

Reprinted 3/21

MAR 8 1984

HOUSE FILE 2487

Place On Calendar

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House File 2121)

Passed House, Date 3-28-84 (p. 1199) Passed Senate, Date 4-5-84 (p. 1341)
Vote: Ayes 75 Nays 21 Vote: Ayes 34 Nays 15
Approved May 17, 1984

2 Motion to reconsider (p. 1200) wd 3/21

A BILL FOR

1 An Act relating to liability in tort by establishing
2 comparative fault as the basis for liability in relation
3 to claims for damages arising from injury to or death of
57794 a person or harm to property and eliminating governmental
5 immunity for certain public improvements and places.

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

HF 2487

5703 1 Section 1. Section 364.12, subsection 2, paragraph b,
5749 2 Code 1983, as amended by 1984 Iowa Acts, House File 359,
3 section 1, is amended by striking the paragraph and inserting
4 in lieu thereof the following:

5 b. An abutting property owner is responsible for the
6 removal of the natural accumulations of snow and ice from
7 sidewalks. However, a person traveling upon a sidewalk assumes
8 the risk of injury due to the natural accumulations of snow
9 and ice and may recover damages from an abutting property
10 owner only if all of the following conditions are proven:

11 (1) The dangerous condition of the sidewalk, due to the
12 natural accumulation of snow and ice, was known to the abutting
13 property owner.

14 (2) The abutting property owner failed to take reasonable
15 measures to remedy the dangerous condition within a reasonable
16 time after the condition became known, or failed to request
17 the city to remedy the dangerous condition at the owner's
18 expense within a reasonable time after the condition became
19 known.

20 (3) The failure of the abutting property owner to take
21 action to remedy the condition made injury to the traveling
22 public probable rather than merely possible.

23 (4) The claim by an injured person is only for medical
24 expenses and loss of income directly related to the injury.

25 A person seeking relief under this paragraph has the burden
26 of proving the existence of all required conditions of
27 liability.

28 A city has the duty to remove natural accumulations of
29 snow and ice from sidewalks only when the city is the abutting
30 property owner or when an abutting property owner has requested
31 that the city remedy, at the property owner's expense, a
32 dangerous condition created by the natural accumulation of
33 snow and ice, with the removal to be done within a reasonable
34 time after the request is made. The recovery of damages from
35 accumulation of snow and ice on sidewalks for which the city

1 has a duty to remove the natural accumulations of snow and
2 ice is subject to the same defenses and conditions for recovery
3 as from an abutting property owner under this paragraph.

4 Sec. 2. NEW SECTION. 668.1 EFFECT OF CONTRIBUTORY FAULT.

5 1. In an action based on fault and seeking to recover
6 damages for injury or death to person or harm to property,
7 any contributory fault chargeable to the claimant diminishes
8 proportionately the amount awarded as compensatory damages
9 for an injury attributable to the claimant's contributory
10 fault, but does not bar recovery. This rule applies whether
11 or not under prior law the claimant's contributory fault
12 constituted a defense or was disregarded under applicable
13 legal doctrines, such as last clear chance.

14 2. "Fault" includes acts or omissions that are in any
15 measure negligent or reckless toward the person or property
16 of the actor or others, or that subject a person to strict
17 tort liability. The term also includes breach of warranty,
18 unreasonable assumption of risk not constituting an enforceable
19 express consent, misuse of a product for which the defendant
20 otherwise would be liable, and unreasonable failure to avoid
21 an injury or to mitigate damages. Legal requirements of
22 causal relation apply both to fault as the basis for liability
23 and to contributory fault.

24 Sec. 3. NEW SECTION. 668.2 APPORTIONMENT OF DAMAGES.

25 1. In all actions involving fault of more than one party
26 to the action, including third-party defendants and persons
27 who have been released under section 668.6, the court, unless
28 otherwise agreed by all parties, shall instruct the jury to
29 answer special interrogatories or, if there is no jury, shall
30 make findings, indicating both of the following:

31 a. The amount of damages each claimant would be entitled
32 to recover if contributory fault is disregarded.

33 b. The percentage of the total fault of all of the parties
34 to each claim that is allocated to each claimant, defendant,
35 third-party defendant, and person who has been released from

1 liability under section 668.6. For this purpose the court
2 may determine that two or more persons are to be treated as
3 a single party.

57497 4 2. In determining the percentages of fault, the trier
5 of fact shall consider both the nature of the conduct of each
6 party at fault and the extent of the causal relation between
7 the conduct and the damages claimed.

5696 8 3. The court shall determine the award of damages to each
9 claimant in accordance with the findings, subject to any
10 reduction under section 668.6, and enter judgment against
11 each party liable on the basis of rules of joint and several
12 liability. For purposes of contribution under sections 668.4
13 and 668.5, the court also shall determine and state in the
14 judgment each party's equitable share of the obligation to
15 each claimant in accordance with the respective percentages
16 of fault.

5902,500 17 4. Upon motion made not later than one year after judgment
18 is entered, the court shall determine whether all or part
19 of a party's equitable share of the obligation is uncollectible
20 from that party, and shall reallocate any uncollectible amount
21 among the other parties, including a claimant at fault,
22 according to their respective percentages of fault. The party
23 whose liability is reallocated is nonetheless subject to
24 contribution and to any continuing liability to the claimant
25 on the judgment.

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573 26 Sec. 4. NEW SECTION. 668.3 SETOFF. A claim and
27 counterclaim shall be set off, and only the difference between
28 them is recoverable in the judgment. However, if either or
29 both of the claims are covered by liability insurance and
30 an insurance carrier's liability under its policy is reduced
31 by reason of the setoff, the insured is entitled to recover
32 from the carrier the amount of the reduction. Amounts so
33 recovered shall be credited against pertinent liability policy
34 limits. For purposes of uninsured-motorist and similar
35 coverages, the amounts so recovered shall be treated as payment

1 of those amounts to the insured by the party liable.

2 Sec. 5. NEW SECTION. 668.4 RIGHT OF CONTRIBUTION.

3 1. A right of contribution exists between or among two
56964 4 or more persons who are jointly and severally liable upon
5 the same indivisible claim for the same injury, death, or
6 harm, whether or not judgment has been recovered against all
7 or any of them. It may be enforced either in the original
8 action or by a separate action brought for that purpose.
9 The basis for contribution is each person's equitable share
10 of the obligation, including the equitable share of a claimant
11 at fault, as determined in accordance with the provisions
12 of section 668.2.

13 2. Contribution is available to a person who enters into
14 a settlement with a claimant only if the liability of the
15 person against whom contribution is sought has been
16 extinguished and only to the extent that the amount paid in
17 settlement was reasonable.

18 Sec. 6. NEW SECTION. 668.5 ENFORCEMENT OF CONTRIBUTION.

19 1. If the proportionate fault of the parties to a claim
20 for contribution has been established previously by the court,
21 as provided by section 668.2, a party paying more than the
22 party's equitable share of the obligation, upon motion, may
23 recover judgment for contribution.

24 2. If the proportionate fault of the parties to the claim
25 for contribution has not been established by the court,
26 contribution may be enforced in a separate action, whether
27 or not a judgment has been rendered against either the person
28 seeking contribution or the person from whom contribution
29 is being sought.

30 3. If a judgment has been rendered, the action for
31 contribution must be commenced within one year after the
32 judgment becomes final. If a judgment has not been rendered,
33 the person bringing the action for contribution either must
34 have discharged by payment the common liability within the
35 period of the statute of limitations applicable to the

1 claimant's right of action against the person and commenced
2 the action for contribution within one year after payment,
3 or must have agreed while action was pending to discharge
4 the common liability and, within one year after the agreement,
5 have paid the liability and commenced an action for
6 contribution.

7 Sec. 7. NEW SECTION. 668.6 EFFECT OF RELEASE. A release,
8 covenant not to sue, or similar agreement entered into by
9 a claimant and a person liable discharges that person from
10 all liability for contribution, but it does not discharge
11 any other persons liable upon the same claim unless it so
12 provides. However, the claim of the releasing person against
13 other persons is reduced by the amount of the released person's
14 equitable share of the obligation, determined in accordance
15 with the provisions of section 668.2.

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16 Sec. 8. Section 619.17, Code 1983, is amended to read
17 as follows:

18 619.17 CONTRIBUTORY NEGLIGENCE--BURDEN. In all actions
19 brought in the courts of this state to recover damages of
20 a defendant in which contributory negligence of the plaintiff,
21 actual or imputed, was heretofore a complete defense or bar
22 to recovery, the plaintiff shall not hereafter, have the
23 burden of pleading and proving ~~his~~ freedom from contributory
24 negligence, and if the defendant relies upon ~~negligence of~~
25 ~~the plaintiff as a complete defense or bar to plaintiff's~~
26 ~~recovery~~ contributory fault of the plaintiff to diminish the
27 amount to be awarded as compensatory damages, the defendant
28 shall have the burden of pleading and proving ~~negligence~~
29 contributory fault of the plaintiff, if any, and that it was
30 a proximate cause of the injury or damage. As used in this
31 section, ~~the term "plaintiff" shall include~~ includes a
32 defendant filing a counterclaim or cross-petition, and the
33 term "defendant" ~~shall include~~ includes a plaintiff against
34 whom a counterclaim or cross-petition has been filed.

35 Sec. 9. Section 613.3, Code Supplement 1983, is repealed.

1 Sec. 10. This Act applies only to causes which accrue
2 on or after its effective date.

3 EXPLANATION

4 This bill would enact the uniform comparative fault Act
5 as promulgated by the conference of commissioners on uniform
6 state laws.

7 The bill would replace common law principles governing
8 actions for damages arising out of personal injury, death
9 or property damage and prohibiting recovery by a person who
10 is contributorily negligent or prohibiting contribution among
11 joint tort-feasors. Under the uniform Act, recovery of damages
12 would not be barred by contributory fault, but the amount
13 of damages would be reduced based upon the percentage of fault
14 attributable to the claimant, as determined by the jury.
15 Contribution between joint tort-feasors also would be
16 permitted, based upon the degree of fault.

17 This bill also modifies the liability for the removal of
18 snow and ice by abutting property owners and municipalities.

19 The bill would take effect July 1 following enactment and
20 would apply to causes of action accruing on or after that
21 date.

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HOUSE FILE 2487

-5480

1 Amend House File 2487 as follows:

2 1. Page 1, by striking everything after the
3 enacting clause and inserting in lieu thereof the
4 following:

5743 5 "Section 1. NEW SECTION. 668.1 NEGLIGENCE
5752 6 DEFINED.

7 1. As used in this chapter, "negligence" means
8 one or more acts or omissions that are in any measure
9 negligent, grossly negligent, or constitute reckless,
10 willful, or wanton misconduct toward the person or
11 property of the actor or others.

12 2. The legal requirements of cause in fact and
13 proximate cause apply both to negligence as the basis
14 for liability and to contributory negligence.

5743 15 Sec. 2. NEW SECTION. 668.2 COMPARATIVE
16 NEGLIGENCE--EFFECT.

568 17 1. Contributory negligence shall not bar recovery
18 in an action by a person or the person's legal
19 representative to recover damages for negligence
20 resulting in death or in injury to person or property,
21 if the contributory negligence was not greater than
22 or equal to the negligence of the person against whom
23 recovery is sought, but any damages allowed shall
24 be diminished in proportion to the amount of negligence
25 attributable to the person recovering.

5770 26 2. In the trial of a claim involving the negligence
27 of more than one party to the claim, including third-
28 party defendants, persons who have been released
29 pursuant to section 668.7, or persons who are not
30 parties to the action, the court, unless otherwise
31 agreed by all parties, shall instruct the jury to
32 answer special interrogatories or, if there is no
33 jury, shall make findings, indicating all of the
34 following:

35 a. The amount of damages each claimant will be
36 entitled to recover if contributory negligence is
37 disregarded.

5710 38 b. The percentage of the total negligence allocated
39 to each claimant, defendant, third-party defendant,
40 person who has been released from liability under
41 section 668.7, and person who is determined to have
56 42 been negligent but who is not a party to the action.
43 For this purpose the court may determine that two
44 or more persons are to be treated as a single party,
45 but the court shall disregard the rule of joint and
46 several liability of defendants.

56 47 3. If the claim is tried to a jury, the court
48 shall not give instructions or permit evidence or
49 argument with respect to the effects of the answers
50 to be returned to the interrogatories submitted under

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1 subsection 2.

2 4. In determining the percentages of negligence,
3 the trier of fact shall consider both the nature of
4 the conduct of each party and the extent of the causal
5 relation between the conduct and the damages claimed.

6 5. The court shall determine the amount of damages
7 payable to each claimant by each other party, if any,
8 in accordance with the findings of the court or jury.

9 6. The liability of a party, if any, is limited
10 to that percentage of the damages that is equal to
11 the percentage of negligence chargeable to that party
12 and the rule of joint and several liability of
13 defendants does not apply.

14 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim
15 and counterclaim shall not be set off against each
16 other, except by agreement of both parties. However,
17 if upon motion of either party the court finds that
18 the obligation of either party is likely to be
19 uncollectible, the court may order that both parties
20 make payment to the court for distribution. The court
21 shall distribute the funds received, and shall declare
22 obligations discharged as if the payment to the court
23 by either party had been a payment to the other party
24 and as if the distribution of the funds back to the
25 party making the payment had been a payment to that
26 party by the other party.

27 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
28 LIABILITY. The common law rule of joint and several
29 liability of joint tort-feasors does not apply under
30 this chapter. The liability of a party, if any, is
31 limited to that percentage of the damage that is equal
32 to the percentage of negligence chargeable to that
33 party.

34 Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBU-
35 TION.

36 1. Contribution is available to a person who
37 enters into a settlement with a claimant only if the
38 liability of the person against whom contribution
39 is sought has been extinguished and only to the extent
40 that the amount paid in settlement was reasonable.
41 The liability of a person for contribution is sub-
42 ject to the limitation stated in section 668.2,
43 subsections 5 and 6.

44 2. A person who obtains a release from a claimant
45 under section 668.7 is immune from indemnity or
46 contribution.

47 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF
48 CONTRIBUTION.

49 1. If the percentages of negligence of each of
50 the parties to a claim for contribution have not been

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Page Three

1 established by the court, contribution may be enforced
2 in a separate action.

3 2. A claim for contribution is enforceable only
4 upon satisfaction of one of the following sets of
5 conditions:

6 a. The person bringing the action for contribution
7 must have discharged the liability of the person from
8 whom contribution is sought by payment made within
9 the period of the statute of limitations applicable
10 to the claimant's right of action and must have
11 commenced the action for contribution within one year
12 after the date of that payment.

13 b. The person seeking contribution must have
14 agreed while the action of the claimant was pending
15 to discharge the liability of the person from whom
16 contribution is sought and within one year after the
17 date of the agreement must have discharged that
18 liability and commenced the action for contribution.

19 Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE.
20 A release, covenant not to sue, or similar agreement
21 entered into by a claimant and a person liable
22 discharges that person from all liability for
23 contribution, but it does not discharge any other
24 persons liable upon the same claim unless it so
25 provides. However, the claim of the releasing person
26 against other persons is reduced by the amount of
27 the released person's equitable share of the
567 28 obligation, as determined in section 668.2, subsections
568 29 5 and 6.

567 30 Sec. 8. The supreme court shall submit to the
571 31 general assembly during the 1985 Session in the manner
574 32 provided in section 602.4202 changes in the rules
575 33 of procedure for courts which are necessitated by
34 the enactment of this chapter.

35 Sec. 9. Section 613.3, Code Supplement 1983, is
36 repealed.

37 Sec. 10. Section 619.17, Code 1983, is repealed.
38 This section does not reinstate a rule requiring a
39 claimant to plead and prove freedom from contributory
40 negligence.

567 41 Sec. 11. This chapter applies to all cases tried
571 42 or retried on or after its effective date."

*Adopted as amended by 5570,
5674 5695 5715 5717,
8 5743A 13/20 (p. 1198)*

BY HALVORSON of Clayton
SKOW of Guthrie
SCHROEDER of Pottawattamie
BAXTER of Des Moines
STROMER of Hancock
LONERGAN of Boone
OXLEY of Linn
BRANSTAD of Winnebago
MUHLBAUER of Crawford
continued next page --

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H-5480 sponsors continued
BLANSHAN of Greene
HARBOR of Mills
FOGARTY of Palo Alto
BENNETT of Ida
COOPER of Lucas
RENKEN of Grundy
KNAPP of Dubuque
HOFFMANN-BRIGHT of Muscatine
KOENIGS of Mitchell
SCHNEKLOTH of Scott
HUGHES of Union
DE GROOT of Lyon
WOODS of Polk
RENAUD of Polk
BLACK of Jasper
WELDEN of Hardin
COCHRAN of Webster
MAULSBY of Calhoun
VAN CAMP of Scott
DAGGETT of Taylor
COREY of Louisa
TORRENCE of Muscatine
FILED MARCH 8, 1984

HOUSE CLIP SHEET

ANDERSON of Audubon
GRUHN of Dickinson
LAGESCHULTE of Bremer
PELLETT of Cass
HANDORF of Marshall
STUELAND of Clinton
SWEARINGEN of Keokuk
VAN MAANEN of Mahaska
HERMANN of Scott
ROYER of Page
VAN GERPEN of Black Hawk
TOFTE of Winneshiek
PEICK of Linn
CARPENTER of Polk
PONCY of Wapello
MULLINS of Kossuth
MC KEAN of Jones
CLARK of Cerro Gordo
DIEMER of Black Hawk
GRANDIA of Marion
KREWSON of Polk
RENSINK of Sioux

HOUSE FILE 2487

H-5702

- 1 Amend House File 2487 as follows:
- 2 1. Page 3, by striking lines 17 through 25.

H-5702 FILED MARCH 15, 1984 BY CHAPMAN of Linn

Placed out of order 3/20 (p. 1199)

HOUSE FILE 2487

H-5703

- 1 Amend House File 2487 as follows:
- 2 1. By striking page 1, line 1, through page 2,
- 3 line 3.
- 4 2. By renumbering to conform to this amendment.

H-5703 FILED MARCH 15, 1984 BY CHAPMAN of Linn

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5713

- 1 Amend House amendment H-5504 to House File 2487
- 2 as follows:
- 3 1. Page 1, line 10, by striking the word "omission,"
- 4 and inserting in lieu thereof the word "omission".
- 5 2. Page 1, by striking line 11, and inserting in
- 6 lieu thereof the following: "~~except-an-act-of-malfeasance~~
- 7 ~~in-office-or-willful~~".
- 8 3. Page 1, line 23, by inserting after the word
- 9 "States" the words ", section 1983, Title 42, United
- 10 States Code,".

H-5713 FILED MARCH 15, 1984 BY JAY of Appanoose

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5716

- 1 Amend amendment H-5504 to House File 2487 as follows:
- 2 1. Page 7, line 46, by striking the words "cases
- 3 filed" and inserting in lieu thereof the following:
- 4 "causes which accrue".

BY DODERER of Johnson
COPENHAVER of Buchanan
JAY of Appanoose
MULLINS of Kossuth

H-5716 FILED MARCH 15, 1984

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5715

- 1 Amend amendment H-5480 to House File 2487 as follows:
- 2 1. Page 3, by striking lines 41 and 42 and inserting
- 3 in lieu thereof the following:
- 4 "Sec. _____. This Act applies only to causes which accrue
- 5 on or after its effective date."

BY DODERER of Johnson
COPENHAVER of Buchanan
HALVORSON of Clayton
MULLINS of Kossuth

H-5715 FILED MARCH 15, 1984

Adopted 3/20 (p. 1197)

H-5695

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 1, by striking lines 21 through 23, and
- 4 inserting in lieu thereof the following: " but any
- 5 damages allowed shall".
- 6 2. By striking page 1, line 47, through page 2,
- 7 line 1.
- 8 3. By renumbering to conform to this amendment.

BY HUMMEL of Benton

H-5695 FILED MARCH 14, 1984

COPENHAVER of Buchanan

*Adopted 3/20 (p. 1183)**Motion to reconsider lost (p. 1197)*

HOUSE FILE 2487

H-5697

- 1 Amend House amendment H-5504 to House File 2487
- 2 as follows:
- 3 1. Page 3, line 16, by striking the word
- 4 "contributed" and inserting in lieu thereof the word
- 5 "contributed."
- 6 2. Page 3, by striking lines 17 through 29.
- 7 3. By striking page 3, line 47 through page 4,
- 8 line 6.
- 9 4. Page 4, by striking lines 16 and 17 and
- 10 inserting in lieu thereof the following: "party
- 11 liable. For purposes".
- 12 5. Page 4, by striking lines 23 through 31 and
- 13 inserting in lieu thereof the following:
- 14 "Sec. 9. NEW SECTION. 668.4 JOINT AND SEVERAL
- 15 LIABILITY. The common law rule of joint and several
- 16 liability of joint tort-feasors does not apply under
- 17 this chapter. The liability of a party, if any, is
- 18 limited to that percentage of the damage that is equal
- 19 to the percentage of fault chargeable to that party."
- 20 6. By renumbering to conform to this amendment.

BY HUMMEL of Benton

H-5697 FILED MARCH 14, 1984

COPENHAVER of Buchanan

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5696

- 1 Amend House File 2487 as follows:
- 2 1. Page 3, by striking lines 11 and 12 and
- 3 inserting in lieu thereof the following: "each party
- 4 liable. For purposes of contribution under sections
- 5 668.4".
- 6 2. Page 3, by striking lines 17 through 25.
- 7 3. Page 3, by inserting after line 25 the
- 8 following:
- 9 "Sec. 4. NEW SECTION. 668.3 JOINT AND SEVERAL
- 10 LIABILITY. The common law rule of joint and several
- 11 liability of joint tort-feasors does not apply under
- 12 this chapter. The liability of a party, if any, is
- 13 limited to that percentage of the damage that is equal
- 14 to the percentage of fault chargeable to that party."
- 15 4. Page 4, line 4, by striking the words "who
- 16 are jointly and severally".
- 17 6. By renumbering to conform to this amendment.

Placed out of order 3/20 (p. 1198)

H-5696 FILED MARCH 14, 1984

BY HUMMEL of Benton

COPENHAVER of Buchanan

HOUSE FILE 2487

H-5658

1 Amend House amendment H-5480 to House File 2487
2 as follows:

3 1. Page 2, by striking lines 9 through 13.
4 2. Page 2, by striking lines 27 through 33, and
5 inserting in lieu thereof the following:

6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
7 LIABILITY.

8 1. In a claim involving two or more defendants,
9 the doctrine of joint and several liability does not
10 apply to a defendant unless the defendant is found
11 to bear twenty percent or more of the negligence that
12 is assigned to all parties.

13 2. The doctrine of joint and several liability
14 shall not apply to a governmental unit under chapters
15 25A or 613A, when the governmental unit is a defendant
16 and is found to bear a lesser percentage of the
17 negligence than the claimant."

18 3. Page 2, by striking line 43, and inserting
19 in lieu thereof the following: "subsection 5."

20 4. Page 3, lines 28 and 29, by striking the words
21 and figures "subsections 5 and 6." and inserting in
22 lieu thereof the word and figure "subsection 5."

23 5. By renumbering to conform to this amendment.

H-5658 FILED MARCH 14, 1984 BY O'KANE of Woodbury

W/D 3/20 (p. 1183)

HOUSE FILE 2487

H-5673

1 Amend House amendment H-5480 to House File 2487
2 as follows:

3 1. Page 3, line 41, by striking the word "tried"
4 and inserting in lieu thereof the word "filed".

5 2. Page 3, line 42, by striking the words "or
6 re-tried".

H-5673 FILED MARCH 14, 1984 BY ROSENBERG of Story

W/D 3/20 (p. 1190)

HOUSE FILE 2487

H-5691

1 Amend House amendment H-5480 to House File 2487
2 as follows:

3 1. Page 1, by striking lines 29 and 30, and
4 inserting in lieu thereof the following: "pursuant
5 to section 668.7, the court, unless otherwise".

6 2. Page 1, by striking line 42, and inserting
7 in lieu thereof the following: "been negligent."

H-5691 FILED MARCH 14, 1984 BY PARKER of Jasper

W/D 3/20 (p. 1183)

HOUSE FILE 2487

H-5675

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 2, by striking lines 9 through 13.
- 4 2. Page 2, by striking lines 27 through 33, and
- 5 inserting in lieu thereof the following:
- 6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
- 7 LIABILITY. In a claim involving two or more defendants
- 8 the doctrine of joint and several liability does not
- 9 apply to a defendant unless the defendant is found
- 10 to bear twenty-five percent or more of the fault that
- 11 is assigned to all parties."
- 12 3. Page 2, by striking line 43 and inserting in
- 13 lieu thereof the following: "subsection 5."
- 14 4. Page 3, lines 28 and 29 by striking the words
- 15 and figures "subsections 5 and 6." and inserting in
- 16 lieu thereof the following: "subsection 5."

H-5675 FILED MARCH 14, 1984 BY VARN of Johnson

W/D 3/20 (p. 1183)

HOUSE FILE 2487

H-5676

- 1 Amend House File 2487 as follows:
- 2 1. Page 5, by inserting after line 15, the
- 3 following:
- 4 "Sec. 8. NEW SECTION. 668.7 COMMENCEMENT OF
- 5 ACTION. The filing of the petition commences the
- 6 action against all parties, whether or not initially
- 7 named, who may be assessed any percentage of fault
- 8 under this chapter."
- 9 2. By renumbering to conform to this amendment.

H-5676 FILED MARCH 14, 1984 BY JAY of Appanoose

Placed out of order 3/20 (p. 1199)

HOUSE FILE 2487

H-5674

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 3, by inserting after line 29, the
- 4 following:
- 5 "Sec. 8. NEW SECTION. 668.8 COMMENCEMENT OF
- 6 ACTION. The filing of the petition commences the
- 7 action against all parties, whether or not initially
- 8 named, who may be assessed any percentage of negligence
- 9 under this chapter."
- 10 2. By renumbering to conform to this amendment.

H-5674 FILED MARCH 14, 1984 BY JAY of Appanoose

Adopted 3/20 (p. 1186)

HOUSE FILE 2487

FI-5504

1 Amend House File 2487 as follows:

2 1. Page 1, by striking everything after the
3 enacting clause and inserting in lieu thereof the
4 following:

5 "Section 1. Section 25A.2, subsection 5, paragraph
6 b, Code Supplement 1983, is amended to read as follows:

5713 7 b. Any claim against an employee of the state
575 8 for money only, on account of damage to or loss of
9 property or on account of personal injury or death,
10 caused by the negligent or wrongful act or omission,
11 except an act of malfeasance in office ~~or-willful~~
12 ~~and-wanton-conduct~~, of any employee of the state while
13 acting within the scope of ~~his~~ the employee's office
14 or employment.

15 Sec. 2. Section 25A.21, Code 1983, is amended
16 by striking the section and inserting in lieu thereof
17 the following:

18 25A.21 EMPLOYEES DEFENDED AND INDEMNIFIED. The
19 state shall defend any employee, and shall indemnify
20 and hold harmless an employee against any claim as
21 defined in section 25A.2, subsection 5, paragraph
22 b, including claims arising under the constitution,
23 statutes or rules of the United States or of any
24 state. However, the duty to indemnify and hold
25 harmless shall not apply to awards for punitive
26 damages. The duty to indemnify and hold harmless
27 shall not apply and the state shall be entitled to
28 restitution from an employee if, in an action commenced
29 by the state against the employee, it is determined
30 that the conduct of the employee upon which a tort
31 claim or demand was based constituted a willful and
32 wanton act or omission or malfeasance in office.

575 33 Sec. 3. Section 25A.22, Code 1983, is amended
34 by striking the section and inserting in lieu thereof
35 the following:

36 25A.22 EMPLOYEES. Employees of the state are
37 not personally liable for any claim which is exempted
38 under section 25A.14, except those claims within
39 subsection 4, claims for punitive damages, and actions
40 permitted by section 85.20. An employee of the state
41 is not liable for punitive damages unless actual
42 malice is pleaded and proven.

575 43 Sec. 4. Section 80.9, Code 1983, is amended by
44 adding

45 the following new subsection:

46 NEW SUBSECTION. 5. If any member is charged with
47 a criminal offense which is related to the member's
48 official duties with the department, the department
49 shall provide the member with defense counsel
50 consistent with the member's legal rights as a

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1 defendant.

55 2 Sec. 5. Section 364.12, subsection 2, Code 1983,
3 as amended by House File 359, section 1, 1983 Session,
4 is amended by striking the subsection and inserting
5 in lieu thereof the following:

6 2. A city shall keep all public grounds, streets,
7 sidewalks, alleys, bridges, culverts, overpasses,
8 underpasses, grade crossing separations and approaches,
9 public ways, squares, and commons open, in repair,
10 and free from nuisance, with the following exceptions:

11 a. Public ways and grounds may be temporarily
12 closed by resolution. Following notice as provided
13 in section 362.3, public ways and grounds may be
14 vacated by ordinance.

15 b. The city's general duty under this subsection
16 does not include a duty to remove natural accumulations
17 of snow or ice from the sidewalks.

18 c. The abutting property owner may be required
19 by ordinance to remove the natural accumulation of
20 snow and ice from the sidewalks within a reasonable
21 amount of time and to maintain all property outside
22 the lot and property lines and inside the curb lines
23 upon the public streets, except that the property
24 owner shall not be required to remove diseased trees
25 or dead wood on the publicly-owned property or right
26 of way.

27 d. If the abutting property owner does not perform
28 an action required under this subsection within a
29 reasonable time, a city may perform the required
30 action and assess the costs against the abutting
31 property for collection in the same manner as a
32 property tax.

33 e. A city has no duty under this subsection with
34 respect to property that is required by law to be
35 maintained by a railway company.

5950 36 Sec. 6. NEW SECTION. 668.1 FAULT DEFINED.

37 1. As used in this chapter, "fault" means one
38 or more acts or omissions that:

39 a. Are in any measure negligent, grossly negligent,
40 or constitute reckless, willful, or wanton misconduct
41 toward the person or property of the actor or others.

42 b. Subject a person to strict liability in tort
43 or breach of warranty.

44 2. The legal requirements of cause in fact and
45 proximate cause continue to apply under this chapter.

46 Sec. 7. NEW SECTION. 668.2 PARTY DEFINED. As
47 used in this chapter, unless otherwise required,
48 "party" means any of the following:

49 1. A claimant.

50 2. A person named as defendant.

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1 3. A person who has been released pursuant to
2 section 668.7.

3 4. A third-party defendant.

4 However, a third-party defendant is not a "party"
5 for purposes of this chapter if the claimant is barred
6 from making a claim against the third-party defendant
7 on a legal ground other than non-timeliness of the
8 claim.

9 Sec. 8. NEW SECTION. 668.3 COMPARATIVE FAULT-
10 -EFFECT.

66- 11 1. If a claim alleges fault as a basis for recovery
12 of damages for injury or death of a person or harm
13 to property, contributory fault that is chargeable
14 to the claimant diminishes proportionately the amount
15 to be awarded to the claimant as compensatory damages
16 for loss to which the claimant's fault contributed
17 except that:

18 a. In a claim against a single defendant, or two
19 or more defendants who are treated as a single party,
20 the claimant is barred from recovery if the percentage
21 of fault chargeable to the claimant is greater than
22 the percentage of fault chargeable to the defendant.

23 b. In a claim against two or more defendants,
24 including third-party defendants and persons who have
25 been released pursuant to section 668.7, recovery
26 by a claimant is barred if the percentage of fault
27 chargeable to the claimant is greater than the combined
28 percentage of fault chargeable to all the other parties
29 to the action.

5510- 30 This rule applies whether or not under prior law
31 a claimant's contributory fault constitutes a defense
32 or was disregarded under applicable legal doctrines.

33 2. In the trial of a claim involving the fault
34 of more than one party to the claim, the court, unless
35 otherwise agreed by all parties, shall instruct the
36 jury to answer special interrogatories or, if there
37 is no jury, shall make findings, indicating all of
38 the following:

39 a. The amount of damages each claimant would be
40 entitled to recover if contributory fault is
41 disregarded.

42 b. The percentage of the total fault of all of
43 the parties to each claim that is allocated to each
44 party, using one hundred percent as the total. For
45 this purpose the court may determine that two or more
46 persons are to be treated as a single party.

47 3. If the claim is tried to a jury the court shall
48 instruct the jury that a finding that more than fifty
49 percent of the fault is chargeable to the claimant
50 is a bar to recovery by the claimant, and interroga-

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1 tories and forms of verdict shall indicate that a
2 finding that more than fifty percent of the fault
3 is chargeable to the claimant means the balance of
4 interrogatories and verdict on percentages of fault
5 should not be completed and no further deliberations
6 are required.

7 4. In determining the percentage of fault, the
8 trier of fact shall consider both the nature of the
9 conduct of each party at fault and the extent of the
10 causal relation between the conduct and the damages
11 claimed.

56712 5. The court shall determine the award of damages
13 to each claimant in accordance with the findings,
14 subject to any reduction under subsections 1 and 2
15 and section 668.7, and enter judgment against each
16 party liable on the basis of the rules of joint and
17 several liability under section 668.4. For purposes
18 of contribution under section 668.5, the court shall
19 also determine and state in the judgment each party's
20 equitable share of the obligation to each claimant
21 in accordance with the respective percentages of
22 fault, subject to section 668.8.

56723 Sec. 9. NEW SECTION. 668.4 JOINT AND SEVERAL
24 LIABILITY. In a claim involving two or more defendants
25 the doctrine of joint and several liability does not
26 apply to a defendant unless the defendant is found
27 to bear twenty percent or more of the fault that is
28 assigned to all parties, and the doctrine of joint
29 and several liability does not apply to a defendant
30 if the percent of fault allocated to the claimant
31 is greater than that allocated to the defendant.

32 Sec. 10. NEW SECTION. 668.5 RIGHT OF
33 CONTRIBUTION.

34 1. A right of contribution exists between or among
35 two or more persons who are liable upon the same
36 indivisible claim for the same injury, death, or harm,
37 whether or not judgment has been recovered against
38 all or any of them. It may be enforced either in
39 the original action or by a separate action brought
40 for that purpose except as provided otherwise in
41 section 668.8. The basis for contribution is each
42 person's equitable share of the obligations, including
43 the share of fault of a claimant, as determined in
44 accordance with section 668.3.

45 2. Contribution is available to a person who
46 enters into a settlement with the claimant only if
47 the liability of the person against whom contribution
48 is sought has been extinguished and only to the extent
49 that the amount paid in settlement was reasonable.

50 Sec. 11. NEW SECTION. 668.6 ENFORCEMENT OF

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1 CONTRIBUTION.

2 1. If the percentages of fault of each of the
3 parties to a claim for contribution have been
4 established previously by the court as provided in
5 section 668.3, subsection 5, or section 668.8, a party
6 paying more than the party's percentage share of
7 damages may recover judgment for contribution upon
8 motion to the court or in a separate action.

9 2. If the percentages of fault of each of the
10 parties to a claim for contribution have not been
11 established by the court, contribution may be enforced
12 in a separate action, whether or not a judgment has
13 been rendered against either the person seeking
14 contribution or the person from whom contribution
15 is sought.

16 3. If a judgment has been rendered, an action
17 for contribution must be commenced within one year
18 after the judgment becomes final. If a judgment has
19 not been rendered, a claim for contribution is
20 enforceable only upon satisfaction of one of the fol-
21 lowing sets of conditions:

22 a. The person bringing the action for contribution
23 must have discharged the liability of the person from
24 whom contribution is sought by payment made within
25 the period of the statute of limitations applicable
26 to the claimant's right of action and must have
27 commenced the action for contribution within one year
28 after the date of that payment.

29 b. The person seeking contribution must have
30 agreed while the action of the claimant was pending
31 to discharge the liability of the person from whom
32 contribution is sought and within one year after the
33 date of the agreement must have discharged that
34 liability and commenced the action for contribution.

35 c. As to a claim against an employer pursuant
36 to section 668.8, the person bringing the action for
37 contribution must have complied with either of the
38 following:

39 1. Made payment within the period of the statute
40 of limitations applicable to the claimant's right
41 of action and commenced the action for contribution
42 within one year after the date of that payment.

43 2. Agreed while the action of the claimant was
44 pending to pay claimant and within one year after
45 the date of agreement made payment and commenced the
46 action for contribution.

47 Sec. 12. NEW SECTION. 668.7 EFFECT OF RELEASE.
48 A release, covenant not to sue, or similar agreement
49 entered into by a claimant and a person liable
50 discharges that person from all liability for

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1 contribution, but it does not discharge any other
2 person liable upon the same claim unless it so
3 provides. However, the claim of the releasing person
4 against other persons is reduced by the amount of
5 the released person's equitable share of the
6 obligation, as determined in section 668.3, subsection
7 5.

8 Sec. 13. NEW SECTION. 668.8 JOINDER.

9 1. In any suit for personal injuries, or claims
10 derived therefrom, the employer of a claimant or a
11 claimant's decedent may be joined as a party for the
12 limited purpose of allocating fault, if any, to the
13 employer to be liable for contribution in an amount
14 proportional to the employer's percent of fault but
15 not to exceed the total payments made as of the date
16 of final judgment to which the employer or its insurer
17 would have subrogation rights in a third-party action
18 as provided by law.

19 2. The employer shall not be included in the
20 allocation of fault under section 668.3. By separate
21 instructions the court shall instruct the jury to
22 answer special interrogatories or, if there is no
23 jury, shall make special findings, using one hundred
24 percent as the total, indicating the percentage of
25 the total fault of all defendants, third-party
26 defendants, persons who have been released from
27 liability under section 668.7, and the employer of
28 a claimant or claimant's decedent that is allocated
29 to each. For this purpose the court may determine
30 that two or more persons are to be treated as a single
31 party. Subject to the limits provided in this chapter
32 contribution may be obtained from and enforced against
33 the employer as provided in sections 668.5 and 668.6.

34 Sec. 14. NEW SECTION. 668.9 VERDICT ERRORS.

35 In an action brought under this chapter and tried
36 to a jury, the court shall not discharge the jury
37 until the court has determined that the verdict or
38 verdicts are consistent with the total damages and
39 percentages of fault, and if inconsistencies exist
40 the court shall do all of the following:

41 1. Inform the jury of the inconsistencies.

42 2. Order the jury to resume deliberations to
43 correct the inconsistencies.

44 3. Instruct the jury that it is at liberty to
45 change any portion or portions of the verdicts to
46 correct the inconsistencies.

574 47 Sec. 15. Section 25A.14, subsection 9, Code
48 Supplement 1983, is amended by striking the subsection.

49 Sec. 16. Section 613A.4, subsection 8, Code
50 Supplement 1983, is amended by striking the subsection.

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1 Sec. 17. Section 619.17, Code 1983, is amended
2 to read as follows:
3 619.17 CONTRIBUTORY NEGLIGENCE FAULT--BURDEN.
4 ~~In all actions brought in the courts of this state~~
5 ~~to recover damages of a defendant in which contributory~~
6 ~~negligence of the plaintiff, actual or imputed, was~~
7 ~~heretofore a complete defense or bar to recovery,~~
8 ~~the A plaintiff shall does not hereafter, have the~~
9 ~~burden of pleading and proving his the plaintiff's~~
10 ~~freedom from contributory negligence, and if the,~~
11 ~~If a defendant relies upon negligence of the plaintiff~~
12 ~~as a complete defense or bar to plaintiff's recovery~~
13 ~~contributory fault of a plaintiff to diminish the~~
14 ~~amount to be awarded as compensatory damages, the~~
15 ~~defendant shall have has the burden of pleading and~~
16 ~~proving negligence fault of the plaintiff, if any,~~
17 ~~and that it was a proximate cause of the injury or~~
18 ~~damage. As used in this section, the term "plaintiff"~~
19 ~~shall include includes a defendant filing a~~
20 ~~counterclaim or cross-petition, and the term~~
21 ~~"defendant" shall include includes a plaintiff against~~
22 ~~whom a counterclaim or cross-petition has been filed.~~
23 Sec. 18. Rule of civil procedure 225, Iowa Court
24 Rules, second edition, is amended by striking the
25 rule and inserting in lieu thereof the following:
26 225. SETOFF OF CLAIMS AND COUNTERCLAIMS. A claim
27 and counterclaim shall not be set off against each
28 other, except by agreement of both parties. However,
29 if upon motion of either party the court finds that
30 the obligation of either party is likely to be
31 uncollectible, the court may order that both parties
32 make payment to the court for distribution. The court
33 shall distribute the funds received, and shall declare
34 obligations discharged as if the payment to the court
35 by either party had been a payment to the other party
36 and as if the distribution of the funds back to the
37 party making payment had been a payment to that party
38 by the other party.
39 Sec. 19. The supreme court shall submit to the
40 general assembly, in the manner provided in section
41 602.4202, changes in the rules of procedure for courts
42 which are necessitated by the enactment of this Act.
43 Sec. 20. Section 613.3, Code Supplement 1983,
44 is repealed.
45 Sec. 21. Sections 5 through 20 of this Act apply
46 to all cases filed on or after its effective date."

BY JAY of Appanoose
PARKER of Jasper
SULLIVAN of Van Buren
O'KANE of Woodbury
ROSENBERG of Story

CHAPMAN of Linn
McINTEE of Black Hawk
ARNOULD of Scott
VARN of Johnson

H-5504 FILED MARCH 8, 1984

Placed out of order 3/20 (p 1198)

H-5745

1 Amend House File 2487 as follows:

2 1. Page 5, by inserting after line 15, the
3 following:

4 "Sec. 8. NEW SECTION. 668.7 ATTORNEY FEES.

5 1. In any action under this chapter, an attorney
6 representing a party pursuant to a contingent fee
7 arrangement shall be entitled to a reasonable fee
8 as determined by the court. However, the fee shall
9 not exceed the following:

10 a. For a judgment of two thousand dollars or less,
11 thirty-five percent of the judgement.

12 b. For a judgment of more than two thousand dollars
13 but less than ten thousand dollars, ten percent of
14 the judgment.

15 c. For a judgment of more than ten thousand
16 dollars, five percent of the judgment.

17 2. Notwithstanding subsection 1, an attorney fee
18 may exceed an applicable maximum if the court
19 determines that extraordinary expenses or services
20 were provided by the attorney. Any fee allowed for
21 extraordinary expenses or services shall be a
22 reasonable fee as determined by the court."

23 2. By renumbering as necessary.

H-5745 FILED MARCH 19, 1984 BY STROMER of Hancock
Placed out of order 3/20 (p. 1199)

H-5746

1 Amend House amendment H-5504 to House File 2487
2 as follows:

3 1. Page 6, by inserting after line 46, the
4 following:

5 "Sec. 15. NEW SECTION. 668.10 ATTORNEY FEES.

6 1. In any action under this chapter, an attorney
7 representing a party pursuant to a contingent fee
8 arrangement shall be entitled to a reasonable fee
9 as determined by the court. However, the fee shall
10 not exceed the following:

11 a. For a judgment of two thousand dollars or less,
12 thirty-five percent of the judgement.

13 b. For a judgment of more than two thousand dollars
14 but less than ten thousand dollars, ten percent of
15 the judgment.

16 c. For a judgment of more than ten thousand
17 dollars, five percent of the judgment.

18 2. Notwithstanding subsection 1, an attorney fee
19 may exceed an applicable maximum if the court
20 determines that extraordinary expenses or services
21 were provided by the attorney. Any fee allowed for
22 extraordinary expenses or services shall be a
23 reasonable fee as determined by the court."

24 2. By renumbering as necessary.

H-5746 FILED MARCH 19, 1984 BY STROMER of Hancock
Placed out of order 3/20 (p. 1198)

H-5571

1 Amend House amendment H-5504 to House File 2487
2 as follows:

3 1. Page 2, by striking lines 2 through 35, and
4 inserting in lieu thereof the following:

5 "Sec. 5. Section 364.12, subsection 2, paragraph
6 b, Code 1983, as amended by House File 359, section
7 1, 1983 Session, is amended by striking the paragraph
8 and inserting in lieu thereof the following:

9 b. The abutting property owner is responsible
10 for the removal of the natural accumulations of snow
11 and ice from the sidewalks and may be liable for
12 damages caused by the failure of the abutting property
13 owner to use reasonable care in the removal of the
14 snow or ice. A person traveling upon a sidewalk
15 assumes the risk of injury due to the natural
16 accumulations of snow and ice and may recover damages
17 from an abutting property owner only if all of the
18 following conditions are proven:

19 (1) The dangerous condition of the sidewalk, due
20 to the natural accumulation of snow and ice, was known
21 to the abutting property owner.

22 (2) The abutting property owner failed to take
23 reasonable measures to remedy the dangerous condition
24 within a reasonable time after the condition became
25 known.

26 (3) The failure of the abutting property owner
27 to take action to remedy the condition made injury
28 to the traveling public probable rather than merely
29 possible.

30 A person seeking relief under this paragraph has
31 the burden of proving the existence of all required
32 conditions of liability. All legal or equitable
33 defenses are available to the abutting property owner
34 in an action brought pursuant to this paragraph.
35 If damages are to be awarded under this paragraph
36 against the abutting property owner, the claimant
37 has the burden of proving the amount of the damages.
38 To authorize recovery of more than a nominal amount,
39 facts must exist and be shown by the evidence which
40 afford a reasonable basis for measuring the amount
41 of the claimant's actual damages, and the amount of
42 actual damages shall not be determined by speculation,
43 conjecture or surmise.

44 The city's general duty under this subsection does
45 not include a duty to remove natural accumulations
46 of snow or ice on the sidewalks. However, when the
47 city is the abutting property owner, it has the
48 specific duty of the abutting property owner set forth
49 in this paragraph."

H-5571 FILED MARCH 9, 1984 BY O'KANE of Woodbury

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5570

1 Amend House amendment H-5480 to House File 2487

2 as follows:

3 1. Page 3, by inserting after line 29 the

4 following:

5 "Sec. 8. Section 364.12, subsection 2, paragraph
6 b, Code 1983, as amended by House File 359, section
7 1, 1983 Session, is amended by striking the paragraph
8 and inserting in lieu thereof the following:

9 b. The abutting property owner is responsible
10 for the removal of the natural accumulations of snow
11 and ice from the sidewalks and may be liable for
12 damages caused by the failure of the abutting property
13 owner to use reasonable care in the removal of the
14 snow or ice. A person traveling upon a sidewalk
15 assumes the risk of injury due to the natural
16 accumulations of snow and ice and may recover damages
17 from an abutting property owner only if all of the
18 following conditions are proven:

19 (1) The dangerous condition of the sidewalk, due
20 to the natural accumulation of snow and ice, was known
21 to the abutting property owner.

22 (2) The abutting property owner failed to take
23 reasonable measures to remedy the dangerous condition
24 within a reasonable time after the condition became
25 known.

26 (3) The failure of the abutting property owner
27 to take action to remedy the condition made injury
28 to the traveling public probable rather than merely
29 possible.

30 A person seeking relief under this paragraph has
31 the burden of proving the existence of all required
32 conditions of liability. All legal or equitable
33 defenses are available to the abutting property owner
34 in an action brought pursuant to this paragraph.
35 If damages are to be awarded under this paragraph
36 against the abutting property owner, the claimant
37 has the burden of proving the amount of the damages.
38 To authorize recovery of more than a nominal amount,
39 facts must exist and be shown by the evidence which
40 afford a reasonable basis for measuring the amount
41 of the claimant's actual damages, and the amount of
42 actual damages shall not be determined by speculation,
43 conjecture or surmise.

44 The city's general duty under this subsection does
45 not include a duty to remove natural accumulations
46 of snow or ice on the sidewalks. However, when the
47 city is the abutting property owner, it has the
48 specific duty of the abutting property owner set forth
49 in this paragraph."

50 2. By renumbering to conform to this amendment.

H-5570 FILED MARCH 9, 1984 BY SCHROEDER of Pottawattamie

Filed not germane 3/20 (p. 1185)

Rule suspended

Adopted 3/20 (p. 1185)

HOUSE FILE 2487

H-5742

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 2, by striking lines 9 through 13.
- 4 2. Page 2, by striking lines 27 through 33, and
- 5 inserting in lieu thereof the following:
- 6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
- 7 LIABILITY.
- 8 1. In a claim involving two or more defendants,
- 9 the doctrine of joint and several liability does not
- 10 apply to a defendant unless the defendant is found
- 11 to bear twenty percent or more of the negligence that
- 12 is assigned to all parties.
- 13 2. The doctrine of joint and several liability
- 14 shall not apply to a governmental unit under chapters
- 15 25A or 613A, when the governmental unit is a
- 16 defendant."
- 17 3. By renumbering to conform to this amendment.

H-5742 FILED MARCH 16, 1984 BY VARN of Johnson

W/D 3/26 (p. 1195)

HOUSE FILE 2487

H-5717

1 Amend House amendment H-5480 to House File 2487

2 as follows:

3 1. Page 3, by inserting after line 29 the following:

4 "Sec. 8. NEW SECTION. 668.8 INSURANCE PRACTICE.

5 1. If an insurance company, for the purpose of
6 structuring payments for which it may be liable, assigns
7 a percentage of negligence to a claimant in settlement
8 negotiations, the percentage must be stated in writing
9 to the claimant and the writing must contain the
10 following language:

11 "The assignment of negligence contained in this
12 notice is not an adjudication, but is merely an
13 estimate. You are not obligated to accept our deter-
14 mination and have the right to go to small claims court,
15 district court, or any other court with jurisdiction to
16 have your percentage of negligence adjudicated. If the
17 court's determination is that you are not negligent or
18 the court finds that you are negligent and our estimation
19 is ten percent or higher in comparison to the court's
20 determination, we shall be liable to pay your court costs,
21 attorney's fees, your percentage of negligence, and up to
22 two thousand dollars or fifty percent of the amount in
23 dispute, whichever is higher."

24 2. If an insurance company notifies a claimant that
25 the company has assigned the claimant a percentage of
26 negligence, and that the percentage will be used to
27 reduce the claimant's recovery, and the claimant sub-
28 sequently obtains a court determination that the claimant
29 is not negligent, or that the claimant is negligent and
30 the company's assignment is ten percent or higher in
31 comparison to the court's determination, the insurance
32 company shall be liable for all of the following:

33 a. The court costs and reasonable attorney's fees
34 incurred by the claimant.

35 b. The payment of the claim disregarding any per-
36 centage of negligence on the part of the claimant.

37 c. Two thousand dollars or fifty percent of the
38 contested amount of the claim, whichever is greater.

39 3. All settlement offers by an insurance company
40 containing an assigned percentage of negligence to a
41 claimant shall be made in writing to the claimant. A
42 person violating this requirement commits a simple
43 misdemeanor."

44 2. By renumbering as necessary.

H-5717 FILED MARCH 15, 1984 BY VARN of Johnson

Adopted 3/20 (p. 1187)

HOUSE FILE 2487

5743

1 Amend House Amendment H-5480 to House File 2487
2 as follows:

3 1. Page 1, by striking lines 5 through 11, and
4 inserting in lieu thereof the following:

5 "Section 1. NEW SECTION. 668.1 FAULT DEFINED.

6 1. As used in this chapter, "fault" means one
7 or more acts or omissions that are in any measure
8 negligent or reckless toward the person or property
9 of the actor or others, or that subject a person to
10 strict tort liability. The term also includes breach
11 of warranty, unreasonable assumption of risk not
12 constituting an enforceable express consent, mis-
13 use of a product for which the defendant otherwise
14 would be liable, and unreasonable failure to avoid
15 an injury or to mitigate damages."

16 2. Page 1, line 13, by striking the word
17 "negligence" and inserting in lieu thereof the word
18 "fault".

19 3. Page 1, line 14, by striking the word
20 "negligence" and inserting in lieu thereof the word
21 "fault".

22 4. Page 1, line 16, by striking the word
23 "NEGLIGENCE" and inserting in lieu thereof the word
24 "FAULT".

25 5. Page 1, line 17, by striking the word
26 "negligence" and inserting in lieu thereof the word
27 "fault".

28 6. Page 1, line 19, by striking the word
29 "negligence" and inserting in lieu thereof the word
30 "fault".

31 7. Page 1, line 21, by striking the word
32 "negligence" and inserting in lieu thereof the word
33 "fault".

34 8. Page 1, by striking lines 22 and 23, and
35 inserting in lieu thereof the following: "or equal
36 to the combined percentage of fault chargeable to
37 all the other parties to the action, but any damages
38 allowed shall".

39 9. Page 1, line 24, by striking the word
40 "negligence" and inserting in lieu thereof the word
41 "fault".

42 10. Page 1, line 26, by striking the word
43 "negligence" and inserting in lieu thereof the word
44 "fault".

45 11. Page 1, line 36, by striking the word
46 "negligence" and inserting in lieu thereof the word
47 "fault".

48 12. Page 1, line 38, by striking the word
49 "negligence" and inserting in lieu thereof the word
"fault".

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Page Two

- 1 13. Page 1, line 42, by striking the word
2 "negligent" and inserting in lieu thereof the words
3 "at fault".
4 14. Page 2, line 2, by striking the word
5 "negligence" and inserting in lieu thereof the word
6 "fault".
7 15. Page 2, line 11, by striking the word
8 "negligence" and inserting in lieu thereof the word
9 "fault".
10 16. Page 2, line 32, by striking the word
11 "negligence" and inserting in lieu thereof the word
12 "fault".
13 17. Page 2, line 49, by striking the word
14 "negligence" and inserting in lieu thereof the word
15 "fault".

BY HALVORSON of Clayton
SKOW of Guthrie
BAXTER of Des Moines
SCHROEDER of Pottawattamie

H-5743 FILED MARCH 16, 1984

A - Adopted 3/20 (p. 1181) Order 31-33 placed
B - Placed out of order 3/20 (p. 1183) order

HOUSE FILE 2487

H-5744

- 1 Amend House amendment H-5480 to House File 2487
2 as follows:
3 1. Page 3, by inserting after line 29, the
4 following:
5 "Sec. 8. NEW SECTION. 668.8 ATTORNEY FEES.
6 1. In any action under this chapter, an attorney
7 representing a party pursuant to a contingent fee
8 arrangement shall be entitled to a reasonable fee
9 as determined by the court. However, the fee shall
10 not exceed the following:
11 a. For a judgment of two thousand dollars or less,
12 thirty-five percent of the judgement.
13 b. For a judgment of more than two thousand dollars
14 but less than ten thousand dollars, ten percent of
15 the judgment.
16 c. For a judgment of more than ten thousand
17 dollars, five percent of the judgment.
18 2. Notwithstanding subsection 1, an attorney fee
19 may exceed an applicable maximum if the court
20 determines that extraordinary expenses or services
21 were provided by the attorney. Any fee allowed for
22 extraordinary expenses or services shall be a
23 reasonable fee as determined by the court."
24 2. By renumbering as necessary.

H-5744 FILED March 19, 1984 BY STROMER of Hancock

W/D 3/20 (p. 1196)

HOUSE FILE 2487

-5749

1 Amend House File 2487 as follows:

2 1. Page 1, by striking line 1 and inserting in
3 lieu thereof the following:

4 "Section 1. Chapter 25A, Code 1983, is amended
5 by adding the following new sections:

6 NEW SECTION. In an action for damages brought
7 pursuant to this chapter in which liability is admitted
8 or established, damages shall not be awarded for
9 actual economic losses incurred or to be incurred
10 if the losses are replaced or indemnified by insurance,
11 governmental employment, service benefit programs
12 or any other source except the assets of the claimant
13 or members of the claimant's immediate family.

14 "Damages", as used in this section, means damages
15 for personal injury, death, or property damage, or
16 for other damages derived from or based on the personal
17 injury, death, or property damage including but not
18 limited to the cost of reasonable medical care,
19 rehabilitation services, and custodial care, and the
20 loss of services and loss of earned income.

21 NEW SECTION. In an action for personal injury,
22 death, or property damage, or any other damages derived
23 therefrom or based thereon, brought pursuant to this
24 chapter, the court shall determine the reasonableness
25 of any contingent fee arrangement between the plaintiff
26 and the plaintiff's attorney.

27 NEW SECTION. No right of action for contribution
28 or indemnity accrues to any person, or an insurer,
29 guarantor, or indemnitor of any person upon whose
30 behalf damages have been paid pursuant to this chapter.

31 NEW SECTION. A person who suffers injury, death,
32 or property damage, or any damage or injury derived
33 therefrom or based thereon, while operating a motor
34 vehicle with a blood alcohol level of ten hundredths
35 or more of one percent by weight of alcohol in the
36 person's blood, or while a passenger in a motor vehicle
37 driven by the person, does not have a claim or cause
38 of action for any damages or other grievance against
39 the state of Iowa under this chapter.

40 Sec. 2. Section 364.12, subsection 2, paragraph
41 b, ".

42 2. Page 2, after line 3, by inserting the
43 following:

44 "Sec. _____. Chapter 613A, Code 1983, is amended
45 by adding the following new sections:

46 NEW SECTION. In an action for damages brought
47 pursuant to this chapter in which liability is admitted
48 or established, damages shall not be awarded for
49 actual economic losses incurred or to be incurred
50 if the losses are replaced or indemnified by insurance,

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1 governmental employment, service benefit programs
2 or any other source except the assets of the claimant
3 or members of the claimant's immediate family.

4 "Damages", as used in this section, means damages
5 for personal injury, death, or property damage, or
6 for other damages derived from or based on the personal
7 injury, death, or property damage including but not
8 limited to the cost of reasonable medical care,
9 rehabilitation services, and custodial care, and the
10 loss of services and loss of earned income.

11 NEW SECTION. In an action for personal injury,
12 death, or property damage, or any other damages derived
13 therefrom or based thereon, brought pursuant to this
14 chapter, the court shall determine the reasonableness
15 of any contingent fee arrangement between the plaintiff
16 and the plaintiff's attorney.

17 NEW SECTION. No right of action for contribution
18 or indemnity accrues to any person, or an insurer,
19 guarantor, or indemnitor of any person upon whose
20 behalf damages have been paid pursuant to this chapter.

21 NEW SECTION. A person who suffers injury, death,
22 or property damage, or any damage or injury derived
23 therefrom or based thereon, while operating a motor
24 vehicle with a blood alcohol level of ten hundredths
25 or more of one percent by weight of alcohol in the
26 person's blood, or while a passenger in a motor vehicle
27 driven by the person, does not have a claim or cause
28 of action for any damages or other grievance against
29 a municipal corporation under this chapter.

30 Sec. _____. Section 613A.4, Code Supplement 1983,
31 is amended by adding the following new subsection:

32 9. A claim based upon or connected with the failure
33 to adopt, order or implement the posting or erection
34 of a stop sign, traffic control signal, or other
35 traffic regulatory sign, signal, or device."

36 3. By numbering and renumbering sections as
37 necessary.

H-5749 FILED MARCH 19, 1984 BY SCHROEDER of Pottawattamie

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5753

1 Amend House amendment H-5480 to House File 2487

2 as follows:

3 1. Page 1, by striking line 5, and inserting in
4 lieu thereof the following:

5 "Section 1. NEW SECTION. DEFINITIONS. As used
6 in sections 1 through 6 of this Act, unless the context
7 otherwise requires:

8 1. "Building standards" means the structural,
9 mechanical, electrical, and quality standards of the
10 home building industry for the geographic area in
11 which the dwelling is situated.

12 2. "Dwelling" means a new building, not previously
13 occupied, constructed for the purpose of habitation;
14 but does not include appurtenant recreational
15 facilities, detached garages, driveways, walkways,
16 patios, boundary walls, retaining walls not necessary
17 for the structural stability of the dwelling,
18 landscaping, fences, nonpermanent construction
19 materials, off-site improvements, and all other similar
20 items.

21 3. "Initial vendee" means a person who first
22 contracts to purchase a dwelling from a vendor for
23 the purpose of habitation and not for resale in the
24 ordinary course of trade.

25 4. "Major construction defect" means actual damage
26 to the load-bearing portion of the dwelling, including
27 damage due to subsidence, expansion or lateral movement
28 of the soil, which affects its load-bearing function
29 and which vitally affects or is imminently likely
30 to vitally affect use of the dwelling for residential
31 purposes. "Major construction defect" does not include
32 damage due to movement of the soil caused by flood,
33 earthquake or other natural disaster.

34 5. "Vendee" means any purchaser of a dwelling
35 and includes the initial vendee and any subsequent
36 purchasers.

37 6. "Vendor" means any person, firm, or corporation
38 which constructs dwellings for the purpose of sale,
39 including the construction of dwellings on land owned
40 by vendees.

41 7. "Warranty date" means the date from and after
42 which the statutory warranties provided in section
43 2 of this Act shall be effective, and which is the
44 earliest of the following:

45 a. The date of the initial vendee's first occupancy
46 of the dwelling.

47 b. The date on which the initial vendee takes
48 legal or equitable title in the dwelling.

49 Sec. 2. NEW SECTION. STATUTORY WARRANTIES.

50 1. In every sale of a completed dwelling, and

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1 in every contract for the sale of a dwelling to be
2 completed, the vendor shall warrant to the vendee
3 all of the following:

4 a. That during the one-year period from and after
5 the warranty date the dwelling shall be free from
6 defects caused by faulty workmanship and defective
7 materials due to noncompliance with building standards.

8 b. That during the two-year period from and after
9 the warranty date, the dwelling shall be free from
10 defects caused by faulty installation of plumbing,
11 electrical, heating, and cooling systems.

12 c. That during the ten-year period from and after
13 the warranty date, the dwelling shall be free from
14 major construction defects.

15 2. The statutory warranties provided in this
16 section shall survive the passing of legal or equitable
17 title in the dwelling to the vendee.

18 Sec. 3. NEW SECTION. EXCLUSIONS. The liability
19 of the vendor under sections 1 to 6 of this Act is
20 limited to the specific items set forth in sections
21 1 to 6 of this Act and does not extend to any of the
22 following:

23 1. Loss or damage not reported by the vendee to
24 the vendor in writing within six months after the
25 vendee discovers or should have discovered the loss
26 or damage.

27 2. Loss or damage caused by defects in design,
28 installation, or materials which the vendee supplied,
29 installed, or had installed under the vendee's
30 direction.

31 3. Secondary loss or damage such as personal
32 injury or property damage.

33 4. Loss or damage from normal wear and tear.

34 5. Loss or damage from normal shrinkage caused
35 by drying of the dwelling within tolerances of building
36 standards.

37 6. Loss or damage from dampness and condensation
38 due to insufficient ventilation after occupancy.

39 7. Loss or damage from negligence, improper
40 maintenance or alteration of the dwelling by parties
41 other than the vendor.

42 8. Loss or damage from changes in grading of the
43 ground around the dwelling by parties other than the
44 vendor.

45 9. Landscaping or insect loss or damage.

46 10. Loss or damage from failure to maintain the
47 dwelling in good repair.

48 11. Loss or damage which the vendee, whenever
49 feasible, has not taken timely action to minimize.

50 12. Loss or damage which occurs after the dwelling

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1 is no longer used primarily as a residence.

2 13. Accidental loss or damage usually described
3 as acts of God, including, but not limited to, fire,
4 explosion, smoke, water escape, windstorm, hail or
5 lightening, falling trees, aircraft and vehicles,
6 flood, and earthquake, except when the loss or damage
7 is caused by failure to comply with building standards.

8 14. Loss or damage from soil movement which is
9 compensated by legislation or covered by insurance.

10 15. Loss or damage due to soil conditions where
11 construction is done upon lands owned by the vendee
12 and obtained by the vendee from a source independent
13 of the vendor.

14 Sec. 4. NEW SECTION. WAIVER AND MODIFICATION
15 LIMITED.

16 1. Except as provided in subsections 2 and 3,
17 sections 1 to 6 of this Act cannot be waived or
18 modified by contract or otherwise. An agreement which
19 purports to waive or modify sections 1 to 6 of this
20 Act, except as provided in subsections 2 and 3, shall
21 be void.

22 2. At any time after a contract for the sale of
23 a dwelling is entered into by and between a vendor
24 and a vendee, any of the statutory warranties provided
25 for in section 2 of this Act may be excluded or
26 modified only by a written instrument, printed in
27 bold face type of a minimum size of ten points, which
28 is signed by the vendee and which sets forth in detail
29 the warranty involved, the consent of the vendee,
30 and the terms of the new agreement contained in the
31 writing. An exclusion or modification shall not be
32 effective unless the vendor provides substitute express
33 warranties offering substantially the same protections
34 to the vendee as the statutory warranties set forth
35 in section 2 of this Act.

36 3. If a major construction defect is discovered
37 prior to the sale of a dwelling, the statutory warranty
38 set forth in section 2, subsection 1, paragraph "c",
39 of this Act may be waived for the defect identified
40 in the waiver instrument, after full oral disclosure
41 of the specific defect, by an instrument which sets
42 forth in detail the specific defect; the difference
43 between the value of the dwelling without the de-
44 fect, and the value of the dwelling with the defect,
45 as determined and attested to by an independent
46 appraiser, contractor, insurance adjuster, engineer
47 or any other similarly knowledgeable person selected
48 by the vendee; the price reduction; the date the
49 construction was completed; the legal description
of the dwelling; the consent of the vendee to the

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1 waiver; and the signatures of the vendee, the vendor,
2 and two witnesses.

3 A single waiver agreed to pursuant to this
4 subsection may not apply to more than one major
5 construction defect in a dwelling.

6 The waiver shall not be effective unless filed
7 for recording with the county recorder or registrar
8 of titles who shall file the waiver for record.

9 4. If the vendor agrees to exclude, modify, or
10 waive any of the statutory warranties provided in
11 section 2 of this Act, the statute of limitations
12 provided in section 614.1, subsection 11, shall not
13 apply to an action arising from any defect in the
14 dwelling for which a statutory warranty was excluded,
15 modified, or waived.

16 Sec. 5. NEW SECTION. REMEDIES. Upon breach of
17 a warranty imposed by section 2 of this Act, the
18 vendee shall have a cause of action against the vendor
19 for damages arising out of the breach, or for specific
20 performance. Damages shall be limited to either of
21 the following:

22 1. The amount necessary to remedy the defect or
23 breach.

24 2. The difference between the value of the dwelling
25 without the defect and the value of the dwelling with
26 the defect.

27 Sec. 6. NEW SECTION. OTHER WARRANTIES. The
28 statutory warranties provided for in section 2 of
29 this Act shall be in addition to all other warranties
30 imposed by law or agreement. The remedies provided
31 in section 5 of this Act shall not be construed as
32 limiting the remedies in any action not predicated
33 upon breach of the statutory warranties imposed by
34 section 2 of this Act.

35 Sec. 7. Section 614.1, Code Supplement 1983, is
36 amended by adding the following new subsection:

37 NEW SUBSECTION. 11. IMPROVEMENTS TO REAL PROPERTY.
38 In addition to limitations contained elsewhere in
39 this section, an action arising out of the unsafe
40 or defective condition of an improvement to real
41 property based on tort and implied warranty and for
42 contribution and indemnity, and founded on injury
43 to property, real or personal, or injury to the person
44 or wrongful death, shall not be brought more than
45 eleven years after the date on which occurred the
46 act or omission of the defendant alleged in the action
47 to have been the cause of the injury or death.
48 However, this subsection shall not be construed to
49 bar an action against a person solely in the person's
50 capacity as an owner, occupant, or operator of an

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1 improvement to real property.

2 Sec. 8. NEW SECTION. 668.1 NEGLIGENCE".

3 2. By renumbering as necessary.

H-5753 FILED MARCH 19, 1984 BY SCHROEDER of Pottawattamie

HOUSE FILE 2487

-5751

1 Amend the Halvorson ~~amendment~~ H-5480 to House File
2 2487 as follows:

3 1. Page 3, by inserting after line 29 the
4 following:

5 "Sec. 8. Chapter 25A, Code 1983, is amended by
6 adding the following new sections:

7 NEW SECTION. In an action for damages brought
8 pursuant to this chapter in which liability is admitted
9 or established, damages shall not be awarded for
10 actual economic losses incurred or to be incurred
11 if the losses are replaced or indemnified by insurance,
12 governmental, employment, service benefit programs
13 or any other source except the assets of the claimant
14 or members of the claimant's immediate family.

15 "Damages", as used in this section, means damages
16 for personal injury, death, or property damage, or
17 for other damages derived from or based on the personal
18 injury, death, or property damage including but not
19 limited to the cost of reasonable medical care,
20 rehabilitation services, and custodial care, and the
21 loss of services and loss of earned income.

22 NEW SECTION. In an action for personal injury,
23 death, or property damage, or any other damages derived
24 therefrom or based thereon, brought pursuant to this
25 chapter, the court shall determine the reasonableness
26 of any contingent fee arrangement between the plaintiff
27 and the plaintiff's attorney.

28 NEW SECTION. No right of action for contribution
29 or indemnity accrues to any person, or an insurer,
30 guarantor, or indemnitor of any person upon whose
31 behalf damages have been paid pursuant to this chapter.

32 NEW SECTION. A person who suffers injury, death,
33 or property damage, or any damage or injury derived
34 therefrom or based thereon, while operating a motor
35 vehicle with a blood alcohol level of ten hundredths
36 or more of one percent by weight of alcohol in the
37 person's blood, or while a passenger in a motor vehicle
38 driven by the person, does not have a claim or cause
39 of action for any damages or other grievance against
40 the state of Iowa under this chapter.

41 Sec. 9. Chapter 613A, Code 1983, is amended by
42 adding the following new sections:

43 NEW SECTION. In an action for damages brought
44 pursuant to this chapter in which liability is admitted
45 or established, damages shall not be awarded for
46 actual economic losses incurred or to be incurred
47 if the losses are replaced or indemnified by insurance,
48 governmental, employment, service benefit programs
49 or any other source except the assets of the claimant
50 or members of the claimant's immediate family.

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1 "Damages", as used in this section, means damages
2 for personal injury, death, or property damage, or
3 for other damages derived from or based on the personal
4 injury, death, or property damage including but not
5 limited to the cost of reasonable medical care,
6 rehabilitation services, and custodial care, and the
7 loss of services and loss of earned income.

8 NEW SECTION. In an action for personal injury,
9 death, or property damage, or any other damages derived
10 therefrom or based thereon, brought pursuant to this
11 chapter, the court shall determine the reasonableness
12 of any contingent fee arrangement between the plaintiff
13 and the plaintiff's attorney.

14 NEW SECTION. No right of action for contribution
15 or indemnity accrues to any person, or an insurer,
16 guarantor, or indemnitor of any person upon whose
17 behalf damages have been paid pursuant to this chapter.

18 NEW SECTION. A person who suffers injury, death,
19 or property damage, or any damage or injury derived
20 therefrom or based thereon, while operating a motor
21 vehicle with a blood alcohol level of ten hundredths
22 or more of one percent by weight of alcohol in the
23 person's blood, or while a passenger in a motor vehicle
24 driven by the person, does not have a claim or cause
25 of action for any damages or other grievance against
26 a municipal corporation under this chapter.

27 Sec. 10. Section 613A.4, Code Supplement 1983,
28 is amended by adding the following new subsection:

29 9. A claim based upon or connected with the failure
30 to adopt, order or implement the posting or erection
31 of a stop sign, traffic control signal, or other
32 traffic regulatory sign, signal, or device."

33 3. By numbering and renumbering sections as
34 necessary.

H-5751 FILED MARCH 19, 1984 BY SCHROEDER of Pottawattamie

W/O 3/20 (p. 1189)

HOUSE FILE 2487

H-5750

1 Amend the Jay amendment H-5504 to House File 2487
2 as follows:

3 1. Page 1, by inserting after line 42 the
4 following:

5 "Sec. 4. Chapter 25A, Code 1983, is amended by
6 adding the following new sections:

7 NEW SECTION. In an action for damages brought
8 pursuant to this chapter in which liability is admitted
9 or established, damages shall not be awarded for
10 actual economic losses incurred or to be incurred
11 if the losses are replaced or indemnified by insurance,
12 governmental, employment, service benefit programs
13 or any other source except the assets of the claimant
14 or members of the claimant's immediate family.

15 "Damages", as used in this section, means damages
16 for personal injury, death, or property damage, or
17 for other damages derived from or based on the personal
18 injury, death, or property damage including but not
19 limited to the cost of reasonable medical care,
20 rehabilitation services, and custodial care, and the
21 loss of services and loss of earned income.

22 NEW SECTION. In an action for personal injury,
23 death, or property damage, or any other damages derived
24 therefrom or based thereon, brought pursuant to this
25 chapter, the court shall determine the reasonableness
26 of any contingent fee arrangement between the plaintiff
27 and the plaintiff's attorney.

28 NEW SECTION. No right of action for contribution
29 or indemnity accrues to any person, or an insurer,
30 guarantor, or indemnitor of any person upon whose
31 behalf damages have been paid pursuant to this chapter.

32 NEW SECTION. A person who suffers injury, death,
33 or property damage, or any damage or injury derived
34 therefrom or based thereon, while operating a motor
35 vehicle with a blood alcohol level of ten hundredths
36 or more of one percent by weight of alcohol in the
37 person's blood, or while a passenger in a motor vehicle
38 driven by the person, does not have a claim or cause
39 of action for any damages or other grievance against
40 the state of Iowa under this chapter."

41 2. Page 2, by inserting after line 35 the
42 following:

43 "Sec. ____ Chapter 613A, Code 1983, is amended
44 by adding the following new sections:

45 NEW SECTION. In an action for damages brought
46 pursuant to this chapter in which liability is admitted
47 or established, damages shall not be awarded for
48 actual economic losses incurred or to be incurred
49 if the losses are replaced or indemnified by insurance,
50 governmental, employment, service benefit programs

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1 or any other source except the assets of the claimant
2 or members of the claimant's immediate family.
3 "Damages", as used in this section, means damages
4 for personal injury, death, or property damage, or
5 for other damages derived from or based on the personal
6 injury, death, or property damage including but not
7 limited to the cost of reasonable medical care,
8 rehabilitation services, and custodial care, and the
9 loss of services and loss of earned income.

10 NEW SECTION. In an action for personal injury,
11 death, or property damage, or any other damages derived
12 therefrom or based thereon, brought pursuant to this
13 chapter, the court shall determine the reasonableness
14 of any contingent fee arrangement between the plaintiff
15 and the plaintiff's attorney.

16 NEW SECTION. No right of action for contribution
17 or indemnity accrues to any person, or an insurer,
18 guarantor, or indemnitor of any person upon whose
19 behalf damages have been paid pursuant to this chapter.

20 NEW SECTION. A person who suffers injury, death,
21 or property damage, or any damage or injury derived
22 therefrom or based thereon, while operating a motor
23 vehicle with a blood alcohol level of ten hundredths
24 or more of one percent by weight of alcohol in the
25 person's blood, or while a passenger in a motor vehicle
26 driven by the person, does not have a claim or cause
27 of action for any damages or other grievance against
28 a municipal corporation under this chapter.

29 Sec. _____. Section 613A.4, Code Supplement 1983,
30 is amended by adding the following new subsection:
31 9. A claim based upon or connected with the failure
32 to adopt, order or implement the posting or erection
33 of a stop sign, traffic control signal, or other
34 traffic regulatory sign, signal, or device."

35 3. By numbering and renumbering sections as
36 necessary.

H-5750 FILED MARCH 19, 1984 BY SCHROEDER of Pottawattamie

Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5754

1 Amend House amendment H-5504 to House File 2487
2 as follows:

3 1. Page 2, by inserting after line 35, the
4 following:

5 "Sec. 6. NEW SECTION. DEFINITIONS. As used in
6 sections 6 through 11 of this Act, unless the context
7 otherwise requires:

8 1. "Building standards" means the structural,
9 mechanical, electrical, and quality standards of the
10 home building industry for the geographic area in
11 which the dwelling is situated.

12 2. "Dwelling" means a new building, not previously
13 occupied, constructed for the purpose of habitation;
14 but does not include appurtenant recreational
15 facilities, detached garages, driveways, walkways,
16 patios, boundary walls, retaining walls not necessary
17 for the structural stability of the dwelling,
18 landscaping, fences, nonpermanent construction
19 materials, off-site improvements, and all other similar
20 items.

21 3. "Initial vendee" means a person who first
22 contracts to purchase a dwelling from a vendor for
23 the purpose of habitation and not for resale in the
24 ordinary course of trade.

25 4. "Major construction defect" means actual damage
26 to the load-bearing portion of the dwelling, including
27 damage due to subsidence, expansion or lateral movement
28 of the soil, which affects its load-bearing function
29 and which vitally affects or is imminently likely
30 to vitally affect use of the dwelling for residential
31 purposes. "Major construction defect" does not include
32 damage due to movement of the soil caused by flood,
33 earthquake or other natural disaster.

34 5. "Vendee" means any purchaser of a dwelling
35 and includes the initial vendee and any subsequent
36 purchasers.

37 6. "Vendor" means any person, firm, or corporation
38 which constructs dwellings for the purpose of sale,
39 including the construction of dwellings on land owned
40 by vendees.

41 7. "Warranty date" means the date from and after
42 which the statutory warranties provided in section
43 7 of this Act shall be effective, and which is the
44 earliest of the following:

45 a. The date of the initial vendee's first occupancy
46 of the dwelling.

47 b. The date on which the initial vendee takes
48 legal or equitable title in the dwelling.

49 Sec. 7. NEW SECTION. STATUTORY WARRANTIES.

50 1. In every sale of a completed dwelling, and

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- 1 in every contract for the sale of a dwelling to be
- 2 completed, the vendor shall warrant to the vendee
- 3 all of the following:
- 4 a. That during the one-year period from and after
- 5 the warranty date the dwelling shall be free from
- 6 defects caused by faulty workmanship and defective
- 7 materials due to noncompliance with building standards.
- 8 b. That during the two-year period from and after
- 9 the warranty date, the dwelling shall be free from
- 10 defects caused by faulty installation of plumbing,
- 11 electrical, heating, and cooling systems.
- 12 c. That during the ten-year period from and after
- 13 the warranty date, the dwelling shall be free from
- 14 major construction defects.
- 15 2. The statutory warranties provided in this
- 16 section shall survive the passing of legal or equitable
- 17 title in the dwelling to the vendee.
- 18 Sec. 8. NEW SECTION. EXCLUSIONS. The liability
- 19 of the vendor under sections 6 to 11 of this Act is
- 20 limited to the specific items set forth in sections
- 21 6 to 11 of this Act and does not extend to any of
- 22 the following:
- 23 1. Loss or damage not reported by the vendee to
- 24 the vendor in writing within six months after the
- 25 vendee discovers or should have discovered the loss
- 26 or damage.
- 27 2. Loss or damage caused by defects in design,
- 28 installation, or materials which the vendee supplied,
- 29 installed, or had installed under the vendee's
- 30 direction.
- 31 3. Secondary loss or damage such as personal
- 32 injury or property damage.
- 33 4. Loss or damage from normal wear and tear.
- 34 5. Loss or damage from normal shrinkage caused
- 35 by drying of the dwelling within tolerances of building
- 36 standards.
- 37 6. Loss or damage from dampness and condensation
- 38 due to insufficient ventilation after occupancy.
- 39 7. Loss or damage from negligence, improper
- 40 maintenance or alteration of the dwelling by parties
- 41 other than the vendor.
- 42 8. Loss or damage from changes in grading of the
- 43 ground around the dwelling by parties other than the
- 44 vendor.
- 45 9. Landscaping or insect loss or damage.
- 46 10. Loss or damage from failure to maintain the
- 47 dwelling in good repair.
- 48 11. Loss or damage which the vendee, whenever
- 49 feasible, has not taken timely action to minimize.
- 50 12. Loss or damage which occurs after the dwelling

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1 is no longer used primarily as a residence.

2 13. Accidental loss or damage usually described
3 as acts of God, including, but not limited to, fire,
4 explosion, smoke, water escape, windstorm, hail or
5 lightening, falling trees, aircraft and vehicles,
6 flood, and earthquake, except when the loss or damage
7 is caused by failure to comply with building standards.

8 14. Loss or damage from soil movement which is
9 compensated by legislation or covered by insurance.

10 15. Loss or damage due to soil conditions where
11 construction is done upon lands owned by the vendee
12 and obtained by the vendee from a source independent
13 of the vendor.

14 Sec. 9. NEW SECTION. WAIVER AND MODIFICATION
15 LIMITED.

16 1. Except as provided in subsections 2 and 3,
17 sections 6 to 11 of this Act cannot be waived or
18 modified by contract or otherwise. An agreement which
19 purports to waive or modify sections 6 to 11 of this
20 Act, except as provided in subsections 2 and 3, shall
21 be void.

22 2. At any time after a contract for the sale of
23 a dwelling is entered into by and between a vendor
24 and a vendee, any of the statutory warranties provided
25 for in section 7 of this Act may be excluded or
26 modified only by a written instrument, printed in
27 bold face type of a minimum size of ten points, which
28 is signed by the vendee and which sets forth in detail
29 the warranty involved, the consent of the vendee,
30 and the terms of the new agreement contained in the
31 writing. An exclusion or modification shall not be
32 effective unless the vendor provides substitute express
33 warranties offering substantially the same protections
34 to the vendee as the statutory warranties set forth
35 in section 7 of this Act.

36 3. If a major construction defect is discovered
37 prior to the sale of a dwelling, the statutory warranty
38 set forth in section 7, subsection 1, paragraph "c",
39 of this Act may be waived for the defect identified
40 in the waiver instrument, after full oral disclosure
41 of the specific defect, by an instrument which sets
42 forth in detail the specific defect; the difference
43 between the value of the dwelling without the de-
44 fect, and the value of the dwelling with the defect,
45 as determined and attested to by an independent
46 appraiser, contractor, insurance adjuster, engineer
47 or any other similarly knowledgeable person selected
48 by the vendee; the price reduction; the date the
construction was completed; the legal description
of the dwelling; the consent of the vendee to the

H-5754

Page Four

1 waiver; and the signatures of the vendee, the vendor,
2 and two witnesses.

3 A single waiver agreed to pursuant to this
4 subsection may not apply to more than one major
5 construction defect in a dwelling.

6 The waiver shall not be effective unless filed
7 for recording with the county recorder or registrar
8 of titles who shall file the waiver for record.

9 4. If the vendor agrees to exclude, modify, or
10 waive any of the statutory warranties provided in
11 section 7 of this Act, the statute of limitations
12 provided in section 614.1, subsection 11, shall not
13 apply to an action arising from any defect in the
14 dwelling for which a statutory warranty was excluded,
15 modified, or waived.

16 Sec. 10. NEW SECTION. REMEDIES. Upon breach
17 of a warranty imposed by section 7 of this Act, the
18 vendee shall have a cause of action against the vendor
19 for damages arising out of the breach, or for specific
20 performance. Damages shall be limited to either of
21 the following:

22 1. The amount necessary to remedy the defect or
23 breach.

24 2. The difference between the value of the dwelling
25 without the defect and the value of the dwelling with
26 the defect.

27 Sec. 11. NEW SECTION. OTHER WARRANTIES. The
28 statutory warranties provided for in section 7 of
29 this Act shall be in addition to all other warranties
30 imposed by law or agreement. The remedies provided
31 in section 10 of this Act shall not be construed as
32 limiting the remedies in any action not predicated
33 upon breach of the statutory warranties imposed by
34 section 7 of this Act.

35 Sec. 12. Section 614.1, Code Supplement 1983,
36 is amended by adding the following new subsection:

37 NEW SUBSECTION. 11. IMPROVEMENTS TO REAL PROPERTY.

38 In addition to limitations contained elsewhere in
39 this section, an action arising out of the unsafe
40 or defective condition of an improvement to real
41 property based on tort and implied warranty and for
42 contribution and indemnity, and founded on injury
43 to property, real or personal, or injury to the person
44 or wrongful death, shall not be brought more than
45 eleven years after the date on which occurred the
46 act or omission of the defendant alleged in the action
47 to have been the cause of the injury or death.

48 However, this subsection shall not be construed to
49 bar an action against a person solely in the person's
50 capacity as an owner, occupant, or operator of an

Page Five

1 improvement to real property."

2 2. By renumbering as necessary.

HOUSE FILE 2487

H-5759

1 Amend House Amendment H-5504 to House File 2487
 2 as follows:
 3 1. Page 1, line 10, by striking the word
 4 "omission," and inserting in lieu thereof the word
 5 "omission".
 6 2. Page 1, by striking line 11, and inserting
 7 in lieu thereof the following: "~~except-an-act-of~~
 8 ~~malfeasance-in-office-or-willful~~".
 9 3. Page 1, by striking lines 33 through 36 and
 10 inserting in lieu thereof the following:
 11 "Sec. 3. Section 25A.22, Code 1983, is amended
 12 to read as follows:
 13 25A.22 ACTIONS IN FEDERAL COURT. The state shall
 14 defend any employee, and shall indemnify and hold
 15 harmless an employee of the state in any action
 16 commenced in federal court under section 1983, Title
 17 42, United States Code, against the employee for acts
 18 of the employee while acting in the scope of
 19 employment. ~~if-the-acts-or-omissions-of-the-employee,~~
 20 ~~upon-which-the-action-is-based,-are-within-the~~
 21 ~~exceptions-to-claim-as-defined-in-section-25A.2,~~
 22 ~~subsection-5,-paragraph-"b",-the-state-shall-not~~
 23 ~~indemnify-or-hold-harmless-the-employee.~~ However,
 24 the duty to indemnify and hold harmless shall not
 25 apply to awards of punitive damages. The duty to
 26 indemnify and hold harmless shall not apply and the
 27 state shall be entitled to restitution from an employee
 28 if, in an action commenced by the state against the
 29 employee, it is determined that the conduct of the
 30 employee upon which the claim or demand was based
 31 constituted a willful and wanton act or omission or
 32 malfeasance in office.
 33 Sec. 4. NEW SECTION. EMPLOYEES. Employees of
 34 the state are".
 35 4. By renumbering as necessary.

H-5759 FILED MARCH 19, 1984 BY JAY of Appanoose
Placed out of order 3/20 (p. 1198)

HOUSE FILE 2487

H-5767

1 Amend the Halvorson amendment H-5480 to House File
 2 2487 as follows:
 3 1. Page 3, by inserting after line 29 the
 4 following:
 5 "Sec. ____ Section 25A.14, Code Supplement 1983,
 6 is amended by adding the following new subsection:
 7 NEW SUBSECTION. 10. A claim based upon or
 8 connected with the failure to adopt, order or implement
 9 the posting or erection of a stop sign, traffic control
 10 signal, or other traffic regulatory sign, signal,
 11 or device."
 12 2. By numbering and renumbering as necessary.

H-5767 FILED MARCH 20, 1984 BY SCHROEDER of Pottawattamie
 RULED NOT GERMANE, THEN WITHDRAWN *(p. 1198)*

HOUSE FILE 2487

H-5758

1 Amend House File 2487 as follows:
2 1. By striking page 3, line 26 through page 4,
3 line 1, and inserting in lieu thereof the following:
4 "Sec. 4. NEW SECTION. 668.3 SETOFF OF CLAIMS
5 AND COUNTERCLAIMS. A claim and counterclaim shall
6 not be set off against each other, except by agreement
7 of both parties. However, if upon motion of either
8 party the court finds that the obligation of either
9 party is likely to be uncollectible, the court may
10 order that both parties make payment to the court
11 for distribution. The court shall distribute the
12 funds received, and shall declare obligations
13 discharged as if the payment to the court by either
14 party had been a payment to the other party and as
15 if the distribution of the funds back to the party
16 making payment had been a payment to that party by
17 the other party."

BY JAY of Appanoose
CHAPMAN of Linn

H-5758 FILED MARCH 19, 1984

Placed out of order 3/20 (p. 1199)

HOUSE FILE 2487

H-5771

1 Amend House amendment H-5480 to House File 2487
2 as follows:
3 1. Page 2, by striking lines 14 through 26, and
4 inserting in lieu thereof the following:
5 "Sec. 3. NEW SECTION. 668.3 SETOFF. A claim
6 and counterclaim shall be set off, and only the
7 difference between them is recoverable in the judgment.
8 However, if either or both of the claims are covered
9 by liability insurance and an insurance carrier's
10 liability under its policy is reduced by reason of
11 the setoff, the insured is entitled to recover from
12 the carrier the amount of the reduction. Amounts
13 so recovered shall be credited against pertinent
14 liability policy limits. For purposes of uninsured
15 motorist and similar coverages, the amounts so
16 recovered shall be treated as payment of those amounts
17 to the insured by the party liable."

H-5771 FILED MARCH 20, 1984 BY GROTH of Buena Vista

LOST (p. 1191)

HOUSE FILE 2487

H-5775

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 3, by inserting after line 29, the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 668.8 COMPARATIVE FAULT
- 6 IN SIGNING. In any action brought against a
- 7 governmental entity under this chapter, and pursuant
- 8 to chapter 25A or 613A, based upon the failure to
- 9 adopt, order or implement the posting or erection
- 10 of a stop sign, traffic control signal, or other
- 11 traffic regulatory sign, signal, or device, the
- 12 governmental entity shall not be liable upon the claim
- 13 unless the act or omission constituted more than
- 14 fifty percent of the total fault assigned to all
- 15 parties."
- 16 2. By numbering and renumbering as necessary.

BY SCHROEDER of Pottawattamie

COOPER of Lucas

H-5775 FILED MARCH 20, 1984

MUHLBAUER of Crawford

LOST (p. 1196)

HOUSE FILE 2487

H-5770

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 1, line 28, by inserting after the word
- 4 "defendants," the word "and".
- 5 2. Page 1, lines 29 and 30, by striking the words
- 6 "or persons who are not parties to the action,".
- 7 3. Page 1, by striking lines 41 and 42, and
- 8 inserting in lieu thereof the word and figure "sec-
- 9 tion 668.7."

BY MCINTEE of Black Hawk

DODERER of Johnson

H-5770 FILED MARCH 20, 1984

LOST (p. 1197)

HOUSE FILE 2487

H-5774

- 1 Amend House amendment H-5480 to House File 2487 as
- 2 follows:
- 3 1. Page 2, by striking lines 9 through 13.
- 4 2. Page 2, by striking lines 27 through 33.
- 5 3. Page 2, by inserting before line 34, the
- 6 following:
- 7 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
- 8 LIABILITY--GOVERNMENTAL ENTITIES. The doctrine of
- 9 joint and several liability does not apply to a
- 10 governmental unit under chapter 25A or 613A, when
- 11 the governmental unit is a defendant."

H-5774 FILED MARCH 20, 1984 BY VARN of Johnson

DIVISION A - LOST, DIVISION B - WITHDRAWN (p. 1195)

(p. 1193)

HOUSE FILE 2487

H-5768

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 2, by striking lines 9 through 13.
- 4 2. Page 2, by striking lines 27 through 33 and
- 5 inserting in lieu thereof the following:
- 6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
- 7 LIABILITY--GOVERNMENTAL ENTITIES. The doctrine of
- 8 joint and several liability does not apply to a gov-
- 9 ernmental unit under chapter 25A or 613A, when the
- 10 governmental unit is a defendant."
- 11 3. Page 2, by inserting before line 34, the
- 12 following:
- 13 "Sec. 5. NEW SECTION. 668.5 JOINT AND SEVERAL
- 14 LIABILITY--NOMINAL PARTIES. In a claim involving
- 15 two or more defendants, the doctrine of joint and
- 16 several liability does not apply to a defendant found
- 17 to bear twenty percent or less of the negligence that
- 18 is assigned to all parties."
- 19 4. By renumbering to conform to this amendment.

H-5768 FILED MARCH 20, 1984 BY VARN of Johnson
LOST (p. 1195)

HOUSE FILE 2487

H-5769

- 1 Amend House amendment H-5480 to House File 2487
- 2 as follows:
- 3 1. Page 2, by striking lines 9 through 13.
- 4 2. Page 2, by striking lines 27 through 33 and
- 5 inserting in lieu thereof the following:
- 6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
- 7 LIABILITY--GOVERNMENTAL ENTITIES. The doctrine of
- 8 joint and several liability does not apply to a gov-
- 9 ernmental unit under chapter 25A or 613A, when the
- 10 governmental unit is a defendant."
- 11 3. Page 2, by inserting before line 34, the follow-
- 12 ing:
- 13 "Sec. 5. NEW SECTION. 668.5 JOINT AND SEVERAL
- 14 LIABILITY--NOMINAL PARTIES. In a claim involving
- 15 two or more defendants, the doctrine of joint and
- 16 several liability does not apply to a defendant found
- 17 to be only nominally at fault."
- 18 4. By renumbering to conform to this amendment.

H-5769 FILED MARCH 20, 1984 BY VARN of Johnson
DIVISION A - WITHDRAWN, DIVISION B - WITHDRAWN (p. 1195)

HOUSE FILE 2487

H-5779

- 1 Amend House File 2487 as follows:
- 2 1. Title page, line 4, by striking the word
- 3 "eliminating" and inserting in lieu thereof the word
- 4 "modifying".

H-5779 FILED MARCH 20, 1984 BY JAY of Appanoose
ADOPTED BY UNANIMOUS CONSENT (p. 1199)

See Judiciary 3/21 do Pass 3/22

Referred 3/29 Amend per 5738v
Do Pass 4/2 (p. 1253)

HOUSE FILE 2487

Judiciary
Doyle, Chair
Dieleman
Horn
Small
Drake
Briles
Gentleman
Mann
Ritsema

HOUSE FILE 2487

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

Re Passed House, Date 4-16-84 (p. 2644) Passed Senate, Date 4-5-84 (p. 1341)

Vote: Ayes 68 Nays 30 Vote: Ayes 34 Nays 15

Approved May 17, 1984

Repassed Senate 4-17-84 (p. 1586)
42-6

A BILL FOR

1 An Act relating to liability in tort by establishing
2 comparative fault as the basis for liability in relation
3 to claims for damages arising from injury to or death of
4 a person or harm to property and modifying governmental
5 immunity for certain public improvements and places.

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

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Contents of the bill is
all new language.
(As Amended)

1 Section 1. NEW SECTION. 668.1 FAULT DEFINED.

2 1. As used in this chapter, "fault" means one or more
3 acts or omissions that are in any measure negligent or reck-
4 less toward the person or property of the actor or others,
5 or that subject a person to strict tort liability. The term
6 also includes breach of warranty, unreasonable assumption
7 of risk not constituting an enforceable express consent, mis-
8 use of a product for which the defendant otherwise would be
9 liable, and unreasonable failure to avoid an injury or to
10 mitigate damages.

11 2. The legal requirements of cause in fact and proximate
12 cause apply both to fault as the basis for liability and to
13 contributory fault.

5735 14 Sec. 2. NEW SECTION. 668.2 COMPARATIVE FAULT--EFFECT.

15 1. Contributory fault shall not bar recovery in an action
16 by a person or the person's legal representative to recover
17 damages for fault resulting in death or in injury to person
18 or property, but any damages allowed shall be diminished in
19 proportion to the amount of fault attributable to the person
20 recovering.

21 2. In the trial of a claim involving the fault of more
22 than one party to the claim, including third-party defendants,
23 persons who have been released pursuant to section 668.7,
24 or persons who are not parties to the action, the court,
25 unless otherwise agreed by all parties, shall instruct the
26 jury to answer special interrogatories or, if there is no
27 jury, shall make findings, indicating all of the following:

28 a. The amount of damages each claimant will be entitled
29 to recover if contributory fault is disregarded.

30 b. The percentage of the total fault allocated to each
31 claimant, defendant, third-party defendant, person who has
32 been released from liability under section 668.7, and person
33 who is determined to have been at fault but who is not a party
34 to the action. For this purpose the court may determine that
35 two or more persons are to be treated as a single party, but

1 the court shall disregard the rule of joint and several
2 liability of defendants.

3 3. In determining the percentages of fault, the trier
4 of fact shall consider both the nature of the conduct of each
5 party and the extent of the causal relation between the conduct
6 and the damages claimed.

7 4. The court shall determine the amount of damages payable
8 to each claimant by each other party, if any, in accordance
9 with the findings of the court or jury.

10 5. The liability of a party, if any, is limited to that
11 percentage of the damages that is equal to the percentage
12 of fault chargeable to that party and the rule of joint and
13 several liability of defendants does not apply.

14 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim and
15 counterclaim shall not be set off against each other, except
16 by agreement of both parties. However, if upon motion of
17 either party the court finds that the obligation of either
18 party is likely to be uncollectible, the court may order that
19 both parties make payment to the court for distribution.
20 The court shall distribute the funds received, and shall
21 declare obligations discharged as if the payment to the court
22 by either party had been a payment to the other party and
23 as if the distribution of the funds back to the party making
24 the payment had been a payment to that party by the other
25 party.

5738 26 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY.
27 The common law rule of joint and several liability of joint
28 tort-feasors does not apply under this chapter. The liability
29 of a party, if any, is limited to that percentage of the
30 damage that is equal to the percentage of fault chargeable
31 to that party.

32 Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

33 1. Contribution is available to a person who enters into
34 a settlement with a claimant only if the liability of the
35 person against whom contribution is sought has been

5738 1 extinguished and only to the extent that the amount paid in
2 settlement was reasonable. The liability of a person for
3 contribution is subject to the limitation stated in section
4 668.2, subsections 4 and 5.

5738 5 2. A person who obtains a release from a claimant under
5790 6 section 668.7 is immune from indemnity or contribution.

7 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

8 1. If the percentages of fault of each of the parties
9 to a claim for contribution have not been established by the
10 court, contribution may be enforced in a separate action.

11 2. A claim for contribution is enforceable only upon
12 satisfaction of one of the following sets of conditions:

13 a. The person bringing the action for contribution must
14 have discharged the liability of the person from whom
15 contribution is sought by payment made within the period of
16 the statute of limitations applicable to the claimant's right
17 of action and must have commenced the action for contribution
18 within one year after the date of that payment.

19 b. The person seeking contribution must have agreed while
20 the action of the claimant was pending to discharge the
21 liability of the person from whom contribution is sought and
22 within one year after the date of the agreement must have
23 discharged that liability and commenced the action for
24 contribution.

25 Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A release,
26 covenant not to sue, or similar agreement entered into by
27 a claimant and a person liable discharges that person from
28 all liability for contribution, but it does not discharge
29 any other persons liable upon the same claim unless it so
30 provides. However, the claim of the releasing person against
31 other persons is reduced by the amount of the released person's
32 equitable share of the obligation, as determined in section
33 668.2, subsections 4 and 5.

5738 34 Sec. 8. NEW SECTION. 668.8 COMMENCEMENT OF ACTION.

35 The filing of the petition commences the action against all

1 parties, whether or not initially named, who may be assessed
2 any percentage of negligence under this chapter.

57353 Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.

4 1. If an insurance company, for the purpose of structuring
5 payments for which it may be liable, assigns a percentage
6 of negligence to a claimant in settlement negotiations, the
7 percentage must be stated in writing to the claimant and the
8 writing must contain the following language:

9 "The assignment of negligence contained in this notice
10 is not an adjudication, but is merely an estimate. You are
11 not obligated to accept our determination and have the right
12 to go to small claims court, district court, or any other
13 court with jurisdiction to have your percentage of negligence
14 adjudicated. If the court's determination is that you are
15 not negligent or the court finds that you are negligent and
16 our estimation is ten percent or higher in comparison to the
17 court's determination, we shall be liable to pay your court
18 costs, attorney's fees, your percentage of negligence, and
19 up to two thousand dollars or fifty percent of the amount
20 in dispute, whichever is higher."

21 2. If an insurance company notifies a claimant that the
22 company has assigned the claimant a percentage of negligence,
23 and that the percentage will be used to reduce the claimant's
24 recovery, and the claimant subsequently obtains a court
25 determination that the claimant is not negligent, or that
26 the claimant is negligent and the company's assignment is
27 ten percent or higher in comparison to the court's
28 determination, the insurance company shall be liable for all
29 of the following:

30 a. The court costs and reasonable attorney's fees incurred
31 by the claimant.

32 b. The payment of the claim disregarding any percentage
33 of negligence on the part of the claimant.

34 c. Two thousand dollars or fifty percent of the contested
35 amount of the claim, whichever is greater.

1 3. All settlement offers by an insurance company containing
2 an assigned percentage of negligence to a claimant shall be
3 made in writing to the claimant. A person violating this
4 requirement commits a simple misdemeanor.

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5 Sec. 10. Section 364.12, subsection 2, paragraph b, Code
6 1983, as amended by House File 359, section 1, 1983 Session,
7 is amended by striking the paragraph and inserting in lieu
8 thereof the following:

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9 b. The abutting property owner is responsible for the
10 removal of the natural accumulations of snow and ice from
11 the sidewalks and may be liable for damages caused by the
12 failure of the abutting property owner to use reasonable care
13 in the removal of the snow or ice. A person traveling upon
14 a sidewalk assumes the risk of injury due to the natural
15 accumulations of snow and ice and may recover damages from
16 an abutting property owner only if all of the following
17 conditions are proven:

18 (1) The dangerous condition of the sidewalk, due to the
19 natural accumulation of snow and ice, was known to the abutting
20 property owner.

21 (2) The abutting property owner failed to take reasonable
22 measures to remedy the dangerous condition within a reasonable
23 time after the condition became known.

24 (3) The failure of the abutting property owner to take
25 action to remedy the condition made injury to the traveling
26 public probable rather than merely possible.

27 A person seeking relief under this paragraph has the burden
28 of proving the existence of all required conditions of
29 liability. All legal or equitable defenses are available
30 to the abutting property owner in an action brought pursuant
31 to this paragraph. If damages are to be awarded under this
32 paragraph against the abutting property owner, the claimant
33 has the burden of proving the amount of the damages. To
34 authorize recovery of more than a nominal amount, facts must
35 exist and be shown by the evidence which afford a reasonable

1 basis for measuring the amount of the claimant's actual
2 damages, and the amount of actual damages shall not be
3 determined by speculation, conjecture or surmise.

4 The city's general duty under this subsection does not
5 include a duty to remove natural accumulations of snow or
6 ice on the sidewalks. However, when the city is the abutting
7 property owner, it has the specific duty of the abutting
8 property owner set forth in this paragraph.

5712> 9 Sec. 11. The supreme court shall submit to the general
10 assembly during the 1985 Session in the manner provided in
11 section 602.4202 changes in the rules of procedure for courts
12 which are necessitated by the enactment of this chapter.

13 Sec. 12. Section 613.3, Code Supplement 1983, is repealed.

14 Sec. 13. Section 619.17, Code 1983, is repealed. This
15 section does not reinstate a rule requiring a claimant to
5738> 16 plead and prove freedom from contributory negligence.

17 Sec. 14. This Act applies only to causes which accrue
18 on or after its effective date.

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HOUSE FILE 2487

5-5738

1 Amend House File 2487 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, line 18, by inserting after the word
4 "property" the words "unless the claimant bears a
5 greater percentage of fault than the combined
6 percentage of fault attributed to the defendants,
7 third-party defendants and persons who have been
8 released pursuant to section 668.7".

9 2. Page 1, line 22, by striking the word
10 "defendants," and inserting in lieu thereof the words
11 "defendants and".

12 3. Page 1, by striking line 24, and inserting
13 in lieu thereof the words "the court,".

14 4. Page 1, line 31, by inserting after the words
15 "third-party defendant," the word "and".

16 5. Page 1, lines 32 through 34, by striking the
17 words ", and person who is determined to have been
18 at fault but who is not a party to the action".

573 19 6. Page 1, line 35, by striking the words "party,
20 but" and inserting in lieu thereof the word "party."

574 21 7. Page 2, by striking lines 1 and 2.

575 22 8. Page 2, by striking lines 10 through 13, and
23 inserting in lieu thereof the following:

24 "5. If the claim is tried to a jury, the court
25 shall not give instructions or permit evidence or
26 argument with respect to the effects of the answers
27 to be returned to the interrogatories submitted under
28 this section."

576 29 9. Page 2, by striking lines 26 through 31, and
577 30 inserting in lieu thereof the following:

578 31 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
579 32 LIABILITY. The common-law doctrine of joint and
33 several liability shall not apply to a defendant who
34 is found to bear less than twenty percent of the total
35 fault allocated to all parties or who is found to
36 bear less fault than the claimant. This section shall
37 apply only to cases brought under this chapter based
38 upon negligence."

39 10. Page 3, line 4, by striking the words and
40 figures "subsections 4 and 5" and inserting in lieu
41 thereof the word and figure "subsection 4".

578 42 11. Page 3, by striking lines 5 and 6.

43 12. Page 3, line 33, by striking the word and
44 figures "subsections 4 and 5" and inserting in lieu
45 thereof the word and figure "subsection 4".

46 13. By striking page 3, line 34, through page
47 4, line 2, and inserting in lieu thereof the following:

48 "Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE.

49 The filing of a petition under this chapter tolls
50 the statute of limitations for the commencement of

1 an action against all parties, whether or not initially
2 named, who may be assessed any percentage of fault
3 under this chapter."

4 14. By striking page 4, line 3, through page 5,
5 line 4, and inserting in lieu thereof the following:

57536 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.

7 1. A settlement offer by an insurance company
8 containing an assigned percentage of fault to a
9 claimant must be made in writing to the claimant.

10 2. If a court determines that the percentage of
11 fault chargeable to a claimant, as determined by the
12 court, is less than the percentage assigned by an
13 insurance company under subsection 1 by more than
14 ten percent of the total percentage of fault, the
15 finding shall raise a presumption of bad faith
16 negotiation on the part of the insurance company.

17 3. A claimant shall have the right to petition
18 the court for a judgment against an insurer for bad
19 faith negotiation under this section."

20 15. By striking page 5, line 5, through page 6,
21 line 8.

22 16. Page 6, by inserting after line 16 the
23 following:

24 "Sec. 14. The commissioner of insurance shall
25 study and report to the legislative council and the
26 senate committee on judiciary and the house committee
27 on judiciary and law enforcement by January 15, 1985,
28 on the issue of insurance practices developed in
29 response to the adoption of comparative fault in the
30 state of Iowa. The report shall include proposals
31 for legislative action and an explanation of the steps
32 taken by the department of insurance to alleviate
33 problems in insurance practice under comparative
34 fault."

35 17. Page 6, line 17, by striking the words "causes
36 which accrue" and inserting in lieu thereof the words
37 "cases tried".

38 18. By renumbering as necessary.

S-5738 FILED BY COMMITTEE ON JUDICIARY
APRIL 2, 1984 DONALD V. DOYLE, CHAIR

Adopted as amended by
5753, 5774, 5779, 5793, 5799 4/5

A - Adopted (1340)
B - Adopted (1336)
C - Adopted as amended (1339) 5799
D - Adopted 4/5 (1333)
E - Adopted as amended by 5753 (1338)
F - Adopted as " 5774 5779 (1339)
G - Adopted (1335)
H - Adopted as amended by 5793 (1336)

HOUSE FILE 2487

S-5753

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 2, by striking lines 6 through 19, and
5 inserting in lieu thereof the following:

6 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.

7 It shall be an unfair trade practice, as defined in
8 chapter 507B, if an insurer assigns a percentage of
9 fault to a claimant, for the purpose of reducing a
10 settlement, when there exists no reasonable evidence
11 upon which the assigned percentage of fault could
12 be based. The prohibitions and sanctions of chapter
13 507B shall apply to violations of this section."

S-5753 FILED BY JULIA B. GENTLEMAN
APRIL 3, 1984

Adopted 4/5 (p. 1336)

HOUSE FILE 2487

S-5762

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 31 through 38 and
5 inserting in lieu thereof the following:
6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
7 LIABILITY. The common-law doctrine of joint and
8 several liability shall apply only to defendants who
9 are found to bear more than fifty percent of the total
10 fault allocated to all parties. This section shall
11 apply only to cases brought under this chapter based
12 upon negligence."

S-5762 FILED

BY WILLIAM W. DIELEMAN

APRIL 4, 1984

Out of order 4/5 (p. 1333)

HOUSE FILE 2487

S-5772

1 Amend House File 2487 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 6, by inserting after line 8 the following:
4 "Sec. 11. Section 613A.12, Code Supplement 1983,
5 is amended to read as follows:
6 613A.12 OFFICERS AND EMPLOYEES --PERSONAL
7 LIABILITY. All officers and employees of
8 municipalities are not personally liable for any claim
9 which is exempted under section 613A.4, except a claim
10 for punitive damages, and actions permitted under
11 section 85.20. An officer or employee of a
12 municipality is not liable for punitive damages as
13 a result of acts in the performance of a law
14 ~~enforcement or emergency duty~~ their duties, unless
15 actual malice or willful, wanton and reckless
16 misconduct is proven."
17 2. By renumbering as necessary.

S-5772 FILED

BY NORMAN G. RODGERS

APRIL 4, 1984

Adopted 4/5 (p. 1341)

JOHN N. NYSTROM

JAMES BRILES

ALVIN MILLER

CALVIN O. HULTMAN

CHARLES MILLER

LEE HOLT

JAMES WELLS

HOUSE FILE 2487

S-5614

1 Amend House File 2487 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 5, by inserting after line 4 the following:

4 "Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL
5 EXEMPTIONS. In any action brought pursuant to this
6 chapter, the state or a municipality shall not be
7 assigned a percentage of fault for any of the
8 following:

9 1. The failure to place, erect, or install a stop
10 sign, traffic control device, or other regulatory
11 sign as defined in the uniform manual for traffic
12 control devices adopted pursuant to section 321.252.
13 However, once a regulatory device has been placed,
14 erected or installed, the state or municipality may
15 be assigned a percentage of fault for its failure
16 to maintain the device.

17 2. The failure to remove natural or unnatural
18 accumulations of snow or ice or to place sand, salt,
19 or other abrasive material on a highway, road, or
20 street if the state or municipality establishes that
21 it has complied with its policy or level of service
22 for snow and ice removal or placing sand, salt or
23 other abrasive material on its highways, roads, or
24 streets.

25 3. For contribution or indemnity, unless the party
26 claiming contribution or indemnity has given the
27 municipality notice of this claim as provided in
28 section 613A.5."

29 2. By renumbering as necessary.

S-5614 FILED

BY JOHN JENSEN

MARCH 28, 1984

Out of order 4/5 (p. 1340)

HOUSE FILE 2487

S-5686

1 Amend House File 2487 as amended, passed and
2 reprinted by the House as follows:

3 1. By striking page 5, line 9 through page 6,
4 line 3 and inserting in lieu thereof the following:

5 "b. The abutting property owner may be required
6 by ordinance to remove the natural accumulations of
7 snow and ice from the sidewalks within a reasonable
8 length of time. A person traveling upon a sidewalk
9 assumes the risk of injury due to the natural
10 accumulations of snow and ice."

S-5686 FILED

BY EDGAR H. HOLDEN

MARCH 30, 1984

DON GETTINGS

Out of order 4/5 (p. 1346)

MILO COLTON

S-5785

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 2, by striking line 21, and inserting
5 in lieu thereof the following: "line 8, and inserting
6 in lieu thereof the following:

7 "Sec. 10. Section 25A.14, subsection 9, Code
8 Supplement 1983, is amended to read as follows:

9 9. Any claim based upon or arising out of a claim
10 of negligent design or specification, negligent
11 adoption of design or specification, or negligent
12 construction or reconstruction of a public improvement
13 as defined in section 384.37, subsection 1, or other
14 public facility that was constructed or reconstructed
15 in accordance with a generally recognized engineering
16 or safety standard, criteria, or design theory in
17 existence at the time of the construction or
18 reconstruction. A claim under this chapter shall
19 not be allowed for failure to upgrade, improve, or
20 alter any aspect of an existing public improvement
21 or other public facility to new, changed, or altered
22 design standards. This subsection shall not apply
23 to claims based upon gross negligence. This subsection
24 takes effect July 1, ~~1984~~ 1985 and applies to all
25 cases tried or retried on or after July 1, ~~1984~~ 1985.

26 Sec. 11. Section 613A.4, subsection 8, unnumbered
27 paragraph 1, Code Supplement 1983, is amended to read
28 as follows:

29 8. Any claim based upon or arising out of a claim
30 of negligent design or specification, negligent
31 adoption of design or specification, or negligent
32 construction or reconstruction of a public improvement
33 as defined in section 384.37, subsection 1, or other
34 public facility that was constructed or reconstructed
35 in accordance with a generally recognized engineering
36 or safety standard, criteria, or design theory in
37 existence at the time of the construction or
38 reconstruction. A claim under this chapter shall
39 not be allowed for failure to upgrade, improve, or
40 alter any aspect of an existing public improvement
41 or other public facility to new, changed, or altered
42 design standards. This subsection shall not apply
43 to claims based upon gross negligence. This subsection
44 takes effect July 1, ~~1984~~ 1985 and applies to all
45 cases tried or retried on or after July 1, ~~1984~~ 1985."

46 2. By renumbering as necessary.

S-5785 FILED

BY TOM MANN, JR.

APRIL 5, 1984

RULED OUT OF ORDER (p. 1335)

HOUSE FILE 2487

S-5779

1 Amend the Judiciary Committee amendment, S-5738,
2 to House File 2487 as amended, passed and reprinted
3 by the House as follows:

4 1. Page 2, by inserting after line 19 the
5 following:

6 "Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL
7 EXEMPTIONS. In any action brought pursuant to this
8 chapter, the state or a municipality shall not be
9 assigned a percentage of fault for any of the
10 following:

11 1. The failure to place, erect, or install a stop
12 sign, traffic control device, or other regulatory
13 sign as defined in the uniform manual for traffic
14 control devices adopted pursuant to section 321.252.
15 However, once a regulatory device has been placed,
16 erected or installed, the state or municipality may
17 be assigned a percentage of fault for its failure
18 to maintain the device.

19 2. The failure to remove natural or unnatural
20 accumulations of snow or ice or to place sand, salt,
21 or other abrasive material on a highway, road, or
22 street if the state or municipality establishes that
23 it has complied with its policy or level of service
24 for snow and ice removal or placing sand, salt or
25 other abrasive material on its highways, roads, or
26 streets.

27 3. For contribution or indemnity, unless the party
28 claiming contribution or indemnity has given the
29 municipality notice of this claim as provided in
30 section 613A.5."

31 2. By renumbering as necessary.

S-5779 FILED & ADOPTED BY JOHN W. JENSEN

APRIL 5, 1984 *W/J 4/5 (p. 1335)*

Reconsidered & Adopted (p. 1337)

HOUSE FILE 2487

S-5784

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 1, by striking lines 19 through 45 and
5 inserting in lieu thereof the following:

6 "6. Page 2, by inserting after line 13 the
7 following:

8 "6. If a claim is tried to a jury, the court shall
9 not give instructions or permit evidence or argument
10 with respect to the effects of the answers to be
11 returned to the interrogatories submitted under this
12 section."

13 7. Page 3, by striking lines 5 and 6."

14 2. By renumbering as necessary.

S-5784 FILED

APRIL 5, 1984

WITHDRAWN (*p. 1331*)

BY RICHARD F. DRAKE

DON GETTINGS

JULIA GENTLEMAN

EDGAR H. HOLDEN

WILLIAM D. PALMER

HOUSE FILE 2487

S-5774

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 20 and 21 and
5 inserting in lieu thereof the following:
6 "Sec. 10. Section 364.12, subsection 2, paragraph
7 b, Code 1983, as amended by House File 359, enacted
8 by the Seventieth General Assembly, 1984 Session,
9 is amended by striking the paragraph and inserting
10 in lieu thereof the following:
11 b. The abutting property owner may be required
12 by ordinance to remove the natural accumulations of
13 snow and ice from the sidewalks within a reasonable
14 length of time. A person traveling upon a sidewalk
15 assumes the risk of injury due to the natural
16 accumulations of snow and ice.
17 If damages are to be claimed under this paragraph,
18 the claimant has the burden of proving the amount
19 of the damages. To authorize recovery of more than
20 a nominal amount, facts must exist and be shown by
21 the evidence which afford a reasonable basis for
22 measuring the amount of the claimant's actual damages,
23 and the amount of actual damages shall not be
24 determined by speculation, conjecture or surmise.
25 The city's general duty under this subsection does
26 not include a duty to remove natural accumulations
27 of snow or ice on the sidewalks. However, when the
28 city is the abutting property owner, it has the
29 specific duty of the abutting property owner set forth
30 in this paragraph."
31 2. By renumbering as necessary.

S-5774 FILED

APRIL 4, 1984

Adopted 4/5 (p. 1335)
Reconciled & Adopted (p. 1338)

BY EDGAR H. HOLDEN

MILO COLTON

DON E. GETTINGS

HOUSE FILE 2487

S-5775

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 20 and 21.
5 2. By renumbering as necessary.

S-5775 FILED

APRIL 4, 1984

Out of order 4/5 (p. 1335)

BY EDGAR H. HOLDEN

MILO COLTON

DON E. GETTINGS

S-5773

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 2, by striking lines 20 and 21 and
5 inserting in lieu thereof the following:

6 "Sec. 10. Section 364.12, subsection 2, paragraph
7 b, Code 1983, as amended by House File 359, enacted
8 by the Seventieth General Assembly, 1984 Session,
9 is amended by striking the paragraph and inserting
10 in lieu thereof the following:

11 b. The abutting property owner may be required
12 by ordinance to remove the natural accumulations of
13 snow and ice from the sidewalks within a reasonable
14 length of time. A person traveling upon a sidewalk
15 assumes the risk of injury due to the natural
16 accumulations of snow and ice, and may claim damages
17 only if all of the following conditions are proven:

18 (1) The natural accumulation of snow and ice was
19 not known by the claimant to be a dangerous condition.

20 (2) The natural accumulation of snow or ice was
21 known to the defendant.

22 (3) The defendant failed to take reasonable
23 measures to remove the natural accumulation of snow
24 or ice within a reasonable time after the condition
25 became known to the defendant.

26 A person seeking relief under this paragraph has
27 the burden of proving the existence of all required
28 conditions of liability. All legal or equitable
29 defenses are available to the defendant in an action
30 brought pursuant to this paragraph. If damages are
31 to be claimed under this paragraph, the claimant has
32 the burden of proving the amount of the damages.
33 To authorize recovery of more than a nominal amount,
34 facts must exist and be shown by the evidence which
35 afford a reasonable basis for measuring the amount
36 of actual damages, and the amount of actual damages
37 shall not be determined by speculation, conjecture
38 or surmise.

39 The city's general duty under this subsection does
40 not include a duty to remove natural accumulations
41 of snow or ice on the sidewalks. However, when the
42 city is the abutting property owner, it has the
43 specific duty of the abutting property owner set forth
44 in this paragraph."

45 2. By renumbering as necessary.

S-5773 FILED
APRIL 4, 1984
Loat 4/5 (p. 1334)

BY EDGAR H. HOLDEN
MILO COLTON
DON E. GETTINGS

HOUSE FILE 2487

S-5790

- 1 Amend House File 2487 as amended, passed, and re-
- 2 printed by the House as follows:
- 3 1. Page 3, line 6, by striking the words "indem-
- 4 nity or".

S-5790 FILED

APRIL 5, 1984

RULED OUT OF ORDER (p. 1340)

BY TOM MANN JR.

C. JOSEPH COLEMAN

HOUSE FILE 2487

S-5793

- 1 Amend the amendment S-5738 to House File 2487 as
- 2 amended, passed and reprinted by the House as follows:
- 3 1. Page 2, line 37, by striking the word "tried"
- 4 and inserting in lieu thereof the words "filed or
- 5 commenced".

S-5793 FILED & ADOPTED

APRIL 5, 1984

RULED OUT OF ORDER (p. 1335)

BY DONALD V. DOYLE

HOUSE FILE 2487

S-5797

- 1 Amend Senate amendment S-5738 to House File 2487
- 2 as amended, passed, and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 22 through 24, and
- 5 inserting in lieu thereof the following:
- 6 "8. Page 2, by inserting after line 13, the
- 7 following:
- 8 "6. If a claim is tried to a jury, the court".
- 9 2. By renumbering as necessary.

S-5797 FILED

APRIL 5, 1984

RULED OUT OF ORDER (p. 1333)

BY RICHARD F. DRAKE

WILLIAM D. PALMER EDGAR HOLDEN
DON GETTINGS

SENATE 5
APRIL 6, 1984

HOUSE FILE 2487

S-5780

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 31 through 38 and
5 inserting in lieu thereof the following:
6 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
7 LIABILITY. The common-law doctrine of joint and
8 several liability shall apply only to defendants who
9 are found to bear more than fifty percent of the total
10 fault allocated to all parties."

S-5780 FILED

BY WILLIAM DIELEMAN

APRIL 5, 1984

RULED OUT OF ORDER (p. 1333)

HOUSE FILE 2487

S-5781

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 35 through 37.
5 2. By renumbering as necessary.

S-5781 FILED & LOST

BY TOM MANN, JR.

APRIL 5, 1984 (p. 1335)

C. JOSEPH COLEMAN

HOUSE FILE 2487

S-5782

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 29 through 38 and
5 inserting in lieu thereof the following:
6 "9. Page 2, by striking lines 26 through 31."

S-5782 FILED

BY TOM MANN, JR.

APRIL 5, 1984

C. JOSEPH COLEMAN

RULED OUT OF ORDER (p. 1333)

HOUSE FILE 2487

S-5783

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 1, by striking lines 3 through 8.
5 2. By renumbering as necessary.

S-5783 FILED & LOST

BY TOM MANN, JR.

APRIL 5, 1984 (p. 1346)

C. JOSEPH COLEMAN

HOUSE FILE 2487

S-5789

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 20 and 21, and
5 inserting in lieu thereof the following:
6 "15. By striking page 5, line 5, through page
7 6, line 8, and inserting in lieu thereof the following:
8 "Sec. 10. Section 364.12, subsection 2, paragraph
9 b, Code 1983, as amended by House File 359, section
10 1, 1984 Session, is amended by striking the paragraph
11 and inserting in lieu thereof the following:
12 b. The abutting property owner is responsible
13 for the removal of the natural accumulations of snow
14 and ice from the sidewalks. A person traveling upon
15 a sidewalk assumes the risk of injury due to the
16 natural accumulations of snow and ice and may recover
17 damages only if all of the following conditions are
18 proven:
19 (1) The dangerous condition of the sidewalk, due
20 to the natural accumulation of snow and ice, was known
21 to the abutting property owner.
22 (2) The abutting property owner failed to take
23 reasonable measures to remedy the dangerous condition
24 within a reasonable time after the condition became
25 known.
26 (3) The failure of the abutting property owner
27 to take action to remedy the condition made injury
28 to the traveling public probable rather than merely
29 possible.
30 A person seeking relief under this paragraph has
31 the burden of proving the existence of all required
32 conditions of liability. All legal or equitable
33 defenses are available in an action brought pursuant
34 to this paragraph. If damages are to be awarded under
35 this paragraph, the claimant has the burden of proving
36 the amount of the damages. To authorize recovery
37 of more than a nominal amount, facts must exist and
38 be shown by the evidence which afford a reasonable
39 basis for measuring the amount of the claimant's
40 actual damages, and the amount of actual damages shall
41 not be determined by speculation, conjecture or
42 surmise.
43 The city's general duty under this subsection does
44 not include a duty to remove natural accumulations
45 of snow or ice on the sidewalks. However, when the
46 city is the abutting property owner, it has the
47 specific duty of the abutting property owner set forth
48 in this paragraph."

SENATE 11
APRIL 6, 1984

HOUSE FILE 2487

S-5787

- 1 Amend Senate amendment S-5738 to House File 2487
- 2 as amended, passed and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 3 through 8.
- 5 2. Page 1, by striking lines 29 through 38, and
- 6 inserting in lieu thereof the following:
- 7 "9. Page 2, by striking lines 26 through 31."
- 8 3. By renumbering as necessary.

S-5787 FILED

BY THOMAS MANN, JR.

APRIL 5, 1984

RULED OUT OF ORDER (p. 1341)

HOUSE FILE 2487

S-5788

- 1 Amend Senate amendment S-5738 to House File 2487
- 2 as amended, passed and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 24 through 28 and
- 5 inserting in lieu thereof the following:
- 6 "5. If the claim is tried to a jury, the court
- 7 shall give instructions and permit evidence and
- 8 argument with respect to the effects of the answers
- 9 to be returned to the interrogatories submitted under
- 10 this section.
- 11 6. In an action brought under this chapter and
- 12 tried to a jury, the court shall not discharge the
- 13 jury until the court has determined that the verdict
- 14 or verdicts are consistent with the total damages
- 15 and percentages of fault, and if inconsistencies exist
- 16 the court shall do all of the following:
- 17 1. Inform the jury of the inconsistencies.
- 18 2. Order the jury to resume deliberations to
- 19 correct the inconsistencies.
- 20 3. Instruct the jury that it is at liberty to
- 21 change any portion or portions of the verdicts to
- 22 correct the inconsistencies."

S-5788 FILED

BY ARTHUR A. SMALL, JR.

APRIL 5, 1984

RULED OUT OF ORDER (p. 1333)

HOUSE FILE 2487

S-5806

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by inserting after line 21, the
5 following:
6 "16. By striking page 5, line 5, through page
7 6, line 8."
8 2. By renumbering as necessary.

S-5806 FILED & ADOPTED
APRIL 5, 1984 (p. 1338)

BY DONALD V. DOYLE

HOUSE FILE 2487

S-5807

1 Amend Senate amendment S-5738 to House File 2487
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 5 through 19 and
5 inserting in lieu thereof the following: "line 4,
6 and inserting in lieu thereof the following:
7 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.
8 1. It shall be an unfair trade practice, as defined
9 in chapter 507B, if an insurer assigns a percentage
10 of fault to a claimant, for the purpose of reducing
11 a settlement, when there exists no reasonable evidence
12 upon which the assigned percentage of fault could
13 be based. The prohibitions and sanctions of chapter
14 507B shall apply to violations of this section.
15 2. Any insurer found by the insurance commissioner
16 to have violated the provisions of subsection 1 must
17 notify all policy holders of the insurer of the
18 determined violation and shall notify all agents
19 representing that insurer that the agent must notify
20 all potential policy holders of the violation." "

S-5807 FILED & WITHDRAWN
APRIL 5, 1984 (p. 1338)

BY ARTHUR A. SMALL, JR.

SENATE 15
APRIL 6, 1984

HOUSE FILE 2487

S-5798

- 1 Amend Senate amendment S-5738 to House File 2487
- 2 as amended, passed, and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 19 through 21.
- 5 2. Page 1, by striking lines 29 through 41.
- 6 3. Page 1, by striking lines 43 through 45.
- 7 4. By renumbering as necessary.

S-5798 FILED
APRIL 5, 1984
ADOPTED (p. 1332)

BY RICHARD F. DRAKE
WILLIAM D. PALMER
EDGAR H. HOLDEN
DON GETTINGS

HOUSE FILE 2487

S-5799

- 1 Amend Senate amendment S-5738 to House File 2487
- 2 as amended, passed and reprinted by the House as
- 3 follows:
- 4 1. Page 1, by striking lines 22 through 28, and
- 5 inserting in lieu thereof the following:
- 6 "8. Page 2, by inserting after line 13, the
- 7 following:
- 8 "6. If the claim is tried to a jury, the court
- 9 shall give instructions and permit evidence and
- 10 argument with respect to the effects of the answers
- 11 to be returned to the interrogatories submitted under
- 12 this section.
- 13 7. In an action brought under this chapter and
- 14 tried to a jury, the court shall not discharge the
- 15 jury until the court has determined that the verdict
- 16 or verdicts are consistent with the total damages
- 17 and percentages of fault, and if inconsistencies exist
- 18 the court shall do all of the following:
- 19 1. Inform the jury of the inconsistencies.
- 20 2. Order the jury to resume deliberations to
- 21 correct the inconsistencies.
- 22 3. Instruct the jury that it is at liberty to
- 23 change any portion or portions of the verdicts to
- 24 correct the inconsistencies.""

S-5799 FILED & ADOPTED
APRIL 5, 1984 (p. 1332)

BY ARTHUR A. SMALL, JR.

HOUSE FILE 2487

S-5804

Amend Senate amendment S-5738 to House File 2487
as amended, passed and reprinted by the House as
follows:

1. Page 2, by inserting after line 21 the
following:

" Page 6, by inserting before line 9 the
following:

"Sec. 10. Section 25A.14, subsection 9, Code
Supplement 1983, is amended to read as follows:

9. Any claim based upon or arising out of a claim
of negligent design or specification, negligent
adoption of design or specification, or negligent
construction or reconstruction of a public improvement
as defined in section 384.37, subsection 1, or other
public facility that was constructed or reconstructed
in accordance with a generally recognized engineering
or safety standard, criteria, or design theory in
existence at the time of the construction or
reconstruction. A claim under this chapter shall
not be allowed for failure to upgrade, improve, or
alter any aspect of an existing public improvement
or other public facility to new, changed, or altered
design standards. This subsection shall not apply
to claims based upon gross negligence. This subsection
takes effect July 1, ~~1984~~ 1985 and applies to all
cases tried or retried on or after July 1, ~~1984~~ 1985.

Sec. 11. Section 613A.4, subsection 8, unnumbered
paragraph 1, Code Supplement 1983, is amended to read
as follows:

8. Any claim based upon or arising out of a claim
of negligent design or specification, negligent
adoption of design or specification, or negligent
construction or reconstruction of a public improvement
as defined in section 384.37, subsection 1, or other
public facility that was constructed or reconstructed
in accordance with a generally recognized engineering
or safety standard, criteria, or design theory in
existence at the time of the construction or
reconstruction. A claim under this chapter shall
not be allowed for failure to upgrade, improve, or
alter any aspect of an existing public improvement
or other public facility to new, changed, or altered
design standards. This subsection shall not apply
to claims based upon gross negligence. This subsection
takes effect July 1, ~~1984~~ 1985 and applies to all
cases tried or retried on or after July 1, ~~1984~~ 1985."

2. By renumbering as necessary.

S-5804 FILED & LOST
APRIL 5, 1984 (p. 1337)

BY TOM MANN, JR.

SENATE AMENDMENT TO HOUSE FILE 2487

H-6147

1 Amend House File 2487 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, line 18, by inserting after the word
4 "property" the words "unless the claimant bears a
5 greater percentage of fault than the combined
6 percentage of fault attributed to the defendants,
7 third-party defendants and persons who have been
8 released pursuant to section 668.7".
9 2. Page 1, line 22, by striking the word
10 "defendants," and inserting in lieu thereof the words
11 "defendants and".
12 3. Page 1, by striking line 24, and inserting
13 in lieu thereof the words "the court,".
14 4. Page 1, line 31, by inserting after the words
15 "third-party defendant," the word "and".
16 5. Page 1, lines 32 through 34, by striking the
17 words ", and person who is determined to have been
18 at fault but who is not a party to the action".
19 6. Page 2, by inserting after line 13, the
20 following:
21 "6. If the claim is tried to a jury, the court
22 shall give instructions and permit evidence and
23 argument with respect to the effects of the answers
24 to be returned to the interrogatories submitted under
25 this section.
26 7. In an action brought under this chapter and
27 tried to a jury, the court shall not discharge the
28 jury until the court has determined that the verdict
29 or verdicts are consistent with the total damages
30 and percentages of fault, and if inconsistencies exist
31 the court shall do all of the following:
32 1. Inform the jury of the inconsistencies.
33 2. Order the jury to resume deliberations to
34 correct the inconsistencies.
35 3. Instruct the jury that it is at liberty to
36 change any portion or portions of the verdicts to
37 correct the inconsistencies."
38 7. Page 3, by striking lines 5 and 6.
39 8. Striking page 3, line 34, through page 4, line
40 2, and inserting in lieu thereof the following:
41 "Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE.
42 The filing of a petition under this chapter tolls
43 the statute of limitations for the commencement of
44 an action against all parties, whether or not initially
45 named, who may be assessed any percentage of fault
46 under this chapter."
47 9. Striking page 4, line 3, through page 5, line
48 4, and inserting in lieu thereof the following:
49 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.
50 It shall be an unfair trade practice, as defined in

H-6147

Page Two

1 chapter 507B, if an insurer assigns a percentage of
2 fault to a claimant, for the purpose of reducing a
3 settlement, when there exists no reasonable evidence
4 upon which the assigned percentage of fault could
5 be based. The prohibitions and sanctions of chapter
6 507B shall apply to violations of this section.

7 Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL
8 EXEMPTIONS. In any action brought pursuant to this
9 chapter, the state or a municipality shall not be
10 assigned a percentage of fault for any of the
11 following:

12 1. The failure to place, erect, or install a stop
13 sign, traffic control device, or other regulatory
14 sign as defined in the uniform manual for traffic
15 control devices adopted pursuant to section 321.252.
16 However, once a regulatory device has been placed,
17 erected or installed, the state or municipality may
18 be assigned a percentage of fault for its failure
19 to maintain the device.

20 2. The failure to remove natural or unnatural
21 accumulations of snow or ice or to place sand, salt,
22 or other abrasive material on a highway, road, or
23 street if the state or municipality establishes that
24 it has complied with its policy or level of service
25 for snow and ice removal or placing sand, salt or
26 other abrasive material on its highways, roads, or
27 streets.

28 3. For contribution or indemnity, unless the party
29 claiming contribution or indemnity has given the
30 municipality notice of this claim as provided in
31 section 613A.5.

32 Sec. 11. Section 364.12, subsection 2, paragraph
33 b, Code 1983, as amended by House File 359, enacted
34 by the Seventieth General Assembly, 1984 Session,
35 is amended by striking the paragraph and inserting
36 in lieu thereof the following:

37 b. The abutting property owner may be required
38 by ordinance to remove the natural accumulations of
39 snow and ice from the sidewalks within a reasonable
40 length of time. A person traveling upon a sidewalk
41 assumes the risk of injury due to the natural
42 accumulations of snow and ice.

43 If damages are to be claimed under this paragraph,
44 the claimant has the burden of proving the amount
45 of the damages. To authorize recovery of more than
46 a nominal amount, facts must exist and be shown by
47 the evidence which afford a reasonable basis for
48 measuring the amount of the claimant's actual damages,
49 and the amount of actual damages shall not be
50 determined by speculation, conjecture or surmise.

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1 the city's general duty under this subsection does
2 not include a duty to remove natural accumulations
3 of snow or ice on the sidewalks. However, when the
4 city is the abutting property owner, it has the
5 specific duty of the abutting property owner set forth
6 in this paragraph."

7 10. Striking page 5, line 5, through page 5, line
8 8.

9 11. Page 6, by inserting after line 8 the
10 following:

11 "Sec. 11. Section 613A.12, Code Supplement 1983,
12 is amended to read as follows:

13 ~~613A.12 OFFICERS AND EMPLOYEES---PERSONAL LIABILITY.~~

14 All officers and employees of municipalities are not
15 personally liable for any claim which is exempted
16 under section 613A.4, except a claim for punitive
17 damages, and actions permitted under section 25.26.
18 An officer or employee of a municipality is not liable
19 for punitive damages as a result of acts in the
20 performance of a law-enforcement-or-emergency-duty
21 their duties, unless actual malice or willful, wanton
22 and reckless misconduct is proven."

23 12. Page 6, by inserting after line 16 the
24 following:

25 "Sec. 14. The commissioner of insurance shall
26 study and report to the legislative council and the
27 senate committee on judiciary and the house committee
28 on judiciary and law enforcement by January 15, 1985,
29 on the issue of insurance practices developed in
30 response to the adoption of comparative fault in the
31 state of Iowa. The report shall include proposals
32 for legislative action and an explanation of the steps
33 taken by the department of insurance to alleviate
34 problems in insurance practice under comparative
35 fault."

36 13. Page 6, line 17, by striking the words "claims
37 which accrue" and inserting in lieu thereof the words
38 "cases filed or commenced".

39 14. Renumbering as necessary.

H-6147 FILED APRIL 6, 1984

RECEIVED FROM THE SENATE

House amended (6328) & concurred 4/16 (p. 2044)

HOUSE FILE 2487

H-6328

1 Amend the amendment H-6147 to House File 2487 as
2 amended, passed, and reprinted by the House as follows:
3 1. By striking page 1, line 3, through page 3,
4 line 39, and inserting in lieu thereof the following:
5 "1. Page 1, by inserting after line 13, the follow-
6 ing:
7 "Sec. 2. NEW SECTION. 668.2 PARTY DEFINED.
8 As used in this chapter, unless otherwise required,
9 "party" means any of the following:
10 1. A claimant.
11 2. A person named as defendant.
12 3. A person who has been released pursuant to
13 section 668.7.
14 4. A third-party defendant."
15 2. Page 1, by striking line 14, and inserting
16 in lieu thereof the following:
17 "Sec. 3. NEW SECTION. 668.3 COMPARATIVE FAULT-
18 -EFFECT."
19 3. Page 1, line 16, by striking the words "person
20 or the person's legal representative" and inserting
21 in lieu thereof the word "claimant".
22 4. Page 1, line 18, by inserting after the word
23 "property" the following: "unless the claimant bears
24 a greater percentage of fault than the combined
25 percentage of fault attributed to the defendants,
26 third-party defendants and persons who have been
27 released pursuant to section 668.7".
28 5. Page 1, lines 19 and 20, by striking the words
29 "person recovering" and inserting in lieu thereof
30 the word "claimant".
31 6. Page 1, line 22, by striking the word
32 "defendants," and inserting in lieu thereof the words
33 "defendants and".
34 7. Page 1, by striking line 24, and inserting
35 in lieu thereof the words "the court,".
36 8. Page 1, line 31, by inserting after the words
37 "third-party defendant," the word "and".
38 9. Page 1, lines 32 through 34, by striking the
39 words ", and person who is determined to have been
40 at fault but who is not a party to the action".
41 10. Page 1, line 35, by striking the words "party,
42 but" and inserting in lieu thereof the word "party."
43 11. Page 2, by striking lines 1 and 2.
44 12. Page 2, by striking lines 10 through 13, and
45 inserting in lieu thereof the following:
46 "5. If the claim is tried to a jury, the court
47 shall give instructions and permit evidence and
48 argument with respect to the effects of the answers
49 to be returned to the interrogatories submitted under
50 this section.

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1 6. In an action brought under this chapter and
2 tried to a jury, the court shall not discharge the
3 jury until the court has determined that the verdict
4 or verdicts are consistent with the total damages
5 and percentages of fault, and if inconsistencies exist
6 the court shall do all of the following:

7 a. Inform the jury of the inconsistencies.

8 b. Order the jury to resume deliberations to
9 correct the inconsistencies.

10 c. Instruct the jury that it is at liberty to
11 change any portion or portions of the verdicts to
12 correct the inconsistencies."

13 13. Page 2, by striking lines 14 through 31, and
14 inserting in lieu thereof the following:

15 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
16 LIABILITY. In actions brought under this chapter,
17 the rule of joint and several liability shall not
18 apply to defendants who are found to bear less than
19 fifty percent of the total fault assigned to all
20 parties."

21 14. By striking page 2, line 32, through page
22 3, line 24, and inserting in lieu thereof the
23 following:

24 "Sec. 5. NEW SECTION. 668.5 RIGHT OF
25 CONTRIBUTION.

26 1. A right of contribution exists between or among
27 two or more persons who are liable upon the same
28 indivisible claim for the same injury, death, or harm,
29 whether or not judgment has been recovered against
30 all or any of them. It may be enforced either in
31 the original action or by a separate action brought
32 for that purpose. The basis for contribution is each
33 person's equitable share of the obligations, including
34 the share of fault of a claimant, as determined in
35 accordance with section 668.3.

36 2. Contribution is available to a person who
37 enters into a settlement with the claimant only if
38 the liability of the person against whom contribution
39 is sought has been extinguished and only to the extent
40 that the amount paid in settlement was reasonable.

41 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRI-
42 BUTION.

43 1. If the percentages of fault of each of the
44 parties to a claim for contribution have been
45 established previously by the court as provided in
46 section 668.3, a party paying more than the party's
47 percentage share of damages may recover judgment for
48 contribution upon motion to the court or in a separate
49 action.

50 2. If the percentages of fault of each of the

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1 parties to a claim for contribution have not been
2 established by the court, contribution may be enforced
3 in a separate action, whether or not a judgment has
4 been rendered against either the person seeking
5 contribution or the person from whom contribution
6 is sought.

7 3. If a judgment has been rendered, an action
8 for contribution must be commenced within one year
9 after the judgment becomes final. If a judgment has
10 not been rendered, a claim for contribution is
11 enforceable only upon satisfaction of one of the fol-
12 lowing sets of conditions:

13 a. The person bringing the action for contribution
14 must have discharged the liability of the person from
15 whom contribution is sought by payment made within
16 the period of the statute of limitations applicable
17 to the claimant's right of action and must have
18 commenced the action for contribution within one year
19 after the date of that payment.

20 b. The person seeking contribution must have
21 agreed while the action of the claimant was pending
22 to discharge the liability of the person from whom
23 contribution is sought and within one year after the
24 date of the agreement must have discharged that
25 liability and commenced the action for contribution."

26 15. Page 3, by striking line 33, and inserting
27 in lieu thereof the word and figures "668.3, subsection
28 4."

29 16. By striking page 3, line 34, through page
30 4, line 2, and inserting in lieu thereof the following:

31 "Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE.
32 The filing of a petition under this chapter tolls
33 the statute of limitations for the commencement of
34 an action against all parties who may be assessed
35 any percentage of fault under this chapter."

36 17. By striking page 4, line 3 through page 6,
37 line 8, and inserting in lieu thereof the following:

38 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.
39 It shall be an unfair trade practice, as defined in
40 chapter 507B, if an insurer assigns a percentage of
41 fault to a claimant, for the purpose of reducing a
42 settlement, when there exists no reasonable evidence
43 upon which the assigned percentage of fault could
44 be based. The prohibitions and sanctions of chapter
45 507B shall apply to violations of this section.

46 Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL EXEMP-
47 TIONS. In any action brought pursuant to this chapter,
48 the state or a municipality shall not be assigned
49 a percentage of fault for any of the following:

50 1. The failure to place, erect, or install a stop

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1 sign, traffic control device, or other regulatory
2 sign as defined in the uniform manual for traffic
3 control devices adopted pursuant to section 321.252.
4 However, once a regulatory device has been placed,
5 created or installed, the state or municipality may
6 be assigned a percentage of fault for its failure
7 to maintain the device.

8 2. The failure to remove natural or unnatural
9 accumulations of snow or ice, or to place sand, salt,
10 or other abrasive material on a highway, road, or
11 street if the state or municipality establishes that
12 it has complied with its policy or level of service
13 for snow and ice removal or placing sand, salt or
14 other abrasive material on its highways, roads, or
15 streets.

16 3. For contribution unless the party claiming
17 contribution has given the state or municipality
18 notice of the claim pursuant to sections 25A.13 and
19 613A.5."

20 18. Page 6, lines 9 and 10, by striking the words
21 "to the general assembly during the 1985 session".

22 19. Page 6, by striking lines 14 through 16, and
23 inserting in lieu thereof the following:

24 "Sec. 13. Section 619.17, Code 1983, is amended
25 to read as follows:

26 619.17 CONTRIBUTORY NEGLIGENCE FAULT--BURDEN.
27 ~~In all actions brought in the courts of this state~~
28 ~~to recover damages of a defendant in which contributory~~
29 ~~negligence of the plaintiff, actual or imputed, was~~
30 ~~heretofore a complete defense or bar to recovery,~~
31 the A plaintiff ~~shall~~ does not ~~hereafter,~~ have the
32 burden of pleading and proving his the plaintiff's
33 freedom from contributory ~~negligence, and if the~~
34 fault. If a defendant relies upon negligence of the
35 plaintiff as a complete defense or bar to plaintiff's
36 recovery contributory fault of a plaintiff to diminish
37 the amount to be awarded as compensatory damages,
38 the defendant ~~shall have~~ has the burden of pleading
39 and proving ~~negligence~~ fault of the plaintiff, if
40 any, and that it was a proximate cause of the injury
41 or damage. As used in this section, ~~the term~~
42 "plaintiff" ~~shall include~~ includes a defendant filing
43 a counterclaim or cross-petition, and the term
44 "defendant" ~~shall include~~ includes a plaintiff against
45 whom a counterclaim or cross-petition has been filed."

46 20. Page 6, by inserting after line 16 the follow-
47 ing:

48 "Sec. 14. The commissioner of insurance shall
49 study and report to the legislative council and the
50 senate committee on judiciary and the house committee

1 on judiciary and law enforcement by January 15, 1985,
2 on the issue of insurance practices developed in
3 response to the adoption of comparative fault in the
4 state of Iowa. The report shall include proposals
5 for legislative action and an explanation of the steps
6 taken by the department of insurance to alleviate
7 existing or potential problems in insurance practice
8 under comparative fault."

9 21. Page 6, by striking lines 17 and 18, and
10 inserting in lieu thereof the following:

11 "Sec. 15. This Act, except for section 4, applies
12 to all cases filed on or after July 1, 1984. Section
13 4 of this Act applies to all cases tried on or after
14 July 1, 1984."

15 22. Title page, by striking lines 4 and 5, and
16 inserting in lieu thereof the following: "a person
17 or harm to property and modifying the liability of
18 governmental entities."

19 23. By renumbering as necessary."

BY JAY of Appanoose
HALVORSON of Clayton
SKOW of Guthrie

H-6328 FILED APRIL 16, 1984

ADOPTED (p. 2043)

HOUSE FILE 2487

H-6221

1 Amend amendment H-6147 to House File 2487 as
2 amended, passed and reprinted by the House as follows:

3 1. Page 3, by striking lines 28 through 35 and
4 inserting in lieu thereof the following: "on judiciary
5 and law enforcement by January 15, 1985, on the
6 following issues:

7 1. Insurance practices, including any changes
8 in premiums and rates, developed in response to the
9 adoption of comparative fault in the state of Iowa
10 and the commissioner's explanation of the steps taken
11 by the department of insurance to alleviate existing
12 or potential problems.

13 2. The feasibility of the establishment of a tort
14 loss reparation fund to be created in the office of
15 the treasurer of the state for the purpose of providing
16 remedial assistance to persons injured but unable
17 to recover due to the abolition of the doctrine of
18 joint and several liability, such program to be funded
19 by a surcharge on liability insurance premiums in
20 an actuarially sound manner and administered by the
21 commissioner of insurance according to such rules
22 as the commissioner may deem necessary.
23 These reports shall include proposals for legislative
24 action, funding, and fiscal impacts required by the
25 suggestions contained in the reports."

BY COPENHAVER of Buchanan
HUMMEL of Benton
JAY of Appanoose
ROSENBERG of Story
McINTEE of Black Hawk
BLANSHAN of Greene

H-6221 FILED APRIL 10, 1984

4/15 4/16 (p. 2039)

HOUSE FILE 2487

H-6203

- 1 Amend the amendment H-6147 to House File 2487 as
- 2 amended, passed and reprinted by the House as follows:
- 3 1. Page 1, by striking lines 3 through 8.
- 4 2. By renumbering as necessary.

BY HUMMEL of Benton

H-6203 FILED APRIL 9, 1984

COPENHAVER of Buchanan

Recd 4/16 (f. 2038)

HOUSE FILE 2487

H-6205

- 1 Amend amendment H-6147 to House File 2487 as
- 2 amended, passed and reprinted by the House as follows:
- 3 1. Page 3, by striking lines 29 through 35 and
- 4 inserting in lieu thereof the following: "on the
- 5 following issues:
- 6 1. Insurance practices developed in response to
- 7 the adoption of comparative fault in the state of
- 8 Iowa and the commissioner's explanation of the steps
- 9 taken by the department of insurance to alleviate
- 10 these problems.
- 11 2. The feasibility of the establishment of a tort
- 12 loss reparation fund to be created in the office of
- 13 the treasurer of the state for the purpose of providing
- 14 remedial assistance to persons injured but unable
- 15 to recover due to the abolition of the doctrine of
- 16 joint and several liability. such program to be funded
- 17 by a surcharge on liability insurance premiums in
- 18 an actuarially sound manner and administered by the
- 19 commissioner of insurance according to such rules
- 20 as the commissioner may deem necessary.
- 21 These reports shall include proposals for legislative
- 22 action, funding, and fiscal impacts required by the
- 23 suggestions contained in the reports."

H-6205 FILED APRIL 9, 1984

BY COPENHAVER of Buchanan
HUMMEL of Benton

JAY of Appanoose
ROSENBERG of Story
MCINTIRE of Black Ha

W/D 4/16 (f. 2039)

APRIL 18, 1984

House Amendment to Senate Amendment
to House File 2487

5939

1 Amend the amendment H-6147 to House File 2487 as
2 amended, passed, and reprinted by the House as follows:
3 1. By striking page 1, line 3, through page 3,
4 line 39, and inserting in lieu thereof the following:
5 "1. Page 1, by inserting after line 13, the follow-
6 ing:
7 "Sec. 2. NEW SECTION. 668.2 PARTY DEFINED.
8 As used in this chapter, unless otherwise required,
9 "party" means any of the following:
10 1. A claimant.
11 2. A person named as defendant.
12 3. A person who has been released pursuant to
13 section 668.7.
14 4. A third-party defendant."
15 2. Page 1, by striking line 14, and inserting
16 in lieu thereof the following:
17 "Sec. 3. NEW SECTION. 668.3 COMPARATIVE FAULT-
18 -EFFECT."
19 3. Page 1, line 16, by striking the words "person
20 or the person's legal representative" and inserting
21 in lieu thereof the word "claimant".
22 4. Page 1, line 18, by inserting after the word
23 "property" the following: "unless the claimant bears
24 a greater percentage of fault than the combined
25 percentage of fault attributed to the defendants,
26 third-party defendants and persons who have been
27 released pursuant to section 668.7".
28 5. Page 1, lines 19 and 20, by striking the words
29 "person recovering" and inserting in lieu thereof
30 the word "claimant".
31 6. Page 1, line 22, by striking the word
32 "defendants," and inserting in lieu thereof the words
33 "defendants and".
34 7. Page 1, by striking line 24, and inserting
35 in lieu thereof the words "the court,".
36 8. Page 1, line 31, by inserting after the words
37 "third-party defendant," the word "and".
38 9. Page 1, lines 32 through 34, by striking the
39 words ", and person who is determined to have been
40 at fault but who is not a party to the action".
41 10. Page 1, line 35, by striking the words "party,
42 but" and inserting in lieu thereof the word "party."
43 11. Page 2, by striking lines 1 and 2.
44 12. Page 2, by striking lines 10 through 13, and
45 inserting in lieu thereof the following:
46 "5. If the claim is tried to a jury, the court
47 shall give instructions and permit evidence and
48 argument with respect to the effects of the answers
49 ~~to be returned to the interrogatories submitted under~~
50 this section.

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1 6. In an action brought under this chapter and
2 tried to a jury, the court shall not discharge the
3 jury until the court has determined that the verdict
4 or verdicts are consistent with the total damages
5 and percentages of fault, and if inconsistencies exist
6 the court shall do all of the following:

7 a. Inform the jury of the inconsistencies.
8 b. Order the jury to resume deliberations to
9 correct the inconsistencies.

10 c. Instruct the jury that it is at liberty to
11 change any portion or portions of the verdicts to
12 correct the inconsistencies."

13 13. Page 2, by striking lines 14 through 31, and
14 inserting in lieu thereof the following:

15 "Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL
16 LIABILITY. In actions brought under this chapter,
17 the rule of joint and several liability shall not
18 apply to defendants who are found to bear less than
19 fifty percent of the total fault assigned to all
20 parties."

21 14. By striking page 2, line 32, through page
22 3, line 24, and inserting in lieu thereof the
23 following:

24 "Sec. 5. NEW SECTION. 668.5 RIGHT OF
25 CONTRIBUTION.

26 1. A right of contribution exists between or among
27 two or more persons who are liable upon the same
28 indivisible claim for the same injury, death, or harm,
29 whether or not judgment has been recovered against
30 all or any of them. It may be enforced either in
31 the original action or by a separate action brought
32 for that purpose. The basis for contribution is each
33 person's equitable share of the obligations, including
34 the share of fault of a claimant, as determined in
35 accordance with section 668.3.

36 2. Contribution is available to a person who
37 enters into a settlement with the claimant only if
38 the liability of the person against whom contribution
39 is sought has been extinguished and only to the extent
40 that the amount paid in settlement was reasonable.

41 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRI-
42 BUTION.

43 1. If the percentages of fault of each of the
44 parties to a claim for contribution have been
45 established previously by the court as provided in
46 section 668.3, a party paying more than the party's
47 percentage share of damages may recover judgment for
48 contribution upon motion to the court or in a separate
49 action.

50 2. If the percentages of fault of each of the

1 parties to a claim for contribution have not been
2 established by the court, contribution may be enforced
3 in a separate action, whether or not a judgment has
4 been rendered against either the person seeking
5 contribution or the person from whom contribution
6 is sought.

7 3. If a judgment has been rendered, an action
8 for contribution must be commenced within one year
9 after the judgment becomes final. If a judgment has
10 not been rendered, a claim for contribution is
11 enforceable only upon satisfaction of one of the fol-
12 lowing sets of conditions:

13 a. The person bringing the action for contribution
14 must have discharged the liability of the person from
15 whom contribution is sought by payment made within
16 the period of the statute of limitations applicable
17 to the claimant's right of action and must have
18 commenced the action for contribution within one year
19 after the date of that payment.

20 b. The person seeking contribution must have
21 agreed while the action of the claimant was pending
22 to discharge the liability of the person from whom
23 contribution is sought and within one year after the
24 date of the agreement must have discharged that
25 liability and commenced the action for contribution."

26 15. Page 3, by striking line 33, and inserting
27 in lieu thereof the word and figures "668.3, subsection
28 4."

29 16. By striking page 3, line 34, through page
30 4, line 2, and inserting in lieu thereof the following:

31 "Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE.
32 The filing of a petition under this chapter tolls
33 the statute of limitations for the commencement of
34 an action against all parties who may be assessed
35 any percentage of fault under this chapter."

36 17. By striking page 4, line 3 through page 6,
37 line 8, and inserting in lieu thereof the following:

38 "Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE.
39 It shall be an unfair trade practice, as defined in
40 chapter 507B, if an insurer assigns a percentage of
41 fault to a claimant, for the purpose of reducing a
42 settlement, when there exists no reasonable evidence
43 upon which the assigned percentage of fault could
44 be based. The prohibitions and sanctions of chapter
45 507B shall apply to violations of this section.

46 Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL EXEMP-
47 TIONS. In any action brought pursuant to this chapter,
48 the state or a municipality shall not be assigned
49 a percentage of fault for any of the following:

50 1. The failure to place, erect, or install a stop

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1 sign, traffic control device, or other regulatory
2 sign as defined in the uniform manual for traffic
3 control devices adopted pursuant to section 321.252.
4 However, once a regulatory device has been placed,
5 created or installed, the state or municipality may
6 be assigned a percentage of fault for its failure
7 to maintain the device.

8 2. The failure to remove natural or unnatural
9 accumulations of snow or ice, or to place sand, salt,
10 or other abrasive material on a highway, road, or
11 street if the state or municipality establishes that
12 it has complied with its policy or level of service
13 for snow and ice removal or placing sand, salt or
14 other abrasive material on its highways, roads, or
15 streets.

16 3. For contribution unless the party claiming
17 contribution has given the state or municipality
18 notice of the claim pursuant to sections 25A.13 and
19 613A.5."

20 18. Page 6, lines 9 and 10, by striking the words
21 "to the general assembly during the 1985 session".

22 19. Page 6, by striking lines 14 through 16, and
23 inserting in lieu thereof the following:

24 "Sec. 13. Section 619.17, Code 1983, is amended
25 to read as follows:

26 619.17 CONTRIBUTORY NEGLIGENCE FAULT--BURDEN.

27 ~~In all actions brought in the courts of this state~~
28 ~~to recover damages of a defendant in which contributory~~
29 ~~negligence of the plaintiff, actual or imputed, was~~
30 ~~heretofore a complete defense or bar to recovery,~~
31 ~~the A plaintiff shall does not hereafter, have the~~
32 ~~burden of pleading and proving his the plaintiff's~~
33 ~~freedom from contributory negligence, and if the~~
34 ~~fault. If a defendant relies upon negligence of the~~
35 ~~plaintiff as a complete defense or bar to plaintiff's~~
36 ~~recovery contributory fault of a plaintiff to diminish~~
37 ~~the amount to be awarded as compensatory damages,~~
38 ~~the defendant shall have has the burden of pleading~~
39 ~~and proving negligence fault of the plaintiff, if~~
40 ~~any, and that it was a proximate cause of the injury~~
41 ~~or damage. As used in this section, the term~~
42 ~~"plaintiff" shall include includes a defendant filing~~
43 ~~a counterclaim or cross-petition, and the term~~
44 ~~"defendant" shall include includes a plaintiff against~~
45 ~~whom a counterclaim or cross-petition has been filed."~~

46 20. Page 6, by inserting after line 16 the follow-
47 ing:

48 "Sec. 14. The commissioner of insurance shall
49 study and report to the legislative council and the
50 senate committee on judiciary and the house committee

SENATE 12
APRIL 18, 1984

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1 on judiciary and law enforcement by January 15, 1985,
2 on the issue of insurance practices developed in
3 response to the adoption of comparative fault in the
4 state of Iowa. The report shall include proposals
5 for legislative action and an explanation of the steps
6 taken by the department of insurance to alleviate
7 existing or potential problems in insurance practice
8 under comparative fault."

9 21. Page 6, by striking lines 17 and 18, and
10 inserting in lieu thereof the following:
11 "Sec. 15. This Act, except for section 4, applies
12 to all cases filed on or after July 1, 1984. Section
13 4 of this Act applies to all cases tried on or after
14 July 1, 1984."

15 22. Title page, by striking lines 4 and 5, and
16 inserting in lieu thereof the following: "a person
17 or harm to property and modifying the liability of
18 governmental entities."

19 23. By renumbering as necessary."

S-5939 FILED
APRIL 17, 1984
SENATE CONCURRED

RECEIVED FROM THE HOUSE

Attorney General concurred 4/17 (p. 1585)

HOUSE FILE 2487

AN ACT

RELATING TO LIABILITY IN TORT BY ESTABLISHING COMPARATIVE
FAULT AS THE BASIS FOR LIABILITY IN RELATION TO CLAIMS
FOR DAMAGES ARISING FROM INJURY TO OR DEATH OF A PERSON
OR HARM TO PROPERTY AND MODIFYING THE LIABILITY OF
GOVERNMENTAL ENTITIES.

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

Section 1. NEW SECTION. 668.1 FAULT DEFINED.

1. As used in this chapter, "fault" means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages.

2. The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault.

Sec. 2. NEW SECTION. 668.2 PARTY DEFINED. As used in this chapter, unless otherwise required, "party" means any of the following:

1. A claimant.
2. A person named as defendant.
3. A person who has been released pursuant to section 668.7.

4. A third-party defendant.

Sec. 3. NEW SECTION. 668.3 COMPARATIVE FAULT--EFFECT.

1. Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant.

2. In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to section 668.7, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. The amount of damages each claimant will be entitled to recover if contributory fault is disregarded.

b. The percentage of the total fault allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under section 668.7. For this purpose the court may determine that two or more persons are to be treated as a single party.

3. In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed.

4. The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury.

5. If the claim is tried to a jury, the court shall give instructions and permit evidence and argument with respect to the effects of the answers to be returned to the interrogatories submitted under this section.

6. In an action brought under this chapter and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:

- a. Inform the jury of the inconsistencies.
- b. Order the jury to resume deliberations to correct the inconsistencies.
- c. Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY. In actions brought under this chapter, the rule of joint and several liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties.

Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

1. If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in section 668.3, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

2. If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:

a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.

b. The person seeking contribution must have agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against

other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3, subsection 4.

Sec. 8. NEW SECTION. 668.8 TOLLING OF STATUTE. The filing of a petition under this chapter tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault under this chapter.

Sec. 9. NEW SECTION. 668.9 INSURANCE PRACTICE. It shall be an unfair trade practice, as defined in chapter 507B, if an insurer assigns a percentage of fault to a claimant, for the purpose of reducing a settlement, when there exists no reasonable evidence upon which the assigned percentage of fault could be based. The prohibitions and sanctions of chapter 507B shall apply to violations of this section.

Sec. 10. NEW SECTION. 668.10 GOVERNMENTAL EXEMPTIONS. In any action brought pursuant to this chapter, the state or a municipality shall not be assigned a percentage of fault for any of the following:

1. The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.
2. The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt or other abrasive material on its highways, roads, or streets.
3. For contribution unless the party claiming contribution has given the state or municipality notice of the claim pursuant to sections 25A.13 and 613A.5.

Sec. 11. The supreme court shall submit in the manner provided in section 602.4202 changes in the rules of procedure for courts which are necessitated by the enactment of this chapter.

Sec. 12. Section 613.3, Code Supplement 1983, is repealed.

Sec. 13. Section 619.17, Code 1983, is amended to read as follows:

619.17 CONTRIBUTORY NEGLIGENCE FAULT--BURDEN. ~~In all actions brought in the courts of this state to recover damages of a defendant in which contributory negligence of the plaintiff, actual or imputed, was heretofore a complete defense or bar to recovery, the~~ A plaintiff shall does not hereafter, have the burden of pleading and proving his the plaintiff's freedom from contributory negligence, ~~and if the fault.~~ If a defendant relies upon negligence of the plaintiff as a complete defense or bar to plaintiff's recovery contributory fault of a plaintiff to diminish the amount to be awarded as compensatory damages, the defendant shall have has the burden of pleading and proving negligence fault of the plaintiff, if any, and that it was a proximate cause of the injury or damage. As used in this section, ~~the term~~ "plaintiff" ~~shall include~~ includes a defendant filing a counterclaim or cross-petition, and the term "defendant" ~~shall include~~ includes a plaintiff against whom a counterclaim or cross-petition has been filed.

Sec. 14. The commissioner of insurance shall study and report to the legislative council and the senate committee on judiciary and the house committee on judiciary and law enforcement by January 15, 1985, on the issue of insurance practices developed in response to the adoption of comparative fault in the state of Iowa. The report shall include proposals for legislative action and an explanation of the steps taken by the department of insurance to alleviate existing or potential problems in insurance practice under comparative fault.

Sec. 15. This Act, except for section 4, applies to all cases filed on or after July 1, 1984. Section 4 of this Act applies to all cases tried on or after July 1, 1984.

DONALD D. AVENSON
Speaker of the House

CHARLES P. MILLER
President Pro Tempore of the
Senate

I hereby certify that this bill originated in the House and is known as House File 2487, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved _____, 1984

TERRY E. BRANSTAD
Governor