

COMMERCE: Palmer, Chair; Mann, Welsh, Lind and Holden

Reprinted 4/87

*See Prior 3/3/87 (p 1065)
Judiciary 4/1/87 Amend (2341), D. Gov. 4/2 (p 1064)*

FILED MAR 20 1987

SENATE FILE 482
BY COMMITTEE ON COMMERCE
Approved (p 822)

Passed Senate, Date 4-3-87 (p 1084) Passed House, Date 4/24/87 (p. 1653)
Vote: Ayes 46 Nays 1 Vote: Ayes 88 Nays 0
Approved May 28, 1987

A BILL FOR

1 An Act relating to the civil process and procedure for awarding
2 interest on civil judgments and decrees, determining whether a
3 sufficient burden of proof has been met for the awarding of
4 punitive damages, and for allowing the consideration for
5 previous payments for medical damages, and providing an
6 effective date.

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

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SC 482

1 Section 1. Section 535.3, Code 1987, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. This section does not apply to
4 the award of interest for judgments and decrees subject to
5 section 668.13.

6 Sec. 2. Section 602.1209, Code 1987, is amended by adding
7 the following new subsection 15 and renumbering the following
8 existing subsection 15:

9 NEW SUBSECTION. 15. Distribute notices of interest rates
10 and changes to interest rates as required by section 668.13,
11 subsection 3.

12 Sec. 3. Section 668.3, subsection 7, is amended to read as
13 follows:

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

- 25 a. The payment method would be inequitable.
- 26 b. The payment method provides insufficient guarantees of
27 future collectibility of the judgment or award.
- 28 c. Payments made under the payment method could be subject
29 to other claims, past or future, against the defendant or the
30 defendant's insurer.

31 Sec. 4. Section 668.3, Code 1987, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 8. In an action brought pursuant to this
34 chapter the court shall instruct the jury to answer special
35 interrogatories or, if there is no jury, shall make findings

1 on each specific item of requested or awarded damages indicat-
2 ing that portion of the judgment or decree awarded for past
3 damages and that portion of the judgment or decree awarded for
4 future damages.

5 Sec. 5. Section 668.5, Code 1987, is amended by adding the
6 following new subsections:

7 NEW SUBSECTION. 3. Contractual or statutory rights of
8 persons not enumerated in section 668.2 for subrogation for
9 losses recovered in proceedings pursuant to this chapter shall
10 not exceed that portion of the judgment or verdict
11 specifically related to such losses, as shown by the
12 itemization of the judgment or verdict returned under section
13 668.3, subsection 8, and according to the findings made
14 pursuant to section 668.14, subsection 3, and such contractual
15 or statutory subrogated persons shall be responsible for a pro
16 rata share of the legal and administrative expenses incurred
17 in obtaining the judgment or verdict.

18 NEW SUBSECTION. 4. Subrogation payment restrictions
19 imposed pursuant to subsection 3 apply to settlement
20 recoveries, but only to the extent that the settlement was
21 reasonable.

22 Sec. 6. NEW SECTION. 668.13 INTEREST ON JUDGMENTS.

23 Interest shall be allowed on all money due on judgments and
24 decrees on actions brought pursuant to this chapter, subject
25 to the following:

26 1. Interest, except interest awarded for future damages,
27 shall accrue from the date of the commencement of the action.

28 2. If the interest rate is fixed by a contract on which
29 the judgment or decree is rendered, the interest allowed shall
30 be at the rate expressed in the contract, not exceeding the
31 maximum rate permitted under section 535.2.

32 3. Interest shall be calculated as of the date of judgment
33 at a rate equal to the coupon issue yield equivalent, as
34 determined by the United States secretary of the treasury, of
35 the average accepted auction price for the last auction of

1 fifty-two week United States treasury bills settled
2 immediately prior to the date of the judgment. The state
3 court administrator shall distribute notice of that rate and
4 any changes to that rate to all district courts.

5 4. Interest awarded for future damages shall not begin to
6 accrue until the date of the entry of the judgment.

7 5. Interest shall be computed daily to the date of the
8 payment, except as may otherwise be ordered by the court
9 pursuant to a structured judgment under section 668.3, subsec-
10 tion 7.

11 6. Structured, periodic, or other nonlump-sum payments
12 ordered pursuant to section 668.3, subsection 7, shall reflect
13 interest in accordance with annuity principles.

14 Sec. 7. NEW SECTION. 668.14 EVIDENCE OF PREVIOUS PAYMENT
15 OR FUTURE RIGHT OF PAYMENT.

16 1. In an action brought pursuant to this chapter seeking
17 damages for personal injury, the court shall permit evidence
18 and argument as to the previous payment or future right of
19 payment of actual economic losses incurred or to be incurred
20 as a result of the personal injury for necessary medical care,
21 rehabilitation services, and custodial care except to the
22 extent that the previous payment or future right of payment is
23 pursuant to a state or federal program or from assets of the
24 claimant or the members of the claimant's immediate family.

25 2. If evidence and argument regarding previous payments or
26 future rights of payment is permitted pursuant to subsection
27 1, the court shall also permit evidence and argument as to the
28 costs to the claimant of procuring the previous payments or
29 future rights of payment and as to any existing rights of in-
30 demnification or subrogation relating to the previous payments
31 or future rights of payment.

32 3. If evidence or argument is permitted pursuant to
33 subsection 1 or 2, the court shall, unless otherwise agreed to
34 by all parties, instruct the jury to answer special
35 interrogatories or, if there is no jury, shall make findings

1 indicating the effect of such evidence or argument on the
2 verdict.

3 4. This section does not apply to actions governed by
4 section 147.136.

5 Sec. 8. Section 668A.1, subsection 1, paragraph a, Code
6 1987, is amended by striking the paragraph and inserting in
7 lieu thereof the following:

8 a. Whether, by a preponderance of clear, convincing, and
9 satisfactory evidence, the conduct of the defendant from which
10 the claim arose constituted willful and wanton disregard for
11 the rights or safety of another.

12 Sec. 9. This Act takes effect July 1, 1987 and applies to:

13 1. All causes of action accruing on or after July 1, 1987.

14 2. All causes of action accruing before July 1, 1987 and
15 filed on or after September 15, 1987.

16 EXPLANATION

17 This bill makes several changes regarding tort liability.

18 Section 1 amends the present prejudgment interest statute
19 to provide that tort judgments under chapter 668 (comparative
20 fault) are not subject to its automatic 10% interest rate.

21 Section 2 includes the duty to provide the district courts
22 with notice of applicable tort judgment interest rates within
23 the responsibilities of the state court administrator.

24 Section 3 deletes the chapter 668 authorization to include
25 interest in structured judgment payments when interest was not
26 included in the initial judgment.

27 Section 4 provides for the itemization of all judgments and
28 verdicts. The jury shall, for each item of damages, indicate
29 that portion which is for past damages and that portion which
30 is for future damages.

31 Section 5 provides that in subrogation rights enforced as a
32 result of chapter 668 awards and settlements, the amount
33 sought in subrogation cannot exceed the amount which was
34 received by the claimant in the judgment -- for that portion
35 of the judgment or verdict which relates to the losses on

1 which the subrogation rights are based. In the case of
2 settlements, the section requires that for the subrogation
3 restriction to apply, the settlement must have been reasonable
4 (as is presently required in issues of chapter 668
5 contribution actions).

6 Section 6 provides the new process and procedure for the
7 determination and award of interest on tort judgments. The
8 resulting civil mechanism provides for the differentiation
9 between past and future damages (disallowing prejudgment
10 interest on future damages) and provides that the applicable
11 interest rate will be tied to the floating market rate used
12 within the federal court system and adopted for the state in
13 section 535.3.

14 Section 7 provides that the court shall allow evidence of
15 previous payment or future right of payment of medical,
16 rehabilitative, and custodial expenses before the court or
17 jury. It also allows for the introduction of evidence
18 relating to the costs to the claimant in procuring such
19 payments and any interest others may already have in the
20 previous payments or future rights. This mechanism also
21 requires the use of special interrogatories or findings to
22 document the extent to which the evidence affected the
23 verdict, and exempts medical malpractice actions from its
24 application (medical malpractice actions are presently
25 controlled by section 147.136 which requires automatic
26 reductions for previous payments).

27 Section 8 increases the burden that must be met to
28 authorize the award of punitive damages. Presently, the
29 burden is by a mere preponderance (i.e, evidence in favor of
30 the fact outweighs evidence in opposition to the fact). The
31 qualitative burden that the evidence must be clear,
32 convincing, and satisfactory is added by this bill.
33 Presently, the court may sometimes require this qualitative
34 burden of proof if it feels that the judicial remedy being
35 requested is extraordinary or may have far-reaching effects

1 upon one or more of the parties. This bill would make the
2 request for punitive damages an "extraordinary judicial
3 remedy" for purposes of imposing this increased burden of
4 proof.

5 Section 9 provides effective dates for the Act.

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SENATE FILE 482

S-3391

1 Amend Senate File 482 as follows:

2 1. Page 1, by inserting after line 11 the
3 following:

4 Sec. ____ . Section 613A.1, Code 1987, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 5. "Discretionary function or
7 duty" means a policy-making decision or policy-
8 implementing action normally made or taken by the
9 governing body of a municipality, its officers, or
10 management level employees and includes, but is not
11 limited to, a decision or action on or involving one
12 or more of the following considerations:

13 a. The type or level of a service provided by a
14 municipality.

15 b. A reduction in services provided by a
16 municipality.

17 c. The number or level of employees or staff, or
18 the employee or officer job classes or positions of a
19 municipality.

20 d. The necessary qualifications of officers or
21 employees.

22 e. The type or number of public improvements or
23 facilities to be constructed, reconstructed, altered,
24 or replaced.

25 f. The design, specifications, or both the design
26 and specifications of public improvements and
27 facilities if the design or specifications chosen are
28 within the range of generally accepted standards at
29 the time of construction, reconstruction, alteration,
30 or replacement.

31 g. The budget or expenditure of municipal funds
32 including, but not limited to, a decision necessitated
33 by budgetary constraints.

34 h. The issuance of bonds or incurring of any form
35 of municipal indebtedness authorized by law.

36 i. The decision of a peace officer not to stop,
37 apprehend, detain, arrest, or charge an individual
38 suspected of a crime if the decision was made without
39 actual malice.

40 j. The time, order, priority, or sequence of any
41 action taken based on the considerations of this
42 subsection.

43 This subsection does not abrogate a municipality's
44 duties under section 309.67 or section 364.12,
45 subsection 2.

46 Sec. ____ . Section 602.8102, subsection 100, Code
47 1987, is amended to read as follows:

48 100. When Except for an action brought pursuant to
49 chapter 668, when the judgment is for recovery of
50 money, compute the interest from the date of verdict

S-3391 pg. 2

1 to the date of payment of the judgment as provided in
2 section 625.21.

3 Sec. ____ . Section 613A.4, Code 1987, is amended by
4 adding the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. This section shall not
6 be construed to create a claim not recognized by
7 common law and shall not be construed to amplify or
8 extend any common law theory of tort recovery.

9 Sec. ____ . Section 625.21, Code 1987, is amended to
10 read as follows:

11 625.21 INTEREST.

12 When Except for an action brought pursuant to
13 chapter 668, when the judgment is for the recovery of
14 money, interest from the time of the verdict or report
15 until judgment is finally entered shall be computed by
16 the clerk and added to the costs of the party entitled
17 thereto."

18 2. Page 3, line 3, by inserting after the word
19 "notice" the word "monthly".

20 3. Renumber as necessary.

S-3391

Filed April 2, 1987

Revised not germane 4/3 (7.1083)

BY COMMITTEE ON JUDICIARY
DONALD V. DOYLE, Chairperson

SENATE FILE 482

S-3398

1 Amend Senate File 482 as follows:

2 1. Page 2, by striking line 26 and inserting the
3 following:

4 "1. Interest".

5 2. Page 2, line 27, by inserting after the word
6 "action" the following: ", but the accrual of
7 interest shall be limited to expenses actually paid by
8 the plaintiff prior to the time of the judgment and
9 shall be awarded to the party who actually paid any
10 preaward expenses. Prejudgment interest shall not
11 apply to awards for past noneconomic, future economic
12 or noneconomic, or punitive damages. Prejudgment
13 interest shall not be included within the award amount
14 on which a contingent attorney's fee is calculated."

S-3398

Filed April 3, 1987

LOST (p. 1151)

BY JULIA GENTLEMAN

SENATE FILE 482

S-3409

- 1 Amend Senate File 482 as follows:
2 1. Page 1, by inserting after line 11 the
3 following:
4 "Sec. ____ . Section 602.8102, subsection 100, Code
5 1987, is amended to read as follows:
6 100. When Except for an action brought pursuant to
7 chapter 668, when the judgment is for recovery of
8 money, compute the interest from the date of verdict
9 to the date of payment of the judgment as provided in
10 section 625.21.
11 Sec. ____ . Section 613A.4, Code 1987, is amended by
12 adding the following new unnumbered paragraph:
13 NEW UNNUMBERED PARAGRAPH. This section shall not
14 be construed to create a claim not recognized by
15 common law and shall not be construed to amplify or
16 extend any common law theory of tort recovery.
17 Sec. ____ . Section 625.21, Code 1987, is amended to
18 read as follows:
19 625.21 INTEREST.
20 When Except for an action brought pursuant to
21 chapter 668, when the judgment is for the recovery of
22 money, interest from the time of the verdict or report
23 until judgment is finally entered shall be computed by
24 the clerk and added to the costs of the party entitled
25 thereto."
26 2. Renumber as necessary.

S-3409

Filed April 3, 1987
ADOPTED (j. 1084)

BY TOM MANN, JR.

SENATE FILE 482

S-3395

- 1 Amend Senate File 482 as follows:
2 1. Page 2, by striking line 26 and inserting the
3 following:
4 "1. Interest, on economic damages actually paid,".
5 2. Page 4, by striking lines 10 and 11 and
6 inserting the following: "the claim arose constituted
7 actual malice."

S-3395

Filed April 3, 1987
LOST (j. 1084)

BY JULIA GENTLEMAN

*Sen Judiciary 4/6/87
Lo Pass 4/16 (p. 1264)*

SENATE FILE 482
BY COMMITTEE ON COMMERCE

(AS AMENDED AND PASSED BY THE SENATE APRIL 3, 1987)

~~_____~~ - New Language by the Senate

Re Passed Senate, Date 5/9/87 (p. 1854) Passed House, Date 4/24/87 (p. 1653)
Vote: Ayes 35 Nays 10 Vote: Ayes 88 Nays 0
Approved May 28, 1987
Motion to Reconsider (p. 1655) w/RS 4/29/87

A BILL FOR

1 An Act relating to the civil process and procedure for awarding
2 interest on civil judgments and decrees, determining whether a
3 sufficient burden of proof has been met for the awarding of
4 punitive damages, and for allowing the consideration for
5 previous payments for medical damages, and providing an
6 effective date.

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

HOUSE AMENDMENT TO
SENATE FILE 482

S-3933

- 1 Amend Senate File 482 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, by striking lines 18 through 23.
- 4 2. Page 3, line 23, by inserting after the word
- 5 "notice" the following: "monthly".
- 6 3. By renumbering, relettering, or redesignating
- 7 and correcting internal references as necessary.

S-3933

Filed May 1, 1987

Adopted 5/9/87 (p. 1753)

RECEIVED FROM THE HOUSE

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SF 482

mj/cw:26

1 Section 1. Section 535.3, Code 1987, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. This section does not apply to
4 the award of interest for judgments and decrees subject to
5 section 668.13.

6 Sec. 2. Section 602.1209, Code 1987, is amended by adding
7 the following new subsection 15 and renumbering the following
8 existing subsection 15:

9 NEW SUBSECTION. 15. Distribute notices of interest rates
10 and changes to interest rates as required by section 668.13,
11 subsection 3.

12 Sec. 3. Section 602.8102, subsection 100, Code 1987, is
13 amended to read as follows:

14 100. When Except for an action brought pursuant to chapter
15 668, when the judgment is for recovery of money, compute the
16 interest from the date of verdict to the date of payment of
17 the judgment as provided in section 625.21.

18 Sec. 4. Section 613A.4, Code 1987, is amended by adding
19 the following new unnumbered paragraph:

20 NEW UNNUMBERED PARAGRAPH. This section shall not be
21 construed to create a claim not recognized by common law and
22 shall not be construed to amplify or extend any common law
23 theory of tort recovery.

24 Sec. 5. Section 625.21, Code 1987, is amended to read as
25 follows:

26 625.21 INTEREST.

27 When Except for an action brought pursuant to chapter 668,
28 when the judgment is for the recovery of money, interest from
29 the time of the verdict or report until judgment is finally
30 entered shall be computed by the clerk and added to the costs
31 of the party entitled thereto.

32 Sec. 6. Section 668.3, subsection 7, is amended to read as
33 follows:

34 7. When a final judgment or award is entered, any party
35 may petition the court for a determination of the appropriate

1 payment method of such judgment or award. If so petitioned
2 the court may order that the payment method for all or part of
3 the judgment or award be by structured, periodic, or other
4 nonlump-sum payments. ~~Structured, periodic, or other nonlump-~~
5 ~~sum-payments-may-include-appropriate-interest-if-such-interest~~
6 ~~was-not-included-in-the-determination-of-the-initial-judgment~~
7 ~~or-award;~~ However, the court shall not order a structured,
8 periodic, or other nonlump-sum payment method if it finds that
9 any of the following are true:

- 10 a. The payment method would be inequitable.
- 11 b. The payment method provides insufficient guarantees of
12 future collectibility of the judgment or award.
- 13 c. Payments made under the payment method could be subject
14 to other claims, past or future, against the defendant or the
15 defendant's insurer.

16 Sec. 7. Section 668.3, Code 1987, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 8. In an action brought pursuant to this
19 chapter the court shall instruct the jury to answer special
20 interrogatories or, if there is no jury, shall make findings
21 on each specific item of requested or awarded damages indicat-
22 ing that portion of the judgment or decree awarded for past
23 damages and that portion of the judgment or decree awarded for
24 future damages.

25 Sec. 8. Section 668.5, Code 1987, is amended by adding the
26 following new subsections:

27 NEW SUBSECTION. 3. Contractual or statutory rights of
28 persons not enumerated in section 668.2 for subrogation for
29 losses recovered in proceedings pursuant to this chapter shall
30 not exceed that portion of the judgment or verdict
31 specifically related to such losses, as shown by the
32 itemization of the judgment or verdict returned under section
33 668.3, subsection 8, and according to the findings made
34 pursuant to section 668.14, subsection 3, and such contractual
35 or statutory subrogated persons shall be responsible for a pro

1 rata share of the legal and administrative expenses incurred
2 in obtaining the judgment or verdict.

3 NEW SUBSECTION. 4. Subrogation payment restrictions
4 imposed pursuant to subsection 3 apply to settlement
5 recoveries, but only to the extent that the settlement was
6 reasonable.

7 Sec. 9. NEW SECTION. 668.13 INTEREST ON JUDGMENTS.

8 Interest shall be allowed on all money due on judgments and
9 decrees on actions brought pursuant to this chapter, subject
10 to the following:

11 1. Interest, except interest awarded for future damages,
12 shall accrue from the date of the commencement of the action.

13 2. If the interest rate is fixed by a contract on which
14 the judgment or decree is rendered, the interest allowed shall
15 be at the rate expressed in the contract, not exceeding the
16 maximum rate permitted under section 535.2.

17 3. Interest shall be calculated as of the date of judgment
18 at a rate equal to the coupon issue yield equivalent, as
19 determined by the United States secretary of the treasury, of
20 the average accepted auction price for the last auction of
21 fifty-two week United States treasury bills settled
22 immediately prior to the date of the judgment. The state
23 court administrator shall distribute notice of that rate and
24 any changes to that rate to all district courts.

25 4. Interest awarded for future damages shall not begin to
26 accrue until the date of the entry of the judgment.

27 5. Interest shall be computed daily to the date of the
28 payment, except as may otherwise be ordered by the court
29 pursuant to a structured judgment under section 668.3, subsec-
30 tion 7.

31 6. Structured, periodic, or other nonlump-sum payments
32 ordered pursuant to section 668.3, subsection 7, shall reflect
33 interest in accordance with annuity principles.

34 Sec. 10. NEW SECTION. 668.14 EVIDENCE OF PREVIOUS
35 PAYMENT OR FUTURE RIGHT OF PAYMENT.

1 1. In an action brought pursuant to this chapter seeking
2 damages for personal injury, the court shall permit evidence
3 and argument as to the previous payment or future right of
4 payment of actual economic losses incurred or to be incurred
5 as a result of the personal injury for necessary medical care,
6 rehabilitation services, and custodial care except to the
7 extent that the previous payment or future right of payment is
8 pursuant to a state or federal program or from assets of the
9 claimant or the members of the claimant's immediate family.

10 2. If evidence and argument regarding previous payments or
11 future rights of payment is permitted pursuant to subsection
12 1, the court shall also permit evidence and argument as to the
13 costs to the claimant of procuring the previous payments or
14 future rights of payment and as to any existing rights of in-
15 demnification or subrogation relating to the previous payments
16 or future rights of payment.

17 3. If evidence or argument is permitted pursuant to
18 subsection 1 or 2, the court shall, unless otherwise agreed to
19 by all parties, instruct the jury to answer special
20 interrogatories or, if there is no jury, shall make findings
21 indicating the effect of such evidence or argument on the
22 verdict.

23 4. This section does not apply to actions governed by
24 section 147.136.

25 Sec. 11. Section 668A.1, subsection 1, paragraph a, Code
26 1987, is amended by striking the paragraph and inserting in
27 lieu thereof the following:

28 a. Whether, by a preponderance of clear, convincing, and
29 satisfactory evidence, the conduct of the defendant from which
30 the claim arose constituted willful and wanton disregard for
31 the rights or safety of another.

32 Sec. 12. This Act takes effect July 1, 1987 and applies
33 to:

- 34 1. All causes of action accruing on or after July 1, 1987.
35 2. All causes of action accruing before July 1, 1987 and

- 1 filed on or after September 15, 1987.
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SENATE FILE 482

H-3754

Amend Senate File 482 as amended, passed and reprinted by the Senate as follows:

1. Page 4, by inserting after line 24 the following:

"Sec. ____ . NEW SECTION. 668.15 MAXIMUM LIABILITY FOR NONECONOMIC DAMAGES.

1. In a verdict issued pursuant to this chapter, that portion of a verdict attributable to noneconomic damages for pain and suffering, loss of consortium, or loss of chance against any one defendant shall not exceed two hundred thousand dollars, except as otherwise provided pursuant to subsections 4 and 5.

2. In an action pursuant to this chapter and tried to a jury, and in which noneconomic damages for pain and suffering, loss of consortium, or loss of chance are sought or argued, the court shall, unless otherwise agreed to by all parties, instruct the jury that the portion of a verdict attributable to noneconomic damages for pain and suffering, loss of consortium, or loss of chance against any one defendant shall not exceed two hundred thousand dollars.

3. In an action brought pursuant to this chapter and tried to a jury, and in which noneconomic damages for pain and suffering, loss of consortium, or loss of chance are sought or argued, the court shall, unless otherwise agreed to by all parties, require that the jury return a verdict itemizing the injuries and damages awarded pursuant to the verdict.

4. In an action brought pursuant to this chapter and in which noneconomic damages for pain and suffering, loss of consortium, or loss of chance are awarded in the maximum amount allowed pursuant to subsection 1, the claimant may petition the court which heard the original action for a waiver of the maximum limitation and for a granting of an increase in that portion of the original verdict attributable to noneconomic damages for pain and suffering, loss of consortium, or loss of chance. A waiver of the maximum limitation and subsequent increase in that portion of the original verdict attributable to noneconomic damages for pain and suffering, loss of consortium, or loss of chance is subject to the following requirements:

a. A hearing shall first be granted at which all parties may appear and present evidence and argument relating to a waiver of the maximum limitation and subsequent increase in the original verdict.

b. A waiver of the maximum limitation and subsequent increase in the original verdict shall only

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Page Two

1 be made upon a determination that the portion of the
 2 original verdict attributable to noneconomic damages
 3 for pain and suffering, loss of consortium, or loss of
 4 chance is clearly insufficient based upon the evidence
 5 presented to the court in the original action and that
 6 the failure to waive the maximum limitation would
 7 result in significant hardship for the claimant.

8 c. An increase in that portion of the original
 9 verdict attributable to noneconomic damages for pain
 10 and suffering, loss of consortium, or loss of chance
 11 must be consistent with the percentages of fault and
 12 evidence as to total damages determined in the
 13 original action.

14 5. The limitations on the amount recoverable for
 15 noneconomic damages for pain and suffering, loss of
 16 consortium, or loss of chance pursuant to this section
 17 shall be indexed biannually on July 1 by rule of the
 18 commissioner of the Iowa division of insurance in
 19 proportion to the net change in the United States city
 20 average consumer price index for all urban consumers
 21 during the preceding twenty-four months. The supreme
 22 court shall implement the biannual indexing by the
 23 issuance of rules as deemed necessary."

24 2. Renumber as necessary.

H-3754 FILED APRIL 14, 1987 BY PAULIN of Plymouth

Adopted 4/24 (p. 1652)

SENATE FILE 482

H-3747

1 Amend Senate File 482 as amended, passed, and
 2 reprinted by the Senate as follows:

3 1. Page 3, line 23, by inserting after the word
 4 "notice" the following: "monthly".

BY HALVORSON of Clayton

H-3747 FILED APRIL 14, 1987 JAY of Appanoose

Adopted 4/24/87 (p. 1648)

SENATE FILE 482

H-3748

1 Amend Senate File 482, as amended, passed and
 2 reprinted by the Senate as follows:

3 1. Page 1, by striking lines 18 through 23.

BY HALVORSON of Clayton

H-3748 FILED APRIL 14, 1987 JAY of Appanoose

Adopted 4/24/87 (p. 1647)

SENATE FILE 482

H-3816

1 Amend Senate File 482 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 535.3, Code 1987, is amended
6 by adding the following new unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. This section does not
8 apply to the award of interest for judgments and
9 decrees subject to section 668.13.

10 Sec. 2. Section 602.1209, Code 1987, is amended by
11 adding the following new subsection 15 and renumbering
12 the following existing subsection 15:

13 NEW SUBSECTION. 15. Distribute notices of
14 interest rates and changes to interest rates as
15 required by section 668.13, subsection 3.

16 Sec. 3. Section 602.8102, subsection 100, Code
17 1987, is amended to read as follows:

18 100. When Except for an action brought pursuant to
19 chapter 668, when the judgment is for recovery of
20 money, compute the interest from the date of verdict
21 to the date of payment of the judgment as provided in
22 section 625.21.

23 Sec. 4. Section 613A.4, Code 1987, is amended by
24 adding the following new unnumbered paragraph:

25 NEW UNNUMBERED PARAGRAPH. This section shall not
26 be construed to create a claim not recognized by
27 common law and shall not be construed to amplify or
28 extend any common law theory of tort recovery.

29 Sec. 5. Section 614.1, Code 1987, is amended by
30 adding the following new subsections:

31 NEW SUBSECTION. 12. AGAINST REGULATED
32 PROFESSIONAL PRACTITIONERS. In addition to
33 limitations contained elsewhere in this section, an
34 action arising out of the performance or
35 nonperformance of a professional service which is
36 subject to regulation by certification or licensure of
37 an agency, board, or court of this state against a
38 person holding a license or certificate entitling the
39 person to engage in the regulated activity or an agent
40 or employee of the person and founded on injury to
41 property, real or personal, or injury to the person or
42 wrongful death, shall not be brought more than ten
43 years after the date on which occurred the act or
44 omission of the defendant alleged in the action to
45 have been the cause of the injury or death.

46 This subsection does not apply if any of the
47 following are true:

48 a. The person engaged in the regulated activity
49 expressly warrants the activity for a period longer
50 than ten years, in which case the period of limitation

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1 is deemed to be that period expressly warranted.

2 b. The person engaged in the regulated activity
3 intentionally misrepresents or fraudulently conceals
4 facts or information concerning the service, and that
5 conduct is a proximate cause of the injury or death
6 upon which the claimant's action is based.

7 c. The nature of the injury or cause of death by
8 its nature does not naturally manifest itself within
9 ten years.

10 NEW SUBSECTION. 13. PRODUCTS. Those founded on
11 injuries to the person or wrongful death against an
12 assembler, designer, supplier of specifications,
13 distributor, manufacturer, or seller for damages
14 arising from an alleged defect in the design, testing,
15 manufacturing, formulation, packaging, warning, or
16 labeling of a product, within two years after the date
17 on which the claimant knew, or through the use of
18 reasonable diligence should have known, of the injury
19 or death for which damages are sought in the action,
20 whichever date occurs first, but in no event shall an
21 action be brought more than ten years after the date
22 that the product that is alleged to have caused the
23 injury or death was first purchased for use or
24 consumption unless one of the following is true:

25 a. The assembler, designer, supplier of
26 specifications, distributor, manufacturer, or seller
27 expressly warranted that the product could be used
28 safely for a period longer than ten years, in which
29 case the period of limitation is deemed to be that
30 period expressly warranted.

31 b. The assembler, designer, supplier of
32 specifications, distributor, manufacturer, or seller
33 intentionally misrepresents facts about the product,
34 or fraudulently conceals information about the
35 product, and that conduct was a proximate cause of the
36 injury or death upon which the claimant's action is
37 based.

38 c. The injury or death was caused by prolonged
39 exposure to a defective product for a period exceeding
40 ten years.

41 d. The nature of the injury or cause of death was
42 such that it would not naturally manifest itself
43 within ten years.

44 Sec. 6. Section 625.21, Code 1987, is amended to
45 read as follows:

46 625.21 INTEREST.

47 When Except for an action brought pursuant to
48 chapter 668, when the judgment is for the recovery of
49 money, interest from the time of the verdict or report
50 until judgment is finally entered shall be computed by

--33--

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1 the clerk be added to the costs of the party entitled
2 thereto.

3 Sec. 7. Section 668.3, subsection 7, is amended to
4 read as follows:

5 7. When a final judgment or award is entered, any
6 party may petition the court for a determination of
7 the appropriate payment method of such judgment or
8 award. If so petitioned the court may order that the
9 payment method for all or part of the judgment or
10 award be by structured, periodic, or other nonlump-sum
11 payments. ~~Structured, periodic, or other nonlump-sum~~
12 ~~payments may include appropriate interest if such~~
13 ~~interest was not included in the determination of the~~
14 ~~initial judgment or award.~~ However, the court shall
15 not order a structured, periodic, or other nonlump-sum
16 payment method if it finds that any of the following
17 are true:

18 a. The payment method would be inequitable.

19 b. The payment method provides insufficient
20 guarantees of future collectibility of the judgment or
21 award.

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

25 Sec. 8. Section 668.3, Code 1987, is amended by
26 adding the following new subsection:

27 NEW SUBSECTION. 8. In an action brought pursuant
28 to this chapter the court shall instruct the jury to
29 answer special interrogatories or, if there is no
30 jury, shall make findings on each specific item of
31 requested or awarded damages indicating that portion
32 of the judgment or decree awarded for past damages and
33 that portion of the judgment or decree awarded for
34 future damages.

35 Sec. 9. Section 668.5, Code 1987, is amended by
36 adding the following new subsections:

37 NEW SUBSECTION. 3. Contractual or statutory
38 rights of persons not enumerated in section 668.2 for
39 subrogation for losses recovered in proceedings
40 pursuant to this chapter shall not exceed that portion
41 of the judgment or verdict specifically related to
42 such losses, as shown by the itemization of the
43 judgment or verdict returned under section 668.3,
44 subsection 8, and according to the findings made
45 pursuant to section 668.14, subsection 3, and such
46 contractual or statutory subrogated persons shall be
47 responsible for a pro rata share of the legal and
48 administrative expenses incurred in obtaining the
49 judgment or verdict.

50 NEW SUBSECTION. 4. Subrogation payment

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restrictions imposed pursuant to a claim for a judgment recovery, but only to the extent that the settlement was reasonable.

4 Sec. 10. NEW SECTION. 668.13 INTEREST ON
5 JUDGMENTS.

6 Interest shall be allowed on all money due on
7 judgments and decrees on actions brought pursuant to
8 this chapter, subject to the following:

9 1. Interest, except interest awarded for future
10 damages, shall accrue from the date of the
11 commencement of the action.

12 2. If the interest rate is fixed by a contract on
13 which the judgment or decree is rendered, the interest
14 allowed shall be at the rate expressed in the
15 contract, not exceeding the maximum rate permitted
16 under section 535.2.

17 3. Interest shall be calculated as of the date of
18 judgment at a rate equal to the coupon issue yield
19 equivalent, as determined by the United States
20 secretary of the treasury, of the average accepted
21 auction price for the last auction of fifty-two week
22 United States treasury bills settled immediately prior
23 to the date of the judgment. The state court
24 administrator shall distribute notice of that rate and
25 any changes to that rate to all district courts.

26 4. Interest awarded for future damages shall not
27 begin to accrue until the date of the entry of the
28 judgment.

29 5. Interest shall be computed daily to the date of
30 the payment, except as may otherwise be ordered by the
31 court pursuant to a structured judgment under section
32 668.3, subsection 7.

33 6. Structured, periodic, or other nonlump-sum
34 payments ordered pursuant to section 668.3, subsection
35 7, shall reflect interest in accordance with annuity
36 principles.

37 Sec. 11. NEW SECTION. 668.14 EVIDENCE OF
38 PREVIOUS PAYMENT OR FUTURE RIGHT OF PAYMENT.

39 1. In an action brought pursuant to this chapter
40 seeking damages for personal injury, the court shall
41 permit evidence and argument as to the previous
42 payment or future right of payment of actual economic
43 losses incurred or to be incurred as a result of the
44 personal injury for necessary medical care,
45 rehabilitation services, and custodial care except to
46 the extent that the previous payment or future right
47 of payment is pursuant to a state or federal program
48 or from assets of the claimant or the members of the
49 claimant's immediate family.

50 2. If evidence and argument regarding previous

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1 payments or future rights of payment is permitted
2 pursuant to subsection 1, the court shall also permit
3 evidence and argument as to the costs to the claimant
4 of procuring the previous payments or future rights of
5 payment and as to any existing rights of in-
6 demnification or subrogation relating to the previous
7 payments or future rights of payment.

8 3. If evidence or argument is permitted pursuant
9 to subsection 1 or 2, the court shall, unless
10 otherwise agreed to by all parties, instruct the jury
11 to answer special interrogatories or, if there is no
12 jury, shall make findings indicating the effect of
13 such evidence or argument on the verdict.

14 4. This section does not apply to actions governed
15 by section 147.136.

16 Sec. 12. Section 668A.1, subsection 1, paragraph
17 a, Code 1987, is amended by striking the paragraph and
18 inserting in lieu thereof the following:

19 a. Whether, by a preponderance of clear,
20 convincing, and satisfactory evidence, the conduct of
21 the defendant from which the claim arose constituted
22 willful and wanton disregard for the rights or safety
23 of another.

24 Sec. 13. This Act takes effect July 1, 1987 and
25 applies to:

26 1. All causes of action accruing on or after July
27 1, 1987.

28 2. All causes of action accruing before July 1,
29 1987 and filed on or after September 15, 1987."

H-3816 FILED APRIL 15, 1987

BY STROMER of Hancock

Filed not germane 4/24 (7/16/47)

SENATE FILE 482

H-3807

1 Amend Senate File 482 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, line 5, by inserting after the word
4 "for" the following: "wages,".

5 2. Page 4, by striking lines 6 through 8 and
6 inserting the following: "rehabilitation services,
7 and custodial care except from assets of the".

8 3. Page 4, by striking lines 18 through 20 and
9 inserting the following: "subsection 1 or 2, the
10 court shall make findings".

11 4. Page 4, line 28, by striking the words "a
12 preponderance of".

H-3807 FILED APRIL 15, 1987 BY CARPENTER of Polk

A. B. C. - Done 4/24 (p. 1649)

D. Done (p. 1652)

SENATE FILE 482

H-3811

1 Amend Senate File 482 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Sec. ____ . Section 321G.22, Code 1987, is amended
6 by adding the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. The state is exclusively
8 liable pursuant to chapter 25A for any liability
9 arising from trails constructed and maintained with
10 funds appropriated under section 321G.7."

11 2. Page 1, by inserting after line 17, the
12 following:

13 "Sec. ____ . Section 613A.4, Code 1987, is amended
14 by adding the following new subsection:

15 NEW SUBSECTION. 11. Any claim for damages
16 resulting from the use of any property which is under
17 the control of a municipality, by ownership, lease, or
18 other agreement, including an agreement permitting use
19 of the property for an activity sponsored by the
20 municipality, and is intended or permitted to be used
21 as a park, playground, beach, swimming pool, or open
22 space area for recreational purposes. However, this
23 subsection does not apply to claims based upon gross
24 negligence."

25 3. Page 3, by inserting after line 6, the
26 following:

27 "Sec. ____ . Section 668.10, Code 1987, is amended
28 by adding the following new subsection:

29 NEW SUBSECTION. 4. Any act or omission arising
30 from the operation or maintenance of a park,
31 playground, beach, swimming pool, or open space area
32 used for recreational purposes, unless it is proven
33 that the act or omission constituted gross
34 negligence."

35 4. Renumber as necessary.

H-3811 FILED APRIL 15, 1987 BY BLACK of Jasper

Rules not germane 4/24 (p. 1646)

SENATE FILE 482

H-3950

1 Amend Senate File 482 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 4, by striking lines 30 and 31 and
4 inserting the following: "the claim arose constituted
5 actual malice."

H-3950 FILED APRIL 23, 1987 BY METCALF of Polk

Lost 4/24 (p. 1653)

SENATE FILE 482

H-3951

1 Amend Senate File 482 as amended, passed and
2 reprinted by the Senate, as follows:
3 1. Page 3, by striking line 11 and 12 and
4 inserting the following:
5 "1. Interest shall accrue from the date of the
6 commencement of the action, but the accrual of
7 interest shall be limited to expenses actually paid by
8 the plaintiff prior to the time of the judgment and
9 shall be awarded to the party who actually paid any
10 preaward expenses. Prejudgment interest shall not
11 apply to awards for past noneconomic, future economic
12 or noneconomic, or punitive damages."

H-3951 FILED APRIL 23, 1987 BY METCALF of Polk

Lost 4/24 (p. 1648)

SENATE FILE 482

H-4003

1 Amend Senate File 482, as amended, passed, and re-
2 printed by the Senate, as follows:
3 1. Page 3, by striking lines 11 and 12 and in-
4 serting the following:
5 "1. Interest shall accrue from the date of the
6 verdict to the date of payment of the judgment."
7 2. Page 3, by striking lines 25 and 26.
8 3. Renumber as necessary

H-4003 FILED APRIL 24, 1987 BY RUNNING of Linn

LOST (p. 1648)

SENATE FILE 482

AN ACT

RELATING TO THE CIVIL PROCESS AND PROCEDURE FOR AWARDING INTEREST ON CIVIL JUDGMENTS AND DECREES, DETERMINING WHETHER A SUFFICIENT BURDEN OF PROOF HAS BEEN MET FOR THE AWARDING OF PUNITIVE DAMAGES, AND FOR ALLOWING THE CONSIDERATION FOR PREVIOUS PAYMENTS FOR MEDICAL DAMAGES, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 535.3, Code 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. This section does not apply to the award of interest for judgments and decrees subject to section 668.13.

Sec. 2. Section 602.1209, Code 1987, is amended by adding the following new subsection 15 and renumbering the following existing subsection 15:

NEW SUBSECTION. 15. Distribute notices of interest rates and changes to interest rates as required by section 668.13, subsection 3.

Sec. 3. Section 602.8102, subsection 100, Code 1987, is amended to read as follows:

100. When Except for an action brought pursuant to chapter 668, when the judgment is for recovery of money, compute the interest from the date of verdict to the date of payment of the judgment as provided in section 625.21.

Sec. 4. Section 625.21, Code 1987, is amended to read as follows:

625.21 INTEREST.

When Except for an action brought pursuant to chapter 668, when the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally

entered shall be computed by the clerk and added to the costs of the party entitled thereto.

Sec. 5. Section 668.3, subsection 7, Code 1987, is amended to read as follows:

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. 6. Section 668.3, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 8. In an action brought pursuant to this chapter the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages.

Sec. 7. Section 668.5, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Contractual or statutory rights of persons not enumerated in section 668.2 for subrogation for losses recovered in proceedings pursuant to this chapter shall

not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under section 668.3, subsection 8, and according to the findings made pursuant to section 668.14, subsection 3, and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict.

NEW SUBSECTION. 4. Subrogation payment restrictions imposed pursuant to subsection 3 apply to settlement recoveries, but only to the extent that the settlement was reasonable.

Sec. 8. NEW SECTION. 668.13 INTEREST ON JUDGMENTS.

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to this chapter, subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.
2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.
3. Interest shall be calculated as of the date of judgment at a rate equal to the coupon issue yield equivalent, as determined by the United States secretary of the treasury, of the average accepted auction price for the last auction of fifty-two week United States treasury bills settled immediately prior to the date of the judgment. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.
4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.
5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

Sec. 9. NEW SECTION. 668.14 EVIDENCE OF PREVIOUS PAYMENT OR FUTURE RIGHT OF PAYMENT.

1. In an action brought pursuant to this chapter seeking damages for personal injury, the court shall permit evidence and argument as to the previous payment or future right of payment of actual economic losses incurred or to be incurred as a result of the personal injury for necessary medical care, rehabilitation services, and custodial care except to the extent that the previous payment or future right of payment is pursuant to a state or federal program or from assets of the claimant or the members of the claimant's immediate family.

2. If evidence and argument regarding previous payments or future rights of payment is permitted pursuant to subsection 1, the court shall also permit evidence and argument as to the costs to the claimant of procuring the previous payments or future rights of payment and as to any existing rights of indemnification or subrogation relating to the previous payments or future rights of payment.

3. If evidence or argument is permitted pursuant to subsection 1 or 2, the court shall, unless otherwise agreed to by all parties, instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating the effect of such evidence or argument on the verdict.

4. This section does not apply to actions governed by section 147.135.

Sec. 10. Section 668A.1, subsection 1, paragraph a, Code 1987, is amended by striking the paragraph and inserting in lieu thereof the following:

a. Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.

Sec. 11. This Act takes effect July 1, 1987 and applies to:

1. All causes of action accruing on or after July 1, 1987.
2. All causes of action accruing before July 1, 1987 and filed on or after September 15, 1987.

JO ANN ZIMMERMAN
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 482, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 28, 1987

TERRY E. BRANSTAD
Governor

SF 482