

# Comment Report

SF 2338

A bill for an act relating to civil actions, including the total amount recoverable as a noneconomic damages award against a health care provider, recoverable damages for medical expenses, and evidence offered to prove past medical expenses. (Formerly SSB 3150.)

Subcommittee Members: Carlson-CH, Meyer, B., Wills

Date: 06/03/2020

Time: 11:30 AM

Location: RM 103, Sup. Ct. Chamber

First Name	Last Name	Company	Phone	Email
Fred	Haskins	Patterson Law Firm, LLP	515 217 8427	fhaskins@pattersonfirm.com
<b>Comment</b>	Patterson Law Firm is monitoring this bill.			
Jane	Robinette			jane.robinette@gmail.com
<b>Comment</b>	I urge you to vote no on SF2338, which would remove the severity exemption to the cap on noneconomic damages in medical malpractice cases. A cap of \$750,000 (up from \$250,000) still may not justly compensate a plaintiff in serious, tragic cases. Why not let judges and juries sort this out based on the evidence in individual trials as it is now? If juries overstep, judges can correct. Statistical information on malpractice insurance costs presented in the Senate subcommittee do not support this change in the law. This bill does not take into account the level of harm in severe cases, and will likely be inadequate to compensate for that harm. Please do not make the situations of these patients and their families worse.			
Matt	Blake	LeadingAge Iowa	5154404630	mblake@leadingageiowa.org
<b>Comment</b>	LeadingAge Iowa, an association of nonprofit aging service providers, supports SF 2338. Nursing facilities have seen a rise in litigation across the country and it is vital that reforms are put in place. With COVID19, reform is needed now more than ever. Nursing facilities have faced unprecedented challenges during the ongoing pandemic. Regardless of their infection control history, the pervasive virus can get into any facility and devastates their resident populations. The future liability related to this virus for nursing facilities is unknown. That is why reasonable caps on noneconomic damages and other reforms and protections are needed.			
Taylor	Larson	MercyOne		tlarson@ls2group.com
<b>Comment</b>	MercyOne has joined other systems and provider associations in advocating for a hard cap on noneconomic damage awards in medical malpractice lawsuits. Today, only a soft cap exists, which has allowed juries to make disproportionate awards, in excess of the lifetime cost of care, for these damages. Further amplified awards could bankrupt small providers and decrease access to care across our state.			
Chris	Ingstad	Iowans for Tax Relief		cingstad@taxrelief.org
<b>Comment</b>	Iowans for Tax Relief is registered in favor of this legislation. Unwarranted lawsuits drive up costs for all consumers. There are already adequate protections in place to accommodate real economic damages, but a handful of cases are driving up everyone's medical costs. ITR is also supportive of liability protection for businesses related to COVID19. After being shut down for weeks due to the virus, governments at all levels are removing restrictions and restarting their economies. Many Iowa businesses have			

gotten the green light from the government to reopen and have been directed to do so cautiously and responsibly, in an effort to protect both their consumers and their employees. Lawsuits against companies trying to reopen will curtail this progress. With so many unknowns, companies may be tempted to retreat or hold back on moving forward. For this reason, it is important that the legislature act to protect Iowa businesses from lawsuits related to COVID19. It cannot be said enough that businesses need to act responsibly. If an employer is following safety measures per CDC guidance though, they should not have to worry about being sued if the virus spreads to an employee or customer. Without this protection, lawsuits could force many business owners out of business, particularly after weathering the financial difficulty of a governmentmandated business closure that lasted for many weeks.

First Name	Last Name	Company	Phone	Email
Lisa	Davis-Cook	Iowa Association for Justice	515.314.2956	ldaviscook@iowajustice.org
<b>Comment</b>	IAJ members work to make sure any person who is injured by the misconduct and negligence of others can get justice in the courtroom, even when taking on the most powerful interests. As an association of trial attorneys who represent injured Iowans when they turn to our courts for justice, we are very concerned about legislative proposals that block access to justice. SF 2338 is an example of the worst of these sorts of proposals.			

# Comments submitted by Iowa Association for Justice against SF 2338



**Pages 2-3:** Facts against SF 2338

**Pages 4:** Comments from Iowa attorney Russ Hixson against SF 2338

**Pages 5-6:** Comments from Dr. Jeffery L. Allyn, M.D. against SF 2338

**Page 7:** Comments from Chad Swanson, IAJ President

**Page 8:** Facts about five medical negligence cases

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# Facts against SF 2338

*Prepared by the Iowa Association for Justice – 2020*

Proponents of SF 2338 are using the COVID-19 pandemic to try to convince lawmakers to enact a hard cap in medical malpractice cases. They claim it should be done “to repay our heroes.” Doctors and nurses have done their jobs admirably, but that is not a reason to take away the Constitutional rights of all Iowans – especially those who have experienced a life-altering injury or the loss of a loved one due to preventable medical negligence.

SF 2338 would force a radical, one-size-fits-all, government-mandated dollar value on human life. This bill is a government overreach that takes power away from a citizen jury and tilts the scales in favor of government, and the most powerful corporations. People on juries should decide the outcomes of court cases, not politicians.

Corporate lobbyists are claiming that five lawsuits over the last three years have cost hospitals and doctors \$85 million in verdicts. The important information being withheld is that not one of these verdicts was *ever* paid in full. Corporate lobbyists are claiming “a single high-dollar judgment is likely to force a practice to close.” Hospitals and doctors are insured for malpractice, and, to our knowledge, no hospital or doctor in Iowa have ever had to pay out of reserves or out of pocket for a verdict that exceeds the malpractice insurance policy limits. Proponents of SF 2338 are using COVID-19, and false statements, to argue for forcing this one-size-fits-all price on life.

## Here are some important facts to consider:

### Health Care Spending:

- In the last year for which data is available (2014), total health care spending in Iowa was \$25.5 billion<sup>1</sup>, while total payouts and expenses for the medical malpractice insurance industry in Iowa was \$18 million<sup>2</sup>.
- *That means medical negligence lawsuits account for 0.071% of total health care spending in Iowa.*
- The insurance industry admits that caps will not lower rates for doctors<sup>3</sup>.
- Stripping Iowans of their constitutional right to trial by jury won't reduce costs for doctors, and it will not improve access to care.
- Caps will only reduce payouts to victims, allowing the insurance industry to keep more premiums.

### Access to Health Care:

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<sup>1</sup> Personal Health Care Expenditures taken from the Centers of Medicare and Medicaid Services.

<sup>2</sup> NAIC Countrywide Summary of Medical Professional Liability Insurance – Calendar Years 2009-2018

<sup>3</sup> "The insurance industry never promised that tort reform would achieve specific premium savings." - American Insurance Association, March 13, 2002

- Over the last decade, the number of active physicians in Iowa has grown 3.5 times faster than the overall population of Iowa.<sup>4</sup>
- A recent study examined physician supply in nine states that enacted caps and compared this data to other “control” states. The authors found, “No evidence that cap adoption predicts an increase in total patient care physicians, in specialties that face high med mal risk (except plastic surgeons), or in rural physicians.”<sup>5</sup>
- Stripping Iowans of their constitutional right to trial by jury won't reduce costs for doctors, and it will not improve access to care. Caps will only reduce payouts to victims, allowing the insurance industry to keep more premiums.

### **Rural Hospitals Close at a Faster Rate in Cap States:<sup>6</sup>**

- More than 2/3 of rural hospital closings happened in a state with a hard cap in place.
- Of the 166 rural hospitals which have closed, 114 (69%) closed in a state with a hard cap in place, while 52 (31%) closed in a state with no cap in place. Additionally, South Dakota, Nebraska, Kansas, Missouri, and Wisconsin have all seen maternity units closing in their states AND seen entire rural hospitals close while a hard cap was in place. Iowa, with no hard cap, has yet to have a rural hospital close, despite the strong national trend in this direction.

### **Medical Malpractice Rates:**

- Iowa Malpractice rates have remained steady since 2012.<sup>7</sup>
- *Over the last ten years, Insurance companies in Iowa took in 85 percent more in premiums than they paid out in losses and expenses.*<sup>8</sup>
- Malpractice premiums for doctors, averaged across specialties, are 58% higher in states with caps than in Iowa.<sup>9</sup>
- Malpractice premiums for internal medicine are 50% higher in states with caps than in Iowa.<sup>10</sup>
- Malpractice premiums for general surgery are 62% higher in states with caps than in Iowa.<sup>11</sup>
- Malpractice premiums for OB/GYNs are 59% higher in states with caps than in Iowa.<sup>12</sup>

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<sup>4</sup> US Census, from 2010 to 2019 the Iowa population grew from 3,046,355 to 3,155,070, or 3.6%. According to the Association of American Medical Colleges, from 2008 to 2018 the number of active physicians in Iowa grew from 6134 to 6,886, or 12.3%.

<sup>5</sup> Bernard S. Black, David A. Hyman and Myungho Paik, “Does Medical Malpractice Reform Increase Physician Supply? Evidence from the Third Reform Wave,” Northwestern University Law & Economics Research Paper No. 14-11; University of Illinois Program in Law, Behavior and Social Science Research Paper No. LBSS 14-36 (July 2014) <http://ssrn.com/abstract=2470370>.

<sup>6</sup> The Cecil G. Sheps Center for Health Services Research at UNC has cataloged every rural hospital closing in America since 2005.

<sup>7</sup> Data from Medical Liability Monitor Annual rate survey.

<sup>8</sup> Derived from data provided by Countrywide Summary of Medical Professional Liability Insurance, NAIC (2019).

<sup>9</sup> Derived from data provided by Medical Liability Monitor. A state's average premium is calculated as the unweighted mean value of premiums for all companies for which data is provided across all regions. A state is classified as having a cap when the state has enacted either a general non-economic damage cap that affects medical malpractice cases or a medical malpractice specific cap on non-economic and/or compensatory damages. Caps that affect one area of medical malpractice (e.g. just wrongful death cases) or punitive damage caps are not counted since these represent a small number of cases.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

## **Russ Hixson, Iowa attorney, comments against SF 2338**

Forcing a government-imposed capped dollar value on human life targets Iowa victims in the most extreme cases of medical negligence. Economic damages rarely apply to retired Iowans, a stay-at-home parent, babies, children, or low-wage workers. This bill sends the message to Iowans that their value does not extend beyond their earning capacity. Iowans lose so much more than that when their lives or their loved ones are taken from them because of someone else's negligence.

Take for example the family of Marvin Morris who, at 84 years of age, was admitted into a local Des Moines hospital in 2019. During his admission, medical personnel put a feeding tube into his lung instead of his stomach. Before using the tube, a radiologist reviewed a chest x-ray and knew the tube was misplaced. Regardless, he did not call the patient's treating physician or nurse to inform them of the problem. Even more egregious is the fact that Marvin's nurse reviewed a radiology report informing her that the tube was misplaced and needed to be repositioned. Instead of heeding the warning, she began placing liquid feeds, medications and water down the tube and into Marvin's lung for more than 14 hours. Marvin drowned to death while his family helplessly watched him suffer as he gurgled and gasped for air. Not only did Marvin suffer tremendously in his last hours, but his wife, children and grandchildren suffered severe emotional trauma that required professional help and counseling to deal with the death of their loved one.

How are you, as lawmakers, in a better position to decide the outcome of these cases through a one-size-fits-all government imposed cap? How are you in a better position than a jury to decide what reasonable compensation is owed to this family.

You've heard about five large verdicts over the last few years in Iowa. The insurance company lobbyists aren't telling the truth about these verdicts. A verdict is rarely, if ever, what the defendant pays. In most cases the defendant pays up to the insurance policy's limits, not the entire verdict. Each of these cases were settled after the fact for amounts substantially less than the verdicts; something that the insurance companies and the defendants are actively hiding from lawmakers. When they talk about paying out \$85 million from 5 cases, this is flat out false.

Hospitals and doctors do not pay jury verdicts themselves. In my 31 years of practice, I am not aware of one case where an Iowa hospitals or Iowa doctor has paid money out of their own pocket for a verdict in excess of their insurance limits. Any statement to the contrary is just not true.

Lastly, our judicial system has in place a system to prevent runaway jury verdicts. Our district court judges as well as the Justices of the Iowa Supreme Court have the power and the ability to take away or reduce verdicts that are not supported by the facts. A cap by the legislature sends a message that we don't trust Iowa juries to do what's right and we don't trust our judges to keep them in check. Such a message does not display Iowa values.

## **Dr. Jeffery L. Allyn, M.D. comments against SF 2338**

My wife died 11 years ago. She was 30 and gave birth to our son the day before. Mary fell victim to the third-leading cause of death in the US: medical error.

An estimated 440,000 lives are lost annually due to preventable medical errors. Around 95% of malpractice cases settle out of court and thereby escape data collection or reports to agencies that might monitor physician quality of care. State boards of medicine tend to focus on issues of substance abuse or mental health among physicians. My profession does not self-police.

Liam, my son, was born at 27 weeks and spent two months in the NICU. I was a single parent, and despite loving support from family and friends, we were without a wife and mother. A malpractice settlement provided the financial means that allowed me to quit medical practice and, for a few years, be a stay-at-home parent for Liam. That settlement also ensured his college fund. Such would not be the case if malpractice awards are capped by proposed legislation.

The accountability delivered by our right to trial by jury remains Iowans' major protection from dangerous medical errors. I am thankful for lawyers who help Iowans pursue that individual right. Their work helps to improve health care outcomes by creating a consequence for harmful, preventable medical errors.

As a physician, I can tell you that if you remove financial responsibility for medical errors, mistakes will not be decreased. Research confirms this common sense notion. A 2019 University of Texas study showed "evidence that hospitals made more avoidable errors after the adoption" of the state's caps law. A 2014 Northwestern University study found "that patient safety gradually worsens after cap adoption."

The specious arguments put forth to support forcing caps on the value of life in medical malpractice cases are the products of lobbyists paid by insurance companies, physician organizations and hospital associations. Malpractice insurance rates are not responsible for shrinking obstetrical care in rural Iowa. Changing demographics and decreased birth rates result in family practitioners delivering too few babies to maintain necessary skills or income. Contemporary obstetricians do not settle in rural areas. They need the resources provided by larger hospitals supported by metropolitan populations and referrals from rural communities. Furthermore, doctor recruitment is difficult for rural areas because of the demands of modern medicine. The romantic notion of the grizzled GP making house calls at midnight is not reality. A rural family practitioner's income does not cover the tremendous debt from education the way higher-paying urban specialty positions can.

Any assertion that physicians, including obstetricians specifically, are leaving Iowa due to medical liability issues has no support in the data. In fact, the percentage increase in both Iowa physicians and active Iowa obstetricians consistently outpace the state's general population growth.

Malpractice insurance rates respond more to the insurer's investment returns, not increases in malpractice settlements. The average rate among Iowa doctors has remained static for the last 12 years. I am certain Iowa physicians want to reduce their liability exposure. Doctors must minimize preventable medical errors, the root cause of medical malpractice lawsuits. My profession's support of its insurance carriers' legislative agenda will not decrease avertable mistakes.



Mary did not die because of a lack of physicians in rural Iowa. She died in Des Moines at a premier tertiary care center. Our malpractice lawsuit did not bring her back. But it did allow us to make changes in our lives to help us with the impact of losing her. Politicians should not be mandating court decisions. Leave outcomes in the hands of citizen jurors. Vote NO on the caps bill.

Jeffery L. Allyn, M.D.

## Chad Swanson, IAJ President, comments against SF 2338

Caps fights typically come up when states are experiencing massive and unanticipated liability premium hikes for doctors. That is not Iowa. Average malpractice insurance premiums in Iowa have increased 0% for Iowa doctors over the last 12 years, and Iowa is among the 5 states with the lowest malpractice costs for doctors.<sup>13</sup> Our rates are already incredibly low, and this bill will do nothing to lower them further.

If anything the insurance industry should be answering for why their insured's have not seen a reduction in premiums, or premium rebates, over the last decade. Over the last 10 years, the medical liability insurance industry has taken in \$709 million in premiums from the Iowa medical profession, and paid out just \$308 million in combined losses and expenses.<sup>14</sup> So, over this last decade the insurance industry has \$401 million in surplus premium dollars, money which is invested and making the industry massive profits.

There is no rational basis for this bill. The medical lobby claims that this bill will improve access to health care in rural Iowa. There is no evidence to back that up. We all know that rural hospitals and clinics across the Midwest are struggling, even more so today. That has everything to do with shrinking patient populations, coupled with shrinking Medicaid reimbursement income, a shrinking available workforce, and now decreased revenue due to COVID-19. It has nothing to do with lawsuits. The chart below demonstrates the *tiny* share of health care spending in Iowa attributed to medical negligence lawsuits. Stripping Iowans of their constitutional right to trial by jury won't reduce costs for doctors, and it will not improve access to care. Caps will only reduce payouts to victims, allowing the insurance industry to keep more premiums.

### Health Care Spending and the Right to Trial by Jury

In the last year for which data is available (2014), total health care spending in Iowa was \$25.5 billion<sup>[1]</sup>, while total payouts and expenses for the medical malpractice insurance industry in Iowa was \$18 million<sup>[2]</sup>. That means medical negligence lawsuits account for 0.071% of total health care spending in Iowa.

**The insurance industry admits that caps will not lower rates for doctors<sup>[3]</sup>.**

**Stripping Iowans of their constitutional right to trial by jury won't reduce costs for doctors, and it will not improve access to care. Caps will only reduce payouts to victims, allowing the insurance industry to keep more premiums.**

**0.071%**  
**Total medical malpractice costs in Iowa**  
This tiny corner represents the costs of medical negligence lawsuits



**\$25.5 Billion**  
**Annual Health Care Spending in Iowa**

<sup>[1]</sup> Personal Health Care Expenditures taken from the Centers of Medicare and Medicaid Services.  
<sup>[2]</sup> NAIC Countrywide Summary of Medical Professional Liability Insurance - Calendar Years 2009-2018  
<sup>[3]</sup> The insurance industry never promised that tort reform would achieve specific premium savings. - American Insurance Association, March 13, 2002



<sup>13</sup> Annual Rate Survey, Medical Liability Monitor, October 2009-2018.

<sup>14</sup> NAIC Countrywide Summary of Medical Professional Liability Insurance – Calendar Years 2009-2018

# **The facts about medical negligence lawsuits in Iowa**

*Prepared by the Iowa Association for Justice – 2020*

Proponents of government-imposed hard caps on jury decisions have communicated to lawmakers that the legislature's 2017 medical malpractice cap has been tested in the courts in multiple cases. That is false. In fact, not one single medical negligence case has gone to trial under the 2017 law, which includes a cap and certificate of merit.

There are five cases the proponents of hard caps consistently bring up. All were filed and tried to a jury under the law as it stood before the 2017 cap. You can read the facts about these cases below.

## **In Huitt v. Iowa Clinic** (filed 2017, verdict 2019)

The Iowa Clinic reviewed the wrong patient's lab results and removed Rickie Huitt's prostate, even though he didn't have cancer. A jury should decide how much Rickie should be compensated, not government mandates.

## **In DeJongh v. Sioux Center Health** (filed 2016, verdict 2018)

Carrie DeJongh, from Hull, Iowa, had an extreme allergic reaction during a routine medical test and the doctors failed to give her an epi-pen injection that would have saved her life. The married mother of four died at Sioux Center Health hospital within hours. A jury should decide how much Carrie's family should be compensated for their loss, not government mandates.

**Plowman v. Fort Madison Hospital** (filed 2013, verdict 2019) was a wrongful birth case, which is now prohibited by statute.

## **In Phillips v. Flexible Family Care** (filed 2014, verdict 2017)

After repeated breaches of the standard of care, Dr. Lynette Iles is now barred from practicing obstetric medicine. When Lisa Phillips, from Washington, Iowa, came in to give birth to her daughter she had no idea about her doctor's past. During the birth, Dr. Iles failed to follow safe medical standards. The doctor's negligence caused newborn Taylor Phillips severe brain damage, resulting in cerebral palsy. A jury should decide how much Taylor and her parents should be compensated, not government mandates.

## **In Pellock v. Mississippi Valley Anesthesiology** (filed 2015, verdict 2017)

Richard Pellock of Dubuque County drowned on his own vomit when an anesthetist failed to insert a breathing tube during surgery prep. The insurance carrier offered \$0 when the Richard's wife and son attempted to settle this case before filing suit. In trial, the anesthesiology provider actually changed his testimony to make it sound like he hadn't committed malpractice. A jury should decide how much Richard family should be compensated for her loss, not government mandates.

It is immoral to force a one-size-fits-all government mandated dollar value on human life. Leave decisions about these cases to Iowa juries.

<b>First Name</b>	<b>Last Name</b>	<b>Company</b>	<b>Phone</b>	<b>Email</b>
Dennis	Tibben	Iowa Medical Society		dtibben@iowamedical.org
<b>Comment</b>	Comments attached regarding SF 2338.			



June 2, 2020

Iowa House of Representatives  
State Capitol  
Des Moines, Iowa 50319

**Re: SF 2338 – Medical Liability Cap on Noneconomic Damages**

Dear Representatives:

On behalf of the nearly 6,000 physician, resident, and medical student members of the Iowa Medical Society, thank you for the opportunity to provide comment on SF 2338, which would enact a hard cap on noneconomic damages in medical liability suits. IMS strongly supports this legislation and urges you to move quickly to enact this legislation. In recent years, Iowa has seen a string of high-dollar suits against Iowa physicians and Iowa facilities. In the last three years alone, there have been five large verdicts totaling \$85 million in damages. At the same time, the overall number of malpractice suits being filed each year has continued to decline. This spike in high-dollar judgements is not an indication that medical care has gotten less safe; it is a sign that plaintiffs attorneys have begun employing questionable tactics to play to a jury's emotions and exploit Iowa's lack of a hard cap on noneconomic damages.

The results have had dramatic effects on local access to care. Judgements of the caliber that we have seen in recent years max our professional liability insurance plans, drain reserve funds, and force difficult decisions about a practice's ability to continue to provide care. Further compounding the problem are the financial strains practices are now facing as a result of the COVID-19 pandemic. Practices across our state have incurred millions of dollars as a result of declines in patient volume and increased costs operation as basic medical supplies now cost practices substantially more as a result of ongoing shortages. A recent survey conducted by the Iowa Medical Society found 64% of respondents reported reducing their operations by 50% or more at the peak of the COVID-19 shutdowns. These shutdowns were critical to preserve protective equipment for front-line response efforts, but they come at a terrible cost.

Before COVID-19, a single high-dollar judgement against a medical clinic held to potential to close that clinic's doors and eliminate access to care in that community. Today, reserve accounts are empty, practices have taken on substantial debt in the form of bridge loans to continue operations prior to the start of federal relief funds, and payment advances from Medicare and commercial payers must be repaid. Under this strain, some rural independent clinics have

indicated they may not survive. Add a high-dollar judgement to this mix and we can say with certainty that they will not.

Iowa's healthcare community stepped up to meet the challenge of COVID-19. We did so at great personal and financial sacrifice, and we did so willingly because it is our calling to do so. We know that the path to recovery will likely take several years. During this period of extreme financial vulnerability and uncertainty, we must have the support and backing of Iowa's elected officials. This starts with the hard cap on noneconomic damages included in SF 2338.

SF 2338 will not prevent a patient who has been harmed from receiving just compensation. Economic damages – those which compensate for quantifiable things like past and future medical expenses, and past and future lost wages – would remain uncapped. Under this legislation, Iowa juries would simply be given clear guidance to ensure a more uniform statewide application of noneconomic damage awards – those which compensate for unquantifiable damages like pain and suffering.

This legislation is an absolutely critical component of Iowa's COVID-19 recovery efforts. We ask that you honor the sacrifice of our healthcare community and help ensure the long-term financial stability necessary to maintain access to care across our state. Please support SF 2338.

Thank you again for this opportunity to provide comment.

Sincerely,

A handwritten signature in blue ink that reads "Brian Privett". The signature is fluid and cursive, with the first name "Brian" and last name "Privett" clearly distinguishable.

Brian Privett, MD  
President

<b>First Name</b>	<b>Last Name</b>	<b>Company</b>	<b>Phone</b>	<b>Email</b>
JD	Davis	Iowa Association of Business and Industry	5152350567	jddavis@iowaabi.org
<b>Comment</b>	Please see the uploaded PDF for ABI's comments.			



## Statement from the Iowa Association of Business and Industry on amendment 3912 to SF2338

At this writing 180,000 Iowans are drawing unemployment meaning the unemployment rate for Iowa is 10.2%. Many Iowa businesses are trying to plan a rebound from the economic downturn that was a result of necessary government action and get Iowans back to work. Broken supply chains must be rebuilt, including on-shoring of some essential production. Some markets have contracted so severely that manufacturers must find new product lines. Other businesses continue to produce products in response to the pandemic that they were not making just a few months ago. Health care providers have been acting heroically providing care to individuals for a disease that has no cure.

This is the wrong time to allow the threat of lawsuits to dampen the activity of rebuilding the economy and caring for the ill. The state legislature has a role to play to make sure the court system does not become an institution used to lay blame for the spread of a pandemic. As it stands employers must weigh the cost and time away from their core business should they be involved in defending liability cases even as they plan for future growth. Indeed employers must even factor being found liable for the spread of a disease that is acknowledged to be a community spread event. The legislature can act to remove these risks while ensuring that any bad actors are still held accountable.

Amendment 3912 to SF2338 does just that. Components of the amendment would:

- **Require that individuals bringing suit meet minimum medical conditions, in this case hospitalization or death.** COVID-19 has shown that many individuals can be asymptomatic or have very light symptoms no worse than a common flu. The amendment makes this distinction.
- **Provide protections from liability lawsuits to persons in control of a facility unless that person recklessly disregards risks or acts with malice.** The amendment allows lawsuits against bad actors to proceed while protecting the vast majority of employers who treasure their employees, patrons and guests.
- **Provide protection from lawsuits if the business was in compliance with federal or state regulations, orders or guidance.** Response to the pandemic has been evolving as more is known about the virus. Guidance from government agencies like the Center for Disease Control, the Occupational Safety and Health Administration and the Iowa Department of Public Health has been evolving too. Businesses should be protected from liability when they seek to comply with guidance from government agencies.
- **Provide protection from lawsuits to health care providers as their industry transformed to respond to COVID-19.** At this time the virus has no cure. Therapies are evolving to provide care, equipment is adapted to provide relief. Some non-essential





care is delayed. Health care providers need protections from liability as they form the front line against the disease.

- **Provide protection from lawsuits to those involved in providing products like disinfectants and face shields needed to fight the virus unless the person disregarded a substantial or unnecessary risk or acted with malice.** Some manufacturers have answered the call and converted their manufacturing capacity to the production of scarce personal protective equipment and sanitization products. They should not now be penalized with product liability suits.
- **Be retroactive to cover the entire period of the presence, to the best of our knowledge, of the coronavirus COVID-19 in Iowa.**

These liability changes, geared only to the spread of the coronavirus COVID-19, are narrow in their application and will allow the Iowa economy to get back on track. Guidance is required from the Iowa Legislature to the court system that will allow responsible businesses to lead an economic recovery for Iowa.

Thanks for your consideration. For more information please use the contact information below.

JD Davis  
Vice President, Public Policy  
Iowa Association of Business and Industry  
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First Name	Last Name	Company	Phone	Email
Abhay	Nadipuram	Iowa Hospital Association		amn@ihaonline.org
<b>Comment</b>	Chairman Carlson, Rep. Meyer, and Rep. Wills:Attached, please find the official comment of the Iowa Hospital Association regarding Senate File 2338. Thank you. Abhay			

Official Comment of the Iowa Hospital Association on SF2338  
Subcommittee Meeting: June 3, 2020, 11:30 am  
Subcommittee Members: Carlson, Meyer, B., and Wills

Per the Capitol Protocols issued by Speaker Grassley and Majority Leader Whitver on May 14, 2020, the Iowa Hospital Association (IHA) hereby submits this official comment for the subcommittee's consideration regarding Senate File 2338.

IHA is registered in favor of SF2338. Historically, IHA has been supportive of caps being placed on noneconomic damages for medical malpractice liability. Noneconomic damages include intangible damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages. Noneconomic damages differ from *economic* damages, which this bill does not cap. Economic damages are tangible damages commonly including loss of wages, lost future earnings, and current or future medical costs arising from the healthcare incident in question.

Until recently, Iowa has not had a history of large judgements against health care facilities and providers. However, this is no longer the case. In the past three years, there have been 5 large verdicts against physicians and healthcare facilities totaling \$85 million in damages. Considering this recent trend, IHA supports SF2338, which places a hard cap on noneconomic damages, for several reasons.

*The Jury Verdicts Are Causing Financial Hardship on Hospitals, Especially Rural Hospitals*

Several of the facilities impacted by the recent verdicts are small clinics and hospitals in rural communities. These judgments have placed them in financial peril. A hard cap on noneconomic damages will provide healthcare facilities and providers with predictability, allow them to practice without the fear of not being able to retain medical malpractice insurance, and ensure that Iowa's healthcare facilities remain economically viable.

*Hospitals are Struggling to Recruit Providers to Iowa Without a Hard Cap*

IHA's members routinely express that they lose good recruits to surrounding states, almost all of which have caps on noneconomic damages, including North Dakota, South Dakota, Nebraska, Missouri, Illinois, and Wisconsin. In IHA's experience, providers are more likely to want to practice in a state with less risk of medical malpractice damages, which means that Iowa's rural healthcare facilities are having difficulty recruiting providers.

*Jury Verdicts in Medical Malpractice Cases Are Skyrocketing*

In the cases described above, 75% of the verdict amounts were for noneconomic damages. In fact, the noneconomic damages were so high in three of those cases, the plaintiffs' counsel did not even bother to pursue economic damages. Instead, the plaintiffs' counsel sought to exploit Iowa's lack of a hard cap on noneconomic damages to secure substantial judgements.

Even more concerning is that these recent jury verdicts likely exceeded providers' malpractice limits (which are usually \$5 million), but in many instances could have settled for much less before a judgment was entered. We know this because in many of these cases a judgment was not entered after a jury rendered a verdict. Although it is routine for medical malpractice cases to settle after

a jury verdict and before a judgment is entered, the point is that the jury verdicts are very, very *public* and settlements are very, very *private*. So, the members of public—who make-up our juries—are conditioned to think that they are expected to issue multi-million-dollar verdicts in malpractice cases, even though such cases often end-up settling for much less. That is not just.

*Skyrocketing Jury Verdicts Are Making It Hard for Providers to Obtain Insurance*

These jury verdicts have caught the attention of medical liability carriers, which have, in some cases raised premiums. The facilities impacted are facing significant financial strain as these substantial judgements max out liability coverage, drain reserve funds, and eat into already tight operating margins. Hospital operating margins are especially low now due to the COVID-19 pandemic.

### **Conclusion**

In several of the recent medical malpractice cases in Iowa, the impacted facilities were the only healthcare provider in that community. Patients who have been injured deserve fair restitution for their loss, but this must be balanced with the needs of the broader community to maintain access to healthcare by making sure Iowa protects the financial viability of those small providers.

IHA is not proposing to cap economic damages. These are concrete expenses that harmed patients and their families should receive. IHA is seeking to cap the intangible noneconomic damages that cannot be quantified, are entirely dependent upon the demands of plaintiff's counsel, and can vary widely from jury to jury. Iowa's providers deserve predictability. IHA supports the passage of SF2338.