/o 4/22 (J. 1331)

WITHDRAWN

SENATE FILE 2265

S-5721

1 Amend the House amendment, S-5684, to Senate File
2 2265, as amended, passed and reprinted by the Senate,
3 as follows:
4 1. Page 24, by inserting after line 14, the
5 following:
6 "___. By striking title page 1, line 1 through
7 title page 2, line 8, and inserting the following:
8 "An Act relating to liability and liability insurance,
9 providing penalties, and providing for publication and
10 effective dates.""

S-5721 Filed April 21, 1986
MANN
Adopted 4/22 (p. 1330)

SENATE FILE 2265

S-5225

1 Amend the House amendment S-5684, to Senate File
2 2265, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 21, line 8, by inserting after the word A
5 "fault" the following: "under section 668.3,
6 subsection 1, Code 1985".
7 2. Page 21, line 24, by striking the word "five" B
8 and inserting the word "fifteen".

S-5225 Filed April 22, 1986 A adopted B lost
BY DRAKE
A - Adopted, B - Lost (p. 1329)

SENATE FILE 2265

S-5724

1 Amend the House amendment, S-5684, to Senate File
2 2265, as amended, passed and reprinted by the Senate,
3 as follows:
4 1. Page 22, line 31, by inserting after the word
5 "property." the following: "Legislation enacted
6 during the second session of the Seventy-first General
7 Assembly which creates a statute of repose relating to
8 improvements to real property shall have no judicial
9 force or effect until such time as this review and
10 report is received."

S-5724 Filed April 22, 1986 OUT OF ORDER
BY MANN

SENATE FILE 2265

S-5717

1 Amend the House amendment, H-5684, to Senate File
2 2265, as amended, passed and reprinted by the Senate,
3 as follows:
4 1. Page 22, by inserting after line 20, the
5 following:
6 "(5) Review and report on the advisability of
7 implementing a claims-made form of insurance
8 practice."

S-5717 Filed April 21, 1986
BY GENTLEMAN
Adopted 4/22 (J. 1329)

SENATE FILE 2265

S-5719

1 Amend the House amendment S-5684 to Senate File
2 2265 as amended, passed and reprinted by the Senate
3 as follows:
4 1. By striking page 20, line 45 through page 21,
5 line 26 and inserting the following:
6 "Sec.___. Section 321.445, Code 1985, as amended by
7 1986 Iowa Acts, Senate File 499, section 2, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. Except as provided under section
10 321.446, the nonuse of a safety belt or safety harness by
11 a person when not required to wear a safety belt or
12 safety harness under subsection 2 or by a person in a
13 cause of action arising prior to July 1, 1986, shall not
14 be admissible or material as evidence in a civil action
15 brought for damages."

S-5719 Filed April 21, 1986
BY DRAKE
Placed o/o 4/22 (J. 1329)

SENATE FILE 2265

S-5720

1 Amend the House amendment S-5684 to Senate File
2 2265 as amended, passed and reprinted by the Senate
3 as follows:
4 1. Page 13, line 43, by striking the words "actual
5 malice" and inserting in lieu thereof the words "gross
6 negligence".
7 2. Page 14, line 3, by striking the words "actual
8 malice" and inserting in lieu thereof the words "gross
9 negligence".

S-5720 Filed April 21, 1986
BY GRONSTAL
Lost 4/22 (J. 1329)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 2265
H-5965

1 Amend the House amendment S-5684, to Senate File
2 2265, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 1, line 17, by striking the words "or
5 private".
6 2. Page 4, by inserting after line 26, the
7 following:
8 "Sec. ___. Section 123.49, subsection 1, Code
9 Supplement 1985, is amended to read as follows:
10 1. A person shall not sell, dispense, or give to
11 ~~any~~ an intoxicated person, or one simulating
12 intoxication, any alcoholic liquor, wine, or beer.
13 a. A person other than a person required to hold a
14 license or permit under this chapter who dispenses or
15 gives an alcoholic beverage, wine, or beer in
16 violation of this subsection is not civilly liable to
17 an injured person or the estate of a person for
18 injuries inflicted on that person as a result of
19 intoxication by the consumer of the alcoholic
20 beverage, wine, or beer.
21 b. The general assembly declares that this
22 subsection shall be interpreted so that the holding of
23 Clark v. Mincks, 364 N.W.2d. 226 (Iowa 1985) is
24 abrogated in favor of prior judicial interpretation
25 finding the consumption of alcoholic beverages, wine,
26 or beer rather than the serving of alcoholic
27 beverages, wine, or beer as the proximate cause of
28 injury inflicted upon another by an intoxicated
29 person."
30 3. Page 4, line 39, by striking the words "or
31 sold and delivered".
32 4. Page 5, by striking lines 5 through 12.
33 5. Page 10, line 34, by striking the word
34 "DISCLOSURE" and inserting the words "COLLECTION AND
35 ANALYSIS".
36 6. Page 10, line 36, by striking the word "shall"
37 and inserting the word "may".
38 7. Page 10, line 37, by inserting after the word
39 "of" the words "necessary additional".
40 8. Page 10, line 46, by inserting after the
41 figure "507D.3." the following:
42 "The commissioner shall provide for the analysis of
43 such information gathered pursuant to this or any
44 other section and shall make such analysis available
45 to the general assembly on an annual basis."
46 9. Page 11, line 48, by striking the word
47 "section" and inserting the words and figure "sections
48 507D.2 and".
49 10. Page 12, by striking lines 33 through 45.
50 11. By striking page 12, line 46, through page

1 13, line 2.
2 12. Page 15, by striking lines 42 and 43, and
3 inserting the following: "counterclaim or cross-
4 petition. However, a party filing the petition,
5 original notice, counterclaim, or cross-petition shall
6 certify to the court that the action meets applicable
7 jurisdictional requirements for amount in
8 controversy."
9 13. Page 16, line 30, by striking the words "for
10 future damages".
11 14. Page 16, line 33, by striking the word
12 "shall" and inserting the word "may".
13 15. Page 16, lines 34 and 35, by striking the
14 words "for future damages".
15 16. By striking page 17, line 43, through page
16 18, line 19.
17 17. By striking page 18, line 20, through page
18 20, line 44, and inserting the following:
19 "Sec. ___. NEW SECTION. 668A.1 PUNITIVE OR
20 EXEMPLARY AWARDS.
21 1. In a trial of a claim involving the request for
22 punitive or exemplary damages, the court shall
23 instruct the jury to answer special interrogatories
24 or, if there is no jury, shall make findings,
25 indicating all of the following:
26 a. Whether the conduct of the defendant from which
27 the claim arose constituted willful and wanton
28 disregard for the rights or safety of another.
29 b. Whether the conduct of the defendant was
30 directed specifically at the claimant, or at the
31 person from which the claimant's claim is derived.
32 2. An award for punitive or exemplary damages
33 shall not be made unless the answer or finding
34 pursuant to subsection 1, paragraph "a", is
35 affirmative. If such answer or finding is
36 affirmative, the jury, or court if there is no jury,
37 shall fix the amount of punitive or exemplary damages
38 to be awarded, and such damages shall be ordered paid
39 as follows:
40 a. If the answer or finding pursuant to subsection
41 1, paragraph "b", is affirmative, the full amount of
42 the punitive or exemplary damages awarded shall be
43 paid to the claimant.
44 b. If the answer or finding pursuant to subsection
45 1, paragraph "b", is negative, after payment of all
46 applicable costs and fees, an amount not to exceed
47 twenty-five percent of the punitive or exemplary
48 damages awarded may be ordered paid to the claimant,
49 with the remainder of the award to be ordered paid
50 into a civil reparations trust fund administered by

1 the state court administrator. Funds placed in the
2 civil reparations trust shall be under the control and
3 supervision of the executive council, and shall be
4 disbursed only for purposes of indigent civil
5 litigation programs or insurance assistance programs.
6 3. The mere allegation or assertion of a claim for
7 punitive damages shall not form the basis for
8 discovery of the wealth or ability to respond in
9 damages on behalf of the party from whom punitive
10 damages are claimed until such time as the claimant
11 has established that sufficient admissible evidence
12 exists to support a prima facie case establishing the
13 requirements of subsection 1, paragraph "a"."
14 18. Page 21, line 8, by inserting after the word
15 "fault" the following: "under section 668.3,
16 subsection 1, Code 1985".
17 19. Page 21, line 30, by striking the word
18 "sixteen" and inserting the words "twelve voting
19 members and two ex officio".
20 20. Page 21, line 32, by striking the word
21 "Three" and inserting the word "Two".
22 21. Page 21, line 34, by striking the word
23 "Three" and inserting the word "Two".
24 22. Page 21, line 49, by inserting after the word
25 "designee" the words ", who shall be an ex officio
26 member".
27 23. Page 22, line 1, by inserting after the word
28 "designee" the words ", who shall be an ex officio
29 member".
30 24. Page 22, by inserting after line 20, the
31 following:
32 "(5) Review and report on the advisability of
33 implementing a claims-made form of insurance
34 practice."
35 25. Page 22, line 21, by striking the word
36 "litigation" and inserting the word "litigating".
37 26. Page 22, by striking lines 38 through 44.
38 27. Page 22, line 47, by inserting after the word
39 "council" the following: "shall authorize the
40 legislative fiscal bureau and the legislative service
41 bureau to provide assistance to the study commission
42 and".
43 28. Page 23, by striking lines 20 through 47.
44 29. Page 24, by inserting after line 14, the
45 following:
46 "___. By striking title page 1, line 1 through
47 title page 2, line 8, and inserting the following:
48 "An Act relating to liability and liability insurance,
49 providing penalties, and providing for publication and
50 effective dates.""

H-5965
Page Four

1 30. By renumbering, relettering, or redesignating
2 and correcting internal references as necessary.

H-5965 FILED APRIL 23, 1986 RECEIVED FROM THE SENATE
House concurred 4/29 (J. 1905)

HOUSE AMENDMENT TO

SENATE FILE 2265

S-5684

1 Amend Senate File 2265 as amended, passed and
2 reprinted by the Senate as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. Section 18.164, subsection 2,
6 unnumbered paragraph 1, Code 1985, is amended to read
7 as follows:
8 The division may shall develop programs for the
9 management of loss and loss exposures of governmental
10 subdivisions which may include, but shall not be
11 limited to, the following:
12 Sec. 2. Section 18.164, Code 1985, is amended by
13 adding the following new subsections:
14 NEW SUBSECTION. 3. The division shall develop and
15 implement a market assistance program to facilitate,
16 arrange, or provide for the acquisition of insurance
17 coverage for all public or private entities deemed to
18 be essential to the public welfare and for which it is
19 determined that present coverage is unavailable,
20 unreasonable, or unacceptable.
21 NEW SUBSECTION. 4. The division shall provide
22 technical advice and assistance, upon request, to
23 governmental subdivisions and public and private
24 entities identified under subsection 3 seeking to
25 utilize alternative financing methods to develop a
26 stable pool of funds with which to insure and reinsure
27 risk exposures, including administrative and personnel
28 support for entities seeking to utilize state
29 financing, or combination financing under chapter 28E.
30 Sec. 3. Section 18.165, subsection 1, paragraph b,
31 Code 1985, is amended to read as follows:
32 b. Bonding of state employees shall be re-
33 evaluated, and uniform standards shall be adopted for
34 the purchase of all fidelity bonds recommended for
35 state employees. To the extent possible, all bonded
36 state employees shall be covered under one or more
37 blanket bonds or position schedule bonds. In carrying
38 out the requirements of section 64.6, the state may
39 purchase an individual or a blanket surety bond
40 insuring the fidelity of state officers ~~subject to the~~
41 ~~minimum surety bond requirements of section 64.6. A~~
42 ~~state officer listed in section 64.6 is deemed to have~~
43 ~~furnished surety if the officer is covered by a~~
44 ~~blanket bond purchased as provided in this paragraph.~~
45 The risk management division may self assume or self
46 insure fidelity exposures for state officials and
47 employees. A state official is deemed to have
48 furnished surety if the official has been covered by
49 any program of insurance or self insurance established
50 by the risk management division.

1 Sec. 4. Section 18.165, subsection 2, Code 1985,
2 is amended to read as follows:
3 2. The division ~~may~~ shall develop programs
4 relating to governmental subdivisions which shall be
5 subject to the following guidelines:
6 a. Participation by a governmental subdivision in
7 any risk management program offered by the division
8 shall be by contract or on a voluntary basis.
9 b. The division shall not be required to negotiate
10 or purchase insurance coverage for any governmental
11 subdivision, as permitted by sections 18.160 to
12 18.169, which fails to comply with standards adopted
13 by the division and may cancel coverage already
14 negotiated or purchased upon determination of such
15 failure.
16 c. Risk management programs may treat loss and
17 risk exposures of governmental subdivisions
18 individually, or on a group basis, or both.
19 Sec. 5. Section 18.166, Code 1985, is amended to
20 read as follows:
21 18.166 PURCHASE OF INSURANCE.
22 1. The department shall be the exclusive
23 contracting agency for the purchase of insurance
24 coverage for state loss and risk exposure except for
25 revenue producing facilities under the state board of
26 regents which have to comply with bond covenants.
27 2. The ~~department~~ division may upon request
28 negotiate with insurers on behalf of governmental
29 subdivisions unable to obtain reasonable or acceptable
30 insurance coverage for the purchase of insurance
31 coverage.
32 3. The department may purchase such contracts of
33 insurance, and may contract with such insurers, as are
34 within the standards prescribed by the risk management
35 division. Funding for the purchase of insurance shall
36 be provided by a specific and separate appropriation
37 provided solely for this purpose.
38 4. The ~~department~~ division may ~~acquire~~ facilitate,
39 arrange, or provide for the acquisition of insurance
40 coverage on behalf of one or more governmental
41 subdivisions upon request. Any insurance contract
42 negotiated by the department may include coverage or
43 coverages for state loss or risk exposures and for the
44 loss or risk exposures of one or more governmental
45 subdivisions, or for any combination thereof.
46 5. The director of the department of general
47 services may act as attorney in fact under section
48 520.2 for governmental subdivisions executing
49 reciprocal or interinsurance contracts under chapter
50 520.

1 6. The department of general services or the
2 division shall not charge governmental subdivisions
3 for risk management services.--However,-the-department
4 shall-not-expend-state-funds-for-the-purchase-of
5 insurance-coverage-for-any-governmental-subdivision,
6 but may charge for the reimbursement of expenses
7 incurred in facilitating, arranging, or acquiring
8 insurance coverage.
9 Sec. 6. Section 18.168, Code 1985, is amended to
10 read as follows:
11 18.168 ACCESS TO STATE RECORDS.
12 1. The division shall be given full assistance and
13 co-operation by every state agency and its officers
14 and employees. Each agency shall provide to the
15 division all requested loss and loss exposure
16 information, and shall comply with all standards and
17 directives of the division and of the department
18 relating to the administration of sections 18.160 to
19 18.169 except as herein provided.
20 2. A governmental subdivision or other public or
21 private entity requesting the assistance of the
22 division shall, as a prerequisite to the assistance,
23 provide the division with full cooperation and all
24 requested loss and loss exposure information, and
25 shall comply with all standards and directives of the
26 division relating to the administration of sections
27 18.160 through 18.169.
28 3. Information provided pursuant to this section
29 shall be maintained in a separate confidential file,
30 notwithstanding chapter 22.
31 Sec. 7. Section 18.169, Code 1985, is amended by
32 striking the section and inserting in lieu thereof the
33 following:
34 18.169 ANNUAL REPORT -- LONG RANGE PLANNING.
35 The division shall:
36 1. Annually submit to the general assembly a
37 report containing the findings and recommendations of
38 the division, setting out the standards adopted, and
39 making recommendations for those statutory changes
40 which are necessary to implement or permit the
41 implementation of standards proposed by the division.
42 The report shall include a summary of the division's
43 annual costs of operation, the risks covered, and the
44 premiums paid.
45 2. Initiate continuing discussion and programming
46 with public and private financing agencies and other
47 interested entities regarding the feasibility and
48 establishment of a continuing source of funds to serve
49 as a reinsurance pool for public and private entities
50 essential to the public welfare.

1 Sec. 8. Section 25A.14, Code 1985, is amended by
2 adding the following new subsection:
3 NEW SUBSECTION. 11. Any claim for financial loss
4 based upon an act or omission in financial regulation,
5 including but not limited to examinations,
6 inspections, audits, or other financial oversight
7 responsibilities, pursuant to Titles XIX through
8 XXIII.
9 Sec. 9. Section 25A.14, Code 1985, is amended by
10 adding the following new unnumbered paragraph:
11 NEW UNNUMBERED PARAGRAPH. Subsection 11 of this
12 section applies to all cases filed on or after July 1,
13 1986, and does not expand any existing cause of action
14 or create any new cause of action against the state.
15 Sec. 10. Section 64.6, Code Supplement 1985, is
16 amended by striking the section and inserting in lieu
17 thereof the following:
18 64.6 STATE OFFICERS -- BONDS.
19 State officials are not required to obtain bonds,
20 but may be covered under a blanket bond for state
21 employees. The blanket bond purchases shall be made
22 in an amount and with the level of assumption of risk
23 by the state that is determined by the risk management
24 division of the department of general services. The
25 state shall pay the reasonable cost of bonds under
26 this section.
57/3
27 Sec. 11. Section 123.92, Code Supplement 1985, is
28 amended to read as follows:
29 123.92 CIVIL LIABILITY FOR SALE ~~OR GIFT~~ AND
30 SERVICE OF BEER, WINE, OR INTOXICATING LIQUOR
31 (DRAMSHOP ACT).
32 ~~Every husband, wife, child, parent, guardian,~~
33 ~~employer or other person~~ Any person who is injured in
34 person or property or means of support by ~~any~~ an
35 intoxicated person or resulting from the intoxication
36 of ~~any~~ a person, has a right of action for all damages
37 actually sustained, severally or jointly, against any
38 licensee or permittee, who ~~sells or gives~~ sold and
57/3 39 served or sold and delivered any beer, wine, or
40 intoxicating liquor to ~~a~~ the intoxicated person ~~while~~
41 ~~the person is~~ when the licensee or permittee knew or
42 should have known the person was intoxicated, or
43 ~~serves a~~ who sold to and served the person to a point
44 where the ~~person is~~ licensee or permittee knew or
45 should have known the person would become intoxicated.
46 If the injury was caused by an intoxicated person, a
47 permittee or licensee may establish as an affirmative
48 defense that the intoxication did not contribute to
49 the injurious action of the person.
50 Every liquor control licensee and class "B" beer

1 permittee shall furnish proof of financial
2 responsibility either by the existence of a liability
3 insurance policy or by posting bond in such amount as
4 determined by the department.
5 The department shall issue to each licensee and
6 permittee a scientific chart showing the relationship
7 between beer, wine, or intoxicating liquor consumed,
8 body weight, and resulting blood alcohol content, and
9 each licensee and permittee shall instruct all persons
10 under their supervision and control, who serve or have
11 the authority to serve beer, wine, or intoxicating
12 liquor, in the use of such chart.
13 Sec. 12. Section 147.1, subsection 6, Code
14 Supplement 1985, is amended by adding the following
15 new lettered paragraph:
16 NEW LETTERED PARAGRAPH. e. The board of trustees
17 of a licensed hospital when performing a function
18 relating to the reporting required by section 147.135,
19 subsection 3.
20 Sec. 13. Section 147.135, Code 1985, is amended by
21 numbering the current unnumbered paragraph as
22 subsection 1 and by adding the following new
23 subsections:
24 NEW SUBSECTION. 2. As used in this subsection,
25 "peer review records" means all complaint files,
26 investigation files, reports, and other investigative
27 information relating to licensee discipline or
28 professional competence in the possession of a peer
29 review committee or an employee of a peer review
30 committee. As used in this subsection, "peer review
31 committee" does not include examining boards. Peer
32 review records are privileged and confidential, are
33 not subject to discovery, subpoena, or other means of
34 legal compulsion for release to a person other than an
35 affected licensee or a peer review committee and are
36 not admissible in evidence in a judicial or
37 administrative proceeding other than a proceeding
38 involving licensee discipline or a proceeding brought
39 by a licensee who is the subject of a peer review
40 record and whose competence is at issue. A person
41 shall not be liable as a result of filing a report or
42 complaint with a peer review committee or providing
43 information to such a committee, or for disclosure of
44 privileged matter to a peer review committee. A
45 person present at a meeting of a peer review committee
46 shall not be permitted to testify as to the findings,
47 recommendations, evaluations, or opinions of the peer
48 review committee in any judicial or administrative
49 proceeding other than a proceeding involving licensee
50 discipline or a proceeding brought by a licensee who

1 is the subject of a peer review committee meeting and
2 whose competence is at issue. Information or
3 documents discoverable from sources other than the
4 peer review committee do not become nondiscoverable
5 from the other sources merely because they are made
6 available to or are in the possession of a peer review
7 committee. However, such information relating to
8 licensee discipline may be disclosed to an appropriate
9 licensing authority in any jurisdiction in which the
10 licensee is licensed or has applied for a license. If
11 such information indicates a crime has been committed,
12 the information shall be reported to the proper law
13 enforcement agency. This subsection shall not
14 preclude the discovery of the identification of
15 witnesses or documents known to a peer review
16 committee. Any final written decision and finding of
17 fact by a licensing board in a disciplinary proceeding
18 is a public record. Upon appeal by a licensee of a
19 decision of a licensing board, the entire case record
20 shall be submitted to the reviewing court. In all
21 cases where privileged and confidential information
22 under this subsection becomes discoverable,
23 admissible, or part of a court record the identity of
24 an individual whose privilege has been involuntarily
25 waived shall be withheld.
26 NEW SUBSECTION. 3. A full and confidential report
27 concerning any final hospital disciplinary action
28 approved by a hospital board of trustees that results
29 in a limitation, suspension, or revocation of a
30 physician's privilege to practice for reasons relating
31 to the physician's professional competence or
32 concerning any voluntary surrender or limitation of
33 privileges for reasons relating to professional
34 competence shall be made to the board of medical
35 examiners by the hospital administrator or chief of
36 medical staff within ten days of such action. The
37 board of medical examiners shall investigate the
38 report and take appropriate action. These reports
39 shall be privileged and confidential as though
40 included in and subject to the requirements for peer
41 review committee information in subsection 2. Persons
42 making these reports and persons participating in
43 resulting proceedings related to these reports shall
44 be immune from civil liability with respect to the
45 making of the report or participation in resulting
46 proceedings. As used in this subsection, "physician"
47 means a person licensed pursuant to chapter 148,
48 chapter 150, or chapter 150A.
49 Sec. 14. Section 258A.6, subsection 4, unnumbered
50 paragraph 1, Code 1985, is amended to read as follows:

1 In order to assure a free flow of information for
2 accomplishing the purposes of this section, and
3 notwithstanding section 622.10, all complaint files,
4 investigation files, other investigation reports, and
5 other investigative information in the possession of a
6 licensing board or peer review committee acting under
7 the authority of a licensing board or its employees or
8 agents which relates to licensee discipline are
9 privileged and confidential, and are not subject to
10 discovery, subpoena, or other means of legal
11 compulsion for their release to a person other than
12 the licensee and the boards, their employees and
13 agents involved in licensee discipline, and are not
14 admissible in evidence in a judicial or administrative
15 proceeding other than the proceeding involving
16 licensee discipline. However, investigative
17 information in the possession of a licensing board or
18 its employees or agents which relates to licensee
19 discipline may be disclosed to the appropriate
20 licensing ~~authority in another~~ authorities within this
21 state, the appropriate licensing authority in another
22 state, the District of Columbia, or a territory or
23 country in which the licensee is licensed or has
24 applied for a license. If the investigative
25 information in the possession of a licensing board or
26 its employees or agents indicates a crime has been
27 committed, the information shall be reported to the
28 proper law enforcement agency. However, a final
29 written decision and finding of fact of a licensing
30 board in a disciplinary proceeding, including a
31 decision referred to in section 258A.3, subsection 4,
32 is a public record.
33 Sec. 15. NEW SECTION. 147.139 EXPERT WITNESS
34 STANDARDS.
35 If the standard of care given by a physician and
36 surgeon licensed pursuant to chapter 148, or
37 osteopathic physician and surgeon licensed pursuant to
38 chapter 150A, or a dentist licensed pursuant to
39 chapter 153, is at issue, the court shall only allow a
40 person to qualify as an expert witness and to testify
41 on the issue of the appropriate standard of care if
42 the person's medical or dental qualifications relate
43 directly to the medical problem or problems at issue
44 and the type of treatment administered in the case.
45 Sec. 16. NEW SECTION. 148.12 VOLUNTARY
46 AGREEMENTS.
47 The medical examiners, after due notice and
48 hearing, may direct the commissioner of health to
49 issue an order to revoke, suspend, or restrict a
50 license to practice medicine and surgery, osteopathic

1 medicine and surgery, or osteopathy, or to issue a
2 restricted license on application if, after a hearing,
3 the medical examiners determine that a physician
4 licensed to practice medicine and surgery, osteopathic
5 medicine and surgery, or osteopathy, or an applicant
6 for licensure has entered into a voluntary agreement
7 to restrict the practice of medicine and surgery,
8 osteopathic medicine and surgery, or osteopathy in
9 another state, district, territory, or country. A
10 certified copy of the voluntary agreement shall be
11 considered conclusive or prima facie evidence.
12 Sec. 17. NEW SECTION. 296.7 INDEBTEDNESS FOR
13 INSURANCE AUTHORIZED -- TAX LEVY.
14 A school district or merged area school corporation
15 is authorized to contract indebtedness and to issue
16 general obligation bonds or enter into insurance
17 agreements obligating the school district or
18 corporation to make payments beyond its current budget
19 year to procure or provide for a policy of insurance,
20 a self insurance program, or a local government risk
21 pool to protect the school district or corporation
22 from tort liability, loss of property, or any other
23 risk associated with the operation of the school
24 district or corporation. Taxes for the payment of the
25 principal, premium, or interest on such a bond, the
26 payment of such an insurance policy, the payment of
27 the costs of such a self insurance program, the
28 payment of the costs of such a local government risk
29 pool, and the payment of any amounts payable under any
30 such insurance agreement may be levied in excess of
31 any tax limitation imposed by statute. Such a self
32 insurance program or local government risk pool is not
33 insurance and is not subject to regulation under
34 chapters 505 through 523C. However, those self-
35 insurance plans regulated pursuant to section 509A.14
36 shall remain subject to the requirements of section
37 509A.14 and rules adopted pursuant to that section.
38 Sec. 18. Section 331.301, Code Supplement 1985, is
39 amended by adding the following new subsections:
40 NEW SUBSECTION. 11. A county may enter into
41 insurance agreements obligating the county to make
42 payments beyond its current budget year to procure or
43 provide for a policy of insurance, a self insurance
44 program, or a local government risk pool to protect
45 the county against tort liability, loss of property,
46 or any other risk associated with the operation of the
47 county. Such a self insurance program or local
48 government risk pool is not insurance and is not
49 subject to regulation under chapters 505 through 523C.
50 However, those self-insurance plans regulated pursuant

1 to section 509A.14 shall remain subject to the
2 requirements of section 509A.14 and rules adopted
3 pursuant to that section.
4 NEW SUBSECTION. 12. The board of supervisors may
5 credit funds to a reserve for the purposes authorized
6 by section 331.301, subsection 11; section 331.424,
7 subsection 1, paragraph 1; and section 331.441,
8 subsection 2, paragraph "b". Moneys credited to the
9 reserve, and interest earned on such moneys, shall
10 remain in the reserve until expended for purposes
11 authorized by section 331.301, subsection 11; section
12 331.424, subsection 1, paragraph "l"; or section
13 331.441, subsection 2, paragraph "b".
14 Sec. 19. Section 331.424, subsection 1, paragraph
15 1, Code 1985, is amended by striking the paragraph and
16 inserting in lieu thereof the following:
17 1. Tort liability insurance, property insurance,
18 and any other insurance that may be necessary in the
19 operation of the county, costs of a self insurance
20 program, costs of a local government risk pool, and
21 amounts payable under any insurance agreements to
22 provide or procure such insurance, self insurance
23 program, or local government risk pool.
24 Sec. 20. Section 331.441, subsection 2, paragraph
25 b, Code 1985, is amended by adding the following new
26 subparagraph:
27 NEW SUBPARAGRAPH. (8) The provision of insurance,
28 or funding a self insurance program or local
29 government risk pool, including but not limited to the
30 investigation and defense of claims, the payment of
31 claims, and the administration and management of such
32 self insurance program or local government risk pool.
33 Sec. 21. Section 364.4, Code Supplement 1985, is
34 amended by adding the following new subsection:
35 NEW SUBSECTION. 5. Enter into insurance
36 agreements obligating the city to make payments beyond
37 its current budget year to procure or provide for a
38 policy of insurance, a self insurance program, or a
39 local government risk pool to protect the city against
40 tort liability, loss of property, or any other risk
41 associated with the operation of the city. Such a
42 self insurance program or local government risk pool
43 is not insurance and is not subject to regulation
44 under chapters 505 through 523C. However, those self-
45 insurance plans regulated pursuant to section 509A.14
46 shall remain subject to the requirements of section
47 509A.14 and rules adopted pursuant to that section.
48 Sec. 22. Section 384.12, subsection 18, Code
49 Supplement 1985, is amended by striking the subsection
50 and inserting in lieu thereof the following:

1 18. A tax to pay the premium costs on tort
2 liability insurance, property insurance, and any other
3 insurance that may be necessary in the operation of
4 the city, the costs of a self insurance program, the
5 costs of a local government risk pool and amounts
6 payable under any insurance agreements to provide or
7 procure such insurance, self insurance program, or
8 local government risk pool.
9 Sec. 23. Section 384.24, subsection 3, Code 1985,
10 is amended by adding the following new lettered
11 paragraph:
12 NEW LETTERED PARAGRAPH. s. The provision of
13 insurance, or funding a self insurance program or
14 local government risk pool, including but not limited
15 to the investigation and defense of claims, the
16 establishment of reserve funds for claims, the payment
17 of claims, and the administration and management of
18 such self insurance program or local government risk
19 pool.
20 Sec. 24. NEW SECTION. 384.110 INSURANCE, SELF-
21 INSURANCE, AND RISK POOLING FUNDS.
22 A city may credit funds to a fund or funds for the
23 purposes authorized by section 364.4, subsection 5;
24 section 384.12, subsection 18; or section 384.24,
25 subsection 3, paragraph "s". Moneys credited to the
26 fund or funds, and interest earned on such moneys,
27 shall remain in the fund or funds until expended for
28 purposes authorized by section 364.4, subsection 5;
29 section 384.12, subsection 18; or section 384.24,
30 subsection 3, paragraph "s".
31 Sec. 25. NEW SECTION. 507D.1 SHORT TITLE.
32 This Act shall be known as the "Insurance
33 Assistance Act".
34 Sec. 26. NEW SECTION. 507D.2 DISCLOSURE OF
35 INFORMATION.
36 The commissioner of insurance shall adopt rules
37 pursuant to chapter 17A for the collection of
38 information relating to the availability, obtain-
39 ability, costs, profits, and losses associated with
40 the provision of property, casualty, product,
41 professional, or other liability insurance within the
42 state, and relating to the feasibility and
43 implementation of market assistance programs,
44 mandatory risk allocation programs, risk-sharing
45 programs, risk management programs, or any other
46 authorized program under section 507D.3.
47 Sec. 27. NEW SECTION. 507D.3 AUTHORIZED
48 ASSISTANCE PROGRAMS.
49 The commissioner of insurance is authorized to
50 institute programs, order the institution of programs

1 within the private sector, or to contract with or
2 delegate authority to the risk management division of
3 the department of general services for the institution
4 of programs relating to insurance assistance
5 including, but not limited to, the following:
6 1. The development and implementation of a market
7 assistance program to facilitate, arrange, or provide
8 for the acquisition of property, casualty, product,
9 professional, or other liability insurance coverage
10 for all persons or entities seeking such coverage but
11 for which the coverage is presently unavailable or
12 unobtainable to the person or entity.
13 2. The development and implementation of a
14 mandatory risk allocation system for property,
15 casualty, product, professional, or other liability
16 insurance, except asbestos and environmental
17 impairment liability, in order to assure that all
18 persons or entities for which such insurance is
19 essential may obtain such insurance from insurers
20 authorized to do business within this state.
21 3. The development and implementation of a risk-
22 sharing program to assist and advise persons or
23 entities seeking property, casualty, product,
24 professional, or other liability insurance, except
25 asbestos and environmental impairment liability, on
26 the most efficient manner in which to share or pool
27 similar risks in order to obtain essential insurance
28 coverage at the minimum cost.
29 4. The development and implementation of a risk
30 management program for persons or entities to which
31 property, casualty, product, professional, or other
32 liability insurance is essential, such program to
33 include at a minimum the following:
34 a. Assistance in developing and maintaining loss
35 and loss exposure data on such liability risks.
36 b. Recommendations regarding risk reduction and
37 risk elimination programs.
38 c. Recommendations of those practices which will
39 permit protection against such losses at the lowest
40 costs, consistent with good underwriting practices and
41 sound risk management techniques.
42 5. Subsections 2 and 3 shall have no application
43 or effect after July 1, 1991.
44 Sec. 28. NEW SECTION. 507D.4 FINANCING OF
45 ASSISTANCE PROGRAMS.
46 The insurance commissioner may, by rule, provide
47 for the financing, as necessary, for any or all
S7/3 48 programs under section 507D.3 by the assessment of
49 fees to insurers authorized to write property,
50 casualty, product, professional, or other liability

1 insurance within this state. The commissioner of
2 insurance may assess fees and charges against persons
3 or entities for costs incurred in providing assistance
4 to the person or entity pursuant to section 507D.3.
5 Fees collected pursuant to such rules shall be used
6 solely for the purposes of the program for which
7 assessed, and are not to be transmitted to the general
8 fund or used for any other purposes.
9 Sec. 29. NEW SECTION. 507D.5 RATE ADJUSTMENT
10 REVIEW.
11 The commissioner of insurance shall conduct a rate
12 adjustment review for all insurers authorized to write
13 property, casualty, product, professional, or other
14 liability insurance within this state and who make a
15 request for rate adjustment regarding such insurance.
16 The commissioner of insurance may employ or contract
17 with actuarial consultants as necessary to review the
18 request. The person conducting the review shall
19 report to the commissioner as to the advisability of
20 the adjustment requested.
21 The reasonable fees and expenses of an actuarial
22 consultant employed or contracted by the commissioner
23 of insurance for purposes of a rate adjustment review
24 shall be assessed against and paid by the person
25 requesting such rate adjustment.
26 Sec. 30. NEW SECTION. 507D.6 CONTINUING STUDIES.
27 The commissioner of insurance is authorized to
28 conduct such further surveys, market reviews, data
29 collection and analysis, studies of a mandatory risk
30 allocation system and a risk sharing program and such
31 other studies as the commissioner deems necessary for
32 the proper implementation of this chapter.
33 Sec. 31. NEW SECTION. 507D.7 AUTHORIZATION TO
34 ACCEPT FUNDS.
35 The commissioner of insurance may accept gifts,
36 grants, or other funds from any sources for the
37 purpose of defraying the costs incurred by the
38 department of insurance in carrying out the provisions
39 of this chapter, provided the funds are made available
40 by more than one source during the fiscal year.
41 However, the commissioner shall transmit to the
42 general assembly by January 1 of each year a list of
43 contributions received from private sources, the
44 contributors, and the purposes for which the
45 contributions were used.
46 Sec. 32. Section 602.1209, Code 1985, is amended
47 by adding the following new subsection:
48 NEW SUBSECTION. 16. Provide for the compilation
49 of information relating to tort liability litigation,
50 including but not limited to the numbers and types of

1 petitions filed and the numbers and amounts of
2 judgments rendered in the various types of cases.
3 Sec. 33. NEW SECTION. 613.18 LIMITATION ON
4 PRODUCTS LIABILITY OF NONMANUFACTURERS.
5 1. A person who is not the assembler, designer, or
6 manufacturer, and who wholesales, retails,
7 distributes, or otherwise sells a product is:
8 a. Immune from any suit based upon strict
9 liability in tort or breach of implied warranty of
10 merchantability which arises solely from an alleged
11 defect in the original design or manufacture of the
12 product.
13 b. Not liable for damages based upon strict
14 liability in tort or breach of implied warranty of
15 merchantability for the product upon proof that the
16 manufacturer is subject to the jurisdiction of the
17 courts of this state and has not been judicially
18 declared insolvent.
19 2. A person who is a retailer of a product and who
20 assembles a product, such assembly having no causal
21 relationship to the injury from which the claim
22 arises, is not liable for damages based upon strict
23 liability in tort or breach of implied warranty of
24 merchantability which arises from an alleged defect in
25 the original design or manufacture of the product upon
26 proof that the manufacturer is subject to the
27 jurisdiction of the courts of this state and has not
28 been judicially declared insolvent.
29 3. An action brought pursuant to this section,
30 where the claimant certifies that the manufacturer of
31 the product is not yet identifiable, tolls the statute
32 of limitations against such manufacturer until such
33 time as discovery in the case has identified the
34 manufacturer.
5713 35 Sec. 34. Section 613A.4, Code 1985, is amended by
36 adding the following new subsections:
5722 37 NEW SUBSECTION. 9. Any claim based upon an act or
38 omission by an officer or employee of the municipality
39 or the municipality's governing body, in the granting,
40 suspension, or revocation of a license or permit,
41 where the damage was caused by the person to whom the
42 license or permit was issued, unless the act of the
5720 43 officer or employee constitutes actual malice or a
44 criminal offense.
45 NEW SUBSECTION. 10. Any claim based upon an act
46 or omission of an officer or employee of the
47 municipality, whether by issuance of permit,
48 inspection, investigation, or otherwise, and whether
49 the statute, ordinance, or regulation is valid, if the
50 damage was caused by a third party, event, or property

1 not under the supervision or control of the
2 municipality, unless the act or omission of the
3 officer or employee constitutes actual malice or a
4 criminal offense.
5 Sec. 35. Section 613A.7, Code 1985, is amended to
6 read as follows:
7 613A.7 INSURANCE.
8 The governing body of any municipality may purchase
9 a policy of liability insurance insuring against all
10 or any part of liability which might be incurred by
11 such municipality or its officers, employees and
12 agents under the provisions of section 613A.2 and
13 section 613A.8 and may similarly purchase insurance
14 covering torts specified in section 613A.4. The
15 governing body of any municipality may adopt a self
16 insurance program, including but not limited to the
17 investigation and defense of claims, the establishment
18 of a reserve fund for claims, the payment of claims,
19 and the administration and management of the self
20 insurance program, to cover all or any part of the
21 liability. The governing body of any municipality may
22 join and pay funds into a local government risk pool
23 to protect itself against any or all liability. The
24 governing body of any municipality may enter into
25 insurance agreements obligating the municipality to
26 make payments beyond its current budget year to
27 provide or procure such policies of insurance, self
28 insurance program, or local government risk pool. The
29 premium costs of such insurance, the costs of such a
30 self insurance program, the costs of a local
31 government risk pool, and the amounts payable under
32 any such insurance agreements may be paid out of the
33 general fund or any available funds or may be levied
34 in excess of any tax limitation imposed by statute.
35 Any independent or autonomous board or commission in
36 the municipality having authority to disburse funds
37 for a particular municipal function without approval
38 of the governing body may similarly enter into
39 insurance agreements, procure liability insurance,
40 adopt a self insurance program, or join a local
41 government risk pool within the field of its
42 operation. The procurement of such insurance
43 constitutes a waiver of the defense of governmental
44 immunity as to those exceptions listed in section
45 613A.4 to the extent stated in such policy but shall
46 have no further effect on the liability of the
47 municipality beyond the scope of this chapter, but if
48 a municipality adopts a self insurance program or
49 joins and pays funds into a local government risk pool
50 such action does not constitute a waiver of the

1 defense of governmental immunity as to the exceptions
2 listed in section 613A.4. The existence of any
3 insurance which covers in whole or in part any
4 judgment or award which may be rendered in favor of
5 the plaintiff, or lack of any such insurance, shall
6 not be material in the trial of any action brought
7 against the governing body of any municipality, or
8 their officers, employees or agents and any reference
9 to such insurance, or lack of same, shall be grounds
10 for a mistrial. A self insurance program or local
11 government risk pool is not insurance and is not
12 subject to regulation under chapters 505 through 523C.
13 Sec. 36. Section 613A.12, Code 1985, is amended to
14 read as follows:
15 613A.12 OFFICERS AND EMPLOYEES -- PERSONAL
16 LIABILITY.
17 All officers and employees of municipalities are
18 not personally liable for ~~any claim~~ claims which ~~is~~
19 are exempted under section 613A.4, except ~~a claim~~
20 claims for punitive damages, and actions permitted
21 under section 85.20. An officer or employee of a
22 municipality is not liable for punitive damages as a
23 result of acts in the performance of a ~~law enforcement~~
24 ~~or emergency~~ duty, unless actual malice or willful,
25 wanton and reckless misconduct is proven.
26 Sec. 37. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.
27 If a party commencing an action has in the
28 preceding five-year period unsuccessfully prosecuted
29 three or more actions, the court may, if it deems the
30 actions to have been frivolous, stay the proceedings
31 until that party furnishes an undertaking secured by
32 cash or approved sureties to pay all costs resulting
33 to opposing parties to the action including a rea-
34 sonable attorney fee.
35 Sec. 38. Section 619.18, Code 1985, is amended by
36 striking the section and inserting in lieu thereof the
37 following:
38 619.18 MONEY DAMAGES NOT TO BE STATED.
39 In an action for personal injury or wrongful death,
40 the amount of money damages demanded shall not be
41 stated in the petition, original notice, or any
42 counterclaim or cross-petition. This section does not
43 apply to claims brought pursuant to chapter 631.
44 Sec. 39. NEW SECTION. 619.19 VERIFICATION NOT
45 REQUIRED --AFFIDAVITS.
46 Pleadings need not be verified unless otherwise
47 required by statute. Where a pleading is verified, it
48 is not necessary that subsequent pleadings be verified
49 unless otherwise required by statute.
50 The signature of a party, the party's legal

1 counsel, or any other person representing the party,
2 to a motion, pleading, or other paper is a certificate
3 that:
4 1. The person has read the motion, pleading, or
5 other paper.
6 2. To the best of the person's knowledge,
7 information, and belief, formed after reasonable
8 inquiry, it is grounded in fact and is warranted by
9 existing law or a good faith argument for the
10 extension, modification, or reversal of existing law.
11 3. It is not interposed for any improper purpose,
12 such as to harass or cause an unnecessary delay or
13 needless increase in the cost of litigation.
14 If a motion, pleading, or other paper is not
15 signed, it shall be stricken unless it is signed
16 promptly after the omission is called to the attention
17 of the pleader or movant.
18 If a motion, pleading, or other paper is signed in
19 violation of this section, the court, upon motion or
20 upon its own initiative, shall impose upon the person
21 signing, the represented party, or both, an
22 appropriate sanction, which may include an order to
23 pay the other party or parties the amount of the
24 reasonable expenses incurred because of the filing of
25 the motion, pleading, or other paper, including a
26 reasonable attorney fee.
27 Sec. 40. Section 668.3, Code 1985, is amended by
28 adding the following new subsection:
5713 29 NEW SUBSECTION. 7. When a final judgment or award
30 is entered for future damages, any party may petition
31 the court for a determination of the appropriate
32 payment method of such judgment or award. If so
33 petitioned the court shall order that the payment
34 method for all or part of the judgment or award for
35 future damages be by structured, periodic, or other
36 nonlump-sum payments. Structured, periodic, or other
37 nonlump-sum payments may include appropriate interest
38 if such interest was not included in the determination
39 of the initial judgment or award. However, the court
40 shall not order a structured, periodic, or other
41 nonlump-sum payment method if it finds that any of the
42 following are true:
43 a. The payment method would be inequitable.
44 b. The payment method provides insufficient
45 guarantees of future collectibility of the judgment or
46 award.
47 c. Payments made under the payment method could be
48 subject to other claims, past or future, against the
49 defendant or the defendant's insurer.
50 Sec. 41. NEW SECTION. 668.11 DISCLOSURE OF

1 EXPERT WITNESSES IN LIABILITY CASES INVOLVING LICENSED
2 PROFESSIONALS.
3 1. A party in a professional liability case
4 brought against a licensed professional pursuant to
5 this chapter who intends to call an expert witness of
6 their own selection, shall certify to the court and
7 all other parties the expert's name, qualifications
8 and the purpose for calling the expert within the
9 following time period:
10 a. The plaintiff within one hundred eighty days of
11 the defendant's answer unless the court for good cause
12 not ex parte extends the time of disclosure.
13 b. The defendant within ninety days of plaintiff's
14 certification.
15 2. If a party fails to disclose an expert pursuant
16 to subsection 1 or does not make the expert available
17 for discovery, the expert shall be prohibited from
18 testifying in the action unless leave for the expert's
19 testimony is given by the court for good cause shown.
20 3. This section does not apply to court appointed
21 experts or to rebuttal experts called with the
22 approval of the court.
23 Sec. 42. NEW SECTION. 668.12 LIABILITY FOR
24 PRODUCTS --STATE OF THE ART DEFENSE.
25 In any action brought pursuant to this chapter
26 against an assembler, designer, supplier of
27 specifications, distributor, manufacturer or seller
28 for damages arising from an alleged defect in the
29 design, testing, manufacturing, formulation,
30 packaging, warning, or labeling of a product, a
31 percentage of fault shall not be assigned to such
32 persons if they plead and prove that the product
33 conformed to the state of the art in existence at the
34 time the product was designed, tested, manufactured,
35 formulated, packaged, provided with a warning, or
36 labeled. Nothing contained in this section shall
37 diminish the duty of an assembler, designer, supplier
38 of specifications, distributor, manufacturer or seller
39 to warn concerning subsequently acquired knowledge of
40 a defect or dangerous condition that would render the
41 product unreasonably dangerous for its foreseeable use
42 or diminish the liability for failure to so warn.
43 Sec. 43. NEW SECTION. 668.14 SUBSEQUENT PROFITS
44 --REMISSION OF ATTORNEY FEE -- CIVIL LITIGATION TRUST.
45 Every person, firm, corporation, partnership,
46 association, or other legal entity contracting with an
47 attorney of record in an action brought pursuant to
48 this chapter, shall pay over to the attorney general
49 any money or other compensation received from the
50 reenactment of the action, by way of movie, book,

1 magazine article, radio or television presentation, or
2 from the expression of the attorney's thoughts,
3 feelings, opinions, or emotions regarding the action,
4 which money or other compensation would otherwise, by
5 terms of a contract, be owing to the attorney. The
6 attorney general shall deposit such funds in a trust
7 account and shall disburse the funds as follows:
8 1. First, payment to the attorney to cover actual
9 expenses incurred.
10 2. Second, payment to the person bringing the
11 action an amount equal to the attorney fee paid by the
12 person as a result of the action.
13 3. Third, any remaining funds disbursed to civil
14 litigation programs for the indigent.
15 Any action taken by an attorney to defeat the
16 purpose of this section shall be null and void as
17 against the public policy of this state.
18 This section applies to all moneys or other
19 compensation received on or after July 1, 1986.
5713 20 Sec. 44. NEW SECTION. 669.1 PUNITIVE OR
21 EXEMPLARY DAMAGES.
22 1. In a civil action where a claim for punitive or
23 exemplary damages is made, the trial shall be
24 conducted in two phases.
25 a. In the trial's first phase, the trier of fact
26 shall determine, concurrent with all other issues
27 presented, whether punitive or exemplary damages may
28 be assessed. However, in making this determination,
29 all of the following apply:
30 (1) If the trier of fact is a jury, the verdict
31 must be unanimous on the issue of liability for
32 punitive or exemplary damages.
33 (2) Evidence of the defendant's wealth or
34 financial condition is not admissible and discovery of
35 the defendant's financial condition shall not be
36 allowed.
37 (3) Punitive or exemplary damages shall not be
38 assessed in a case where any of the following are
39 true:
40 (a) There is no finding of actual damages,
41 compensatory damages are not awarded, or only nominal
42 damages are awarded.
43 (b) The defendant has previously been assessed
44 punitive or exemplary damages for the same conduct
45 serving as the basis for the claim.
46 (c) The defendant has previously been criminally
47 or civilly punished by fine or imprisonment, or
48 proceedings for criminal or civil punishment have been
49 instituted or are pending, which arose from the same
50 conduct for which punitive or exemplary damages are

1 sought.
2 (d) The defendant was acting in good faith that
3 the actions were proper, or was acting in good faith
4 reliance on the advice of legal counsel.
5 (e) Against a principal or employer for the acts
6 of an employee or agent, unless the principal or
7 employer authorized or ratified the conduct of the
8 employee or agent serving as the basis for the claim.
9 However, this authorization or ratification must have
10 been made by a person expressly empowered to do so.
11 (f) For tortious breach of contract, unless it is
12 first determined that the contract involves a subject
13 matter of great public interest.
14 (4) The plaintiff must have proven the defendant's
15 culpability, as defined in subsection 2, and each
16 element authorizing the imposition of punitive or
17 exemplary damages beyond a reasonable doubt.
18 Presumptions shall not be used to shift this burden of
19 proof.
20 b. If liability for punitive or exemplary damages
21 is found in the trial's first phase, the judge shall
22 then assess the amount of punitive or exemplary
23 damages in the trial's second phase. During the
24 second phase, the judge may consider evidence not
25 formally admitted during the first phase, including
26 evidence of an economic or social policy nature, and
27 hear any evidence outside the record that would aid in
28 determining the amount of punitive or exemplary
29 damages to be assessed including any evidence of
30 remedial measures undertaken by the defendant relating
31 to the conduct from which the present claims arise.
32 The defendant may introduce expert testimony
33 concerning the assessment of punitive or exemplary
34 damages which may include testimony regarding the
35 subsequent effects which the award of punitive or
36 exemplary damages would have on the defendant's
37 ability to pay subsequent or anticipated awards
38 arising from the same conduct from which the present
39 claims arise.
40 2. A defendant shall not be held liable for
41 punitive or exemplary damages unless the plaintiff has
42 proven that the defendant acted with oppression,
43 fraud, or malice toward the plaintiff. For purposes
44 of this subsection:
45 a. "Oppression" means a specific intent to subject
46 a person to cruel and unjust hardship.
47 b. "Fraud" means an intentional misrepresentation,
48 deceit or concealment of a material fact known to the
49 defendant with the intention on the part of the
50 defendant to deprive a person of property or legal

1 right, or otherwise cause injury.
2 c. "Malice" means conduct which is specifically
3 intended by the defendant to cause tangible or
4 intangible injury to another, or an act that is
5 carried out with flagrant indifference to the rights
6 of others and with a subjective awareness that the act
7 could result in death or serious injury.
8 3. If punitive or exemplary damages are awarded,
9 they shall be distributed as follows:
10 a. An amount shall be awarded to the plaintiff not
11 to exceed ten percent of all compensatory damages
12 awarded.
13 b. An amount shall be awarded to the crime victim
14 reparation program, established pursuant to chapter
15 912, not to exceed fifteen percent of the punitive or
16 exemplary damages.
17 c. The remainder, if any, shall be paid to the
18 general fund of the state.
19 This established distribution scheme shall not be
20 introduced as evidence and is not a proper subject
21 matter on voir dire. This subsection shall not be
22 construed as granting the state a cause of action to
23 seek punitive damages or be a party to an action in
24 which punitive or exemplary damages are sought, except
25 the right to collect punitive or exemplary damages
26 after they have been assessed and determined.
27 However, the state may seek punitive or exemplary
28 damages in its own right where authorized by statute.
29 4. At any time during the trial and upon motion of
30 the defendant, the court may hold a hearing on the
31 merit of the claim for punitive or exemplary damages.
32 The court may award costs, expenses, and reasonable
33 attorney's fees, as it deems equitable and
34 appropriate, to the defendant and against the
35 plaintiff or the plaintiff's attorney if the court
36 determines that either of the following is true:
37 a. The claim for punitive or exemplary damages was
38 brought without sufficient facts and evidence to
39 reasonably entitle the plaintiff to a judgment for
40 such damages.
41 b. The claim for punitive or exemplary damages was
42 maintained after it was reasonably evident that there
43 were insufficient facts and evidence to reasonably
44 entitle the plaintiff to a judgment for such damages.
51/9 45 Sec. 45. Section 321.445, Code 1985, as amended by
46 1986 Iowa Acts, Senate File 499, section 2, is amended
47 by adding the following new subsection:
48 NEW SUBSECTION. 4. a. The nonuse of a safety
49 belt or safety harness by a person is not admissible
50 or material as evidence in a civil action brought for

1 damages in a cause of action arising prior to July 1,
2 1986.
3 b. In a cause of action arising on or after July
4 1, 1986, brought to recover damages arising out of the
5 ownership or operation of a motor vehicle, the failure
6 to wear a safety belt or safety harness in violation
7 of this section shall not be considered evidence of
8 comparative fault. However, except as provided in
9 section 321.446, subsection 6, the failure to wear a
10 safety belt or safety harness in violation of this
11 section may be admitted to mitigate damages, but only
12 under the following circumstances:
13 (1) Parties seeking to introduce evidence of the
14 failure to wear a safety belt or safety harness in
15 violation of this section must first introduce
16 substantial evidence that the failure to wear a safety
17 belt or safety harness contributed to the injury or
18 injuries claimed by the plaintiff.
19 (2) If the evidence supports such a finding, the
20 trier of fact may find that the plaintiff's failure to
21 wear a safety belt or safety harness in violation of
22 this section contributed to the plaintiff's claimed
23 injury or injuries, and may reduce the amount of
24 plaintiff's recovery by an amount not to exceed five
25 percent of the damages awarded after any reductions
26 for comparative fault.
27 Sec. 46. STUDY COMMISSION CREATED.
28 1. There is established a commission to study the
29 issues involved in liability and liability insurance
30 concerns. The commission shall be composed of sixteen
31 members who shall be appointed as follows:
32 a. Three members of the house of representatives,
33 by the speaker of the house.
34 b. Three members of the senate, by the senate
35 majority leader.
36 c. Two members of the house of representatives, by
37 the house minority leader.
38 d. Two members of the senate, by the senate
39 minority leader.
40 e. Four members of the public as representatives
41 of the public or private sector for industries,
42 professions, local governments, or other particularly
43 affected groups, appointed by the chairperson and vice
44 chairperson of the legislative council, in
45 consultation with the senate and house minority
46 leaders and with the approval of the legislative
47 council.
48 f. The attorney general or the attorney general's
49 designee.
50 g. The commissioner of insurance or the

5713 1 commissioner's designee.
2 2. The commission's study shall include, but is
3 not limited to, the following:
4 a. The implementation of maximum caps on liability
5 payments.
6 b. The elimination of the collateral source rule.
7 c. The review of present insurance practices,
8 including:
9 (1) A review and report on the feasibility and
10 advisability of enacting a mandatory insurance
11 disclosure Act.
12 (2) A review and report on the present level of
13 industry regulation and the potential for increasing
14 such regulation. This report should approximate the
15 cost of any recommendations made.
16 (3) A review and report on the present powers,
17 authority, and staffing of the insurance department.
18 (4) A review and report on the feasibility and
19 advisability of enacting insurance assistance and risk
20 management programs.
5717 21 d. The review of alternative methods of litigation
22 actions.
23 e. The review of alternatives to reduce
24 nonmeritorious suits.
25 f. Review and report on the advisability of
26 limiting tort liability of the state and
27 municipalities arising from regulatory and licensing
28 activities.
29 g. Review and report on the advisability of
30 enacting a statute of repose for actions arising from
5724 31 improvements to real property.
32 h. Monitor and report on any operation savings in
33 the insurance industry due to tort liability reform
34 for the period from July 1, 1983 to present, including
35 the effects of this Act, and the feasibility of
36 mandatory rate adjustments for insurers to reflect
37 such cost savings.
38 i. Review and report on the advisability of
39 enacting a system for the compensation of individuals
40 injured by the state or a municipality of a nature
41 similar to existing statutory enactments relating to
42 workers' compensation, and having such attributes as a
43 no-fault basis, limited recovery, and remedy
44 exclusivity.
45 j. Other issues necessary to ensure fairness in
46 the operation of the tort liability system.
5711 47 3. The legislative council may authorize funds for
48 the study commission, which may be used for the
49 following commission purposes.
50 a. Employment of a full-time staff person for the

1 commission.
2 b. Employment of actuarial, insurance, and legal
3 consultants.
4 c. Compilation, printing, and distribution of
5 materials prepared by the commission.
6 d. Necessary expenses of travel, attendance, and
7 participation in regional or national programs.
8 4. Public members of the study commission shall
9 receive a per diem of forty dollars and be reimbursed
10 for their travel and other necessary expenses actually
11 incurred in the performance of their official duties.
12 Public employees who are members of the study
13 commission shall be reimbursed for travel and other
14 expenses actually incurred in the performance of their
15 official duties.
16 5. The study commission shall hold its first
17 meeting within sixty days of its formation and shall
18 transmit copies of its final report to the legislative
19 council by December 15, 1986.
5713 20 Sec. 47. The judicial department shall compile
21 information relating to tort liability litigation,
22 including but not limited to the numbers and types of
23 petitions filed and the numbers and amounts of
24 judgments rendered in the various types of cases, for
25 the period of July 1, 1983 through July 1, 1986, and
26 for such period prior to July 1, 1983 as the
27 department determines to be feasible, and shall report
28 such information to the legislative council by
29 September 1, 1986. The judicial department is
30 authorized to contract for the information compilation
31 required under this section.
5713 32 Sec. 48. The supreme court shall, by January 1,
33 1987, develop and convey to the Seventy-second General
34 Assembly a system of mandatory arbitration, and may
35 develop and convey a system of mandatory mediation,
36 for actions brought pursuant to chapter 668, as the
37 court deems appropriate in order to expedite in a less
38 costly manner any action wherein a party asserts a
39 claim not exceeding fifteen thousand dollars, or a
40 judge of the district court at a pretrial conference
41 determines that no greater amount is genuinely in
42 controversy. The court shall include an estimate of
43 fiscal and personnel resources necessary for the
44 implementation of any system developed.
45 The court may, prior to January 1, 1987, begin
46 implementation of any arbitration or mediation system
47 developed pursuant to this section.
48 Sec. 49. A county which has levied a tax pursuant
49 to section 331.424, subsection 1, paragraph 1, or a
50 city which has levied a tax pursuant to section

1 384.12, subsection 18, for the fiscal year July 1,
2 1985 through June 30, 1986, may use any unexpended
3 proceeds of this tax to pay the costs of a self
4 insurance program or the costs of a local government
5 risk pool.
6 Sec. 50. Section 64.7, Code 1985, is repealed.
7 Sec. 51. This Act, being deemed of immediate
8 importance, takes effect from and after its
9 publication in The Sioux City Journal, a newspaper
10 published in Sioux City, Iowa, and in the Ad-Express
11 and Daily Iowegian and Citizen, a newspaper published
12 in Centerville, Iowa, and unless otherwise
13 specifically provided, applies to all cases filed on
14 or after July 1, 1986."

721>

S-5684 Filed April 11, 1986 REC'D FROM THE HOUSE

~~Senate~~ amended (5713B, c, D) 5717, 5721, 5725A)
and Concurred 4/22 (p. 1332)

SENATE FILE 2265

H-5743

Amend the Committee on Judiciary and Law Enforcement amendment, H-5575, to Senate File 2265 as amended, passed and reprinted by the Senate as follows:

1. Page 8, by striking lines 13 through 35.

2. Page 17, by inserting after line 46 the following:

"Sec. ___. RESTRICTIONS ON ALTERNATIVE FINANCING.

1. For the period running from the effective date of this Act to January 1, 1988, alternative financing programs for insurance coverage authorized by sections 20 through 26, 28, and 39 of this Act shall be subject to the following restrictions:

a. A governmental entity shall not enter into an alternative financing program without prior written approval, and the division of risk management of the department of general services shall be the exclusive agency for the granting of such approval.

b. The use of such alternative financing programs by cities and counties having a population of less than one hundred thousand persons, according to the latest certified federal census, shall be limited to a maximum of three pilot programs. Applications for the approval of a pilot program shall be submitted to the division of risk management within thirty days of the effective date of this Act, with such application to be in a form similar to a request for the rating of general obligation bonds.

2. Approval for an alternative financing program by the division of risk management shall be based upon, but is not limited to, a review of the following:

a. The existence of an implemented or planned risk management program for the entity.

b. The entity's plans for risk management and loss avoidance, to minimize losses.

c. The availability of expertise from a risk management specialist.

d. The funds currently available through traditional financing methods.

e. The funds anticipated to be raised by any planned alternative financing mechanism allowed by this Act.

f. The entity's previous experience and success with similar alternative financing mechanisms.

g. The completeness and thoroughness of the entity's planning.

h. The probability for successful implementation and continuing existence of the entity's planned program.

1 3. The risk manager shall file with the general
2 assembly and the office of the governor, by January 1,
3 1988, a report of the feasibility and effects of
4 alternative financing plans authorized by this Act,
5 and making recommendations regarding the expansion of
6 the programs. Expansion of the pilot programs
7 established pursuant to subsection 1, paragraph "b",
8 shall not occur until at least thirty days following
9 the receipt of the report required by this
10 subsection."

BY HALVORSON of Clayton
CARPENTER of Polk

H-5743 FILED APRIL 8, 1986
LOST (p. 1313)

SENATE FILE 2265

H-5744

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed and reprinted by the Senate, as
4 follows:
5 1. Page 5, by striking lines 49 and 50, and
6 inserting the following: "XXIII. This subsection
7 does not apply to acts or omissions which constitute
8 gross negligence amounting to a willful and wanton
9 disregard for the rights or safety of others.
10 However, an act or omission shall not be deemed to
11 constitute gross negligence amounting to a willful and
12 wanton disregard for the rights or safety of others if
13 the state has made all reasonable efforts to meet its
14 policy or level of service for such financial
15 regulation considering the availability or
16 unavailability of fiscal or personnel resources."

H-5744 FILED APRIL 8, 1986 BY HAVERLAND of Polk
OUT OF ORDER (p. 1300)

SENATE FILE 2265

H-5733

1 Amend the amendment H-5575 to Senate File 2265, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 10, by inserting after line 23, the
5 following:
6 "Sec. ___. NEW SECTION. 507D.1 SHORT TITLE.
7 This Act shall be known as the "Insurance
8 Assistance Act".
9 Sec. ___. NEW SECTION. 507D.2 DISCLOSURE OF
10 INFORMATION.
11 The commissioner of insurance shall adopt rules
12 pursuant to chapter 17A for the collection of
13 information relating to the availability, obtain
14 ability, costs, profits, and losses associated with
15 the provision of property, casualty, product, pro-
16 fessional, or other liability insurance within the
17 state, and relating to the feasibility and
18 implementation of market assistance programs,
19 mandatory risk allocation programs, risk-sharing
20 programs, risk management programs, or any other
21 authorized program under section 507D.3.
22 Sec. ___. NEW SECTION. 507D.3 AUTHORIZED
23 ASSISTANCE PROGRAMS.
24 The commissioner of insurance is authorized to
25 institute programs, order the institution of programs
26 within the private sector, or to contract with or
27 delegate authority to the risk management division of
28 the department of general services for the institution
29 of programs relating to insurance assistance
30 including, but not limited to, the following:
31 1. The development and implementation of a market
32 assistance program to facilitate, arrange, or provide
33 for the acquisition of property, casualty, product,
34 professional, or other liability insurance coverage
35 for all persons or entities seeking such coverage but
36 for which the coverage is presently unavailable or
37 unobtainable to the person or entity.
38 2. The development and implementation of a
39 mandatory risk allocation system for property,
40 casualty, product, professional, or other liability
41 insurance, except asbestosis and environmental
42 impairment liability, in order to assure that all
43 persons or entities for which such insurance is
44 essential may obtain such insurance from insurers
45 authorized to do business within this state.
46 3. The development and implementation of a risk-
47 sharing program to assist and advise persons or
48 entities seeking property, casualty, product,
49 professional, or other liability insurance, except
50 asbestosis and environmental impairment liability, on

H-5733
Page Two

1 the most efficient manner in which to share or pool
2 similar risks in order to obtain essential insurance
3 coverage at the minimum cost.
4 4. The development and implementation of a risk
5 management program for persons or entities to which
6 property, casualty, product, professional, or other
7 liability insurance is essential, such program to
8 include at a minimum the following:
9 a. Assistance in developing and maintaining loss
10 and loss exposure data on such liability risks.
11 b. Recommendations regarding risk reduction and
12 risk elimination programs.
13 c. Recommendations of those practices which will
14 permit protection against such losses at the lowest
15 costs, consistent with good underwriting practices and
16 sound risk management techniques.
17 5. Subsections 2 and 3 shall have no application
18 or effect after July 1, 1991.
19 Sec. ___. NEW SECTION. 507D.4 FINANCING OF
20 ASSISTANCE PROGRAMS.
21 The insurance commissioner may, by rule, provide
22 for the financing, as necessary, for any or all
23 programs under section 507D.3 by the assessment of
24 fees to insurers authorized to write property,
25 casualty, product, professional, or other liability
26 insurance within this state. The commissioner of
27 insurance may assess fees and charges against persons
28 or entities for costs incurred in providing assistance
29 to the person or entity pursuant to section 507D.3.
30 Fees collected pursuant to such rules shall be used
31 solely for the purposes of the program for which
32 assessed, and are not to be transmitted to the general
33 fund or used for any other purposes.
34 Sec. ___. NEW SECTION. 507D.5 RATE ADJUSTMENT
35 REVIEW.
36 The commissioner of insurance shall conduct a rate
37 adjustment review for all insurers authorized to write
38 property, casualty, product, professional, or other
39 liability insurance within this state and who make a
40 request for rate adjustment regarding such insurance.
41 The commissioner of insurance may employ or contract
42 with actuarial consultants as necessary to review the
43 request. The person conducting the review shall
44 report to the commissioner as to the advisability of
45 the adjustment requested.
46 The reasonable fees and expenses of an actuarial
47 consultant employed or contracted by the commissioner
48 of insurance for purposes of a rate adjustment review
49 shall be assessed against and paid by the person
50 requesting such rate adjustment.

1 Sec. ___. NEW SECTION. 507D.6 CONTINUING
2 STUDIES.
3 The commissioner of insurance is authorized to
4 conduct such further surveys, market reviews, data
5 collection and analysis, studies of a mandatory risk
6 allocation system and a risk sharing program and such
7 other studies as the commissioner deems necessary for
8 the proper implementation of this chapter."

H-5733 FILED APRIL 7, 1986 BY STROMER of Hancock
W/D 4/8 (p. 1314)

SENATE FILE 2265

H-5734

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 12, by inserting after line 12, the
6 following:
7 "Sec. ___. Section 613A.12, Code 1985, is amended
8 to read as follows:
9 613A.12 OFFICERS AND EMPLOYEES -- PERSONAL
10 LIABILITY.
11 All officers and employees of municipalities are
12 not personally liable for ~~any claim~~ claims which ~~is~~
13 are exempted under section 613A.4, except ~~a claim~~
14 claims for punitive damages, and actions permitted
15 under section 85.20. An officer or employee of a
16 municipality is not liable for punitive damages as a
17 result of acts in the performance of a ~~law-enforcement~~
18 ~~or emergency~~ duty, unless actual malice ~~or willful,~~
19 ~~wanton and reckless misconduct~~ is proven."

BY CARPENTER of Polk
O'KANE of Woodbury
PLATT of Muscatine

H-5734 FILED APRIL 7, 1986
Lost 4/8 (p. 1319)

SENATE FILE 2265

H-5731

1 Amend the Committee on Judiciary and Law
2 Enforcement Amendment, H-5575, to Senate File 2265 as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 15, by inserting after line 14, the
6 following:
7 "Sec. ___. NEW SECTION. 668.13 REDUCTIONS FOR
8 COLLATERAL SOURCE PAYMENTS.
9 In an action brought pursuant to this chapter, the
10 recovery awarded pursuant to section 668.3 shall be
11 reduced by the amount, and in proportion to the
12 percentages of assigned fault, of any losses replaced
13 by insurance or benefit programs or any other source
14 except the claimant's assets and family."
15 2. Page 16, by striking line 31.

H-5731 FILED APRIL 7, 1986 BY HALVORSON of Clayton
Lost 4/9 (p. 1344)

H-5716 SENATE FILE 2265

1 Amend amendment H-5602 to amendment H-5575 to
2 Senate File 2265 as amended, passed, and reprinted by
3 the Senate, as follows:
4 1. Page 7, line 35, by striking the word "asbestosis"
5 and inserting the word "asbestos".
6 2. Page 7, line 44, by striking the word "asbestosis"
7 and inserting the word "asbestos".
8 3. Page 9, line 6, by striking the word "source" and
9 inserting the word "sources".
10 4. Page 9, line 9, by inserting after the word
11 "chapter" the following: ", provided the funds are made
12 available by more than one source during the fiscal year".

H-5716 FILED APRIL 7, 1986 BY GRONINGA of Cerro Gordo
ADOPTED BY UNANIMOUS CONSENT
(p. 1267)

SENATE FILE 2265

H-5717

1 Amend the Committee on Judiciary and Law
2 Enforcement Amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 5, by striking lines 49 and 50, and
6 inserting the following: "XXIII. This subsection
7 does not apply to acts or omissions which constitute
8 gross negligence amounting to a willful and wanton
9 disregard for the rights or safety of others.
10 However, an act or omission shall not be deemed to
11 constitute gross negligence amounting to a willful and
12 wanton disregard for the rights or safety of others if
13 the state can establish that it has complied with its
14 policy or level of service for such financial
15 regulation. For purposes of establishing such
16 compliance, the state may introduce any material
17 evidence relating to its policy or level of service,
18 including extent of statutory mandate and fiscal and
19 personnel resources available."

BY HAVERLAND of Polk
JAY of Appanoose

H-5717 FILED APRIL 7, 1986
Placed o/o 4/8 (p. 1300)

SENATE FILE 2265

H-5713

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 8, lines 32 and 33, by striking the words
6 and figure "pursuant to section 613A.7".
7 2. Page 9, lines 17 and 18, by striking the words
8 and figure "pursuant to section 613A.7".
9 3. Page 9, line 50, by striking the words and
10 figure "pursuant to section 613A.7".
11 4. Page 10, line 16, by inserting after the
12 figure "18;" the word "or".
13 5. Page 10, line 17, by striking the words and
14 figure "; or section 613A.7".

H-5713 FILED APRIL 7, 1986 BY O'KANE of Woodbury
H/D 4/8 (p. 1309)

SENATE FILE 2265

H-5708

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265, as
3 amended, passed, and reprinted by the Senate, as
4 follows:
5 1. Page 10, by inserting after line 23 the
6 following:
7 "Sec. ___. Section 602.1209, Code 1985, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. 16. Provide for the compilation
10 of information relating to tort liability litigation,
11 including but not limited to the numbers and types of
12 petitions filed and the numbers and amounts of
13 judgments rendered in the various types of cases."
14 2. Page 17, by inserting after line 36 the
15 following:
16 "Sec. ___. The judicial department shall compile
17 information relating to tort liability litigation,
18 including but not limited to the numbers and types of
19 petitions filed and the numbers and amounts of
20 judgments rendered in the various types of cases, for
21 the period of July 1, 1983 through July 1, 1986, and
22 for such period prior to July 1, 1983 as the
23 department determines to be feasible, and shall report
24 such information to the legislative council by
25 September 1, 1986. The judicial department is
26 authorized to contract for the information compilation
27 required under this section."

BY SWARTZ of Marshall
GRONINGA of Cerro Gordo
JAY of Appanoose

H-5708 FILED APRIL 4, 1986

Adopted 4/8 (J. 1314)

H-5692

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 13, by inserting after line 49 the
6 following:
7 "4. Punitive or exemplary damages awarded pursuant
8 to this section shall not exceed two hundred thousand
9 dollars to or on behalf of any one person."
10 2. Page 13, by inserting before line 50 the
11 following:
12 "Sec. ___. NEW SECTION. 624.42 LIMITATION ON
13 NONECONOMIC DAMAGES.
14 In a civil action for recovery of damages for death
15 of or injury to person or property, the court shall
16 not award an amount exceeding two hundred thousand
17 dollars for noneconomic damages to or on behalf of any
18 one person."

BY STROMER of Hancock
HARBOR of Mills
DIEMER of Black Hawk
RENKEN of Grundy
SCHNEKLOTH of Scott
H-5692 FILED APRIL 4, 1986

METCALF of Polk
ROYER of Page
CARPENTER of Polk
SHONING of Woodbury
BENNETT of Ida
MAULSBY of Calhoun

B- Lost 4/9 (p. 1336) A W/D (p. 1357)

SENATE FILE 2265

H-5707

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 6, by striking lines 16 through 32 and
6 inserting the following:
7 "123.92 CIVIL LIABILITY FOR SALE OR GIFT OF BEER,
8 WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).
9 Every husband, wife, child, parent, guardian,
10 employer or other person who is injured in person or
11 property or means of support by any intoxicated person
12 or resulting from the intoxication of any person, has
13 a right of action for all damages actually sustained,
14 severally or jointly, against any licensee or
15 permittee, who sells or gives any beer, wine, or
16 intoxicating liquor to a person while the person is
17 intoxicated, or serves a person to a point where the
18 person is intoxicated. If the injury was".
19 2. Page 6, line 36, by inserting after the word
20 "person." the following: "However, a licensee or
21 permittee found to be liable under this section shall
22 have a cause of action against the intoxicated person
23 for contribution or idemnity."

BY DODERER of Johnson
COREY of Louisa
TEAFORD of Black Hawk
CLARK of Cerro Gordo
McKEAN of Jones
McINTEE of Black Hawk
FEY of Scott
H-5707 FILED APRIL 4, 1986

PEICK of Linn
JAY of Appanoose
CHAPMAN of Linn
MULLINS of Kossuth
JOHNSON of Winneshiek
PETERSON of Carroll
HUGHES of Union
SHOULTZ of Black Hawk

A- Lost 4/8 (p. 1305) Motion to recon. (p. 1319) w/d 4/9 (p. 1358)
B- W/D 4/9 (p. 1358)

SENATE FILE 2265

H-5688

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 10, by inserting after line 23 the
6 following:
7 "Sec. ___. NEW SECTION. 507D.1 SHORT TITLE.
8 This Act shall be known as the "Insurance
9 Assistance Act".
10 Sec. ___. NEW SECTION. 507D.2 DISCLOSURE OF
11 INFORMATION.
12 The commissioner of insurance shall adopt rules
13 pursuant to chapter 17A for the collection of
14 information relating to the availability, obtain
15 ability, costs, profits, and losses associated with
16 the provision of property, casualty, product, pro-
17 fessional, or other liability insurance within the
18 state, and relating to the feasibility and
19 implementation of market assistance programs,
20 mandatory risk allocation programs, risk-sharing
21 programs, risk management programs, or any other
22 authorized program under section 507D.3.
23 Sec. ___. NEW SECTION. 507D.3 AUTHORIZED
24 ASSISTANCE PROGRAMS.
25 The commissioner of insurance is authorized to
26 institute programs, order the institution of programs
27 within the private sector, or to contract with or
28 delegate authority to the risk management division of
29 the department of general services for the institution
30 of programs relating to insurance assistance
31 including, but not limited to, the following:
32 1. The development and implementation of a market
33 assistance program to facilitate, arrange, or provide
34 for the acquisition of property, casualty, product,
35 professional, or other liability insurance coverage
36 for all persons or entities seeking such coverage but
37 for which the coverage is presently unavailable or
38 unobtainable to the person or entity.
39 2. The development and implementation of a
40 mandatory risk allocation system for property,
41 casualty, product, professional, or other liability
42 insurance, except asbestosis and environmental
43 impairment liability, in order to assure that all
44 persons or entities for which such insurance is
45 essential may obtain such insurance from insurers
46 authorized to do business within this state.
47 3. The development and implementation of a risk-
48 sharing program to assist and advise persons or
49 entities seeking property, casualty, product,
50 professional, or other liability insurance, except

1 asbestosis and environmental impairment liability, on
2 the most efficient manner in which to share or pool
3 similar risks in order to obtain essential insurance
4 coverage at the minimum cost.
5 4. The development and implementation of a risk
6 management program for persons or entities to which
7 property, casualty, product, professional, or other
8 liability insurance is essential, such program to
9 include at a minimum the following:
10 a. Assistance in developing and maintaining loss
11 and loss exposure data on such liability risks.
12 b. Recommendations regarding risk reduction and
13 risk elimination programs.
14 c. Recommendations of those practices which will
15 permit protection against such losses at the lowest
16 costs, consistent with good underwriting practices and
17 sound risk management techniques.
18 5. Subsections 2 and 3 shall have no application
19 or effect after July 1, 1991.
20 Sec. ___. NEW SECTION. 507D.4 FINANCING OF
21 ASSISTANCE PROGRAMS.
22 The insurance commissioner may, by rule, provide
23 for the financing, as necessary, for any or all
24 programs under section 507D.3 by the assessment of
25 fees to insurers authorized to write property,
26 casualty, product, professional, or other liability
27 insurance within this state. The commissioner of
28 insurance may assess fees and charges against persons
29 or entities for costs incurred in providing assistance
30 to the person or entity pursuant to section 507D.3.
31 Fees collected pursuant to such rules shall be used
32 solely for the purposes of the program for which
33 assessed, and are not to be transmitted to the general
34 fund or used for any other purposes.
35 Sec. ___. NEW SECTION. 507D.5 RATE ADJUSTMENT
36 REVIEW.
37 The commissioner of insurance shall conduct a rate
38 adjustment review for all insurers authorized to write
39 property, casualty, product, professional, or other
40 liability insurance within this state and who make a
41 request for rate adjustment regarding such insurance.
42 The commissioner of insurance may employ or contract
43 with actuarial consultants as necessary to review the
44 request. The person conducting the review shall
45 report to the commissioner as to the advisability of
46 the adjustment requested.
47 The reasonable fees and expenses of an actuarial
48 consultant employed or contracted by the commissioner
49 of insurance for purposes of a rate adjustment review
50 shall be assessed against and paid by the person

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1 requesting such rate adjustment.
2 Sec. ___. NEW SECTION. 507D.6 CONTINUING
3 STUDIES.
4 The commissioner of insurance is authorized to
5 conduct such further surveys, market reviews, data
6 collection and analysis, studies of a mandatory risk
7 allocation system and a risk sharing program and such
8 other studies as the commissioner deems necessary for
9 the proper implementation of this chapter.
10 Sec. ___. NEW SECTION. 507D.7 AUTHORIZATION TO
11 ACCEPT FUNDS.
12 The commissioner of insurance may accept gifts,
13 grants, or other funds from any sources for the
14 purpose of defraying the costs incurred by the
15 department of insurance in carrying out the provisions
16 of this chapter, provided the funds are made available
17 by more than one source during the fiscal year.
18 However, the commissioner shall transmit to the
19 general assembly by January 1 of each year a list of
20 contributions received from private sources, the
21 contributors, and the purposes for which the
22 contributions were used."

BY RUNNING of Linn
GRONINGA of Cerro Gordo

H-5688 FILED APRIL 3, 1986

W/D 4/8 (P. 1313)

SENATE FILE 2265

H-5669

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by inserting after line 41 the
6 following:
7 "Sec. ___. NEW SECTION. 669.1 AUTHORIZATION.
8 The supreme court by rule may provide for mandatory
9 arbitration of actions brought pursuant to chapter
10 668, as the court deems appropriate in order to
11 expedite in a less costly manner any action wherein a
12 party asserts a claim not exceeding fifteen thousand
13 dollars, or a judge of the district court, at a
14 pretrial conference, determines that no greater amount
15 appears to be genuinely in controversy.
16 Sec. ___. NEW SECTION. 669.2 IMPLEMENTATION.
17 The supreme court shall by rule adopt procedures
18 adapted to each judicial district to implement
19 mandatory arbitration under this chapter.
20 Sec. ___. NEW SECTION. 669.3 QUALIFICATION --
21 APPOINTMENT -- COMPENSATION OF ARBITRATORS.
22 The qualification and the method of appointment of
23 arbitrators shall be prescribed by rule. Arbitrators
24 shall be entitled to reasonable compensation for their
25 services. Arbitration hearings shall be conducted by
26 arbitrators sitting in panels of three, or a lesser
27 number as may be stipulated by the parties.
28 Sec. ___. NEW SECTION. 669.4 DECISION AND AWARD.
29 Following the arbitration hearing as prescribed by
30 rule, the arbitrators' decision shall be filed with
31 the district court, together with proof of service on
32 the parties. Within the time prescribed by rule, any
33 party to the proceeding may file with the clerk of the
34 court a written notice of the rejection of the award.
35 In case of a rejection, the parties may, upon payment
36 of appropriate costs, proceed to trial in the district
37 court.
38 Sec. ___. NEW SECTION. 669.5 JUDGMENT OF THE
39 COURT.
40 If no rejection of the award is filed, a judge of
41 the district court may enter the award as the judgment
42 of the court in the matter.
43 Sec. ___. NEW SECTION. 669.6 CHAPTER NOT
44 AFFECTED.
45 Chapter 679A, or any other provision of law
46 relating to arbitration, is not applicable to
47 arbitration proceedings pursuant to this chapter."
48 2. By renumbering as necessary.

H-5669 FILED APRIL 3, 1986 BY BENNETT of Ida

W/D 4/9 (p. 1357)

SENATE FILE 2265

H-5684

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 8, by striking lines 13 through 35.
6 2. Page 17, by inserting after line 46 the
7 following:
8 "Sec. ___. RESTRICTIONS ON ALTERNATIVE FINANCING.
9 Alternative financing for insurance coverage
10 authorized by sections 20 through 26, 28, and 39 of
11 this Act, shall be subject to the following
12 restrictions:
13 1. For the period running from the effective date
14 of this Act to January 1, 1988, there shall be allowed
15 a maximum of three pilot programs for the use of such
16 alternative financing mechanisms. The pilot programs
17 shall be selected as follows:
18 a. The division of risk management of the
19 department of general services shall be the exclusive
20 agency for the granting of authorization for pilot
21 programs for the period running from the effective
22 date of this Act to January 1, 1988.
23 b. All governmental entities seeking to use
24 alternative financing methods authorized by this Act
25 shall, within thirty days of the effective date of
26 this Act, submit to the risk management division of
27 the department of general services an application for
28 a pilot project, such application to be in a form
29 similar to a request for the rating of bonds.
30 c. Authorization by the division of risk
31 management shall be based on, but not limited to, the
32 following:
33 (1) The existence of an implemented or planned
34 risk management program for the entity.
35 (2) The entity's plans for risk management and
36 loss avoidance, to minimize losses.
37 (3) The availability of expertise from a risk
38 management specialist.
39 (4) The funds currently available through
40 traditional financing methods.
41 (5) The funds anticipated to be raised by any
42 planned alternative financing mechanism allowed by
43 this Act.
44 (6) The entity's previous experience and success
45 with similar alternative financing mechanisms.
46 (7) The completeness and thoroughness of the
47 entity's planning.
48 (8) The probability for successful implementation
49 and continuing existence of the entity's planned
50 program.

2. The risk manager shall file with the general assembly and the office of the governor, by January 1, 1988, a report of the feasibility and effects of alternative financing plans authorized by this Act, and making recommendations regarding the expansion of the programs. Expansion of the pilot programs established pursuant to subsection 1 shall not occur until at least thirty days following the receipt of the report required by this subsection."

BY HUMMEL of Benton
HARBOR of Mills
CARPENTER of Polk
DIEMER of Black Hawk
METCALF of Polk

H-5684 FILED APRIL 3, 1986
W/D 4/8 (p.1311)

SENATE FILE 2265

H-5676

Amend the Committee on Judiciary and Law Enforcement amendment, H-5575, to Senate File 2265 as amended, passed and reprinted by the Senate as follows:

1. Page 17, by striking lines 12 and 13, and inserting the following:

"i. Review and report on the advisability of enacting a system for the compensation of individuals injured by the state or a municipality of a nature similar to existing statutory enactments relating to workers' compensation, and having such attributes as a no-fault basis, limited recovery, and remedy exclusivity.

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

H-5676 FILED APRIL 3, 1986 BY STROMER of Hancock
Adopted 4/9 (p.1351)

SENATE FILE 2265

H-5675

Amend the Committee on Judiciary and Law Enforcement amendment, H-5575, to Senate File 2265 as amended, passed and reprinted by the Senate as follows:

1. Page 17, by inserting after line 44 the following:

"Sec. ___. A municipality is authorized to submit a claim to the state comptroller for the payment of any documented increase in tort liability insurance premiums of the municipality for the fiscal year 1987 over the average of the municipality's corresponding tort liability insurance premiums for the fiscal years 1985 and 1986."

H-5675 FILED APRIL 3, 1986 BY STROMER of Hancock
Lost 4/9 (p.1352)

H-5668

SENATE FILE 2265

1 Amend amendment H-5575 to Senate File 2265 as
2 amended, passed and reprinted by the Senate as follows:
3 1. Page 6, by striking lines 14 through 49.

BY DODERER of Johnson
SHERZAN of Polk
SHOULTZ of Black Hawk
McKEAN of Jones

H-5668 FILED APRIL 2, 1986
Lost 4/8 (p. 1309)

SENATE FILE 2265

H-5670

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by striking lines 42 through 50 and
6 inserting the following:
7 "Sec. ___. Section 321.445, Code 1985, as amended
8 by 1986 Iowa Acts, Senate File 499, section 2, is
9 amended by adding the following new subsection:
10 NEW SUBSECTION. 4. Except as provided under
11 section 321.446, the nonuse of a safety belt or safety
12 harness by a person when not required to wear a safety
13 belt or safety harness under subsection 2 or by a
14 person in a cause of action arising prior to July 1,
15 1986, shall not be admissible or material as evidence
16 in a civil action brought for damages."

BY CHAPMAN of Linn
SWARTZ of Marshall

H-5670 FILED APRIL 3, 1986
Placed o/t 4/9 (p. 1350)

SENATE FILE 2265

H-5659

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 6, by striking lines 14 through 49 and
6 inserting the following:
7 "Sec. ___. Section 123.92, Code Supplement 1985,
8 is amended by striking the section and inserting in
9 lieu thereof the following:
10 123.92 CIVIL LIABILITY FOR SALE OR GIFT OF BEER,
11 WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).
12 A licensee or permittee who sells, gives, or
13 otherwise supplies alcoholic liquor, wine, or beer
14 shall not be liable unless the licensee or permittee
15 does one of the following:
16 1. Causes the consumption by force or by
17 representing that the beverages contain no alcohol.
18 2. Knew or had reasonable cause to believe that
19 the person consuming was under the legal age, and the
20 beverages provided were a substantial factor in
21 causing injury to a third party. However, liability
22 shall not attach if all of the following occurred:
23 a. The underage person falsely represented that
24 they had attained the legal drinking age.
25 b. The underage person supported the
26 representation of legal drinking age with
27 documentation.
28 c. The beverages were provided in good faith
29 reliance on the underage person's representation of
30 legal drinking age.
31 d. Based on the appearance of the underage person,
32 an ordinary and prudent person would believe that the
33 underaged person had attained the legal drinking age.
34 Every liquor control licensee and permittee shall
35 furnish proof of financial responsibility either by
36 the existence of a liability insurance policy or by
37 posting bond in an amount determined by the
38 department."

BY HALVORSON of Clayton
WOODS of Polk
DIEMER of Black Hawk
KOENIGS of Mitchell
METCALF of Polk
H-5659 FILED APRIL 2, 1986
Lost 4/8 (p. 1303)

ROYER of Page
SHONING of Woodbury
MAULSBY of Calhoun
LAGESCHULTE of Bremer
HARBOR of Mills
CLARK of Cerro Gordo

SENATE FILE 2265

H-5651

1 Amend Senate File 2265 as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 17, by inserting after line 27, the
4 following:
5 "Sec. ___. NEW SECTION. 669.1 AUTHORIZATION.
6 The supreme court by rule may provide for mandatory
7 arbitration of actions brought pursuant to chapter
8 668, as the court deems appropriate in order to
9 expedite in a less costly manner any action wherein a
10 party asserts a claim not exceeding fifteen thousand
11 dollars, or a judge of the district court, at a
12 pretrial conference, determines that no greater amount
13 appears to be genuinely in controversy.
14 Sec. ___. NEW SECTION. 669.2 IMPLEMENTATION.
15 The supreme court shall by rule adopt procedures
16 adapted to each judicial district to implement
17 mandatory arbitration under this chapter.
18 Sec. ___. NEW SECTION. 669.3 QUALIFICATION --
19 APPOINTMENT -- COMPENSATION OF ARBITRATORS.
20 The qualification and the method of appointment of
21 arbitrators shall be prescribed by rule. Arbitrators
22 shall be entitled to reasonable compensation for their
23 services. Arbitration hearings shall be conducted by
24 arbitrators sitting in panels of three, or a lesser
25 number as may be stipulated by the parties.
26 Sec. ___. NEW SECTION. 669.4 DECISION AND AWARD.
27 Following the arbitration hearing as prescribed by
28 rule, the arbitrators' decision shall be filed with
29 the district court, together with proof of service on
30 the parties. Within the time prescribed by rule, any
31 party to the proceeding may file with the clerk of the
32 court a written notice of the rejection of the award.
33 In case of a rejection, the parties may, upon payment
34 of appropriate costs, proceed to trial in the district
35 court.
36 Sec. ___. NEW SECTION. 669.5 JUDGMENT OF THE
37 COURT.
38 If no rejection of the award is filed, a judge of
39 the district court may enter the award as the judgment
40 of the court in the matter.
41 Sec. ___. NEW SECTION. 669.6 CHAPTER NOT
42 AFFECTED.
43 Chapter 679A, or any other provision of law
44 relating to arbitration, is not applicable to
45 arbitration proceedings pursuant to this chapter."
46 2. Title page 2, line 6, by inserting after the
47 word "action," the words "creating a mandatory
48 arbitration system for certain cases,".
49 3. By numbering, renumbering, and changing
50 internal references as necessary.

H-5651 FILED APRIL 2, 1986 BY BENNETT of Ida

Placed o/o 4/9 (p. 1360)

H-5634

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by striking lines 42 through 50 and
6 inserting the following:
7 "Sec. ___. Section 321.445, Code 1985, as amended
8 by 1986 Iowa Acts, Senate File 499, section 2, is
9 amended by adding the following new subsection:
10 NEW SUBSECTION. 4. The nonuse of a seat belt by a
11 person is not admissible or material as evidence in
12 civil actions brought for damages."

H-5634 FILED APRIL 2, 1986 BY BLANSHAN of Greene
Placed o/o 4/9 (p. 1350)

SENATE FILE 2265

H-5638

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 13, by inserting after line 49 the
6 following:
7 "4. The mere allegation or assertion of a claim
8 for punitive damages shall not form the basis for
9 discovery of the wealth or ability to respond in
10 damages on behalf of the party from whom punitive
11 damages are claimed until such time as the claimant
12 has established that sufficient admissible evidence
13 exists to support a prima facie case establishing the
14 requirements of subsection 1."

H-5638 FILED APRIL 2, 1986 BY JAY of Appanoose
Lost 4/9 (p. 1334)

SENATE FILE 2265

H-5642

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 6, line 26, by inserting after the word
6 "served" the words "or sold and delivered".
7 2. Page 13, line 22, by inserting after the word
8 "that" the words "an issue of fact exists that".
9 3. Page 14, line 22, by inserting after the word
10 "defendant" the words "or the defendant's insurer".

H-5642 FILED APRIL 2, 1986 BY JAY of Appanoose
Adopted 4/9 (p. 1303)
Since 7 & 6 placed o/o [illegible]

SENATE FILE 2265

H-5658

1 Amend amendment H-5575 to Senate File 2265 as
2 amended, passed and reprinted by the Senate as follows:
3 1. Page 15, by striking lines 15 through 41.

BY DODERER of Johnson
SIEGRIST of Pottawattamie

H-5658 FILED APRIL 2, 1986
N/D 4/9 (p. 1345)

SENATE FILE 2265

H-5627

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 15, by inserting after line 41, the
6 following:
7 "Sec. ___. NEW SECTION. 668.15 ATTORNEY FEES.
8 1. In an action under this chapter, an attorney
9 representing a party pursuant to a contingent fee
10 arrangement is entitled to a reasonable fee as
11 determined by the court. However, the fee shall not
12 exceed the following:
13 a. For the amount of the judgment not exceeding
14 one hundred thousand dollars, thirty-five percent of
15 the amount.
16 b. For the amount of a judgment exceeding one
17 hundred thousand dollars but not exceeding five
18 hundred thousand dollars, twenty percent of the
19 amount.
20 c. For the amount of the judgment exceeding five
21 hundred thousand dollars but not exceeding one million
22 dollars, ten percent of the amount.
23 d. For the amount of the judgment exceeding one
24 million dollars, five percent of the amount.
25 2. Notwithstanding subsection 1, an attorney fee
26 may exceed an applicable maximum if either of the
27 following is true:
28 a. The court determines that extraordinary
29 expenses or services were provided by the attorney.
30 b. Appeal is taken and heard. However, any
31 additional fees allowed under this paragraph shall not
32 exceed the applicable maximum by more than twenty
33 percent.
34 Any fee allowed pursuant to this subsection shall
35 be a reasonable fee as determined by the court."

H-5627 FILED APRIL 1, 1986 BY MILLER of Cherokee

Lost 4/9 (p. 1346)

SENATE FILE 2265

H-5628

1 Amend Senate File 2265 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 15, by inserting after line 23 the
4 following:
5 "c. Whether the award is authorized by statute."
6 2. Page 15, line 25, by striking the words
7 "answer or finding" and inserting the words "answers
8 or findings".
9 3. Page 15, by striking line 26 and inserting the
10 following: "paragraphs "a" and "c", are affirmative.
11 If such answers or findings are".

BY SHONING of Woodbury
ROYER of Page
BENNETT of Ida
CARPENTER of Polk
METCALF of Polk
RENKEN of Grundy
HARBOR of Mills
DIEMER of Black Hawk
HALVORSON of Clayton

H-5628 FILED APRIL 1, 1986

Placed o/c 4/9 (p. 1365)

SENATE FILE 2265

H-5631

1 Amend amendment H-5575 to Senate File 2265 as
2 amended, passed and reprinted by the Senate as follows:
3 1. Page 18, line 5, by striking the word "The" and
4 inserting the words: "the Ad-Express and Daily".

H-5631 FILED APRIL 1, 1986 BY GRONINGA of Cerro Gordo
W/D 4/9 (J. 1352)

SENATE FILE 2265

H-5633

1 Amend amendment H-5575 to Senate File 2265, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. By striking page 17, line 47 through page 18,
5 line 6, and inserting the following:
6 "Sec. ___. This Act, being deemed of immediate
7 importance, takes effect from and after its
8 publication in The Sioux City Journal, a newspaper
9 published in Sioux City, Iowa, and in the Ad-Express
10 and Daily Iowegian and Citizen, a newspaper published
11 in Centerville, Iowa, and unless otherwise
12 specifically provided, applies to all cases filed on
13 or after July 1, 1986."

H-5633 FILED APRIL 1, 1986 BY JAY of Appanoose
Adopted 4/9 (J. 1353)

SENATE FILE 2265

5626

Amend the Committee on Judiciary and Law Enforcement amendment, H-5575, to Senate File 2265 as amended, passed and reprinted by the Senate as follows:

1. Page 5, by inserting before line 42 the following:

"Sec. ___. Section 25A.4, unnumbered paragraph 2, Code 1985, is amended to read as follows:

The state ~~shall be~~ is liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the state ~~shall~~ is not be liable for ~~interest prior to judgment or for~~ punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the state were a private litigant."

2. Page 10, by inserting before line 24 the following:

"Sec. ___. Section 535.3, Code 1985, is amended to read as follows:

535.3 INTEREST ON JUDGMENTS AND DECREES.

Interest shall be allowed on all money due on judgments and decrees of courts at the rate of ten percent per year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by ~~the provisions of~~ section 535.2, which allowable rate must be expressed in the judgment or decree. The interest shall accrue from the date of the ~~commencement of the action~~ judgment or decree.

Sec. ___. Section 557A.16, subsection 2, Code Supplement 1985, is amended to read as follows:

2. If a developer or any other person subject to this chapter violates ~~any~~ a provision of this chapter or ~~any~~ a provision of the project or time-share instruments, ~~any~~ a person or class of persons damaged or otherwise adversely affected by the violation ~~shall have~~ has a claim for appropriate relief, which shall be brought in the county in which the time-share project is located or was offered or sold, in which the time-share offeror or time-share salesperson resides or is doing business upon tender of the time-share interest sold, or in which the contract was made. The court may order the developer or other person subject to this chapter to refund the purchaser the full amount paid by the purchaser, ~~with prejudgment interest,~~ less a portion of the amount paid representing the portion of any benefit the

1 purchaser actually received or had the right to
2 receive during the time preceding the tender. In all
3 cases, the court may provide equitable relief it
4 considers necessary or proper. The court may also
5 award the person or class of persons reasonable
6 attorney's fees. This action does not limit any other
7 remedy of the purchaser."
8 3. By numbering and renumbering as necessary.

BY HALVORSON of Clayton
LAGESCHULTE of Bremer
DIEMER of Black Hawk

H-5626 FILED APRIL 1, 1986
Lost 4/8 (p.1303)

SENATE FILE 2265

H-5625

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 6, by striking lines 14 through 49 and
6 inserting the following:
7 "Sec. ___. Section 123.92, Code Supplement 1985,
8 is amended by striking the section and inserting in
9 lieu thereof the following:
10 123.92 CIVIL LIABILITY FOR SALE OR GIFT OF BEER,
11 WINE, OR INTOXICATING LIQUOR (DRAMSHOP ACT).
12 A licensee or permittee who sells, gives, or
13 otherwise supplies alcoholic liquor, wine, or beer
14 shall not be liable unless the licensee or permittee
15 does one of the following:
16 1. Causes the consumption by force or by
17 representing that the beverages contain no alcohol.
18 2. Knew or had reasonable cause to believe that
19 the person consuming was under the legal age, and the
20 beverages provided were a substantial factor in
21 causing injury to a third party. However, liability
22 shall not attach if all of the following occurred:
23 a. The underage person falsely represented that
24 they had attained the legal drinking age.
25 b. The underage person supported the
26 representation of legal drinking age with
27 documentation.
28 c. The beverages were provided in good faith
29 reliance on the underage person's representation of
30 legal drinking age.
31 d. Based on the appearance of the underage person,
32 an ordinary and prudent person would believe that the
33 underaged person had attained the legal drinking age.
34 Every liquor control licensee and permittee shall
35 furnish proof of financial responsibility either by
36 the existence of a liability insurance policy or by
37 posting bond in an amount determined by the
38 department."

BY HALVORSON of Clayton
DIEMER of Black Hawk
METCALF of Polk
ROYER of Page
SHONING of Woodbury
MAULSBY of Calhoun
LAGESCHULTE of Bremer
HARBOR of Mills

H-5625 FILED APRIL 1, 1986
W/D 4/8 (p.1306)

SENATE FILE 2265

H-5624

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 11, by inserting after line 4 the
6 following:
7 "Sec. ___. Section 613A.4, subsection 6, Code
8 1985, is amended to read as follows:
9 6. Any claim for damages ~~caused-by-a~~
10 ~~municipality's-failure-to-discover-a-latent-defect-in~~
11 ~~the-course-of~~ arising out of a municipality's
12 performance of or failure to perform an inspection.
13 Sec. ___. Section 613A.4, Code 1985, is amended by
14 adding the following new subsections:
15 NEW SUBSECTION. 9. Any claim based upon an act or
16 omission by an officer or employee of the municipality
17 or the municipality's governing body, in the granting,
18 suspension, or revocation of a license or permit,
19 where the damage was caused by the person to whom the
20 license or permit was issued, unless the act of the
21 officer or employee constitutes actual malice.
22 NEW SUBSECTION. 10. Any claim based upon an act
23 or omission of an officer or employee of the
24 municipality, whether by issuance of permit,
25 inspection, investigation, or otherwise, and whether
26 the statute, ordinance, or regulation is valid, if the
27 damage was caused by a third party, event, or property
28 not under the supervision or control of the
29 municipality, unless the act or omission of the
30 officer or employee constitutes actual malice."
31 2. By numbering and renumbering as necessary.

BY HALVORSON of Clayton
HARBOR of Mills
LAGESCHULTE of Bremer
MAULSBY of Calhoun
SHONING of Woodbury
DIEMER of Black Hawk
RENKEN of Grundy
METCALF of Polk

H-5624 FILED APRIL 1, 1986

W/D 4/8 (p. 1316)

SENATE FILE 2265

H-5623

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 10, line 25, by striking the words "OF
6 NONMANUFACTURERS".
7 2. Page 11, by inserting after line 4 the
8 following:
9 "4. A civil action against a manufacturer, a
10 distributor, or a seller of a product for the recovery
11 of damages for personal injury, death, or property
12 damages, sustained by reason of an alleged defect in
13 the design, testing, manufacturing, formulation,
14 marketing, packaging, warning or labeling of the
15 product based on the theories of strict liability in
16 tort or breach of an implied warranty shall not be
17 commenced more than ten years after the product was
18 first purchased, leased, bailed, or installed for use
19 or consumption. This subsection does not affect the
20 time during which a person found liable may seek and
21 obtain contribution or indemnity from another person
22 whose actual fault caused a product to be defective."

BY HALVORSON of Clayton
METCALF of Polk
STROMER of Hancock
RENKEN of Grundy
DIEMER of Black Hawk
HERMANN of Scott
CARPENTER of Polk
ROYER of Page
SHONING of Woodbury
BENNETT of Ida
MAULSBY of Calhoun
LAGESCHULTE of Bremer

H-5623 FILED APRIL 1, 1986

Lost 4/8 (p. 1316) Motion to reconsider (p. 1319)
" lost 4/9 (p. 1358)

SENATE FILE 2265
Amendments H-5575 & H-5602
FISCAL NOTE
REQUESTED BY REPRESENTATIVE SWARTZ

In compliance with a written request received March 28, 1986, a fiscal note for AMENDMENTS H-5575 AND H-5602 TO SENATE FILE 2265 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-5575 moves Code sections pertaining to the risk management division of general services. Risk management is retained under the department of general services. The risk management division is required to engage in activities designed to reduce losses and loss exposures of state government and will develop programs to assist governmental subdivisions. The division will also develop and implement a market assistance program to facilitate, arrange, or provide for insurance coverage for governmental entities for which it is determined that present coverage is unavailable, unreasonable, or unacceptable, and will provide technical advice and assistance to governmental entities seeking to utilize alternative financing methods to develop a stable pool of funds with which to insure and reinsure risk exposures. The division is required to submit an annual report to the general assembly.

The amendment also broadens the standard of care in the dram shop act to create liability for selling and serving a person when the licensee or permittee knew or should have known the person was or would become intoxicated. The beer and liquor control department is required to distribute a chart to licensees and permittees containing information on factors affecting intoxication.

The proceedings of peer review committees are made inadmissable as evidence in any civil action, as are reports submitted by hospital disciplinary authorities to the medical examiners board. The standard for admissibility of evidence given by expert witnesses on standard of care issues is tightened.

School districts, counties and cities are permitted to issue general obligation bonds, enter into agreements and make supplemental levies for liability insurance purposes, and engage in self-insurance and risk pooling.

The amendment limits the products liability exposure of nonmanufacturers, makes it more difficult for people who frequently prosecute unsuccessful lawsuits to file an action, and prohibits specifying the amount of money damages being demanded in actions for personal injury or wrongful death. The amendment sets out criteria which must be met before punitive or exemplary damages can be awarded, provides for court approval of structured, periodic or other nonlump-sum payments, requires advance disclosure of expert witnesses in liability cases involving licensed professionals, provides a state-of-the-art defense, requires an attorney who profits from books or other media about an action to turn the profits to the attorney general for specified purposes, provides that nonuse of a seat belt is inadmissable in civil actions for damages, and creates a study commission on liability issues.

Amendment H-5602 makes several significant changes to H-5575. Changes are made to the existing Code language pertaining to risk management. The division of risk management is required to develop programs for the management of loss and loss exposures of governmental subdivisions and to operate a market assistance program to facilitate, arrange or provide for the acquisition of insurance coverage for all public or private entities deemed to be essential to the public welfare. The amendment also requires the division to provide technical advice and assistance, upon request, to these public and private entities for which it is determined that present coverage is unavailable, unreasonable or unacceptable. This assistance includes the administrative and personnel support for entities seeking to utilize state financing. The division is permitted to assume fidelity exposures for state

officials and employees, negotiate upon request with insurers on behalf of governmental subdivisions unable to obtain reasonable or acceptable insurance coverage, and cancel coverage already negotiated or purchased for governmental subdivisions if they fail to comply with standards. The division may charge for the reimbursement of expenses incurred in facilitating, arranging, or acquiring insurance coverage.

Gross negligence in acts pertaining to financial regulation is kept under the state tort claims act, and state officials are no longer required to obtain their own bonds and may be covered under a blanket bond. The sections in H-5575 pertaining to peer review are changed and dentists are added to the standards pertaining to expert witness testimony.

The commissioner of insurance is authorized to institute or order the institution of programs by the private sector relating to insurance assistance, including market assistance programs, mandatory risk allocation systems, risk-sharing programs, and risk management programs for those for whom liability insurance is essential. Financing for these programs may be by assessment of fees to insurers who write property and liability insurance in Iowa, and fees and charges may be assessed against persons or entities who receive assistance. Fees collected are to be held separate and are not to be transferred for the general fund or used for any other purpose.

The commissioner is also required to conduct a rate adjustment review for all insurers writing property and casualty insurance when the insurer makes request for a rate adjustment. The costs of an actuarial consultant will be assessed against the insurer make the rate adjustment request. The commissioner is authorized to conduct continuing studies pertaining to insurance assistance.

The amendment removes the requirement that insurers specify the separate cost of coverage for punitive and exemplary damages, expands the study committee, provides that the judicial council shall require district clerks to compile information relating to tort liability litigation.

FISCAL EFFECT: Due to the current conditions in the insurance market, this legislation could result in many requests for assistance from governmental entities. Depending upon the volume of requests for assistance, the department of general services estimates that an additional 2.00 to 5.00 FTE will be required to implement the proposed legislation. Costs for salaries and support are estimated to be between $51,300 and $140,400. The present staff of the division of risk management is 1.50 FTE.

There are a variety of provisions of this bill which would have the effect of limiting liability exposure. It is projected that these provisions will reduce expenditures of governmental entities, the amount that expenditures will be reduced cannot be estimated.

The sections of H-5602 that pertain to the commissioner of insurance are not expected to require additional expenditures.

(LSB 8069S, HML)

SOURCES: Department of General Services
Insurance Department

FILED APRIL 4, 1986 BY DENNIS PROUTY, FISCAL DIRECTOR

5602 amends Sec. 1 thru 11

SENATE FILE 2265

H-5575

1 Amend Senate File 2265 as amended, passed and
2 reprinted by the Senate as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. NEW SECTION. 18.190 DEFINITIONS.
6 As used in sections 18.190 through 18.200 unless
7 the context otherwise requires:
8 1. "Division" means the division of risk
9 management created by section 18.192.
10 2. "Insurance coverage" means any contract whereby
11 loss exposure or risk exposure is transferred to or
12 shared by an insurer.
13 3. "Governmental subdivision" means a city,
14 county, township, school district, area education
15 agency, area vocational school, area community
16 college, an entity created by agreement under chapter
17 28E, or another political subdivision. The term does
18 not include any unit or agency of state government.
19 Sec. 2. NEW SECTION. 18.191 SCOPE OF ACT.
20 Sections 18.190 through 18.200 apply to all
21 property and casualty loss exposures, but do not apply
22 to any exposure covered by life, accident and health,
23 or workers compensation insurance, and do not apply to
24 any retirement plan or system.
25 The duties of the department of general services
26 and the division under sections 18.190 through 18.200
27 extend to and encompass the personnel and property of
28 the state board of regents and the state department of
29 transportation in the same manner and to the same
30 extent as other agencies of state government.
31 Sections 18.190 through 18.200 do not apply to losses
32 and loss exposures for revenue producing facilities
33 under the state board of regents which are required to
34 carry insurance under a bond covenant.
35 Sec. 3. NEW SECTION. 18.192 RISK MANAGEMENT
36 DIVISION.
37 A division of risk management is created within the
38 department of general services. The division is the
39 agency which administers sections 18.190 through
40 18.200. The division is supervised by a risk manager
41 who shall be appointed and subject to removal by the
42 director of general services.
43 Sec. 4. NEW SECTION. 18.193 PERSONNEL.
44 The risk manager shall employ other permanent full-
45 time personnel as necessary to administer this
46 chapter. All permanent full-time personnel other than
47 the risk manager are subject to chapter 19A. The risk
48 manager is authorized to hire as independent
49 contractors other persons as necessary to assist the
50 risk manager in establishing standards and procedures

1 under sections 18.190 through 18.200.
2 Sec. 5. NEW SECTION. 18.194 DUTIES OF DIVISION.
3 1. The risk management division, with respect to
4 losses and loss exposures of state government, shall:
5 a. Develop and maintain loss and exposure data on
6 all state property and liability risks.
7 b. Develop risk reduction or elimination programs.
8 c. Determine which risk exposures shall be insured
9 and which risk exposures shall be self-insured or
10 assumed by the state.
11 d. Review the insurance purchasing practices of
12 the state.
13 e. Establish standards for the purchase of
14 necessary insurance coverage at the lowest costs,
15 consistent with good underwriting practices and sound
16 risk management techniques.
17 f. Recommend to the general assembly legislation
18 as necessary from time to time to carry out the
19 purposes of sections 18.190 through 18.200.
20 2. The division shall develop programs for the
21 management of losses and loss exposures of
22 governmental subdivisions which may include, but are
23 not limited to, the following:
24 a. To assist subdivisions in the development and
25 maintenance of loss and loss exposure data on property
26 and liability risks of governmental subdivisions.
27 b. To recommend risk reduction or risk elimination
28 programs to governmental subdivisions.
29 c. To recommend to governmental subdivisions those
30 practices which will permit protection against losses
31 at the lowest costs, consistent with good underwriting
32 practices and sound risk management techniques.
33 d. To negotiate or acquire insurance coverage for
34 governmental subdivisions, subject to the limitations
35 contained in sections 18.190 through 18.200.
36 e. To recommend to the general assembly and
37 governmental subdivisions, changes in statutes,
38 ordinances, and policies as necessary to enable
39 governmental subdivisions to develop and implement
40 risk management programs and to acquire insurance
41 coverage.
42 3. The division shall develop and implement a
43 market assistance program to facilitate, arrange, or
44 provide for the acquisition of insurance coverage for
45 all public or private entities deemed to be essential
46 to the public welfare and for which it is determined
47 that present coverage is unavailable, unreasonable, or
48 unacceptable.
49 4. The division shall provide technical advice and
50 assistance to governmental subdivisions and public and

1 private entities identified under subsection 3 seeking
2 to utilize alternative financing methods to develop a
3 stable pool of funds with which to insure and reinsure
4 risk exposures, including administrative and personnel
5 support for entities seeking to utilize state
6 financing, or combination financing under chapter 28E.
7 Sec. 6. NEW SECTION. 18.195 GUIDELINES.
8 1. The risk management division shall carry out
9 its duties relating to state government loss and risk
10 exposures pursuant to the following guidelines:
11 a. To the extent possible, all insurance coverage
12 which is purchased for vehicles owned by the state
13 shall be under fleet policies.
14 b. Bonding of state employees shall be
15 reevaluated, and uniform standards shall be adopted
16 for the purchase of all fidelity bonds recommended for
17 state employees. To the extent possible, all bonded
18 state employees shall be covered under one or more
19 blanket bonds or position schedule bonds. In carrying
20 out section 64.6, the state may purchase an individual
21 or a blanket surety bond insuring the fidelity of
22 state officers subject to the minimum surety bond
23 requirements of section 64.6. A state officer listed
24 in section 64.6 is deemed to have furnished surety if
25 the officer is covered by a blanket bond purchased as
26 provided in this paragraph.
27 c. The management of state property loss exposures
28 and state liability risk exposures shall be
29 accomplished for state government as a whole, and
30 without regard to the branch of government or the
31 agency within which the loss exposure or risk exposure
32 arises, except that the state board of regents shall
33 share in the management of property loss exposures and
34 liability risk exposures involving institutions under
35 the jurisdiction of the board.
36 d. Insurance coverage may include any type of
37 insurance protection sold by insurers, including but
38 not limited to, full coverage, partial coverage,
39 coinsurance, reinsurance, and deductible insurance.
40 2. The division shall develop programs relating to
41 governmental subdivisions which are subject to the
42 following guidelines:
43 a. Participation by a governmental subdivision in
44 any risk management program offered by the division
45 shall be by contract or on a voluntary basis.
46 b. The division is not required to negotiate or
47 purchase insurance coverage for any governmental
48 subdivision, as permitted by sections 18.190 through
49 18.200, which fails to comply with standards adopted
50 by the division, and may cancel coverage already

1 negotiated or purchased upon determination of such
2 failure.
3 c. Risk management programs may treat loss and
4 risk exposures of governmental subdivisions
5 individually, or on a group basis, or both.
6 Sec. 7. NEW SECTION. 18.196 PURCHASE OF
7 INSURANCE.
8 1. The division, in consultation with the director
9 of the department of general services, is the
10 exclusive contracting agency for the purchase of
11 insurance coverage for state loss and risk exposure
12 except for revenue producing facilities under the
13 state board of regents which have to comply with bond
14 covenants.
15 2. The division shall negotiate with insurers on
16 behalf of governmental subdivisions unable to obtain
17 reasonable or acceptable insurance coverage, for the
18 purchase of insurance coverage.
19 3. The division may purchase contracts of
20 insurance, and may contract with insurers, within the
21 standards prescribed by the risk management division.
22 Funding for the purchase of insurance for state loss
23 and risk exposure shall be provided by a specific and
24 separate appropriation provided solely for this
25 purpose.
26 4. The division may facilitate, arrange, or
27 provide for the acquisition of insurance coverage on
28 behalf of one or more governmental subdivisions. Any
29 insurance contract negotiated by the division may
30 include coverage or coverages for state loss or risk
31 exposures and for the loss or risk exposures of one or
32 more governmental subdivisions, or for any combination
33 of these exposures.
34 5. The risk manager may act as attorney in fact
35 under section 520.2 for governmental subdivisions
36 executing reciprocal or interinsurance contracts under
37 chapter 520.
38 6. The division shall not charge governmental
39 subdivisions for risk management services, but may
40 charge for the reimbursement of expenses incurred in
41 facilitating, arranging, or acquiring insurance
42 coverage.
43 Sec. 8. NEW SECTION. 18.197 EXECUTIVE COUNCIL
44 SUPERVISION.
45 All standards adopted by the division under
46 sections 18.190 through 18.200 are subject to review
47 and approval or disapproval by the executive council.
48 However, each standard proposed by the division shall
49 be effective on the date specified in the standard
50 unless specifically disapproved by the executive

1 council within thirty days after a copy of the
2 proposed standard is delivered to the secretary of the
3 executive council.
4 Sec. 9. NEW SECTION. 18.198 ACCESS TO STATE
5 RECORDS.
6 The division shall be given full assistance and
7 cooperation by every state agency and its officers and
8 employees. Each agency shall provide to the division
9 all requested loss and loss exposure information, and
10 shall comply with all standards and directives of the
11 division and of the department of insurance relating
12 to the administration of sections 18.190 through
13 18.200 except as otherwise provided in those sections.
14 Sec. 10. NEW SECTION. 18.199 ACCESS TO RECORDS
15 OF GOVERNMENTAL SUBDIVISIONS AND OTHER ENTITIES.
16 A governmental subdivision or other public or
17 private entity requesting the assistance of the
18 division shall, as a prerequisite to the assistance,
19 provide the division with full cooperation and all
20 requested loss and loss exposure information, and
21 shall comply with all standards and directives of the
22 division relating to the administration of sections
23 18.190 through 18.200.
24 Sec. 11. NEW SECTION. 18.200 ANNUAL REPORT --
25 LONG RANGE PLANNING.
26 The division shall:
27 1. Annually submit to the general assembly a
28 report containing the findings and recommendations of
29 the division, setting out the standards adopted, and
30 making recommendations for those statutory changes
31 which are necessary to implement or permit the
32 implementation of standards proposed by the division.
33 The report shall include a summary of the division's
34 annual costs of operation, the risks covered, and the
35 premiums paid.
36 2. Initiate continuing discussion and programming
37 with public and private financing agencies and other
38 interested entities regarding the feasibility and
39 establishment of a continuing source of funds to serve
40 as a reinsurance pool for public and private entities
41 essential to the public welfare.
5626 170,5757 42 Sec. 12. Section 25A.14, Code 1985, is amended by
43 adding the following new subsection:
5602 5717 5744 44 NEW SUBSECTION. 11. Any claim for financial loss
45 based upon an act or omission in financial regulation,
46 including but not limited to examinations,
47 inspections, audits, or other financial oversight
48 responsibilities, pursuant to Titles XIX through
49 XXIII. This subsection shall not apply to claims
50 based upon gross negligence.
5782

Sec. 13. 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.

5774 5602 Sec. 14. Section 64.6, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

Unless covered by a higher limit blanket bond purchased as provided in section ~~18.165~~ 18.195, subsection 1, paragraph "b", state officers shall give bonds, the premiums being paid by the state, in an amount as follows:

5668 5659 5625 5668 Sec. 15. Section 123.92, Code Supplement 1985, is amended to read as follows:

5707 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.

5707 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.

The department shall issue to each licensee and permittee a scientific chart showing the relationship between beer, wine, or intoxicating liquor consumed, body weight, and resulting blood alcohol content, and each licensee and permittee shall instruct all persons under their supervision and control, who serve or have the authority to serve beer, wine, or intoxicating liquor, in the use of such chart.

56.. Sec. 16. Section 147.135, Code 1985, is amended by

1 adding the following new unnumbered paragraphs:
2 NEW UNNUMBERED PARAGRAPH. The proceedings and
3 records of a peer review committee are confidential
4 and are not discoverable or admissible in evidence in
5 any civil action. A person present at a meeting of a
6 peer review committee shall not be permitted to
7 testify in any civil action as to the findings,
8 recommendations, evaluations, or opinions of the peer
9 review committee. Information or documents dis-
10 coverable from sources other than the peer review
11 committee do not become nondiscoverable from the other
12 sources merely because they are made available to a
13 peer review committee.
14 NEW UNNUMBERED PARAGRAPH. The hospital
15 administrator or chief of the medical staff shall make
16 a full and confidential report to the board of medical
17 examiners concerning final hospital disciplinary
18 action approved by the hospital board of trustees,
19 within ten days of the action, if the action results
20 in a limitation, suspension, or revocation of a
21 physician's privilege to practice for reasons relating
22 to the physician's professional competence or
23 concerning any voluntary surrender or limitation of
24 privileges for reasons relating to professional
25 competence. The board of medical examiners shall
26 investigate the report and take appropriate action.
27 The reports are not discoverable or admissible in
28 evidence in any civil action. Persons making these
29 reports and persons participating in proceedings
30 related to these reports are immune from civil
31 liability with respect to the making of the report or
32 participation in the related proceedings. However,
33 the immunity does not apply to an act, omission, or
34 decision made with malice.
35 Sec. 17. NEW SECTION. 147.139 EXPERT WITNESS
36 STANDARDS.
5602 37 If the standard of care given by a physician and
38 surgeon licensed pursuant to chapter 148, or
39 osteopathic physician and surgeon licensed pursuant to
40 chapter 150A is at issue, the court shall only allow a
41 person to qualify as an expert witness and to testify
42 on the issue of the appropriate standard of care if
43 the person's medical qualifications relate directly to
44 the medical problem or problems at issue and the type
45 of treatment administered in the case.
46 Sec. 18. NEW SECTION. 148.12 VOLUNTARY
47 AGREEMENTS.
48 The medical examiners, after due notice and
49 hearing, may direct the commissioner of health to
50 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.

5743,5 Sec. 19. NEW SECTION. 296.7 INDEBTEDNESS FOR INSURANCE AUTHORIZED -- TAX LEVY.

5713 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 pursuant to section 613A.7. Such a self insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C.

5756,56 Sec. 20. 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.

5756,56 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,

1 subsection 1, paragraph 1; and section 331.441,
2 subsection 2, paragraph "b". Moneys credited to the
3 reserve, and interest earned on such moneys, shall
4 remain in the reserve until expended for purposes
5 authorized by section 331.301, subsection 11; section
5602 6 331.424, subsection 1, paragraph "l"; or section
7 331.441, subsection 2, paragraph "b".
8 Sec. 21. Section 331.424, subsection 1, paragraph
9 1, Code 1985, is amended by striking the paragraph and
10 inserting in lieu thereof the following:
5713 11 1. Tort liability insurance, property insurance,
12 and any other insurance that may be necessary in the
13 operation of the county, costs of a self insurance
14 program, costs of a local government risk pool, and
15 amounts payable under any insurance agreements to
16 provide or procure such insurance, self insurance
17 program, or local government risk pool pursuant to
5748 18 section 613A.7.
19 Sec. 22. Section 331.441, subsection 2, paragraph
20 b, Code 1985, is amended by adding the following new
21 subparagraph:
22 NEW SUBPARAGRAPH. (8) The provision of insurance,
23 or funding a self insurance program or local
24 government risk pool, including but not limited to the
25 investigation and defense of claims, the payment of
26 claims, and the administration and management of such
27 self insurance program or local government risk pool.
28 Sec. 23. Section 364.4, Code Supplement 1985, is
29 amended by adding the following new subsection:
30 NEW SUBSECTION. 5. Enter into insurance
31 agreements obligating the city to make payments beyond
32 its current budget year to procure or provide for a
33 policy of insurance, a self insurance program, or a
34 local government risk pool to protect the city against
35 tort liability, loss of property, or any other risk
36 associated with the operation of the city. Such a
37 self insurance program or local government risk pool
38 is not insurance and is not subject to regulation
5756,5611 39 under chapters 505 through 523C.
40 Sec. 24. Section 384.12, subsection 18, Code
41 Supplement 1985, is amended by striking the subsection
42 and inserting in lieu thereof the following:
43 18. A tax to pay the premium costs on tort
44 liability insurance, property insurance, and any other
45 insurance that may be necessary in the operation of
46 the city, the costs of a self insurance program, the
47 costs of a local government risk pool and amounts
48 payable under any insurance agreements to provide or
5748 49 procure such insurance, self insurance program, or
50 local government risk pool pursuant to section 613A.7.

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1 Sec. 25. Section 384.24, subsection 3, Code 1985,
2 is amended by adding the following new lettered
3 paragraph:
4 NEW LETTERED PARAGRAPH. s. The provision of
5 insurance, or funding a self insurance program or
6 local government risk pool, including but not limited
7 to the investigation and defense of claims, the
8 establishment of reserve funds for claims, the payment
9 of claims, and the administration and management of
10 such self insurance program or local government risk
11 pool.
12 Sec. 26. NEW SECTION. 384.110 INSURANCE, SELF-
13 INSURANCE, AND RISK POOLING FUNDS.
5708,5713 14 A city may credit funds to a fund or funds for the
15 purposes authorized by section 364.4, subsection 5;
16 section 384.12, subsection 18; section 384.24,
17 subsection 3, paragraph "s"; or section 613A.7.
18 Moneys credited to the fund or funds, and interest
19 earned on such moneys, shall remain in the fund or
20 funds until expended for purposes authorized by
21 section 364.4, subsection 5; section 384.12,
22 subsection 18; section 384.24, subsection 3, paragraph
5626 23 "s"; or section 613A.7.
5602
5686 24 Sec. 27. NEW SECTION. 613.18 LIMITATION ON
5623 25 PRODUCTS LIABILITY OF NONMANUFACTURERS.
5708 26 1. A person who is not the assembler, designer, or
5733 27 manufacturer, and who wholesales, retails,
28 distributes, or otherwise sells a product is:
29 a. Immune from any suit based upon strict
30 liability in tort or breach of implied warranty of
31 merchantability which arises solely from an alleged
32 defect in the original design or manufacture of the
33 product.
34 b. Not liable for damages based upon strict
35 liability in tort or breach of implied warranty of
36 merchantability for the product upon proof that the
37 manufacturer is subject to the jurisdiction of the
38 courts of this state and has not been judicially
39 declared insolvent.
40 2. A person who is a retailer of a product and who
41 assembles a product, such assembly having no causal
42 relationship to the injury from which the claim
43 arises, is not liable for damages based upon strict
44 liability in tort or breach of implied warranty of
45 merchantability which arises from an alleged defect in
46 the original design or manufacture of the product upon
47 proof that the manufacturer is subject to the
48 jurisdiction of the courts of this state and has not
49 been judicially declared insolvent.
50 3. An action brought pursuant to this section,

1 where the claimant certifies that the manufacturer of
2 the product is not yet identifiable, tolls the statute
3 of limitations against such manufacturer until such
4 time as discovery in the case is completed.
5 Sec. 28. Section 613A.7, Code 1985, is amended to
6 read as follows:
7 613A.7 INSURANCE.
8 The governing body of any municipality may purchase
9 a policy of liability insurance insuring against all
10 or any part of liability which might be incurred by
11 such municipality or its officers, employees and
12 agents under the provisions of section 613A.2 and
13 section 613A.8 and may similarly purchase insurance
14 covering torts specified in section 613A.4. The
15 governing body of any municipality may adopt a self
16 insurance program, including but not limited to the
17 investigation and defense of claims, the establishment
18 of a reserve fund for claims, the payment of claims,
19 and the administration and management of the self
20 insurance program, to cover all or any part of the
21 liability. The governing body of any municipality may
22 join and pay funds into a local government risk pool
23 to protect itself against any or all liability. The
24 governing body of any municipality may enter into
25 insurance agreements obligating the municipality to
26 make payments beyond its current budget year to
27 provide or procure such policies of insurance, self
28 insurance program, or local government risk pool. The
29 premium costs of such insurance, the costs of such a
30 self insurance program, the costs of a local
31 government risk pool, and the amounts payable under
32 any such insurance agreements may be paid out of the
33 general fund or any available funds or may be levied
34 in excess of any tax limitation imposed by statute.
35 Any independent or autonomous board or commission in
36 the municipality having authority to disburse funds
37 for a particular municipal function without approval
38 of the governing body may similarly enter into
39 insurance agreements, procure liability insurance,
40 adopt a self insurance program, or join a local
41 government risk pool within the field of its
42 operation. The procurement of such insurance
43 constitutes a waiver of the defense of governmental
44 immunity as to those exceptions listed in section
45 613A.4 to the extent stated in such policy but shall
46 have no further effect on the liability of the
47 municipality beyond the scope of this chapter, but if
48 a municipality adopts a self insurance program or
49 joins and pays funds into a local government risk pool
50 such action does not constitute a waiver of the

1 defense of governmental immunity as to the exceptions
2 listed in section 613A.4. The existence of any
3 insurance which covers in whole or in part any
4 judgment or award which may be rendered in favor of
5 the plaintiff, or lack of any such insurance, shall
6 not be material in the trial of any action brought
7 against the governing body of any municipality, or
8 their officers, employees or agents and any reference
9 to such insurance, or lack of same, shall be grounds
10 for a mistrial. A self insurance program or local
11 government risk pool is not insurance and is not
12 subject to regulation under chapters 505 through 523C.
5734 5763 13 Sec. 29. NEW SECTION. 617.16 FRIVOLOUS ACTIONS.
14 If a party commencing an action has in the
15 preceding five-year period unsuccessfully prosecuted
16 three or more actions, the court may, if it deems the
17 actions to have been frivolous, stay the proceedings
18 until that party furnishes an undertaking secured by
19 cash or approved sureties to pay all costs resulting
20 to opposing parties to the action including a rea-
21 sonable attorney fee.
22 Sec. 30. Section 619.18, Code 1985, is amended by
23 striking the section and inserting in lieu thereof the
24 following:
25 619.18 MONEY DAMAGES NOT TO BE STATED.
26 In an action for personal injury or wrongful death,
27 the amount of money damages demanded shall not be
28 stated in the petition, original notice, or any
29 counterclaim or cross-petition. This section does not
30 apply to claims brought pursuant to chapter 631.
31 Sec. 31. NEW SECTION. 619.19 VERIFICATION NOT
32 REQUIRED --AFFIDAVITS.
33 Pleadings need not be verified unless otherwise
34 required by statute. Where a pleading is verified, it
35 is not necessary that subsequent pleadings be verified
36 unless otherwise required by statute.
37 The signature of a party, the party's legal
38 counsel, or any other person representing the party,
39 to a motion, pleading, or other paper is a certificate
40 that:
41 1. The person has read the motion, pleading, or
42 other paper.
43 2. To the best of the person's knowledge,
44 information, and belief, formed after reasonable
45 inquiry, it is grounded in fact and is warranted by
46 existing law or a good faith argument for the
47 extension, modification, or reversal of existing law.
48 3. It is not interposed for any improper purpose,
49 such as to harass or cause an unnecessary delay or
50 needless increase in the cost of litigation.

1 If a motion, pleading, or other paper is not
2 signed, it shall be stricken unless it is signed
3 promptly after the omission is called to the attention
4 of the pleader or movant.
5 If a motion, pleading, or other paper is signed in
6 violation of this section, the court, upon motion or
7 upon its own initiative, shall impose upon the person
8 signing, the represented party, or both, an
9 appropriate sanction, which may include an order to
10 pay the other party or parties the amount of the
11 reasonable expenses incurred because of the filing of
12 the motion, pleading, or other paper, including a
13 reasonable attorney fee.
5768,5745 14 Sec. 32. NEW SECTION. 624.39 PUNITIVE OR
15 EXEMPLARY AWARDS.
5746 16 1. Punitive or exemplary damages shall not be
17 awarded in the judgment of any case unless one of the
18 following occurs:
19 a. The cause of action for the case is provided by
20 a statute which specifically authorizes the award of
21 punitive or exemplary damages.
5642 22 b. The court first determines that the conduct of
23 the defendant from which the claim arose was in
24 reckless, malicious, intentional, or willful and
25 wanton disregard for the rights or safety of the
26 claimant.
27 2. Notwithstanding subsection 1, punitive or
28 exemplary damages shall not be awarded based upon the
29 defendant's vicarious liability for the act of another
30 unless one of the following is true:
31 a. The defendant authorized the act and the manner
32 of the act.
33 b. The other person was an employee or agent of
34 the defendant at the time of the act, and the
35 employment of such person by the defendant was in
36 reckless disregard for the rights or safety of others.
37 c. The other person was an employee of the de-
38 fendant in an officer or managerial capacity, and the
39 act upon which the claim is based was an act within
40 such person's scope of employment.
41 d. The defendant, or an employee of the defendant
42 in an officer or managerial capacity, ratified or
43 approved the conduct of the other person upon which
44 the claim is based.
5602 45 3. An insurer who provides coverage for punitive
46 or exemplary damages shall designate in each policy
47 the separate cost and pricing of the portion of the
48 policy relating to such coverage for punitive or
5692,5638 49 exemplary damages.
50 Sec. 33. Section 668.3, Code 1985, is amended by

1 adding the following new subsection:
5746,5648 2 NEW SUBSECTION. 7. When a final judgment or award
3 is entered for future damages, any party may petition
4 the court for a determination of the appropriate
5 payment method of such judgment or award. If so
6 petitioned the court shall order that the payment
7 method for all or part of the judgment or award for
8 future damages be by structured, periodic, or other
9 nonlump-sum payments. Structured, periodic, or other
10 nonlump-sum payments may include appropriate interest
11 if such interest was not included in the determination
12 of the initial judgment or award. However, the court
13 shall not order a structured, periodic, or other
14 nonlump-sum payment method if it finds that any of the
15 following are true:
16 a. The payment method would be inequitable.
17 b. The payment method provides insufficient
18 guarantees of future collectibility of the judgment or
19 award.
20 c. Payments made under the payment method could be
21 subject to other claims, past or future, against the
5642 22 defendant.
23 Sec. 34. NEW SECTION. 668.11 DISCLOSURE OF
24 EXPERT WITNESSES IN LIABILITY CASES INVOLVING LICENSED
25 PROFESSIONALS.
5662 26 1. A party in a professional liability case
27 pursuant to this chapter who intends to call an expert
28 witness of their own selection, shall certify to the
29 court and all other parties the expert's name,
30 qualifications and the purpose for calling the expert
31 within the following time period:
32 a. The plaintiff within one hundred eighty days of
33 the defendant's answer unless the court for good cause
34 not ex parte extends the time of disclosure.
35 b. The defendant within ninety days of plaintiff's
36 certification.
37 2. If a party fails to disclose an expert pursuant
38 to subsection 1 or does not make the expert available
39 for discovery, the expert shall be prohibited from
40 testifying in the action unless leave for the expert's
41 testimony is given by the court for good cause shown.
42 3. This section does not apply to court appointed
43 experts or to rebuttal experts called with the
44 approval of the court.
45 Sec. 35. NEW SECTION. 668.12 LIABILITY FOR
46 PRODUCTS --STATE OF THE ART DEFENSE.
47 In any action brought pursuant to this chapter
48 against an assembler, designer, supplier of
49 specifications, distributor, manufacturer or seller
50 for damages arising from an alleged defect in the

1 design, testing, manufacturing, formulation,
2 packaging, warning, or labeling of a product, a
3 percentage of fault shall not be assigned to such
4 persons if they plead and prove that the product
5 conformed to the state of the art in existence at the
6 time the product was designed, tested, manufactured,
7 formulated, packaged, provided with a warning, or
8 labeled. Nothing contained in this section shall
9 diminish the duty of an assembler, designer, supplier
10 of specifications, distributor, manufacturer or seller
11 to warn concerning subsequently acquired knowledge of
12 a defect or dangerous condition that would render the
13 product unreasonably dangerous for its foreseeable use
14 or diminish the liability for failure to so warn.
15 Sec. 36. NEW SECTION. 668.14 SUBSEQUENT PROFITS
16 -- REMISSION OF ATTORNEY FEE -- CIVIL LITIGATION TRUST.
17 Every person, firm, corporation, partnership,
18 association, or other legal entity contracting with an
19 attorney of record in an action brought pursuant to
20 this chapter, shall pay over to the attorney general
21 any money or other compensation received from the
22 reenactment of the action, by way of movie, book,
23 magazine article, radio or television presentation, or
24 from the expression of the attorney's thoughts,
25 feelings, opinions, or emotions regarding the action,
26 which money or other compensation would otherwise, by
27 terms of a contract, be owing to the attorney. The
28 attorney general shall deposit such funds in a trust
29 account and shall disburse the funds as follows:
30 1. First, payment to the attorney to cover actual
31 expenses incurred.
32 2. Second, payment to the person bringing the
33 action an amount equal to the attorney fee paid by the
34 person as a result of the action.
35 3. Third, any remaining funds disbursed to civil
36 litigation programs for the indigent.
37 Any action taken by an attorney to defeat the
38 purpose of this section shall be null and void as
39 against the public policy of this state.
40 This section applies to all moneys or other
41 compensation received on or after July 1, 1986.
42 Sec. 37. Senate File 499, section 2, as enacted by
43 the 1986 Session of the Seventy-first General Assembly
44 is amended by adding the following new subsection:
45 NEW SUBSECTION. 4. The nonuse of a seatbelt by a
46 person identified in subsection 2, paragraphs "a"
47 through "f", and by a person in a cause of action
48 arising prior to July 1, 1986, shall not be admissible
49 or material as evidence in civil actions brought for
50 damage.

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1 Sec. 38. STUDY COMMISSION CREATED.
5776,5602 2 1. There is established a commission to study the
5762 3 issues involved in liability and liability insurance
4 concerns. The commission shall be composed of twelve
5 voting members and two ex officio members, appointed
6 as follows:
7 a. Two members of the house of representatives, by
8 the speaker of the house.
9 b. Two members of the senate, by the senate
10 majority leader.
11 c. Two members of the house of representatives, by
12 the house minority leader.
13 d. Two members of the senate, by the senate
14 minority leader.
15 e. Four members of the public as representatives
16 of the private sector for industries, professions, or
17 other particularly affected groups, appointed by the
18 chairperson and vice chairperson of the legislative
19 council, in consultation with the senate and house
20 minority leaders and with the approval of the
21 legislative council.
22 f. The attorney general or the attorney general's
23 designee, who shall be an ex officio member.
24 g. The commissioner of insurance or the
25 commissioner's designee, who shall be an ex officio
26 member.
27 2. The commission's study shall include, but is
28 not limited to, the following:
29 a. The implementation of maximum caps on liability
30 payments.
31 b. The elimination of the collateral source rule.
32 c. The review of present insurance practices,
33 including:
34 (1) A review and report on the feasibility and
35 advisability of enacting a mandatory insurance
36 disclosure Act.
37 (2) A review and report on the present level of
38 industry regulation and the potential for increasing
39 such regulation. This report should approximate the
40 cost of any recommendations made.
41 (3) A review and report on the present powers,
42 authority, and staffing of the insurance department.
43 (4) A review and report on the feasibility and
44 advisability of enacting insurance assistance and risk
45 management programs.
46 d. The review of alternative methods of litigation
47 actions.
48 e. The review of alternatives to reduce
49 nonmeritorious suits.
50 f. Review and report on the advisability of

1 limiting tort liability of the state arising from
2 regulatory and licensing activities.
3 g. Review and report on the advisability of
4 enacting a statute of repose for actions arising from
5 improvements to real property.
6 h. Monitor and report on any operation savings in
7 the insurance industry due to tort liability reform
8 for the period from July 1, 1983 to present, including
9 the effects of this Act, and the feasibility of
10 mandatory rate adjustments for insurers to reflect
11 such cost savings.
5670 12 i. Other issues necessary to ensure fairness in
13 the operation of the tort liability system.
14 3. The legislative council may authorize funds for
15 the study commission, which may be used for the
16 following commission purposes.
17 a. Employment of a full-time staff person for the
18 commission.
19 b. Employment of actuarial, insurance, and legal
20 consultants.
21 c. Compilation, printing, and distribution of
22 materials prepared by the commission.
23 d. Necessary expenses of travel, attendance, and
24 participation in regional or national programs.
25 4. Public members of the study commission shall
26 receive a per diem of forty dollars and be reimbursed
27 for their travel and other necessary expenses actually
28 incurred in the performance of their official duties.
29 Public employees who are members of the study
30 commission shall be reimbursed for travel and other
31 expenses actually incurred in the performance of their
32 official duties.
33 5. The study commission shall hold its first
34 meeting within sixty days of its formation and shall
35 transmit copies of its final report to the legislative
36 council by December 15, 1986.
5602 37 Sec. 39. A county which has levied a tax pursuant
5705 38 to section 331.424, subsection 1, paragraph 1, or a
5780 39 city which has levied a tax pursuant to section
40 384.12, subsection 18, for the fiscal year July 1,
41 1985 through June 30, 1986, may use any unexpended
42 proceeds of this tax to pay the costs of a self
43 insurance program or the costs of a local government
5675 44 risk pool.
5602 45 Sec. 40. Sections 18.160 through 18.169, Code
5686 46 1985, are repealed.
5610 47 Sec. 41. Sections 15 through 18, 27, and 29
5623 48 through 35 of this Act take effect July 1 following
5746 49 their enactment and apply to all cases filed on or
50 after that date.

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1 Sec. 42. Sections 19 through 26, 28, 38, and 39 of
2 this Act, being deemed of immediate importance, take
3 effect from and after their publication in The Sioux
4 City Journal, a newspaper published in Sioux City,
5631 5 Iowa, and in The Iowegian and Citizen, a newspaper
6 published in Centerville, Iowa."

BY COMMITTEE ON JUDICIARY
H-5575 FILED MARCH 27, 1986 AND LAW ENFORCEMENT
Adopted as amended by 5602 h.c, 5633, 5642, 5676, 5708, 5745, 5747, 5748, 5756, 5760, 5762, 5763, 5780 4/9 (p 1360)

SENATE FILE 2265

H-5588

1 Amend amendment H-5575 to Senate File 2265 as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 14, by striking lines 3 through 6, and
5 inserting the following: "is entered for future
6 damages, the court shall order that the payment".

H-5588 FILED MARCH 27, 1986 BY CLARK of Cerro Gordo
W/D 4/9 (p 1343)

SENATE FILE 2265

H-5602

1 Amend the amendment H-5575 to Senate File 2265, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. By striking page 1, line 5, through page 5,
5 line 41, and inserting the following:
6 "Sec. ___. Section 18.164, subsection 2,
7 unnumbered paragraph 1, Code 1985, is amended to read
8 as follows:
9 The division may shall develop programs for the
10 management of loss and loss exposures of governmental
11 subdivisions which may include, but shall not be
12 limited to, the following:
13 Sec. ___. Section 18.164, Code 1985, is amended by
14 adding the following new subsections:
15 NEW SUBSECTION. 3. The division shall develop and
16 implement a market assistance program to facilitate,
17 arrange, or provide for the acquisition of insurance
18 coverage for all public or private entities deemed to
19 be essential to the public welfare and for which it is
20 determined that present coverage is unavailable,
21 unreasonable, or unacceptable.
22 NEW SUBSECTION. 4. The division shall provide
23 technical advice and assistance, upon request, to
24 governmental subdivisions and public and private
25 entities identified under subsection 3 seeking to
26 utilize alternative financing methods to develop a
27 stable pool of funds with which to insure and reinsure
28 risk exposures, including administrative and personnel
29 support for entities seeking to utilize state
30 financing, or combination financing under chapter 28E.
31 Sec. ___. Section 18.165, subsection 1, paragraph
32 b, Code 1985, is amended to read as follows:
33 b. Bonding of state employees shall be re-
34 evaluated, and uniform standards shall be adopted for
35 the purchase of all fidelity bonds recommended for
36 state employees. To the extent possible, all bonded
37 state employees shall be covered under one or more
38 blanket bonds or position schedule bonds. In carrying
39 out the requirements of section 64.6, the state may
40 purchase an individual or a blanket surety bond
41 insuring the fidelity of state officers ~~subject-to-the~~
42 ~~minimum-surety-bond-requirements-of-section-64.6.--A~~
43 ~~state-officer-listed-in-section-64.6-is-deemed-to-have~~
44 ~~furnished-surety-if-the-officer-is-covered-by-a~~
45 ~~blanket-bond-purchased-as-provided-in-this-paragraph.~~
46 The risk management division may self assume or self
47 insure fidelity exposures for state officials and
48 employees. A state official is deemed to have
49 furnished surety if the official has been covered by
50 any program of insurance or self insurance established

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1 by the risk management division.
2 Sec. ___. Section 18.165, subsection 2, Code 1985,
3 is amended to read as follows:
4 2. The division ~~may~~ shall develop programs
5 relating to governmental subdivisions which shall be
6 subject to the following guidelines:
7 a. Participation by a governmental subdivision in
8 any risk management program offered by the division
9 shall be by contract or on a voluntary basis.
10 b. The division shall not be required to negotiate
11 or purchase insurance coverage for any governmental
12 subdivision, as permitted by sections 18.160 to
13 18.169, which fails to comply with standards adopted
14 by the division and may cancel coverage already
15 negotiated or purchased upon determination of such
16 failure.
17 c. Risk management programs may treat loss and
18 risk exposures of governmental subdivisions
19 individually, or on a group basis, or both.
20 Sec. ___. Section 18.166, Code 1985, is amended to
21 read as follows:
22 18.166 PURCHASE OF INSURANCE.
23 1. The department shall be the exclusive
24 contracting agency for the purchase of insurance
25 coverage for state loss and risk exposure except for
26 revenue producing facilities under the state board of
27 regents which have to comply with bond covenants.
28 2. The ~~department~~ division may upon request
29 negotiate with insurers on behalf of governmental
30 subdivisions unable to obtain reasonable or acceptable
31 insurance coverage for the purchase of insurance
32 coverage.
33 3. The department may purchase such contracts of
34 insurance, and may contract with such insurers, as are
35 within the standards prescribed by the risk management
36 division. Funding for the purchase of insurance shall
37 be provided by a specific and separate appropriation
38 provided solely for this purpose.
39 4. The ~~department~~ division may ~~acquire~~ facilitate,
40 arrange, or provide for the acquisition of insurance
41 coverage on behalf of one or more governmental
42 subdivisions upon request. Any insurance contract
43 negotiated by the department may include coverage or
44 coverages for state loss or risk exposures and for the
45 loss or risk exposures of one or more governmental
46 subdivisions, or for any combination thereof.
47 5. The director of the department of general
48 services may act as attorney in fact under section
49 520.2 for governmental subdivisions executing
50 reciprocal or interinsurance contracts under chapter

1 520.
2 6. The department of general services or the
3 division shall not charge governmental subdivisions
4 for risk management services~~.--However,-the-department~~
5 ~~shall-not-expend-state-funds-for-the-purchase-of~~
6 ~~insurance-coverage-for-any-governmental-subdivision~~,
7 but may charge for the reimbursement of expenses
8 incurred in facilitating, arranging, or acquiring
9 insurance coverage.
10 Sec. ___. Section 18.168, Code 1985, is amended to
11 read as follows:
12 18.168 ACCESS TO ~~STATE~~ RECORDS.
13 1. The division shall be given full assistance and
14 co-operation by every state agency and its officers
15 and employees. Each agency shall provide to the
16 division all requested loss and loss exposure
17 information, and shall comply with all standards and
18 directives of the division and of the department
19 relating to the administration of sections 18.160 to
20 18.169 except as herein provided.
21 2. A governmental subdivision or other public or
22 private entity requesting the assistance of the
23 division shall, as a prerequisite to the assistance,
24 provide the division with full cooperation and all
25 requested loss and loss exposure information, and
26 shall comply with all standards and directives of the
27 division relating to the administration of sections
28 18.160 through 18.169.
29 3. Information provided pursuant to this section
30 shall be maintained in a separate confidential file,
31 notwithstanding chapter 22.
32 Sec. ___. Section 18.169, Code 1985, is amended by
33 striking the section and inserting in lieu thereof the
34 following:
35 18.169 ANNUAL REPORT -- LONG RANGE PLANNING.
36 The division shall:
37 1. Annually submit to the general assembly a
38 report containing the findings and recommendations of
39 the division, setting out the standards adopted, and
40 making recommendations for those statutory changes
41 which are necessary to implement or permit the
42 implementation of standards proposed by the division.
43 The report shall include a summary of the division's
44 annual costs of operation, the risks covered, and the
45 premiums paid.
46 2. Initiate continuing discussion and programming
47 with public and private financing agencies and other
48 interested entities regarding the feasibility and
49 establishment of a continuing source of funds to serve
50 as a reinsurance pool for public and private entities

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1 essential to the public welfare."
2 2. Page 5, by striking lines 49 and 50 and
3 inserting the following: "XXIII".
4 3. Page 6, by striking lines 7 through 13, and
5 inserting the following:
6 "Sec. ___. Section 64.6, Code Supplement 1985, is
7 amended by striking the section and inserting in lieu
8 thereof the following:
9 64.6 STATE OFFICERS -- BONDS.
10 State officials are not required to obtain bonds,
11 but may be covered under a blanket bond for state
12 employees. The blanket bond purchases shall be made
13 in an amount and with the level of assumption of risk
14 by the state that is determined by the risk management
15 division of the department of general services. The
16 state shall pay the reasonable cost of bonds under
17 this section."
18 4. By striking page 6, line 50 through page 7,
19 line 34 and inserting the following:
20 "Sec. ___. Section 147.1, subsection 6, Code
21 Supplement 1985, is amended by adding the following
22 new lettered paragraph:
23 NEW LETTERED PARAGRAPH. e. The board of trustees
24 of a licensed hospital when performing a function
25 relating to the reporting required by section 147.135,
26 subsection 3.
27 Sec. ___. Section 147.135, Code 1985, is amended
28 by numbering the current unnumbered paragraph as
29 subsection 1 and by adding the following new
30 subsections:
31 NEW SUBSECTION. 2. As used in this subsection,
32 "peer review records" means all complaint files,
33 investigation files, reports, and other investigative
34 information relating to licensee discipline or
35 professional competence in the possession of a peer
36 review committee or an employee of a peer review
37 committee. As used in this subsection, "peer review
38 committee" does not include examining boards. Peer
39 review records are privileged and confidential, are
40 not subject to discovery, subpoena, or other means of
41 legal compulsion for release to a person other than an
42 affected licensee or a peer review committee and are
43 not admissible in evidence in a judicial or
44 administrative proceeding other than a proceeding
45 involving licensee discipline or a proceeding brought
46 by a licensee who is the subject of a peer review
47 record and whose competence is at issue. A person
48 shall not be liable as a result of filing a report or
49 complaint with a peer review committee or providing
50 information to such a committee, or for disclosure of

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1 privileged matter to a peer review committee. A
2 person present at a meeting of a peer review committee
3 shall not be permitted to testify as to the findings,
4 recommendations, evaluations, or opinions of the peer
5 review committee in any judicial or administrative
6 proceeding other than a proceeding involving licensee
7 discipline or a proceeding brought by a licensee who
8 is the subject of a peer review committee meeting and
9 whose competence is at issue. Information or
10 documents discoverable from sources other than the
11 peer review committee do not become nondiscoverable
12 from the other sources merely because they are made
13 available to or are in the possession of a peer review
14 committee. However, such information relating to
15 licensee discipline may be disclosed to an appropriate
16 licensing authority in any jurisdiction in which the
17 licensee is licensed or has applied for a license. If
18 such information indicates a crime has been committed,
19 the information shall be reported to the proper law
20 enforcement agency. This subsection shall not
21 preclude the discovery of the identification of
22 witnesses or documents known to a peer review
23 committee. Any final written decision and finding of
24 fact by a licensing board in a disciplinary proceeding
25 is a public record. Upon appeal by a licensee of a
26 decision of a licensing board, the entire case record
27 shall be submitted to the reviewing court. In all
28 cases where privileged and confidential information
29 under this subsection becomes discoverable,
30 admissible, or part of a court record the identity of
31 an individual whose privilege has been involuntarily
32 waived shall be withheld.
33 NEW SUBSECTION. 3. A full and confidential report
34 concerning any final hospital disciplinary action
35 approved by a hospital board of trustees that results
36 in a limitation, suspension, or revocation of a
37 physician's privilege to practice for reasons relating
38 to the physician's professional competence or
39 concerning any voluntary surrender or limitation of
40 privileges for reasons relating to professional
41 competence shall be made to the board of medical
42 examiners by the hospital administrator or chief of
43 medical staff within ten days of such action. The
44 board of medical examiners shall investigate the
45 report and take appropriate action. These reports
46 shall be privileged and confidential as though
47 included in and subject to the requirements for peer
48 review committee information in subsection 2. Persons
49 making these reports and persons participating in
50 resulting proceedings related to these reports shall

1 be immune from civil liability with respect to the
2 making of the report or participation in resulting
3 proceedings. As used in this subsection, "physician"
4 means a person licensed pursuant to chapter 148,
5 chapter 150, or chapter 150A.
6 Sec. ___. Section 258A.6, subsection 4, unnumbered
7 paragraph 1, Code 1985, is amended to read as follows:
8 In order to assure a free flow of information for
9 accomplishing the purposes of this section, and
10 notwithstanding section 622.10, all complaint files,
11 investigation files, other investigation reports, and
12 other investigative information in the possession of a
13 licensing board or peer review committee acting under
14 the authority of a licensing board or its employees or
15 agents which relates to licensee discipline are
16 privileged and confidential, and are not subject to
17 discovery, subpoena, or other means of legal
18 compulsion for their release to a person other than
19 the licensee and the boards, their employees and
20 agents involved in licensee discipline, and are not
21 admissible in evidence in a judicial or administrative
22 proceeding other than the proceeding involving
23 licensee discipline. However, investigative
24 information in the possession of a licensing board or
25 its employees or agents which relates to licensee
26 discipline may be disclosed to ~~the~~ appropriate
27 licensing ~~authority in another~~ authorities within this
28 state, the appropriate licensing authority in another
29 state, the District of Columbia, or a territory or
30 country in which the licensee is licensed or has
31 applied for a license. If the investigative
32 information in the possession of a licensing board or
33 its employees or agents indicates a crime has been
34 committed, the information shall be reported to the
35 proper law enforcement agency. However, a final
36 written decision and finding of fact of a licensing
37 board in a disciplinary proceeding, including a
38 decision referred to in section 258A.3, subsection 4,
39 is a public record."
40 5. Page 7, line 40, by inserting after the figure
41 "150A" the words ", or a dentist licensed pursuant to
42 chapter 153,".
43 6. Page 7, line 43, by inserting after the word
44 "medical" the words "or dental".
45 7. Page 9, line 6, by striking the word "or".
46 8. Page 9, line 7, by inserting after the words
47 "paragraph "b"" the following: ", or section 613A.7".
48 9. Page 10, by inserting after line 23, the
49 following:
50 "Sec. ___. NEW SECTION. 507D.1 SHORT TITLE.

1 This Act shall be known as the "Insurance
2 Assistance Act".
3 Sec. ___. NEW SECTION. 507D.2 DISCLOSURE OF
4 INFORMATION.
5 The commissioner of insurance shall adopt rules
6 pursuant to chapter 17A for the collection of
7 information relating to the availability, obtain
8 ability, costs, profits, and losses associated with
9 the provision of property, casualty, product, pro-
10 fessional, or other liability insurance within the
11 state, and relating to the feasibility and
12 implementation of market assistance programs,
13 mandatory risk allocation programs, risk-sharing
14 programs, risk management programs, or any other
15 authorized program under section 507D.3.
16 Sec. ___. NEW SECTION. 507D.3 AUTHORIZED
17 ASSISTANCE PROGRAMS.
18 The commissioner of insurance is authorized to
19 institute programs, order the institution of programs
20 within the private sector, or to contract with or
21 delegate authority to the risk management division of
22 the department of general services for the institution
23 of programs relating to insurance assistance
24 including, but not limited to, the following:
25 1. The development and implementation of a market
26 assistance program to facilitate, arrange, or provide
27 for the acquisition of property, casualty, product,
28 professional, or other liability insurance coverage
29 for all persons or entities seeking such coverage but
30 for which the coverage is presently unavailable or
31 unobtainable to the person or entity.
32 2. The development and implementation of a
33 mandatory risk allocation system for property,
34 casualty, product, professional, or other liability
35 insurance, except asbestosis and environmental
36 impairment liability, in order to assure that all
37 persons or entities for which such insurance is
38 essential may obtain such insurance from insurers
39 authorized to do business within this state.
40 3. The development and implementation of a risk-
41 sharing program to assist and advise persons or
42 entities seeking property, casualty, product,
43 professional, or other liability insurance, except
44 asbestosis and environmental impairment liability, on
45 the most efficient manner in which to share or pool
46 similar risks in order to obtain essential insurance
47 coverage at the minimum cost.
48 4. The development and implementation of a risk
49 management program for persons or entities to which
50 property, casualty, product, professional, or other

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1 liability insurance is essential, such program to
2 include at a minimum the following:
3 a. Assistance in developing and maintaining loss
4 and loss exposure data on such liability risks.
5 b. Recommendations regarding risk reduction and
6 risk elimination programs.
7 c. Recommendations of those practices which will
8 permit protection against such losses at the lowest
9 costs, consistent with good underwriting practices and
10 sound risk management techniques.
11 5. Subsections 2 and 3 shall have no application
12 or effect after July 1, 1991.
13 Sec. ___. NEW SECTION. 507D.4 FINANCING OF
14 ASSISTANCE PROGRAMS.
15 The insurance commissioner may, by rule, provide
16 for the financing, as necessary, for any or all
17 programs under section 507D.3 by the assessment of
18 fees to insurers authorized to write property,
19 casualty, product, professional, or other liability
20 insurance within this state. The commissioner of
21 insurance may assess fees and charges against persons
22 or entities for costs incurred in providing assistance
23 to the person or entity pursuant to section 507D.3.
24 Fees collected pursuant to such rules shall be used
25 solely for the purposes of the program for which
26 assessed, and are not to be transmitted to the general
27 fund or used for any other purposes.
28 Sec. ___. NEW SECTION. 507D.5 RATE ADJUSTMENT
29 REVIEW.
30 The commissioner of insurance shall conduct a rate
31 adjustment review for all insurers authorized to write
32 property, casualty, product, professional, or other
33 liability insurance within this state and who make a
34 request for rate adjustment regarding such insurance.
35 The commissioner of insurance may employ or contract
36 with actuarial consultants as necessary to review the
37 request. The person conducting the review shall
38 report to the commissioner as to the advisability of
39 the adjustment requested.
40 The reasonable fees and expenses of an actuarial
41 consultant employed or contracted by the commissioner
42 of insurance for purposes of a rate adjustment review
43 shall be assessed against and paid by the person
44 requesting such rate adjustment.
45 Sec. ___. NEW SECTION. 507D.6 CONTINUING
46 STUDIES.
47 The commissioner of insurance is authorized to
48 conduct such further surveys, market reviews, data
49 collection and analysis, studies of a mandatory risk
50 allocation system and a risk sharing program and such

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1 other studies as the commissioner deems necessary for
2 the proper implementation of this chapter.
3 Sec. ___. NEW SECTION. 507D.7 AUTHORIZATION TO
4 ACCEPT FUNDS.
5716 5 The commissioner of insurance may accept gifts,
C 6 grants, or other funds from any source for the purpose
7 of defraying the costs incurred by the department of
8 insurance in carrying out the provisions of this
9 chapter. However, the commissioner shall transmit to
10 the general assembly by January 1 of each year a list
11 of contributions received from private sources, the
12 contributors, and the purposes for which the
13 contributions were used."
14 10. Page 11, line 4, by striking the words "is
A 15 completed" and inserting the words "has identified the
16 manufacturer".
17 11. Page 13, by striking lines 45 through 49.
18 12. Page 14, line 26, by inserting after the word
19 "case" the following: "brought against a licensed
20 professional".
21 13. Page 16, line 7, by striking the word "Two"
22 and inserting the word "Three".
23 14. Page 16, line 9, by striking the word "Two"
24 and inserting the word "Three".
25 15. Page 16, by striking line 16, and inserting
26 the following: "of the public or private sector for
27 industries, professions, local governments, or".
28 16. Page 16, by striking line 23 and inserting
29 the following: "designee."
30 17. Page 16, by striking lines 25 and 26 and
31 inserting the following: "commissioner's designee."
32 18. Page 17, line 1, by inserting after the word
33 "state" the words "and municipalities".
34 19. Page 17, by inserting after line 36 the
35 following:
B 36 "Sec. ___. The judicial council shall promulgate
37 rules and adopt uniform forms to be used by the clerks
38 of the district court in compiling information
39 relating to tort liability litigation for the period
40 of at least July 1, 1983 through July 1, 1986 and for
41 the development of a uniform procedure for such
42 information compilation for all cases filed on or
43 after July 1, 1986."
44 20. Page 17, by striking lines 45 and 46, and
A 45 inserting the following:
46 "Sec. ___. Section 64.7, Code 1985, is repealed."

BY COMMITTEE ON SMALL
H-5602 FILED MARCH 28, 1986 BUSINESS AND COMMERCE

Adopted: C (as amended by 5716) 4/8 (p. 1300) A (p. 1300)
Withdrawn: B 4/8 (p. 1299) B (p. 1300)

SENATE FILE 2265

H-5610

1 Amend amendment H-5575 to Senate File 2265, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. By striking page 17, line 47 through page 18,
5 line 6, and inserting the following:
6 "Sec. ___. This Act, being deemed of immediate
7 importance, takes effect from and after its
8 publication in The Sioux City Journal, a newspaper
9 published in Sioux City, Iowa, and in The Iowegian and
10 Citizen, a newspaper published in Centerville, Iowa,
11 and unless otherwise specifically provided, applies to
12 all cases filed on or after July 1, 1986."

H-5610 FILED MARCH 28, 1986 BY JAY of Appanoose

W/d 4/9 (p. 1353)

SENATE FILE 2265

H-5611

1 Amend the Committee on Judiciary and Law
2 Enforcement amendment, H-5575, to Senate File 2265 as
3 amended, passed and reprinted by the Senate as
4 follows:
5 1. Page 8, line 35, by inserting after the figure
6 "523C." the following: "Any issue of general
7 obligation bonds under this section shall be subject
8 to the provisions of chapter 75."
9 2. Page 8, line 47, by inserting after the figure
10 "523C." the following: "Any issue of general
11 obligation bonds under this subsection shall be
12 subject to the provisions of chapter 75."
13 3. Page 9, line 39, by inserting after the figure
14 "523C." the following: "Any issue of general
15 obligation bonds under this subsection shall be
16 subject to the provisions of chapter 75."
17 4. Page 12, line 12, by inserting after the
18 figure "523C." the following: "Any issue of general
19 obligation bonds under this section shall be subject
20 to the provisions of chapter 75."

H-5611 FILED MARCH 28, 1986 BY KREMER of Buchanan

Lost 4/8 (p. 1311)

SSB 2098

SSB 2098

COMMERCE: Palmer, Chair; Priebe and Holden

Now SF 2265

SENATE FILE 2265
BY (PROPOSED COMMITTEE ON COMMERCE BILL)

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

A BILL FOR

1 An Act relating to civil actions brought for the recovery of
2 damages, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. Section 25A.4, unnumbered paragraph 2, Code
2 1985, is amended to read as follows:
3 The state ~~shall be~~ is liable in respect to such claims to
4 the same claimants, in the same manner, and to the same extent
5 as a private individual under like circumstances, except that
6 the state ~~shall~~ is not be liable for ~~interest prior to~~
7 ~~judgment or for~~ punitive damages. Costs shall be allowed in
8 all courts to the successful claimant to the same extent as if
9 the state were a private litigant.
10 Sec. 2. Section 535.3, Code 1985, is amended to read as
11 follows:
12 535.3 INTEREST ON JUDGMENTS AND DECREES.
13 Interest shall be allowed on all money due on judgments and
14 decrees of courts at the rate of ten percent per year, unless
15 a different rate is fixed by the contract on which the
16 judgment or decree is rendered, in which case the judgment or
17 decree ~~shall draw~~ draws interest at the rate expressed in the
18 contract, not exceeding the maximum applicable rate permitted
19 by ~~the provisions of~~ section 535.2, which allowable rate must
20 be expressed in the judgment or decree. The interest ~~shall~~
21 ~~accrue~~ accrues from the date of the ~~commencement of the action~~
22 judgment or decree.
23 Sec. 3. Section 557A.16, subsection 2, Code Supplement
24 1985, is amended to read as follows:
25 2. If a developer or any other person subject to this
26 chapter violates ~~any~~ a provision of this chapter or ~~any~~ a
27 provision of the project or time-share instruments, ~~any~~ a
28 person or class of persons damaged or otherwise adversely
29 affected by the violation ~~shall have~~ has a claim for
30 appropriate relief, which shall be brought in the county in
31 which the time-share project is located or was offered or
32 sold, in which the time-share offeror or time-share
33 salesperson resides or is doing business upon tender of the
34 time-share interest sold, or in which the contract was made.
35 The court may order the developer or other person subject to

1 this chapter to refund the purchaser the full amount paid by
2 the purchaser, ~~with prejudgment interest,~~ less a portion of
3 the amount paid representing the portion of any benefit the
4 purchaser actually received or had the right to receive during
5 the time preceding the tender. In all cases, the court may
6 provide equitable relief it considers necessary or proper.
7 The court may also award the person or class of persons
8 reasonable attorney's fees. This action does not limit any
9 other remedy of the purchaser.
10 Sec. 4. NEW SECTION. 602.10150 CONTINGENCY FEE
11 CONTRACTS.
12 1. An attorney in this state who contracts to represent a
13 plaintiff on a contingency fee basis shall, at the time the
14 contract is entered into, provide a duplicate copy of the con-
15 tract to the plaintiff or the plaintiff's guardian or repre-
16 sentative. The duplicate copy shall be signed by both the
17 attorney and the plaintiff or the plaintiff's guardian or
18 representative.
19 2. A contingency fee contract shall include, but is not
20 limited to, the following:
21 a. A statement as to how disbursements and costs incurred
22 in connection with the prosecution or settlement of the claim
23 will affect the contingency fee and the client's recovery.
24 b. A statement as to what extent, if any, the plaintiff
25 could be required to pay any compensation to the attorney for
26 related matters that arise out of their relationship not
27 covered by their contingency fee contract. This may include
28 any amounts collected for the plaintiff by the attorney.
29 c. A statement that there is no normal or set rate for
30 contingency fee rate, and that the attorney and the client may
31 negotiate any rate.
32 d. A statement of the contingency fee rate upon which the
33 client and the attorney have agreed.
34 3. Failure to comply with any provision of this section
35 renders the agreement voidable at the option of the plaintiff,

1 and the attorney is then entitled to collect a reasonable fee
2 as determined by the court.
3 Sec. 5. NEW SECTION. 624.41 PUNITIVE OR EXEMPLARY
4 AWARDS.
5 Punitive or exemplary damages shall not be awarded in the
6 judgment of a case unless the cause of action of the case is
7 provided by statute and the statute specifically authorizes
8 the award of punitive or exemplary damages. The award of
9 punitive or exemplary damages is subject to all limitations
10 set out in the authorizing statute.
11 Sec. 6. NEW SECTION. 624.42 LIMITATION ON NONECONOMIC
12 DAMAGES.
13 In a civil action for the recovery of damages for death of
14 or injury to person or property, the court shall not award an
15 amount exceeding two hundred thousand dollars for noneconomic
16 damages to or on behalf of any one person.
17 Sec. 7. NEW SECTION. 668.11 REDUCTIONS FOR COLLATERAL
18 SOURCE PAYMENTS.
19 In an action brought pursuant to this chapter, the recovery
20 awarded pursuant to section 668.3 shall be reduced by the
21 amount, and in proportion to the percentages of assigned
22 fault, of any losses replaced by insurance or benefit programs
23 or any other source except the claimant's assets and family.
24 Sec. 8. NEW SECTION. 668.12 INSTALLMENT JUDGMENTS.
25 1. In an action brought pursuant to this chapter in which
26 a judgment is entered for money damages equal to or exceeding
27 the sum of one hundred thousand dollars for damages arising
28 from personal injury, sickness, disease, or death, the court
29 shall, subject to the requirements of this section, order in
30 the judgment that the damages be paid by periodic payments.
31 2. The judgment ordering periodic payments shall specify
32 the recipient or recipients of each payment, the size of each
33 payment, the interval between payments, and the number of
34 payments, and shall contain provisions to make reasonably
35 certain, under the particular circumstances, that funds are

1 and will be available to enable the judgment creditor to make
2 all periodic payments. A periodic payment upon becoming due
3 and payable is a separate judgment upon which execution may
4 issue.
5 a. The right to receive periodic payments is personal to
6 the recipient or recipients, who shall not alienate,
7 anticipate, pledge, encumber, or assign the payments except to
8 the extent a payment has become due and payable. If a
9 recipient attempts to take any action contrary to this
10 paragraph, all obligations of payments to the recipient
11 terminate. Periodic payments are not subject to the claims of
12 a creditor except to the extent that the payments are due and
13 payable.
14 b. The specifications in this subsection may provide that
15 the recipient, size, interval between, or number of payments
16 are subject to modification or termination on the basis of a
17 contingency or contingencies specified in the judgment
18 ordering periodic payments; however, the payments shall
19 terminate upon the death of the judgment creditor.
20 c. A judgment ordering periodic payments shall provide
21 that upon termination of payments to a judgment creditor all
22 unused and unassigned funds shall revert to the judgment
23 debtor or others as their interests appear. "Assigned" funds
24 are funds which the judgment for periodic payments orders paid
25 only upon termination of the periodic payments to the
26 recipient.
27 3. When the action is tried by a court without a jury and
28 the liability of the defendant has been established, the
29 court, after considering the evidence, shall enter written
30 findings of fact setting forth the damage sustained by the
31 plaintiff. In arriving at its findings the court shall not
32 consider evidence establishing the present value of future
33 damages. The findings of fact shall state separately the
34 amounts of damages segregated according to the type of loss
35 sustained. The damages shall be further segregated as to

1 damages for past injuries, if any, and the specific amounts to
2 be awarded as future damages. The award for future damages
3 shall be expressed in three elements, to the extent that each
4 of the elements is found to be present: loss of future
5 income, future expenses for care and treatment, and future
6 noneconomic harm to be endured by the party.
7 4. When an action described in this section is tried by a
8 jury and the liability of the defendant has been established,
9 the jury shall render a money damage verdict on special
10 verdict forms provided by the court. In arriving at its
11 verdict the jury shall not consider evidence establishing the
12 present value of future damages. The special verdict form
13 submitted to the jury shall require the jury to state
14 separately the amounts of damages segregated according to the
15 type of loss sustained. The special verdict form shall
16 further require the jury to segregate the damages as to
17 damages for personal injuries, if any, and the specific
18 amounts to be awarded as future damages, if any. The award
19 for future damages on the special verdict form shall be
20 expressed in three elements, to the extent that each of the
21 elements is found to be present: loss of future income, future
22 expenses for care and treatment, and future noneconomic harm
23 to be endured by the party.
24 5. Upon entry of a damage verdict described in subsection
25 4, or the findings of fact in subsection 3, the court shall
26 provide each party with a copy and shall order the parties to
27 prepare a plan of periodic payments which, subject to
28 subsection 6, will grant the judgment creditor an installment
29 recovery substantially equal to the recovery established in
30 the damage verdict or findings of fact.
31 a. The parties shall submit periodic payment plans to the
32 court within twenty days of receipt of a copy of the damage
33 verdict or findings of fact.
34 b. If a party fails to comply with paragraph a, the court
35 may adopt any submitted plan as the periodic payments

1 judgment, and the party failing to submit a plan shall not
2 challenge on appeal the adequacy of the periodic payments plan
3 adopted in the judgment.
4 c. The court shall consider the submitted plans in
5 arriving at a periodic payments judgment. However, the court
6 is not required to adopt a submitted plan unless that plan has
7 been approved by all parties to the action.
8 d. The plan adopted as a periodic payment judgment shall,
9 subject to subsection 6, grant the judgment creditor an
10 installment recovery substantially equal to the future damage
11 recovery established by the damage verdict or findings of
12 fact.
13 6. The periodic payments judgment shall provide that:
14 a. Past damages shall be paid in a lump sum within twenty
15 days of entry of judgment unless the parties agree to and the
16 court approves as being equitable a plan which provides for
17 the installment payment of these damages.
18 b. All taxable costs shall be paid in a lump sum.
19 c. The fees of attorneys representing the judgment
20 creditor shall be subtracted from the recovery of the judgment
21 creditor before the periodic payment recovery is computed.
22 Those fees shall be paid in a lump sum within twenty days of
23 entry of judgment unless the attorney and the judgment
24 creditor agree to, and the court approves as being equitable,
25 a plan which provides for the installment payment of fees.
26 7. This section applies to all court-approved settlements
27 and compromises arising from the action.
28 8. As used in this section, the term periodic payments
29 means the payment or delivery of money or other property to a
30 judgment creditor at regular intervals.
31 9. Notwithstanding this section, a court may award a lump-
32 sum judgment in an action subject to this section if all
33 parties to the action agree. In that event, the court shall
34 reopen the case for the purpose of taking testimony, shall
35 make a finding of the present value of future damages, and

1 shall reduce the portion of the award which relates to future
2 damages to the amount determined to be the present value.
3 10. After entry of a judgment providing for periodic
4 payments, the court may, on the petition of a party making or
5 receiving payments under the judgment, alter the recipient,
6 size, interval between, or number of payments specified in the
7 original judgment, provided that the total of the payments
8 shall not exceed the amount of the original judgment which is
9 unpaid.
10 Sec. 9. This Act takes effect July 1 following its enact-
11 ment and applies to all cases tried on or after that date.
12 EXPLANATION
13 This bill modifies the manner and method of civil actions
14 for damages as follows:
15 Sections 1, 2, and 3 provide that interest on a judgment or
16 decree will accrue from the date of the judgment or decree,
17 rather than from the date of the commencement of the action.
18 Two references to prejudgment interest which appear in the
19 Code, and which are no longer necessary due to this Act, are
20 struck.
21 Section 4 sets out certain provisions and information which
22 must be disclosed by an attorney when entering into a
23 contingency fee contract, and that failure to provide such
24 information allows the plaintiff to void the contract.
25 Section 5 prohibits the award of punitive or exemplary
26 damages in cases other than cases where the award is
27 specifically authorized by statute. The award is also subject
28 to any limitations contained within the authorizing statute.
29 Section 6 places an award limit of $200,000 on noneconomic
30 damages.
31 Section 7 provides that any recovery pursuant to chapter
32 668 (Comparative Fault Act) shall be reduced by the amount of
33 the losses of the claimant which have been replaced by
34 insurance, benefits, or other sources except personal assets
35 and relatives.

1 Section 8 provides for the payment of judgments in excess
2 of $100,000 in periodic installments, with past damages,
3 costs, and attorneys' fees to be paid in a lump sum, and
4 future damages to be paid in accordance with a plan approved
5 by the court after consultation with the parties.
6 Section 9 provides an effective date of July 1 following
7 enactment for the Act and provides that the Act will apply to
8 all cases tried on or after that date.
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SENATE FILE 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 cooperation 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 NONMANUFACTURERS.

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

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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 "l", 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.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2265, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved _____, 1986

TERRY E. BRANSTAD
Governor