

MAR 19 1997
Place On Calendar

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HOUSE FILE 693
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 149)

Passed House, Date ^(P. 952) 4-1-97 Passed Senate, Date 4-18-97 ^(P. 1274)
Vote: Ayes 55 Nays 44 Vote: Ayes 30 Nays 17
Approved May 29, 1997

A BILL FOR

1 An Act relating to civil actions and statutes of limitations in
2 civil actions, the rate of interest on judgments and decrees,
3 procedures for furnishing patient records of plaintiffs,
4 comparative fault in consortium claims, damages in civil
5 actions, and joint and several liability.

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

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HF 693

1 Section 1. Section 535.3, Code 1997, is amended to read as
2 follows:

3 535.3 INTEREST ON JUDGMENTS AND DECREES.

4 ~~1.~~ Interest shall be allowed on all money due on judgments
5 and decrees of courts ~~at the rate of ten percent per year,~~
6 ~~unless a~~ as follows:

7 1. At a rate equal to the coupon issue yield equivalent,
8 as determined by the United States secretary of the treasury,
9 of the average accepted auction price for the last auction of
10 fifty-two-week United States treasury bills settled
11 immediately prior to the date of the judgment.

12 2. A different rate which is fixed by the contract on
13 which the judgment or decree is rendered, in which case the
14 judgment or decree shall draw interest at the rate expressed
15 in the contract, not exceeding the maximum applicable rate
16 permitted by the provisions of section 535.2, which rate must
17 be expressed in the judgment or decree.

18 3. The state court administrator shall distribute notice
19 monthly of the rate set under subsection 1 and any changes to
20 that rate to all district courts.

21 4. The interest shall accrue from the date of the
22 commencement of the action, except as otherwise provided in
23 subsection 3 5, and shall be computed daily to the date of
24 payment and shall be compounded annually.

25 ~~2.--This section does not apply to the award of interest~~
26 ~~for judgments and decrees subject to section 668-13.~~

27 ~~3.~~ 5. Interest on periodic payments for child, spousal, or
28 medical support shall not accrue until thirty days after the
29 payment becomes due and owing and shall accrue at a rate of
30 ten percent per annum thereafter.

31 Sec. 2. Section 614.1, Code 1997, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 2A. WITH RESPECT TO PRODUCT SELLERS.

34 a. (1) Except as provided in subparagraph (2), a product
35 seller shall not be subject to liability in a product

1 liability claim if the product seller proves by a
2 preponderance of the evidence that the harm was caused after
3 the product's useful safe life had expired. Useful safe life
4 begins at the time of delivery of the product and extends for
5 the time during which the product would normally be likely to
6 perform or be stored in a safe manner. For the purposes of
7 this subsection, "time of delivery" means the time of delivery
8 of a product to its first purchaser or lessee who was not
9 engaged in the business of either selling such products or
10 using them as component parts of another product to be sold.
11 Examples of evidence that is especially probative in
12 determining whether a product's useful safe life had expired
13 include the following:

14 (a) The amount of wear and tear to which the product had
15 been subject.

16 (b) The effect of deterioration from natural causes and
17 from climate and other conditions under which the product was
18 used or stored.

19 (c) The normal practices of the user, similar users, and
20 the product seller with respect to the circumstances,
21 frequency and purposes of the product's use, and with respect
22 to repairs, renewals, and replacements.

23 (d) Any representations, instructions, or warnings made by
24 the product seller concerning proper maintenance, storage, and
25 use of the product or the expected useful life of the product.

26 (e) Any modification or alteration of the product by a
27 user or third party.

28 (2) A product seller may be subject to liability for harm
29 caused by a product used beyond its useful safe life to the
30 extent that the product seller has expressly warranted the
31 product for a longer period.

32 b. (1) In claims that involve harm caused more than
33 twelve years after the time of delivery of a product, a
34 presumption arises that the harm was caused after the useful
35 safe life of the product had expired. This presumption may

1 only be rebutted by clear and convincing evidence.

2 (2) (a) If a product seller provides, markets,
3 advertises, or warrants that its product can be utilized
4 safely for a period longer than twelve years, the period of
5 repose, after which the presumption created in subparagraph
6 (1) arises, shall be extended according to that promise,
7 marketing, advertisement, or warranty.

8 (b) The twelve-year period of repose established in
9 subparagraph (1) does not apply if the product seller
10 intentionally misrepresents facts about the product, or
11 fraudulently conceals information about the product, and that
12 conduct was a substantial cause of the claimant's harm.

13 (c) This subsection shall not affect the right of any
14 person liable under a product liability claim to seek and
15 obtain indemnity from any other person who is responsible for
16 the harm which gave rise to the product liability claim.

17 (d) The twelve-year period of repose established in
18 subparagraph (1) shall not apply if the harm was caused by
19 prolonged exposure to a defective product, or if the injury-
20 causing aspect of the product that existed at the time of
21 delivery was not discoverable by a reasonably prudent person
22 until more than twelve years after the time of delivery, or if
23 the harm caused within twelve years after the time of delivery
24 did not manifest itself until after the twelve-year period.

25 c. (1) In a product liability claim against the product
26 seller, the twelve-year limitation shall not apply to the time
27 period in which to discover a disease that is latent and
28 caused by exposure to a harmful material, in which event the
29 action shall be deemed to have accrued when the disease and
30 such disease's cause have been made known to the person or at
31 the point the person should have been aware of the disease and
32 such disease's cause.

33 (2) As used in this lettered paragraph, "harmful material"
34 means silicon gel breast implants, which were implanted prior
35 to July 12, 1992; and chemical substances commonly known as

1 asbestos, dioxins, or polychlorinated biphenyls, whether alone
2 or as part of any product; or any substance which is
3 determined to present an unreasonable risk of injury to health
4 or the environment by the United States environmental
5 protection agency pursuant to the federal Toxic Substance
6 Control Act, 15 U.S.C. § 2601 et seq., or by this state, if
7 that risk is regulated by the United States environmental
8 protection agency or this state.

9 d. This subsection shall not apply to cases filed on or
10 before July 1, 1997.

11 Sec. 3. Section 622.10, Code 1997, is amended to read as
12 follows:

13 622.10 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE --
14 EXCEPTIONS -- REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS
15 AFTER COMMENCEMENT OF LEGAL ACTION -- APPLICATION TO COURT.

16 1. A practicing attorney, counselor, physician, surgeon,
17 physician assistant, mental health professional, or the
18 stenographer or confidential clerk of any such person, who
19 obtains information by reason of the person's employment, or a
20 member of the clergy shall not be allowed, in giving
21 testimony, to disclose any confidential communication properly
22 entrusted to the person in the person's professional capacity,
23 and necessary and proper to enable the person to discharge the
24 functions of the person's office according to the usual course
25 of practice or discipline.

26 2. The prohibition does not apply to cases where the
27 person in whose favor the prohibition is made waives the
28 rights conferred; nor does the prohibition apply to physicians
29 or surgeons, physician assistants, mental health
30 professionals, or to the stenographer or confidential clerk of
31 any physicians or surgeons, physician assistants, or mental
32 health professionals, in a civil action in which the condition
33 of the person in whose favor the prohibition is made is an
34 element or factor of the claim or defense of the person or of
35 any party claiming through or under the person. The evidence

1 is admissible upon trial of the action only as it relates to
2 the condition alleged.

3 3. a. If a written request is made after the commencement
4 of a legal action to a physician or surgeon, physician
5 assistant, or mental health professional by an adverse party
6 for the patient records of a plaintiff in a civil action in
7 which the condition of the plaintiff in whose favor the
8 prohibition is made is an element or factor of the claim or a
9 defense of the adverse party or of any party claiming through
10 or under the adverse party, and the records relate to the
11 condition alleged, the physician or surgeon, physician
12 assistant, or mental health professional shall notify the
13 plaintiff and the plaintiff's attorney in writing of the
14 request and the plaintiff shall sign a consent within sixty
15 days of receipt of the notification, authorizing the physician
16 or surgeon, physician assistant, or mental health professional
17 to do all of the following:

18 (1) Provide a complete copy of the patient's records,
19 including but not limited to any reports of third parties or X
20 rays relating to the condition.

21 (2) Allow the adverse party to review the original patient
22 records relating to the condition alleged.

23 (3) Review other health care records, films, and documents
24 relating to the condition alleged and furnished by the
25 attorney of the adverse party, prior to providing testimony.

26 (4) Confer with the attorney of the adverse party prior to
27 providing testimony regarding the plaintiff's medical history
28 and the condition alleged, opinions regarding health etiology
29 and prognosis for the condition alleged, and opinions
30 regarding the care provided to the plaintiff by other health
31 care providers for the condition alleged, subject to the
32 limitations set forth in paragraph "c".

33 b. If a plaintiff fails to sign a consent within the
34 prescribed time period, or if a physician or surgeon,
35 physician assistant, or mental health professional fails to

1 comply with the request, the court may after hearing order
2 disclosure or compliance or any other relief authorized under
3 the Iowa rules of civil procedure.

4 c. Counsel for the defendant shall schedule any meeting
5 with the plaintiff's physician at a time mutually agreed upon
6 by the plaintiff's counsel. The plaintiff and plaintiff's
7 counsel shall be present at all such meetings, or participate
8 in telephonic communication with the physician and counsel for
9 the defendant. The plaintiff and counsel for the plaintiff
10 may additionally seek a protective order structuring all such
11 communication by making application to the court at any time.
12 The defendant, as the party requesting the meeting with the
13 physician, is responsible for all costs charged by the
14 physician related to the meeting.

15 4. If an adverse party desires the oral deposition, either
16 discovery or evidentiary, of a physician or surgeon, physician
17 assistant, or mental health professional to which the
18 prohibition would otherwise apply or the stenographer or
19 confidential clerk of a physician or surgeon, physician
20 assistant, or mental health professional or desires to call a
21 physician or surgeon, physician assistant, or mental health
22 professional to which the prohibition would otherwise apply or
23 the stenographer or confidential clerk of a physician or
24 surgeon, physician assistant, or mental health professional as
25 a witness at the trial of the action, the adverse party shall
26 file an application with the court for permission to do so.
27 The court upon hearing, which shall not be ex parte, shall
28 grant permission unless the court finds that the evidence
29 sought does not relate to the condition alleged and shall fix
30 a reasonable fee to be paid to the physician or surgeon,
31 physician assistant, or mental health professional by the
32 party taking the deposition or calling the witness.

33 5. For the purposes of this section, "mental health
34 professional" means a psychologist licensed under chapter
35 154B, a registered nurse licensed under chapter 152, a social

1 worker licensed under chapter 154C, a marital and family
2 therapist licensed under chapter 154D, a mental health
3 counselor licensed under chapter 154D, or an individual
4 holding at least a master's degree in a related field as
5 deemed appropriate by the board of behavioral science
6 examiners.

7 6. No A qualified school guidance counselor, who has met
8 the certification and accreditation standards of the
9 department of education as provided in section 256.11,
10 subsection 10, who obtains information by reason of the
11 counselor's employment as a qualified school guidance
12 counselor shall not be allowed, in giving testimony, to
13 disclose any confidential communications properly entrusted to
14 the counselor by a pupil or the pupil's parent or guardian in
15 the counselor's capacity as a qualified school guidance
16 counselor and necessary and proper to enable the counselor to
17 perform the counselor's duties as a qualified school guidance
18 counselor.

19 Sec. 4. Section 624.18, Code 1997, is amended to read as
20 follows:

21 624.18 DISTINCTION-BETWEEN-DEBT-AND DESIGNATION AND
22 CALCULATION OF DAMAGES.

23 1. In all actions where the plaintiff recovers a sum of
24 money, the amount to which the plaintiff is entitled may be
25 awarded the plaintiff by the judgment generally, without any
26 distinction being therein made as to whether such sum is
27 recovered by way of debt or damages.

28 2. Under no circumstances shall there be a reduction to
29 present value more than one time by either the trier of fact
30 or the court. In the event the court reduces future
31 noneconomic damages to present value, a separate hearing shall
32 be held by the court to afford all parties the opportunity to
33 present evidence and testimony on the appropriate method of
34 reduction to present value and if any reduction should in fact
35 take place.

1 Sec. 5. Section 668.3, subsection 1, Code 1997, is amended
2 to read as follows:

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

12 b. Contributory fault shall not bar recovery in an action
13 by a claimant to recover damages for loss of services,
14 companionship, society, or consortium, unless the fault
15 attributable to the person whose injury or death provided the
16 basis for the damages is greater in percentage than the
17 combined percentage of fault attributable to the defendants,
18 third-party defendants, and persons who have been released
19 pursuant to section 668.7, but any damages allowed shall be
20 diminished in proportion to the amount of fault attributable
21 to the person whose injury or death provided the basis for the
22 damages.

23 Sec. 6. Section 668.3, subsection 2, paragraph b, Code
24 1997, is amended to read as follows:

25 b. The percentage of the total fault allocated to each
26 claimant, defendant, third-party defendant, ~~and~~ person who has
27 been released from liability under section 668.7, and injured
28 or deceased person whose injury or death provides a basis for
29 a claim to recover damages for loss of consortium, services,
30 companionship, or society. For this purpose the court may
31 determine that two or more persons are to be treated as a
32 single party.

33 Sec. 7. Section 668.3, subsection 8, Code 1997, is amended
34 to read as follows:

35 8. In an action brought pursuant to this chapter the court

1 shall instruct the jury to answer special interrogatories or,
2 if there is no jury, shall make findings on each specific item
3 of requested or awarded damages indicating that portion of the
4 judgment or decree awarded for past damages and that portion
5 of the judgment or decree awarded for future damages. All
6 awards of future damages shall be calculated according to the
7 method set forth in section 624.18.

8 Sec. 8. Section 668.4, Code 1997, is amended to read as
9 follows:

10 668.4 JOINT AND SEVERAL LIABILITY.

11 In actions brought under this chapter, the rule of joint
12 and several liability shall ~~not apply to defendants who are~~
13 ~~found to bear less than fifty percent of the total fault~~
14 assigned to all parties apply only to economic damages and
15 shall not apply to any noneconomic damage awards.

16

EXPLANATION

17 This bill amends Code section 535.3 to provide that the
18 rate of interest on judgments and decrees is to be equal to
19 the coupon issue rate of a 52-week United States treasury bill
20 unless a different issue rate is set by contract and expressed
21 in the judgment or decree. The interest shall accrue from the
22 date of the commencement of the action and shall be computed
23 daily to the date of payment and shall be compounded annually.
24 Support payments due and owing accruing interest at a 10
25 percent annual rate.

26 Code section 614.1 is amended to provide a rebuttable
27 presumption that a 12-year statute of repose arises in the
28 case of a product liability claim against a product seller.
29 The bill provides a product seller shall not be subject to
30 liability in a product liability claim if the product seller
31 proves by preponderance of the evidence that the harm was
32 caused after the product's useful safe life which may be
33 shorter or longer than 12 years. Useful safe life begins at
34 the time of delivery of the product and extends for the time
35 during which the product would normally be likely to perform

1 or be stored in a safe manner. The bill provides general
2 exceptions relating to seller misrepresentations, indemnity
3 claims, and difficulty of discovery. In product liability
4 cases involving a disease that is latent and caused by
5 exposure to certain harmful materials, the 12-year period of
6 repose shall not apply and the action shall be deemed to have
7 accrued when the disease and such disease's cause have been
8 made known to the person or at the point the person should
9 have been aware of the disease and such disease's cause. The
10 provisions only apply to cases filed after July 1, 1997.

11 Code section 622.10 is amended to provide a procedure for
12 the furnishing of a plaintiff's patient records by a physician
13 or surgeon, physician assistant, or mental health professional
14 to an adverse party in a civil action in which the condition
15 of the plaintiff is an element or factor of the claim or is a
16 defense of the adverse party or of any party claiming through
17 or under the adverse party, if the record relates to the
18 condition alleged. The bill provides that if a request for
19 patient records is made after the commencement of a legal
20 action, the plaintiff shall sign a consent form within 60 days
21 of the receipt of notification by the physician or surgeon,
22 physician assistant, or mental health professional of the
23 written request authorizing the physician or surgeon,
24 physician assistant, or mental health professional to do all
25 of the following: provide a complete copy of the patient's
26 records; allow the adverse party to review the original
27 patient record; review other records, films, and documents
28 relating to the alleged condition; and confer with the adverse
29 party's attorney regarding the patient's medical history, the
30 etiology and prognosis for the condition alleged, and opinions
31 of other health care professionals regarding the condition
32 alleged. If the plaintiff fails to sign the consent form
33 within the 60-day period, the court may after hearing order
34 disclosure or compliance or other relief. The bill provides
35 requirements for meetings between defense counsel and the

1 plaintiff's physician relating to who may call the meetings,
2 who shall attend, protective orders, and responsibility for
3 costs associated with the meeting.

4 Code sections 624.18 and 668.3 are amended to specify that
5 calculations of future damages awarded in personal injury
6 actions may be adjusted to reflect present value.

7 Code section 668.3 is also amended to provide that the
8 percentage of fault assigned to the person whose death or
9 injury gave rise to a consortium claim shall apply to reduce
10 or bar a judgment for loss of consortium.

11 Code section 668.4 is amended to limit joint and several
12 liability to apply only to economic damage awards in
13 comparative fault actions.

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HOUSE FILE 693

H-1453

- 1 Amend House File 693 as follows:
- 2 1. Page 1, by striking lines 7 through 11 and
- 3 inserting the following:
- 4 "1. At a rate equal to the prime rate as
- 5 established by the federal reserve board and published
- 6 in the Wall Street Journal in the first edition
- 7 published during the month in which the judgment was
- 8 rendered, plus two percent."

By BERNAU of Story

H-1453 FILED MARCH 27, 1997

lost 4-1-97
(P. 929)

HOUSE FILE 693

H-1454

- 1 Amend House File 693 as follows:
- 2 1. Page 1, by striking lines 7 through 11 and
- 3 inserting the following:
- 4 "1. At a rate equal to the prime rate as
- 5 established by the federal reserve board and published
- 6 in the Wall Street Journal in the first edition
- 7 published during the month in which the judgment was
- 8 rendered."

By BERNAU of Story

H-1454 FILED MARCH 27, 1997

lost 4-1-97
(P. 929)

HOUSE FILE 693

H-1405

- 1 Amend House File 693 as follows:
- 2 1. Page 9, by inserting after line 15 the
- 3 following:
- 4 "Sec. ____ . Section 668.14, subsection 4, Code
- 5 1997, is amended by striking the subsection.
- 6 Sec. ____ . Section 147.136, Code 1997, is
- 7 repealed."
- 8 2. By renumbering as necessary.

By MORELAND of Wapello

H-1405 FILED MARCH 26, 1997

lost 4-1-97
(P. 951)

HOUSE FILE 693

H-1455

1 Amend House File 693 as follows:

2 1. Page 4, by inserting after line 8 the
3 following:

4 "d. This subsection shall not apply unless the
5 party seeking to avail themselves of the benefit of
6 this subsection proves by a preponderance of the
7 evidence that, at the time the product was first
8 placed in the stream of commerce, it contained the
9 following disclaimer:

10 This product was delivered on _____ (date
11 and time of delivery) and has an expected useful life
12 of _____ (expected useful life of product, in years)
13 years. Anyone purchasing or using this product should
14 not anticipate that this product will be free from
15 defects after _____ (last date of the
16 product's useful life). Furthermore, anyone
17 purchasing or using this product after
18 _____ (last date of the product's useful
19 life) should be aware that they may not have any legal
20 recourse available to them in the event this product
21 causes an injury or death. It is important that you
22 retain this disclaimer as it is the only warning you
23 shall receive relating to the useful life of this
24 product."

25 2. By renumbering as necessary.

By HUSER of Polk

H-1455 FILED MARCH 27, 1997

Last 4-1-97

(p.931)

HOUSE FILE 693

H-1457

1 Amend House File 693 as follows:
2 1. Page 7, by inserting after line 35 the
3 following:
4 "Sec. ____ . NEW SECTION. 624B.1 TITLE --
5 DEFINITIONS.
6 1. This chapter shall be known as the "Sunshine in
7 Litigation Act".
8 2. For the purposes of this chapter, unless the
9 context otherwise requires, "court records" means any
10 of the following:
11 a. All documents of any nature filed in connection
12 with any matter before any civil court, except any of
13 the following:
14 (1) Documents filed with a court for in camera
15 review for the purpose of obtaining a ruling on the
16 discoverability of such documents.
17 (2) Documents in court files to which access is
18 otherwise restricted by law.
19 b. Settlement agreements, not filed of record,
20 that seek to restrict disclosure of information
21 concerning matters that have a probable adverse effect
22 upon the general public health or safety, the
23 administration of public office, or the operation of
24 government.
25 c. Discovery, not filed of record, concerning
26 matters that have a probable adverse effect upon the
27 general public health or safety, the administration of
28 public office, or the operation of government, except
29 discovery not filed of record in cases originally
30 initiated to preserve bona fide trade secrets or other
31 intangible property rights.
32 Sec. ____ . NEW SECTION. 624B.2 SEALING RECORDS.
33 A court order or opinion issued in the adjudication
34 of a case shall not be sealed. Other court records
35 are presumed to be open to the general public but may
36 be sealed pursuant to the procedures of this chapter
37 upon a showing of all of the following:
38 1. A specific, serious, and substantial interest
39 which clearly outweighs the presumption of openness
40 and any probable adverse effect that sealing will have
41 upon the general public health or safety.
42 2. No less restrictive means than sealing the
43 records will adequately and effectively protect the
44 specific interest asserted.
45 Sec. ____ . NEW SECTION. 624B.3 COERCION.
46 A person shall not offer an inducement to a party
47 to a civil action designed to influence that party in
48 regard to the sealing of any court record. Violation
49 of this section is punishable as a contempt of court.
50 Sec. ____ . NEW SECTION. 624B.4 NOTICE.

H-1457

H-1457

Page 2

1 Court records may be sealed only upon a party's
2 written motion, which shall be open to public
3 inspection. The person seeking to have court records
4 sealed shall post a public notice in the manner that
5 notices for meetings of county governmental bodies are
6 required to be posted pursuant to section 21.4. The
7 notice shall contain the content of the motion,
8 identify the case in which the motion has been filed,
9 and state that a hearing will be held in open court on
10 the motion and that any person may intervene and be
11 heard concerning the motion. The notice shall also
12 contain the date and time of the hearing and a brief
13 but specific description of the nature of the case,
14 the court records sought to be sealed, and the
15 identity of the person seeking to have court records
16 sealed. A verified copy of the notice shall be filed
17 with the clerk of court by the person seeking to have
18 court records sealed.

19 Sec. ____ . NEW SECTION. 624B.5 HEARING.

20 A hearing shall be held in open court on a motion
21 to seal court records as soon as practicable but not
22 less than fourteen days after notice is posted
23 pursuant to section 624B.4. Nonparties may intervene
24 as a matter of right for the limited purpose of
25 participating in the proceedings which will determine
26 whether court records are sealed. The court may
27 inspect records in camera.

28 Sec. ____ . NEW SECTION. 624B.6 TEMPORARY SEALING
29 ORDER.

30 A temporary sealing order may issue upon motion and
31 notice to any parties who have answered in the case,
32 upon a showing of compelling need from specific facts
33 shown by affidavit or by verified petition that
34 immediate and irreparable injury will result to a
35 specific interest of the movant before notice can be
36 posted and a hearing held. A temporary sealing order
37 shall set forth the time for the hearing required by
38 section 624B.5 and shall direct the person seeking to
39 have court records sealed to give the notice required
40 by section 624B.4. The court may modify or withdraw
41 any temporary order upon motion by any party or
42 intervenor, following notice to all parties and a
43 hearing conducted as soon as practicable. Issuance of
44 a temporary order shall not reduce the burden of proof
45 of the party seeking to seal court records.

46 Sec. ____ . NEW SECTION. 624B.7 ORDER ON MOTION TO
47 SEAL COURT RECORDS.

48 A motion relating to sealing or opening court
49 records shall be decided by written order, open to
50 public inspection, which shall state the style and

H-1457

-2-

H-1457

Page 3

1 number of the case, the specific reasons for finding
2 and concluding whether the showing required by section
3 624B.2 has been made, the specific court records or
4 portions of court records which are to be sealed, and
5 the period of time the records are to be sealed. The
6 order shall not be included in any judgment or other
7 order but shall be a separate document in the case.
8 However, failure to comply with this requirement shall
9 not affect the appealability of the order.

10 Sec. ____ . NEW SECTION. 624B.8 CONTINUING
11 JURISDICTION.

12 Any person may intervene as a matter of right at
13 any time before or after judgment to seal or open
14 court records. A court that issues an order sealing
15 court records retains continuing jurisdiction to
16 enforce, alter, or vacate that order. An order
17 sealing or opening court records shall be reconsidered
18 on motion of any party or intervenor, who had actual
19 notice of the hearing preceding issuance of the order,
20 without first showing changed circumstances materially
21 affecting the order. The circumstances need not be
22 related to the case in which the order was issued.
23 However, the burden of making the showing required by
24 section 624B.2 shall be on the party seeking to seal
25 records.

26 Sec. ____ . NEW SECTION. 624B.9 APPEAL.

27 An order or a portion of an order relating to
28 sealing or opening court records shall be deemed to be
29 severed from the case and a final adjudication of that
30 issue, and may be appealed by any party or intervenor
31 who participated in the hearing preceding issuance of
32 the order. The appellate court may stay the appeal
33 and order the trial court to direct that further
34 public notice be given, to hold further hearings, or
35 to make additional findings.

36 Sec. ____ . NEW SECTION. 624B.10 APPLICABILITY
37 DATE.

38 Access to documents in court files not defined as
39 court records by this chapter remains governed by
40 existing law. This chapter does not apply to any court
41 records sealed in an action in which a final judgment
42 was entered before July 1, 1997. This chapter applies
43 to cases pending on July 1, 1997, only with regard to
44 court records filed or exchanged on or after July 1,
45 1997, and any motion filed on or after July 1, 1997,
46 to alter or vacate an order restricting access to
47 court records issued before July 1, 1997."

48 2. Title page, line 5, by inserting after the
49 word "actions," the following: "sealing and opening
50 court records,".

H-1457

-3-

H-1457

Page 4

1 3. By renumbering as necessary.

By MORELAND of Wapello

H-1457 FILED MARCH 27, 1997

Not Hermone 4-1-97
(A 948)

HOUSE FILE 693

H-1456

1 Amend House File 693 as follows:

- 2 1. Page 6, line 5, by inserting after the word
3 "physician" the following: "or surgeon, physician
4 assistant, or mental health professional".
5 2. Page 6, line 8, by inserting after the word
6 "physician" the following: "or surgeon, physician
7 assistant, or mental health professional".
8 3. Page 6, line 13, by inserting after the word
9 "physician" the following: "or surgeon, physician
10 assistant, or mental health professional".
11 4. Page 6, line 14, by inserting after the word
12 "physician" the following: "or surgeon, physician
13 assistant, or mental health professional".

A

14 5. Page 7, by inserting after line 27 the
15 following:
16 "1A. In all personal injury actions where the
17 plaintiff recovers a sum of money that, according to
18 special verdict, is intended, in whole or in part, to
19 address the future damages of the plaintiff, that
20 portion of the judgment that reflects the future
21 damages shall be adjusted by the court or the finder
22 of fact to reflect the present value of the sum."

23 6. Page 7, by striking lines 30 through 35 and
24 inserting the following: "or the court."

25 7. Page 9, by striking lines 12 through 15 and
26 inserting the following: "and severable liability
27 shall not apply to defendants who are found to bear
28 less than fifty percent of the total fault assigned to
29 all parties. However, a defendant found to bear fifty
30 percent or more of fault shall only be jointly and
31 severally liable for economic damages and not for any
32 noneconomic damage awards."

B

33 8. By renumbering as necessary.

By LAMBERTI of Polk

H-1456 FILED MARCH 27, 1997

A. Order 4-1-97 (P. 944)
B. Adopted 4-1-97 (P. 945)

HOUSE FILE 693

H-1458

- 1 Amend House File 693 as follows:
- 2 1. Page 8, by striking lines 1 through 32.
- 3 2. Title page, line 4, by striking the words
- 4 "comparative fault in consortium claims,".
- 5 3. By renumbering as necessary.

By CHAPMAN of Linn

H-1458 FILED MARCH 27, 1997

Lost 4-1-97
(p.949)

HOUSE FILE 693

H-1459

- 1 Amend House File 693 as follows:
- 2 1. Page 9, by striking lines 8 through 15.
- 3 2. Title page, line 4, by inserting after the
- 4 word "claims," the following: "and".
- 5 3. Title page, line 5, by striking the words "
- 6 and joint and several liability".
- 7 4. By renumbering as necessary.

By MORELAND of Wapello

H-1459 FILED MARCH 27, 1997

o/order 4-1-97
(p.945)

HOUSE FILE 693

H-1460

- 1 Amend House File 693 as follows:
- 2 1. Page 9, by striking lines 12 through 15 and
- 3 inserting the following: "and severable liability
- 4 shall not apply to defendants who are found to bear
- 5 less than fifty percent of the total fault assigned to
- 6 all parties. However, a defendant found to bear fifty
- 7 percent or more of fault shall only be jointly and
- 8 severally liable for economic damages and not for any
- 9 noneconomic damage awards. In actions brought under
- 10 this chapter, the rule of joint and several liability
- 11 shall apply when the plaintiff is found to bear no
- 12 fault."

By MORELAND of Wapello

H-1460 FILED MARCH 27, 1997

o/order 4-1-97
(p.945)

HOUSE FILE 693

1468

1 Amend House File 693 as follows:

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

4 "Section 1. NEW SECTION. 135.26 HEALTH CARE
5 PROVIDER RECORDS -- DUPLICATION FOR PROVISION TO
6 PATIENT.

7 1. Upon the written request of a patient, a health
8 care provider shall allow the patient to inspect and
9 shall provide the patient with a duplicate of the
10 health care record of the patient. The health care
11 provider may charge a fee, as established by rule of
12 the department, for duplication of the record.

13 2. A health care provider may withhold the record
14 from the patient if the provider reasonably determines
15 that the information is detrimental to the physical or
16 mental health of the patient, or is likely to cause
17 the patient to harm the patient or another person. If
18 a record is withheld from the patient under this
19 subsection, the health care provider may provides
20 access to the record or a duplicate of the record to
21 the patient's attorney or personal physician upon
22 request of the patient.

23 3. For the purposes of this section:

24 a. "Health care provider" means a person licensed
25 to practice medical surgery pursuant to chapter 148,
26 physical therapy pursuant to chapter 148A,
27 occupational therapy pursuant to chapter 148B,
28 acupuncture pursuant to chapter 148E, podiatry
29 pursuant to chapter 149, osteopathy pursuant to
30 chapter 150, osteopathic medicine and surgery pursuant
31 to chapter 150A, chiropractic pursuant to chapter 151,
32 nursing pursuant to chapter 152, dietetics pursuant to
33 chapter 152A, respiratory care pursuant to chapter
34 152B, massage therapy pursuant to chapter 152C,
35 dentistry pursuant to chapter 153, optometry pursuant
36 to chapter 154, psychology pursuant to chapter 154B,
37 social work pursuant to chapter 154C, behavioral
38 science pursuant to chapter 154D, or licensed as a
39 physician assistant pursuant to chapter 148C, a
40 hospital licensed pursuant to chapter 135B, and a
41 health care facility licensed pursuant to chapter
42 135C.

43 b. "Health care record" includes but is not
44 limited to evaluations, diagnoses, prognoses,
45 treatment, history, charts, pictures, laboratory
46 reports, X rays, prescriptions, and other technical
47 information used in assessing a patient's condition.

48 4. The department shall adopt rules prescribing
49 uniform fees, based upon the actual cost of
50 duplication, that a health care provider may charge

1468

H-1468

Page 2

1 for duplication of health care records requested by a
2 patient under this section. The rules adopted may
3 provide for an additional fee based upon the actual
4 costs for postage or other means of delivery and may
5 provide for an annual increase based upon the annual
6 rate of inflation for the preceding calendar year as
7 determined by the consumer price index published by
8 the bureau of labor statistics of the United States
9 department of labor."

10 2. Title page, line 3, by striking the words "of
11 plaintiffs".

12 3. By renumbering as necessary.

By JOCHUM of Dubuque

H-1468 FILED MARCH 31, 1997

*Not Lerman P. 929
4-1-97*

HOUSE FILE 693

H-1479

1 Amend House File 693 as follows:

2 1. Page 1, by striking lines 1 through 30 and
3 inserting the following:

4 "Sec. ____ . Section 535.3, subsection 1, Code 1997,
5 is amended by striking the subsection and inserting in
6 lieu thereof the following:

7 1. Interest shall be allowed on all money due on
8 judgments and decrees of courts at a rate calculated
9 according to section 668.13.

10 Sec. ____ . Section 535.3, subsection 2, Code 1997,
11 is amended by striking the subsection.

12 Sec. ____ . Section 535.3, subsection 3, Code 1997,
13 is amended to read as follows:

14 3. Interest on periodic payments for child,
15 spousal, or medical support shall not accrue until
16 thirty days after the payment becomes due and owing
17 and shall accrue at a rate of ten percent per annum
18 thereafter."

19 2. By renumbering as necessary.

By LAMBERTI of Polk

H-1479 FILED MARCH 31, 1997

Adopted 4-1-97

(P. 930)

HOUSE FILE 693

-1480

1 Amend House File 693 as follows:

2 1. By striking page 1, line 31, through page 4,
3 line 10, and inserting the following:

4 "Sec. ____ . Section 614.1, Code 1997, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 2A. WITH RESPECT TO PRODUCTS.

7 Those founded on the death of a person or injuries to
8 the person or property brought against the
9 manufacturer, assembler, designer, supplier of
10 specifications, seller, lessor, or distributor of a
11 product based upon an alleged defect in the design,
12 inspection, testing, manufacturing, formulation,
13 marketing, packaging, warning, labeling of the
14 product, or any other alleged defect or failure of
15 whatever nature or kind, based on the theories of
16 strict liability in tort, negligence, or breach of an
17 implied warranty shall not be commenced more than
18 twelve years after the product was first purchased,
19 leased, bailed, or installed for use or consumption
20 unless expressly warranted for a longer period of time
21 by the manufacturer, assembler, designer, supplier of
22 specifications, seller, lessor, or distributor of the
23 product. This subsection shall not affect the time
24 during which a person found liable may seek and obtain
25 contribution or indemnity from another person whose
26 actual fault caused a product to be defective. This
27 subsection shall not apply if the manufacturer,
28 assembler, designer, supplier of specifications,
29 seller, lessor, or distributor of the product
30 intentionally misrepresents facts about the product or
31 fraudulently conceals information about the product
32 and that conduct was a substantial cause of the
33 claimant's harm."

34 2. By renumbering as necessary.

By LAMBERTI of Polk

H-1480 FILED MARCH 31, 1997

adopted 4/1/97

(P. 934)

HOUSE FILE 693

H-1481

1 Amend House File 693 as follows:

2 1. Page 4, by inserting before line 11 the
3 following:

4 "Sec. ____ . Section 614.1, subsection 9, Code 1997,
5 is amended to read as follows:

6 9. MALPRACTICE.

7 a. Those Except as provided in paragraph "b",
8 those founded on injuries to the person or wrongful
9 death against any physician and surgeon, osteopath,
10 osteopathic physician and surgeon, dentist, podiatric
11 physician, optometrist, pharmacist, chiropractor,
12 physician assistant, or nurse, licensed under chapter
13 147, or a hospital licensed under chapter 135B,
14 arising out of patient care, within two years after
15 the date on which the claimant knew, or through the
16 use of reasonable diligence should have known, or
17 received notice in writing of the existence of, the
18 injury or death for which damages are sought in the
19 action, whichever of the dates occurs first, but in no
20 event shall any action be brought more than six years
21 after the date on which occurred the act or omission
22 or occurrence alleged in the action to have been the
23 cause of the injury or death unless a foreign object
24 unintentionally left in the body caused the injury or
25 death.

26 b. An action subject to paragraph "a" and brought
27 on behalf of a minor who was under the age of six
28 years when the act, omission, or occurrence alleged in
29 the action occurred, shall be commenced no later than
30 the minor's eighth birthday.

31 Sec. ____ . Section 614.8, Code 1997, is amended to
32 read as follows:

33 614.8 MINORS AND PERSONS WITH MENTAL ILLNESS.

34 a. The times limited for actions herein in this
35 chapter, except those brought for penalties and
36 forfeitures, shall be are extended in favor of minors
37 and persons with mental illness, so that they shall
38 have one year from and after the termination of such
39 the disability within which to commence said an
40 action.

41 b. Except as provided in section 614.1, subsection
42 9, the times limited for actions in this chapter,
43 except those brought for penalties and forfeitures,
44 are extended in favor of minors, so that they shall
45 have one year from and after attainment of majority
46 within which to commence an action."

47 2. By renumbering as necessary.

By BRADLEY of Clinton

MAY of Worth

HANSEN of Pottawattamie

MERTZ of Kossuth

JACOBS of Polk

MUNDIE of Webster

LAMBERTI of Polk

O'BRIEN of Boone

H-1481 FILED MARCH 31, 1997

Adopted 4-1-97

{p. 942}

- w/d as sponsor 4-1-97

HOUSE FILE 693

1482

1 Amend House File 693 as follows:

2 1. By striking page 5, line 3, through page 6,
3 line 3, and inserting the following:

4 "3. a. In a civil action in which the condition
5 of the plaintiff in whose favor the prohibition is
6 made is an element or factor of the claim or defense
7 of the adverse party or of any party claiming through
8 or under the adverse party, the adverse party shall
9 make a written request for records relating to the
10 condition alleged upon the plaintiff's counsel for a
11 legally sufficient patient's waiver under federal and
12 state law. Upon receipt of a written request, the
13 plaintiff shall execute the patient's waiver and
14 release it to the adverse party making the request
15 within sixty days of receipt of the written request.
16 The patient's waiver may require a physician or
17 surgeon, physician assistant, or mental health
18 professional to do all of the following:

19 (1) Provide a complete copy of the patient's
20 records including, but not limited to, any reports or
21 diagnostic imaging relating to the condition alleged.

22 (2) Consult with the attorney for the adverse
23 party prior to providing testimony regarding the
24 plaintiff's medical history and the condition alleged
25 and opinions regarding health etiology and prognosis
26 for the condition alleged subject to the limitations
27 in paragraph "c".

28 b. If a plaintiff fails to sign a waiver within
29 the prescribed time period, the court may order
30 disclosure or compliance. The failure of a party to
31 comply with the court's order may be grounds for
32 dismissal of the action or any other relief authorized
33 under the rules of civil procedure.

34 c. Any physician or surgeon, physician assistant,
35 or mental health professional who provides records,
36 provides information during consultation, or otherwise
37 responds in good faith to a request pursuant to
38 paragraph "a" shall be immune with respect to all
39 civil or criminal penalties, claims, or actions of any
40 kind with respect to this section.

41 d. Any physician or surgeon, physician assistant,
42 or mental health professional who provides records or
43 consults with the counsel for the adverse party shall
44 be entitled to charge a reasonable fee for production
45 of the records, diagnostic imaging, and consultation.
46 Any party seeking consultation shall be responsible
47 for payment of all charges. The fee for copies of any
48 records shall be based upon actual cost of
49 production."

2. Page 6, by striking lines 4 through 14 and

482

-1-

H-1482

Page 2

1 inserting the following:

2 "e. Defendant's counsel shall provide a written
3 notice to plaintiff's counsel at least ten days prior
4 to any meeting with plaintiff's physician or surgeon,
5 physician assistant, or mental health professional.
6 Plaintiff's counsel may be present at all such
7 meetings, or participate in telephonic communication
8 with the physician or surgeon, physician assistant, or
9 mental health professional and counsel for the
10 defendant. Plaintiff's counsel may seek a protective
11 order structuring all communication by making
12 application to the court at any time."

13 3. Page 6, by inserting after line 14 the
14 following:

15 "f. The provisions of this subsection do not apply
16 to actions or claims brought pursuant to chapter 85,
17 85A, or 85B."

By LAMBERTI of Polk

H-1482 FILED MARCH 31, 1997

Adopted
4-1-97 (p.943)

HOUSE FILE 693

H-1483

1 Amend House File 693 as follows:

2 1. Page 9, by inserting after line 7 the
3 following:

4 "Sec. ____ . NEW SECTION. 668.3A IMMUNITY DUE TO
5 MISUSE, FAILURE TO MAINTAIN, OR ALTERATION.

6 1. Notwithstanding any other provisions of the
7 Code, in an action seeking recovery of damages for
8 personal injury, death, or property damage alleged to
9 have been caused by a product, no fault shall be
10 allocated to a manufacturer, assembler, designer,
11 supplier of specifications, seller, lessor, or
12 distributor, if the primary cause of the injury was a
13 misuse of the product by the plaintiff or some third
14 person or was a failure to properly maintain, service,
15 or repair the product or was due to an alteration,
16 modification, or change in the product which was made
17 by a person other than, and without the direction or
18 consent of, the manufacturer, assembler, designer,
19 supplier of specifications, seller, lessor, or
20 distributor from whom recovery of damages is being
21 sought.

22 2. If a manufacturer, assembler, designer,
23 supplier of specifications, seller, lessor, or
24 distributor discovers a defect in the product after
the product was delivered to the end user, the
25 manufacturer, assembler, designer, supplier of
26 specifications, seller, lessor, or distributor shall
27 be immune from liability for the defect if all of the
28 following apply:

29 a. The manufacturer, assembler, designer, supplier
30 of specifications, seller, lessor, or distributor
31 provides written notice to the end user regarding the
32 defect and possible harmful effects associated with
33 the defect in the product.

34 b. The party providing the notice remedies the
35 defect within a reasonable amount of time following
36 the notice, at the expense of the party providing the
37 notice.

38 A party providing notice under this subsection
39 shall be immune from liability from the time notice is
40 provided to the time the defect is remedied by the
41 party providing the notice."

42 2. By renumbering as necessary.

By JENKINS of Black Hawk

H-1483 FILED MARCH 31, 1997

WITHDRAWN

4-1-97

(p. 950)

HOUSE FILE 693

H-1484

1 Amend House File 693 as follows:

2 1. Page 9, by inserting after line 15 the
3 following:

4 "Sec. ____ . NEW SECTION. 668B.1 LIMITATION ON
5 NONECONOMIC DAMAGES.

6 1. In a civil action in which liability is
7 admitted or established, the present value of the
8 damages awarded for noneconomic losses incurred or to
9 be incurred in the future by the plaintiff by reason
10 of personal injury or death, shall not exceed two
11 hundred fifty thousand dollars. As used in this
12 section, "noneconomic losses" shall include but not be
13 limited to pain and suffering, mental anguish,
14 emotional distress, humiliation, loss of consortium,
15 lost opportunity, loss of expectations, and punitive
16 or exemplary damages.

17 2. In an action tried to a jury where damages for
18 noneconomic losses are sought, the court shall submit
19 an instruction to the jury that the maximum allowable
20 award allowed by law for noneconomic losses in a case
21 of the most egregious nature is two hundred fifty
22 thousand dollars and that the damages awarded in the
23 case before them for noneconomic damages shall be made
24 in proportion thereto based on the egregiousness of
25 the loss if liability for such losses is established.
26 A separate interrogatory verdict form shall be
27 submitted for the return of noneconomic damages unless
28 all parties waive this requirement."

29 2. By renumbering as necessary.

By CHURCHILL of Polk
SUKUP of Franklin
BRUNKHORST of Bremer

WELTER of Jones
VEENSTRA of Sioux

H-1484 FILED MARCH 31, 1997

WITHDRAWN

4-1-97

(P. 951)

HOUSE FILE 693

H-1491

- 1 Amend the amendment, H-1460, to House File 693 as
2 follows:
3 1. Page 1, by striking lines 9 through 12 and
4 inserting the following: "noneconomic damage awards.
5 If a plaintiff is found to bear no fault, a defendant
6 found to bear fifty percent or more of the fault shall
7 be jointly and severally liable for both economic and
8 noneconomic damages."

By MILLAGE of Scott

H-1491 FILED APRIL 1, 1997

OUT OF ORDER 4-1-97

(P. 945)

HOUSE FILE 693

H-1495

- 1 Amend the amendment, H-1483, to House File 693 as
2 follows:
3 1. Page 1, line 42, by inserting after the word
4 "notice." the following: "This subsection shall not
5 be deemed to create a duty to recall or retrofit a
6 product after the time of the initial sale or delivery
7 of the product by the manufacturer, assembler,
8 designer, supplier of specifications, seller, lessor,
9 or distributor."

By JENKINS of Black Hawk

H-1495 FILED APRIL 1, 1997

ADOPTED 4-1-97

(P. 950)

HOUSE FILE 693

H-1496

- 1 Amend the amendment, H-1468, to House File 693 as
2 follows:
3 1. Page 1, line 39, by inserting after the figure
4 "148C," the following: "an advanced registered nurse
5 practitioner licensed pursuant to chapter 152,".

By JOCHUM of Dubuque

H-1496 FILED APRIL 1, 1997

ADOPTED 4-1-97

(P. 928)

HOUSE FILE 693

H-1501

1 Amend the amendment, H-1481, to House File 693 as
2 follows:

3 1. Page 1, by striking lines 26 through 30 and
4 inserting the following:

5 "b. An action founded on injuries to the person or
6 wrongful death against a pediatrician or obstetrician,
7 physician assistant, or nurse, licensed under chapter
8 147, arising out of patient care, and brought on
9 behalf of a minor who was under the age of six years
10 when the act, omission, or occurrence alleged in the
11 action occurred, shall be commenced no later than the
12 minor's twelfth birthday. However, if the claimant
13 did not know and through the use of reasonable
14 diligence could not have been expected to know of the
15 act, omission, or occurrence until after the minor
16 reached the age of six years, then the action may be
17 brought pursuant to paragraph "a" on behalf of the
18 minor and may be commenced within the time periods
19 provided in paragraph "a". The provisions of this
20 paragraph shall not apply if the pediatrician or
21 obstetrician, physician assistant, or nurse warranted
22 orally or in written form regarding the success of the
23 delivery of the baby or the care of the minor under
24 the age of six, or the pediatrician or obstetrician,
25 physician assistant, or nurse misrepresented facts
26 regarding the delivery or care of the minor, or
27 fraudulently concealed information relating to the
28 delivery of the baby or the care of the minor, or a
29 foreign object unintentionally left in the body caused
30 the injury or death."

31 2. Page 1, by inserting after line 46 the
32 following:

33 "____. Page 9, by inserting after line 15 the
34 following:

35 "Sec. ____ . OBSTETRICAL STUDY.

36 1. a. The Iowa department of public health shall
37 conduct a study to verify the number of physicians by
38 county practicing in Iowa who are engaged in
39 obstetrical deliveries without regard to the
40 physicians' areas of practice, specialties, or the
41 areas of board certification. The department shall
42 further certify the number of specialists licensed as
43 obstetricians and gynecologists by county.

44 b. The department shall additionally request from
45 each physician engaged in obstetrical deliveries a
46 copy of the malpractice insurance coverage maintained
47 by each physician, the company providing the coverage,
48 the annual premium paid, and any applicable
49 deductible.

50 2. a. The department shall conduct the study

H-1501

H-1501

Page 2

1 under subsection 1 within six months of the effective
2 date of this Act and shall annually update the study,
3 with a copy of the report to be delivered to the
4 general assembly each year by January 15.

5 b. The department shall include in the annual
6 report an analysis of the impact of this Act, if any,
7 on the number of claims or actions commenced against
8 physicians engaged in obstetrical deliveries. The
9 department shall also include in the annual report the
10 number and percentage of increase or decrease from the
11 previous year of physicians practicing in rural Iowa
12 engaged in the delivery of babies or care of minors
13 under the age of six.

14 3. The commissioner of insurance shall report by
15 January 15 of each year to the general assembly
16 whether medical malpractice premiums for pediatricians
17 and obstetricians have been reduced since the
18 effective date of this Act.

19 Sec. ____ . APPLICABILITY DATE. The amendments to
20 section 614.1, subsection 9, shall apply to actions
21 filed after July 1, 1997.

22 Sec. ____ . The amendments to section 614.1,
23 subsection 9, in this Act are repealed on June 30,
24 2000, and the Code editor shall return the language of
25 subsection 9 to the language of the 1997 Code of
26 Iowa."

27 " ____ . Title page, by striking line 5 and
28 inserting the following: "actions, joint and several
29 liability, and providing an applicability date."

30 3. By renumbering as necessary.

By DINKLA of Guthrie

H-1501 FILED APRIL 1, 1997

LOST 4-1-97

(p.94)

HOUSE FILE 693

H-1502

1 Amend the amendment, H-1481, to House File 693 as
2 follows:

3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: ", provided that when the
5 minor does not have a living parent or guardian or
6 live with a parent or guardian the statute of
7 limitations tolls until one year after the minor
8 reaches the age of majority".

By JOCHUM of Dubuque

H-1502 FILED APRIL 1, 1997

LOST 4-1-97

P. 935

HOUSE FILE 693

H-1503

1 Amend the amendment, H-1481, to House File 693 as
2 follows:
3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: "or within two years after
5 the date on which the claimant knew, or through the
6 use of reasonable diligence should have known, or
7 received notice in writing of the existence of, the
8 injury or death for which damages are sought in the
9 action, but in no event shall any action be brought
10 more than one year after the minor attains the age of
11 majority".

By KREIMAN of Davis

H-1503 FILED APRIL 1, 1997

LOST 4-1-97

(P.936)

HOUSE FILE 693

H-1504

1 Amend the amendment, H-1481, to House File 693 as
2 follows:
3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: "or as provided in
5 paragraph "a", whichever is later, provided that when
6 the minor does not have a living parent or guardian or
7 live with a parent or guardian, or when the minor's
8 parent or guardian has not exercised reasonable
9 judgment in deciding whether to pursue the minor's
10 claim, or when the injury is to the minor's
11 reproductive system the statute of limitations tolls
12 until one year after the minor reaches the age of
13 majority".

By CHAPMAN of Linn

H-1504 FILED APRIL 1, 1997

LOST 4-1-97

(P.936)

HOUSE FILE 693

H-1505

1 Amend the amendment, H-1481, to House File 693 as
2 follows:
3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: "or as provided in
5 paragraph "a", whichever is later, unless the injury
6 is to the child's reproductive system in which case
7 the statute of limitations tolls until one year after
8 the minor reaches the age of majority".

By HUSER of Polk

H-1505 FILED APRIL 1, 1997

LOST 4-1-97

(P.938)

HOUSE FILE 693

H-1506

1 Amend the amendment, H-1481, to House File 693 as
2 follows:
3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: "provided that when the
5 minor's parent or guardian has not exercised
6 reasonable judgment in deciding whether to pursue the
7 child's claim the statute of limitations tolls until
8 one year after the minor reaches the age of majority".

By KREIMAN of Davis

H-1506 FILED APRIL 1, 1997

WITHDRAWN 4-1-97
(P. 937)

HOUSE FILE 693

H-1507

1 Amend the amendment, H-1481, to House File 693 as
2 follows:
3 1. Page 1, line 30, by inserting after the word
4 "birthday" the following: ", unless a foreign object
5 unintentionally left in the body caused the injury or
6 death".

By BELL of Jasper

H-1507 FILED APRIL 1, 1997

WITHDRAWN 4-1-97

HOUSE FILE 693

H-1515

1 Amend the amendment, H-1480, to House File 693 as
2 follows:
3 1. Page 1, by striking line 7 and inserting the
4 following:
5 "a. Those founded on the death of a person or
6 injuries to".
7 2. Page 1, by striking line 33 and inserting the
8 following: "claimant's harm."
9 b. (1) The twelve-year limitation in paragraph
10 "a" shall not apply to the time period in which to
11 discover a disease that is latent and caused by
12 exposure to a harmful material, in which event the
13 action shall be deemed to have accrued when the
14 disease and such disease's cause have been made known
15 to the person or at the point the person should have
16 been aware of the disease and such disease's cause.
17 (2) As used in this paragraph, "harmful material"
18 means silicon gel breast implants, which were
19 implanted prior to July 12, 1992; and chemical
20 substances commonly known as asbestos, dioxins,
21 tobacco, or polychlorinated biphenyls, whether alone
22 or as part of any product; or any substance which is
23 determined to present an unreasonable risk of injury
24 to health or the environment by the United States
25 environmental protection agency pursuant to the
26 federal Toxic Substance Control Act, 15 U.S.C. § 2601
27 et seq., or by this state, if that risk is regulated
28 by the United States environmental protection agency
29 or this state."

By LAMBERTI of Polk

H-1515 FILED APRIL 1, 1997

ADOPTED

4/1/97
(P. 933)

HOUSE FILE 693

H-1508

1 Amend the amendment, H-1481, to House File 693 as
2 follows:

3 1. Page 1, line 30, by inserting after the word
4 "birthday." the following: "A physician and surgeon,
5 osteopath, osteopathic physician and surgeon, dentist,
6 podiatric physician, optometrist, pharmacist,
7 chiropractor, physician assistant, or nurse licensed
8 under chapter 147, or a hospital licensed under
9 chapter 135B shall not assert this paragraph as a
10 defense unless an informed consent waiver which was
11 signed by the patient's parent or legal guardian prior
12 to the treatment in question is produced. The
13 informed consent waiver shall state:

14 I am aware that any claim for damages arising from
15 any injury to or the death of my child, or the child
16 for whom I am the legal guardian, due to the treatment
17 the child is about to receive must be filed no later
18 than the child's eighth birthday, as the child will be
19 under the age of six when the treatment is performed.
20 I understand that this means my family will forever
21 forfeit any right to recover damages arising from this
22 treatment unless a claim is filed prior to the child's
23 eighth birthday, even if such treatment results in
24 injuries that are not discovered until after the
25 child's eighth birthday."

By SHOULTZ of Black Hawk

H-1508 FILED APRIL 1, 1997

LOST 4-1-97

(A 938)

HOUSE FILE 693

H-1509

1 Amend the amendment, H-1460, to House File 693 as
2 follows:

3 1. Page 1, by striking lines 9 through 12 and
4 inserting the following: "noneconomic damage awards.
5 However, where the plaintiff is found to bear no
6 fault, the rule of joint and several liability shall
7 apply to both economic damages and noneconomic
8 damages."

By MORELAND of Wapello

H-1509 FILED APRIL 1, 1997

OUT OF ORDER 4-1-97

HOUSE FILE 693

H-1513

1 Amend the amendment, H-1456, to House File 693 as
 2 follows:
 3 1. Page 1, by inserting after line 1 the
 4 following:
 5 " . Page 4, line 17, by inserting after the
 6 word "assistant," the following: "nurse
 7 practitioner,".
 8 " . Page 4, line 29, by inserting after the word
 9 "assistants," the following: "nurse practitioners,".
 10 " . Page 4, line 31, by inserting after the word
 11 "assistants," the following: "nurse practitioners,".
 12 " . Page 5, line 5, by inserting after the word
 13 "assistant," the following: "nurse practitioner,".
 14 " . Page 5, line 12, by inserting after the word
 15 "assistant," the following: "nurse practitioner,".
 16 " . Page 5, line 16, by inserting after the word
 17 "assistant," the following: "nurse practitioner,".
 18 " . Page 5, line 35, by inserting after the word
 19 "assistant," the following: "nurse practitioner,".
 20 2. Page 1, line 4, by inserting after the word
 21 "assistant," the following: "nurse practitioner,".
 22 3. Page 1, line 7, by inserting after the word
 23 "assistant," the following: "nurse practitioner,".
 24 4. Page 1, line 10, by inserting after the word
 25 "assistant," the following: "nurse practitioner,".
 26 5. Page 1, line 13, by inserting after the word
 27 "assistant," the following: "nurse practitioner,".
 28 6. By renumbering as necessary.

By JOCHUM of Dubuque

H-1513 FILED APRIL 1, 1997

WITHDRAWN 4-1-97

(p.944)

HOUSE FILE 693

H-1514

1 Amend the amendment, H-1480, to House File 693 as
 2 follows:
 3 1. Page 1, line 33, by inserting after the word
 4 "harm." the following: "This subsection shall apply
 5 to products first purchased, leased, bailed, or
 6 installed for use or consumption after the effective
 7 date of this Act."

By MORELAND of Wapello

H-1514 FILED APRIL 1, 1997

LOST 4-1-97

HOUSE FILE 693

H-1510

- 1 Amend the amendment, H-1456, to House File 693 as
 2 follows:
 3 1. Page 1, line 32, by inserting after the word
 4 "awards." the following: "In actions brought under
 5 this chapter, the rule of joint and several liability
 6 shall apply to both economic damages and noneconomic
 7 damages when the plaintiff is found to bear no fault."

By MORELAND of Wapello

H-1510 FILED APRIL 1, 1997

LOST 4-1-97

(p. 945)

HOUSE FILE 693

H-1511

- 1 Amend the amendment, H-1481, to House File 693 as
 2 follows:
 3 1. Page 1, line 30, by inserting after the word
 4 "birthday" the following: "or as provided in
 5 paragraph "a", whichever is later".

By BERNAU of Story

H-1511 FILED APRIL 1, 1997

ADOPTED 4-1-97

(p. 939)

HOUSE FILE 693

H-1512

- 1 Amend the amendment, H-1481, to House File 693 as
 2 follows:
 3 1. Page 1, by inserting after line 46 the
 4 following:
 5 "____. Page 9, by inserting after line 15 the
 6 following:
 7 "Sec. ____ . Section 668.14, subsection 4, Code
 8 1997, is amended by striking the subsection.
 9 Sec. ____ . Section 147.136, Code 1997, is
 10 repealed."
 11 2. By renumbering as necessary.

By MORELAND of Wapello

H-1512 FILED APRIL 1, 1997

NOT GERMANE 4-1-97

(p. 941)

4/2/97 ordinary
5-4/3/97 Amend/Do Pass w/ 53355
5-4/10/97 Unfinished Business Calendar

HOUSE FILE **693**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 149)

(As Amended and Passed by the House, April 1, 1997)

Passed House, Date ^(p.1407) 4/22/97 Passed Senate, Date ^(p.1274) 4-18-97
Vote: Ayes 56 Nays 43 Vote: Ayes 30 Nays 17
Approved May 29, 1997

A BILL FOR

1 An Act relating to civil actions and statutes of limitations in
2 civil actions, the rate of interest on judgments and decrees,
3 procedures for furnishing patient records of plaintiffs,
4 comparative fault in consortium claims, damages in civil
5 actions, and joint and several liability.

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

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House Amendments _____

1 Section 1. Section 535.3, subsection 1, Code 1997, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 1. Interest shall be allowed on all money due on judgments
5 and decrees of courts at a rate calculated according to
6 section 668.13.

7 Sec. 2. Section 535.3, subsection 2, Code 1997, is amended
8 by striking the subsection.

9 Sec. 3. Section 535.3, subsection 3, Code 1997, is amended
10 to read as follows:

11 3. Interest on periodic payments for child, spousal, or
12 medical support shall not accrue until thirty days after the
13 payment becomes due and owing and shall accrue at a rate of
14 ten percent per annum thereafter.

15 Sec. 4. Section 614.1, Code 1997, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 2A. WITH RESPECT TO PRODUCTS.

18 a. Those founded on the death of a person or injuries to
19 the person or property brought against the manufacturer,
20 assembler, designer, supplier of specifications, seller,
21 lessor, or distributor of a product based upon an alleged
22 defect in the design, inspection, testing, manufacturing,
23 formulation, marketing, packaging, warning, labeling of the
24 product, or any other alleged defect or failure of whatever
25 nature or kind, based on the theories of strict liability in
26 tort, negligence, or breach of an implied warranty shall not
27 be commenced more than twelve years after the product was
28 first purchased, leased, bailed, or installed for use or
29 consumption unless expressly warranted for a longer period of
30 time by the manufacturer, assembler, designer, supplier of
31 specifications, seller, lessor, or distributor of the product.
32 This subsection shall not affect the time during which a
33 person found liable may seek and obtain contribution or
34 indemnity from another person whose actual fault caused a
35 product to be defective. This subsection shall not apply if

1 the manufacturer, assembler, designer, supplier of
2 specifications, seller, lessor, or distributor of the product
3 intentionally misrepresents facts about the product or
4 fraudulently conceals information about the product and that
5 conduct was a substantial cause of the claimant's harm.

6 b. (1) The twelve-year limitation in paragraph "a" shall
7 not apply to the time period in which to discover a disease
8 that is latent and caused by exposure to a harmful material,
9 in which event the action shall be deemed to have accrued when
10 the disease and such disease's cause have been made known to
11 the person or at the point the person should have been aware
12 of the disease and such disease's cause.

13 (2) As used in this paragraph, "harmful material" means
14 silicon gel breast implants, which were implanted prior to
15 July 12, 1992; and chemical substances commonly known as
16 asbestos, dioxins, tobacco, or polychlorinated biphenyls,
17 whether alone or as part of any product; or any substance
18 which is determined to present an unreasonable risk of injury
19 to health or the environment by the United States
20 environmental protection agency pursuant to the federal Toxic
21 Substance Control Act, 15 U.S.C. § 2601 et seq., or by this
22 state, if that risk is regulated by the United States
23 environmental protection agency or this state.

24 Sec. 5. Section 614.1, subsection 9, Code 1997, is amended
25 to read as follows:

26 9. MALPRACTICE.

27 a. Those Except as provided in paragraph "b", those
28 founded on injuries to the person or wrongful death against
29 any physician and surgeon, osteopath, osteopathic physician
30 and surgeon, dentist, podiatric physician, optometrist,
31 pharmacist, chiropractor, physician assistant, or nurse,
32 licensed under chapter 147, or a hospital licensed under
33 chapter 135B, arising out of patient care, within two years
34 after the date on which the claimant knew, or through the use
35 of reasonable diligence should have known, or received notice

1 in writing of the existence of, the injury or death for which
2 damages are sought in the action, whichever of the dates
3 occurs first, but in no event shall any action be brought more
4 than six years after the date on which occurred the act or
5 omission or occurrence alleged in the action to have been the
6 cause of the injury or death unless a foreign object
7 unintentionally left in the body caused the injury or death.

8 b. An action subject to paragraph "a" and brought on
9 behalf of a minor who was under the age of six years when the
10 act, omission, or occurrence alleged in the action occurred,
11 shall be commenced no later than the minor's eighth birthday
12 or as provided in paragraph "a", whichever is later.

13 Sec. 6. Section 614.8, Code 1997, is amended to read as
14 follows:

15 614.8 MINORS AND PERSONS WITH MENTAL ILLNESS.

16 a. The times limited for actions herein in this chapter,
17 except those brought for penalties and forfeitures, shall be
18 are extended in favor of minors and persons with mental
19 illness, so that they shall have one year from and after the
20 termination of such the disability within which to commence
21 said an action.

22 b. Except as provided in section 614.1, subsection 9, the
23 times limited for actions in this chapter, except those
24 brought for penalties and forfeitures, are extended in favor
25 of minors, so that they shall have one year from and after
26 attainment of majority within which to commence an action.

27 Sec. 7. Section 622.10, Code 1997, is amended to read as
28 follows:

29 622.10 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE --
30 EXCEPTIONS -- REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS
31 AFTER COMMENCEMENT OF LEGAL ACTION -- APPLICATION TO COURT.

32 1. A practicing attorney, counselor, physician, surgeon,
33 physician assistant, mental health professional, or the
34 stenographer or confidential clerk of any such person, who
35 obtains information by reason of the person's employment, or a

1 member of the clergy shall not be allowed, in giving
2 testimony, to disclose any confidential communication properly
3 entrusted to the person in the person's professional capacity,
4 and necessary and proper to enable the person to discharge the
5 functions of the person's office according to the usual course
6 of practice or discipline.

7 2. The prohibition does not apply to cases where the
8 person in whose favor the prohibition is made waives the
9 rights conferred; nor does the prohibition apply to physicians
10 or surgeons, physician assistants, mental health
11 professionals, or to the stenographer or confidential clerk of
12 any physicians or surgeons, physician assistants, or mental
13 health professionals, in a civil action in which the condition
14 of the person in whose favor the prohibition is made is an
15 element or factor of the claim or defense of the person or of
16 any party claiming through or under the person. The evidence
17 is admissible upon trial of the action only as it relates to
18 the condition alleged.

19 3. a. In a civil action in which the condition of the
20 plaintiff in whose favor the prohibition is made is an element
21 or factor of the claim or defense of the adverse party or of
22 any party claiming through or under the adverse party, the
23 adverse party shall make a written request for records
24 relating to the condition alleged upon the plaintiff's counsel
25 for a legally sufficient patient's waiver under federal and
26 state law. Upon receipt of a written request, the plaintiff
27 shall execute the patient's waiver and release it to the
28 adverse party making the request within sixty days of receipt
29 of the written request. The patient's waiver may require a
30 physician or surgeon, physician assistant, or mental health
31 professional to do all of the following:

32 (1) Provide a complete copy of the patient's records
33 including, but not limited to, any reports or diagnostic
34 imaging relating to the condition alleged.

35 (2) Consult with the attorney for the adverse party prior

1 to providing testimony regarding the plaintiff's medical
2 history and the condition alleged and opinions regarding
3 health etiology and prognosis for the condition alleged
4 subject to the limitations in paragraph "c".

5 b. If a plaintiff fails to sign a waiver within the
6 prescribed time period, the court may order disclosure or
7 compliance. The failure of a party to comply with the court's
8 order may be grounds for dismissal of the action or any other
9 relief authorized under the rules of civil procedure.

10 c. Any physician or surgeon, physician assistant, or
11 mental health professional who provides records, provides
12 information during consultation, or otherwise responds in good
13 faith to a request pursuant to paragraph "a" shall be immune
14 with respect to all civil or criminal penalties, claims, or
15 actions of any kind with respect to this section.

16 d. Any physician or surgeon, physician assistant, or
17 mental health professional who provides records or consults
18 with the counsel for the adverse party shall be entitled to
19 charge a reasonable fee for production of the records,
20 diagnostic imaging, and consultation. Any party seeking
21 consultation shall be responsible for payment of all charges.
22 The fee for copies of any records shall be based upon actual
23 cost of production.

24 e. Defendant's counsel shall provide a written notice to
25 plaintiff's counsel at least ten days prior to any meeting
26 with plaintiff's physician or surgeon, physician assistant, or
27 mental health professional. Plaintiff's counsel may be
28 present at all such meetings, or participate in telephonic
29 communication with the physician or surgeon, physician
30 assistant, or mental health professional and counsel for the
31 defendant. Plaintiff's counsel may seek a protective order
32 structuring all communication by making application to the
33 court at any time.

34 f. The provisions of this subsection do not apply to
35 actions or claims brought pursuant to chapter 85, 85A, or 85B.

1 4. If an adverse party desires the oral deposition, either
2 discovery or evidentiary, of a physician or surgeon, physician
3 assistant, or mental health professional to which the
4 prohibition would otherwise apply or the stenographer or
5 confidential clerk of a physician or surgeon, physician
6 assistant, or mental health professional or desires to call a
7 physician or surgeon, physician assistant, or mental health
8 professional to which the prohibition would otherwise apply or
9 the stenographer or confidential clerk of a physician or
10 surgeon, physician assistant, or mental health professional as
11 a witness at the trial of the action, the adverse party shall
12 file an application with the court for permission to do so.
13 The court upon hearing, which shall not be ex parte, shall
14 grant permission unless the court finds that the evidence
15 sought does not relate to the condition alleged and shall fix
16 a reasonable fee to be paid to the physician or surgeon,
17 physician assistant, or mental health professional by the
18 party taking the deposition or calling the witness.

19 5. For the purposes of this section, "mental health
20 professional" means a psychologist licensed under chapter
21 154B, a registered nurse licensed under chapter 152, a social
22 worker licensed under chapter 154C, a marital and family
23 therapist licensed under chapter 154D, a mental health
24 counselor licensed under chapter 154D, or an individual
25 holding at least a master's degree in a related field as
26 deemed appropriate by the board of behavioral science
27 examiners.

28 6. No A qualified school guidance counselor, who has met
29 the certification and accreditation standards of the
30 department of education as provided in section 256.11,
31 subsection 10, who obtains information by reason of the
32 counselor's employment as a qualified school guidance
33 counselor shall not be allowed, in giving testimony, to
34 disclose any confidential communications properly entrusted to
35 the counselor by a pupil or the pupil's parent or guardian in

1 the counselor's capacity as a qualified school guidance
2 counselor and necessary and proper to enable the counselor to
3 perform the counselor's duties as a qualified school guidance
4 counselor.

5 Sec. 8. Section 624.18, Code 1997, is amended to read as
6 follows:

7 624.18 DISTINCTION-BETWEEN-DEBT-AND DESIGNATION AND
8 CALCULATION OF DAMAGES.

9 1. In all actions where the plaintiff recovers a sum of
10 money, the amount to which the plaintiff is entitled may be
11 awarded the plaintiff by the judgment generally, without any
12 distinction being therein made as to whether such sum is
13 recovered by way of debt or damages.

14 1A. In all personal injury actions where the plaintiff
15 recovers a sum of money that, according to special verdict, is
16 intended, in whole or in part, to address the future damages
17 of the plaintiff, that portion of the judgment that reflects
18 the future damages shall be adjusted by the court or the
19 finder of fact to reflect the present value of the sum.

20 2. Under no circumstances shall there be a reduction to
21 present value more than one time by either the trier of fact
22 or the court.

23 Sec. 9. Section 668.3, subsection 1, Code 1997, is amended
24 to read as follows:

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

34 b. Contributory fault shall not bar recovery in an action
35 by a claimant to recover damages for loss of services,

1 companionship, society, or consortium, unless the fault
2 attributable to the person whose injury or death provided the
3 basis for the damages is greater in percentage than the
4 combined percentage of fault attributable to the defendants,
5 third-party defendants, and persons who have been released
6 pursuant to section 668.7, but any damages allowed shall be
7 diminished in proportion to the amount of fault attributable
8 to the person whose injury or death provided the basis for the
9 damages.

10 Sec. 10. Section 668.3, subsection 2, paragraph b, Code
11 1997, is amended to read as follows:

12 b. The percentage of the total fault allocated to each
13 claimant, defendant, third-party defendant, and person who has
14 been released from liability under section 668.7, and injured
15 or deceased person whose injury or death provides a basis for
16 a claim to recover damages for loss of consortium, services,
17 companionship, or society. For this purpose the court may
18 determine that two or more persons are to be treated as a
19 single party.

20 Sec. 11. Section 668.3, subsection 8, Code 1997, is
21 amended to read as follows:

22 8. In an action brought pursuant to this chapter the court
23 shall instruct the jury to answer special interrogatories or,
24 if there is no jury, shall make findings on each specific item
25 of requested or awarded damages indicating that portion of the
26 judgment or decree awarded for past damages and that portion
27 of the judgment or decree awarded for future damages. All
28 awards of future damages shall be calculated according to the
29 method set forth in section 624.18.

30 Sec. 12. Section 668.4, Code 1997, is amended to read as
31 follows:

32 668.4 JOINT AND SEVERAL LIABILITY.

33 In actions brought under this chapter, the rule of joint
34 and severable liability shall not apply to defendants who are
35 found to bear less than fifty percent of the total fault

1 assigned to all parties. However, a defendant found to bear
2 fifty percent or more of fault shall only be jointly and
3 severally liable for economic damages and not for any
4 noneconomic damage awards.

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HOUSE FILE 693

S-3472

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 4, line 16, by inserting after the word
4 "person." the following: "The prohibition also does
5 not apply to cases in which the communication pertains
6 to chemical test results of specimens of a person's
7 blood, breath, or urine which are obtained under
8 chapter 321J."

By TOM FLYNN

S-3472 FILED APRIL 10, 1997

Withdrawn 4-18-97 (P. 1269)

HOUSE FILE 693

S-3496

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 4, line 16, by inserting after the word
4 "person." the following: "The prohibition also does
5 not apply to cases in which the communication pertains
6 to chemical test results of specimens of a person's
7 blood, breath, or urine."

By TOM FLYNN

Withdrawn 4-18-97

S-3496 FILED APRIL 14, 1997 (P. 1269)

HOUSE FILE 693

S-3355

1 Amend House File 693 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 9, by inserting after line 4 the
4 following:

5 "Sec. ____ . OBSTETRICAL STUDY.

6 1. a. The Iowa department of public health shall
7 conduct a study to verify the number of physicians by
8 county practicing in Iowa who are engaged in
9 obstetrical deliveries without regard to the
10 physicians' areas of practice, specialties, or the
11 areas of board certification. The department shall
12 further certify the number of specialists licensed as
13 obstetricians and gynecologists by county.

14 b. The department shall additionally request from
15 each physician engaged in obstetrical deliveries a
16 copy of the malpractice insurance coverage maintained
17 by each physician, the company providing the coverage,
18 the annual premium paid, and any applicable
19 deductible.

20 2. a. The department shall conduct the study
21 under subsection 1 within six months of the effective
22 date of this Act and shall annually update the study,
23 with a copy of the report to be delivered to the
24 general assembly each year by January 15.

25 b. The department shall include in the annual
26 report an analysis of the impact of this Act, if any,
27 on the number of claims or actions commenced against
28 physicians engaged in obstetrical deliveries. The
29 department shall also include in the annual report the
30 number and percentage of increase or decrease from the
31 previous year of physicians practicing in rural Iowa
32 engaged in the delivery of babies or care of minors
33 under the age of six.

34 3. The commissioner of insurance shall report by
35 January 15 of each year to the general assembly
36 whether medical malpractice premiums for pediatricians
37 and obstetricians have been reduced since the
38 effective date of this Act."

39 2. By renumbering as necessary.

By COMMITTEE ON JUDICIARY
ANDY McKEAN, Chairperson

Adopted

S-3355 FILED APRIL 3, 1997

April 18, 1997 (P. 1266)

HOUSE FILE 693

S-3559

1 Amend the amendment, S-3355, to House File 693, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by striking lines 3 through 38 and
5 inserting the following:

6 "____. Page 1, by inserting before line 1 the
7 following:

8 "Section 1. Section 135.11, Code 1997, is amended
9 by adding the following new subsection:

10 NEW SUBSECTION. 18A. Consult with the office of
11 statewide clinical education programs at the
12 university of Iowa college of medicine and annually
13 submit a report to the general assembly by January 15
14 verifying the number of physicians in active practice
15 in Iowa by county who are engaged in providing
16 obstetrical care. To the extent data are readily
17 available, the report shall include information
18 concerning the number of deliveries per year by
19 specialty and county, the age of physicians performing
20 deliveries, and the number of current year graduates
21 of the university of Iowa college of medicine and the
22 university of osteopathic medicine and health sciences
23 entering into residency programs in obstetrics,
24 gynecology, and family practice. The report may
25 include additional data relating to access to
26 obstetrical services that may be available."

By LARRY McKIBBEN
MARY NEUHAUSER

S-3559 FILED APRIL 17, 1997

Adopted 4-18-97
(P. 1266)

HOUSE FILE 693

S-3568

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, line 12, by inserting after the word
4 "later" the following: "provided that when the
5 claimant does not become aware of the existence of the
6 minor's injuries until after the minor's sixth
7 birthday, a claim shall be commenced within two years
8 after the date on which the claimant knew, or through
9 the use of reasonable diligence should have known, or
10 received notice in writing of the existence of, the
11 injury or death for which damages are sought in the
12 action, but in no event shall any action be brought
13 more than one year after the attainment of majority".

By MARY NEUHAUSER

S-3568 FILED APRIL 17, 1997

Withdrawn 4-18-97

(P.1272)

HOUSE FILE 693

S-3569

1 Amend House File 693 as follows:
2 1. Page 2, by inserting after line 23 the
3 following:
4 "c. This subsection shall not apply to a
5 manufacturer, assembler, designer, supplier of
6 specifications, seller, lessor, or distributor of a
7 product, if the manufacturer, assembler, designer,
8 supplier of specifications, seller, lessor, or
9 distributor of a product knew that the product was
10 defective. For purposes of this subsection, a
11 manufacturer, assembler, designer, supplier of
12 specifications, seller, lessor, or distributor of a
13 product shall be deemed to have known of the defect if
14 either of the following apply:
15 (1) The manufacturer, assembler, designer,
16 supplier of specifications, seller, lessor, or
17 distributor of a product had been held liable in a
18 case in a court of competent jurisdiction where the
19 defective product was at issue.
20 (2) The manufacturer, assembler, designer,
21 supplier of specifications, seller, lessor, or
22 distributor of a product had tested the product and
23 the test indicated that the product was defective."
24 2. By renumbering as necessary.

By MARY A. LUNDBY

S-3569 FILED APRIL 17, 1997

Withdrawn

4-18-97

(P.1268)

S-3563

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, line 27, by striking the word "twelve"
4 and inserting the following: "fifteen".

5 2. Page 2, line 6, by striking the words "twelve-
6 year" and inserting the following: "fifteen-year".

7 3. Page 2, by inserting after line 23 the
8 following:

9 "c. The fifteen-year limitation in paragraph "a"
10 shall not apply unless, at the time the product was
11 purchased, leased, bailed, or installed, it contained
12 the following disclaimer:

13 Important Notice: Please make note of the day on
14 which this product was purchased, leased, bailed, or
15 installed. Unless expressly warranted otherwise,
16 anyone purchasing or using this product should not
17 anticipate that this product will be free from defects
18 more than fifteen years from the date the product was
19 purchased, leased, bailed, or installed. Furthermore,
20 anyone using this product after that time should be
21 aware that they may not have any legal recourse
22 available to them in the event this product causes an
23 injury or death. It is important that you retain this
24 disclaimer and note the date on which the product was
25 purchased, leased, bailed, or installed as this is the
26 only warning you shall receive regarding your legal
27 rights in the event this product causes death or
28 injury to person or property."

By STEVEN D. HANSEN

S-3563 FILED APRIL 17, 1997

A. o/order 4/18/97 (P.1267)
B. Root (P.1268) HOUSE FILE 693

S-3567

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 3, line 12, by inserting after the word
4 "later" the following: "provided that when the
5 injury is to the minor's reproductive system the
6 statute tolls until one year after the age of
7 majority".

By MARY NEUHAUSER

S-3567 FILED APRIL 17, 1997

Withdrawn
(P.1272) 4.18.97

S-3593

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, line 6, by inserting after the figure
4 "668.13" the following: ", except for interest due
5 pursuant to section 85.30 for which the rate shall be
6 ten percent per year".

A

7 2. Page 1, line 27, by striking the word "twelve"
8 and inserting the following: "fifteen".

9 3. Page 2, line 6, by striking the word "twelve-
10 year" and inserting the following: "fifteen-year".

11 4. Page 2, line 12, by inserting after the word
12 "cause." the following: "This subsection shall not
13 apply to cases governed by section 614.1, subsection
14 11."

B

15 5. Page 3, line 9, by striking the word "six" and
16 inserting the following: "eight".

17 6. Page 3, line 11, by striking the word "eighth"
18 and inserting the following: "tenth".

19 7. Page 3, line 33, by inserting after the words
20 "physician assistant," the following: "advanced
21 registered nurse practitioner,".

22 8. Page 4, line 10, by inserting after the words
23 "physician assistants," the following: "advanced
24 registered nurse practitioners,".

25 9. Page 4, line 12, by inserting after the words
26 "physician assistants," the following: "advanced
27 registered nurse practitioners,".

28 10. Page 4, line 30, by inserting after the words
29 "physician assistant," the following: "advanced
30 registered nurse practitioner,".

31 11. Page 5, line 10, by inserting after the words
32 "physician assistant," the following: "advanced
33 registered nurse practitioner,".

C

34 12. Page 5, line 16, by inserting after the words
35 "physician assistant," the following: "advanced
36 registered nurse practitioner,".

37 13. Page 5, line 25, by inserting after the word
38 "counsel" the following: "in a manner consistent with
39 the Iowa rules of civil procedure providing for notice
40 of deposition".

41 14. Page 5, line 26, by inserting after the words
42 "physician assistant," the following: "advanced
43 registered nurse practitioner,".

44 15. Page 5, line 27, by striking the words "may
45 be" and inserting the following: "has the right to
46 be".

47 16. Page 5, line 30, by inserting after the word
48 "assistant," the following: "advanced registered
49 nurse practitioner,".

50 17. Page 6, line 3, by inserting after the word

S-3593

1 "assistant," the following: "advanced registered
2 nurse practitioner,".

3 18. Page 6, line 6, by inserting after the word
4 "assistant," the following: "advanced registered
5 nurse practitioner,".

C

6 19. Page 6, line 7, by inserting after the words
7 "physician assistant," the following: "advanced
8 registered nurse practitioner,".

9 20. Page 6, line 10, by inserting after the words
10 "physician assistant," the following: "advanced
11 registered nurse practitioner,".

12 21. Page 6, line 17, by inserting after the words
13 "physician assistant," the following: "advanced
14 registered nurse practitioner,".

15 22. Page 9, by inserting after line 4 the
16 following:

17 "Sec. 13. Section 668.13, subsection 3, Code 1997,
18 is amended to read as follows:

A

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

29 Sec. _____. If any provision of this Act or the
30 application thereof to any person is invalid, the
31 invalidity shall not affect the provisions or
32 applications of this Act which can be given effect
33 without the invalid provisions or application, and to
34 this end the provisions of this Act are severable.

35 Sec. _____. EFFECTIVE DATES. Sections 1, 2, 3, 7, 8,
36 9, 10, 11, 12, and 13 of this Act shall apply to
37 actions filed after July 1, 1997. Section 4 of this
38 Act shall apply to actions filed after July 1, 1997,
39 except that any cause of action having actually
40 accrued as of the date of enactment of this Act shall
41 be preserved according to the law applicable to the
42 statute of limitations in effect at the time of
43 accrual. Sections 5 and 6 of this Act shall apply to
44 all causes of action accruing on or after July 1,
45 1997, and to all causes of action accruing before July
46 1, 1997, and filed after July 1, 1999."

D

47 23. Title page, by striking line 5 and inserting
48 the following: "actions, joint and several liability,
49 and providing effective dates."

50 24. By renumbering as necessary.

By LARRY MCKIBBEN
RICHARD F. DRAKE

A-D adopted 4-18-97
(P. 1267)

APRIL 18, 1997 Page 24
HOUSE FILE 693

S-3598

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, line 10, by inserting after the word
4 "occurred," the following: "and where the alleged
5 act, omission, or occurrence took place more than
6 twenty miles from a city with a population of more
7 than fifteen thousand and in a county with a
8 population of less than fifteen thousand,".

By ROD HALVORSON

S-3598 FILED APRIL 17, 1997

Rest 4-18-97 (A 1272)

HOUSE FILE 693

S-3599

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, line 12, by inserting after the word
4 "later." the following: "A physician and surgeon,
5 osteopath, osteopathic physician and surgeon, dentist,
6 podiatric physician, optometrist, pharmacist,
7 chiropractor, or nurse licensed under chapter 147, or
8 a hospital licensed under chapter 135B shall not
9 assert this paragraph as a defense unless they produce
10 an informed consent waiver which was signed by the
11 patient's parent or legal guardian prior to the
12 treatment in question, which states:

13 I am aware that any claim for damages arising from
14 any injury or the death of my child due to the
15 treatment my child is about to receive must be filed
16 no later than my child's tenth birthday, as my child
17 will be under the age of eight when the treatment is
18 performed. I understand that this means that my
19 family will forever forfeit any right to recover
20 damages arising from this treatment unless a claim is
21 filed prior to the child's tenth birthday, even if
22 such treatment results in injuries that are not
23 discovered until after the child's tenth birthday."

By ROD HALVORSON

S-3599 FILED APRIL 17, 1997

Rest 4-18-97

(P. 1273)

HOUSE FILE 693

S-3574

- 1 Amend House File 693 as follows:
 2 1. Page 2, by inserting after line 23 the
 3 following:
 4 "c. The limitation in paragraph "a" shall not
 5 apply if the manufacturer, assembler, designer,
 6 supplier of specifications, seller, lessor, or
 7 distributor of the product violated a statute, rule,
 8 regulation, or standard and that violation was a cause
 9 of the claimant's harm."
 10 2. By renumbering, relettering, or redesignating
 11 as necessary.

By STEVEN D. HANSEN

Withdrawn 4-18-97
 (P.1272)
 S-3574 FILED APRIL 17, 1997

HOUSE FILE 693

S-3587

- 1 Amend House File 693, as amended, passed, and
 2 reprinted by the House as follows:
 3 1. By striking page 1, line 15, through page 2,
 4 line 23.
 5 2. By renumbering as necessary.

By TOM VILSACK

S-3587 FILED APRIL 17, 1997

Lost 4-18-97 (P.1267)

HOUSE FILE 693

S-3600

- 1 Amend House File 693, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 3, line 12, by inserting after the word
 4 "later." the following: "A physician and surgeon,
 5 osteopath, osteopathic physician and surgeon, dentist,
 6 podiatric physician, optometrist, pharmacist,
 7 chiropractor, or nurse licensed under chapter 147, or
 8 a hospital licensed under chapter 135B shall not
 9 assert this paragraph as a defense unless they produce
 10 an informed consent waiver which was signed by the
 11 patient's parent or legal guardian prior to the
 12 treatment in question, which states:
 13 I am aware that any claim for damages arising from
 14 any injury or the death of my child due to the
 15 treatment my child is about to receive must be filed
 16 no later than my child's eighth birthday, as my child
 17 will be under the age of six when the treatment is
 18 performed. I understand that this means that my
 19 family will forever forfeit any right to recover
 20 damages arising from this treatment unless a claim is
 21 filed prior to the child's eighth birthday, even if
 22 such treatment results in injuries that are not
 23 discovered until after the child's eighth birthday."

By ROD HALVORSON

S-3600 FILED APRIL 17, 1997

Withdrawn 4-18-97
 (P.1273)

HOUSE FILE 693

S 3601

Amend House File 693, as amended, passed, and reprinted by the House, as follows:

3 1. Page 3, by striking lines 8 through 12 and
4 inserting the following:

5 "b. An action founded on injuries to the person or
6 wrongful death against a physician and surgeon,
7 osteopath, osteopathic physician and surgeon,
8 physician assistant, nurse, or advanced registered
9 nurse practitioner licensed under chapter 147 arising
10 out of patient care and brought on behalf of a minor
11 who was under the age of six when the act, omission,
12 or occurrence alleged in the action occurred, shall be
13 commenced no later than the minor's tenth birthday.
14 However, if the claimant did not know or through the
15 use of reasonable diligence could not have been
16 expected to know of the act, omission, or occurrence
17 until after the minor reached the age of six years,
18 then the action may be brought pursuant to paragraph
19 "a" on behalf of the minor and may be commenced within
20 the time periods provided in paragraph "a". The
21 provisions of this paragraph shall not apply if any of
22 the following occur:

23 (1) The physician and surgeon, osteopath,
24 osteopathic physician and surgeon, physician
25 assistant, nurse, or advanced registered nurse
26 practitioner licensed under chapter 147 warrant orally
27 or in written form regarding the success of the
28 delivery of a baby or the care of a minor under the
29 age of six.

30 (2) The physician and surgeon, osteopath,
31 osteopathic physician and surgeon, physician
32 assistant, nurse, or advanced registered nurse
33 practitioner licensed under chapter 147 misrepresent
34 facts regarding the delivery of a baby or the care of
35 a minor under the age of six.

36 (3) The physician and surgeon, osteopath,
37 osteopathic physician and surgeon, physician
38 assistant, nurse, or advanced registered nurse
39 practitioner licensed under chapter 147 fraudulently
40 conceal information relating to the delivery of a baby
41 or the care of a minor under the age of six.

42 (4) A foreign object is unintentionally left in
43 the body causing the injury or death."

By MARY NEUHAUSER

S-3601 FILED APRIL 18, 1997

LOST

(P.1272)

HOUSE FILE 693

3607

Amend House File 693 as follows:

1. Page 2, by inserting after line 23 the following:
 - "c. The limitation in paragraph "a" shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product violated a state or federal statute, rule, or regulation and that violation was a cause of the claimant's harm."
2. By renumbering, relettering, or redesignating as necessary.

By STEVEN D. HANSEN

S-3607 FILED APRIL 18, 1997

LOST

(p. 1268)

HOUSE FILE 693

S-3608

- Amend House File 693, as amended, passed, and reprinted by the House, as follows:
 1. Page 2, line 3, by striking the word "intentionally".
 2. Page 2, line 4, by striking the word "fraudulently".

By WILLIAM D. PALMER

3608 FILED APRIL 18, 1997

LOST (p. 1268)

HOUSE FILE 693

S-3609

- Amend House File 693, as amended, passed, and reprinted by the House, as follows:
 1. Page 4, line 16, by inserting after the word "person." the following: "The prohibition also does not apply to cases in which the communication pertains to results or circumstances pertaining to the results of chemical tests of specimens of a person's blood, breath, or urine which are taken to determine alcohol concentration or intoxication and are related to the operation of a motor vehicle by the person who is the subject of the test."

By TOM FLYNN

S-3609 FILED APRIL 18, 1997

LOST

(p. 1270)

HOUSE FILE 693

S-3602

1 Amend House File 693 as follows:
 2 1. Page 3, line 12, by inserting after the word
 3 "later." the following: "This paragraph shall not
 4 apply to an action related to a disease or injury that
 5 is latent in symptom manifestation, in which case the
 6 action shall be deemed to have accrued when the
 7 disease or injury and the cause of the disease or
 8 injury have been made known to the minor's parent or
 9 legal guardian or at the point the minor's parent or
 10 legal guardian should have known of the disease or
 11 injury and the cause of such disease or injury."

By MARY NEUHAUSER

S-3602 FILED APRIL 18, 1997

WITHDRAWN

(P. 1273)

HOUSE FILE 693

S-3604

1 Amend House File 693, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 1, by inserting before line 1 the
 4 following:
 5 "Section 1. NEW SECTION. 519A.15 MEDICAL
 6 MALPRACTICE INSURANCE.
 7 1. The commissioner shall require that an insurer
 8 offering medical malpractice insurance to licensed
 9 health care providers in this state offer medical
 10 malpractice insurance on both a "claims-made" and
 11 "occurrence" basis.
 12 2. An insurer which violates this section is
 13 subject to fines and penalties applicable to licensed
 14 insurers generally, including revocation of the
 15 insurer's license and of the right to do business in
 16 the state."

By JOHNIE HAMMOND

S-3604 FILED APRIL 18, 1997

LOST (P. 1270)

HOUSE FILE 693

S-3605

1 Amend House File 693, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 3, line 12, by inserting after the word
 4 "later" the following: ", provided that when the
 5 minor does not have a living parent or guardian or
 6 live with a parent or guardian the statute tolls until
 7 one year after the age of majority".

By JOHNIE HAMMOND

S-3605 FILED APRIL 18, 1997

LOST

(P. 1273)

HOUSE FILE 693

3612

Amend the amendment, S-3601, to House File 693, as amended, passed, and reprinted by the House, as follows:

1. Page 1, line 11, by striking the word "six" and inserting the following: "eight".
2. Page 1, line 17, by striking the word "six" and inserting the following: "eight".
3. Page 1, line 29, by striking the word "six" and inserting the following: "eight".
4. Page 1, line 33, by inserting after the figure "147" the following: "intentionally".
5. Page 1, line 35, by striking the word "six" and inserting the following: "eight".
6. Page 1, line 41, by striking the word "six" and inserting the following: "eight".

By MARY NEUHAUSER

S-3612 FILED APRIL 18, 1997

ADOPTED

(p. 1273)

HOUSE FILE 693

S-3613

Amend House File 693, as amended, passed, and reprinted by the House, as follows:

1. Page 2, by inserting after line 23 the following:
"c. The fifteen-year limitation in paragraph "a" shall not apply to any action brought by the state."

By JACK RIFE

S-3613 FILED APRIL 18, 1997

LOST

(p. 1274)

HOUSE FILE 693

S-3610

1 Amend House File 693, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, line 12, by inserting after the word
4 "later" the following: "provided that when the
5 claimant does not become aware of the existence of the
6 minor's injuries until after the minor's eighth
7 birthday, a claim shall be commenced within two years
8 after the date on which the claimant knew, or through
9 the use of reasonable diligence should have known, or
10 received notice in writing of the existence of, the
11 injury or death for which damages are sought in the
12 action, but in no event shall any action be brought
13 more than one year after the attainment of majority".

By MARY NEUHAUSER

S-3610 FILED APRIL 18, 1997

WITHDRAWN

(p. 1273)

HOUSE FILE 693

S-3611

1 Amend House File 693 as follows:
2 1. Page 2, by inserting after line 23 the
3 following:
4 "c. This subsection shall not apply to a
5 manufacturer, assembler, designer, supplier of
6 specifications, seller, lessor, or distributor of a
7 product, if the manufacturer, assembler, designer,
8 supplier of specifications, seller, lessor, or
9 distributor of a product knew that the product was
10 defective. For purposes of this subsection, a
11 manufacturer, assembler, designer, supplier of
12 specifications, seller, lessor, or distributor of a
13 product shall be deemed to have known of the defect if
14 either of the following apply:
15 (1) The manufacturer, assembler, designer,
16 supplier of specifications, seller, lessor, or
17 distributor of a product had been held liable in a
18 case in a court of competent jurisdiction where the
19 defective product was at issue.
20 (2) The manufacturer, assembler, designer,
21 supplier of specifications, seller, lessor, or
22 distributor of a product had tested the product and
23 the test indicated that the product was defective."
24 2. By renumbering as necessary.

By PATRICIA HARPER

S-3611 FILED APRIL 18, 1997

LOST

(p. 1271)

SENATE AMENDMENT TO HOUSE FILE 693

H-1815

1 Amend House File 693 as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "Section 1. Section 135.11, Code 1997, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. 18A. Consult with the office of
8 statewide clinical education programs at the
9 university of Iowa college of medicine and annually
10 submit a report to the general assembly by January 15
11 verifying the number of physicians in active practice
12 in Iowa by county who are engaged in providing
13 obstetrical care. To the extent data are readily
14 available, the report shall include information
15 concerning the number of deliveries per year by
16 specialty and county, the age of physicians performing
17 deliveries, and the number of current year graduates
18 of the university of Iowa college of medicine and the
19 university of osteopathic medicine and health sciences
20 entering into residency programs in obstetrics,
21 gynecology, and family practice. The report may
22 include additional data relating to access to
23 obstetrical services that may be available."

24 2. Page 1, line 6, by inserting after the figure
25 "668.13" the following: ", except for interest due
26 pursuant to section 85.30 for which the rate shall be
27 ten percent per year".

28 3. Page 1, line 27, by striking the word "twelve"
29 and inserting the following: "fifteen".

30 4. Page 2, line 6, by striking the word "twelve-
31 year" and inserting the following: "fifteen-year".

32 5. Page 2, line 12, by inserting after the word
33 "cause." the following: "This subsection shall not
34 apply to cases governed by section 614.1, subsection
35 11."

36 6. Page 3, line 9, by striking the word "six" and
37 inserting the following: "eight".

38 7. Page 3, line 11, by striking the word "eighth"
39 and inserting the following: "tenth".

40 8. Page 3, line 33, by inserting after the words
41 "physician assistant," the following: "advanced
42 registered nurse practitioner,".

43 9. Page 4, line 10, by inserting after the words
44 "physician assistants," the following: "advanced
45 registered nurse practitioners,".

46 10. Page 4, line 12, by inserting after the words
47 "physician assistants," the following: "advanced
48 registered nurse practitioners,".

49 11. Page 4, line 30, by inserting after the words
50 "physician assistant," the following: "advanced

H-1815

-1-

H-1815

Page 2

- 1 registered nurse practitioner,".
2 12. Page 5, line 10, by inserting after the words
3 "physician assistant," the following: "advanced
4 registered nurse practitioner,".
5 13. Page 5, line 16, by inserting after the words
6 "physician assistant," the following: "advanced
7 registered nurse practitioner,".
8 14. Page 5, line 25, by inserting after the word
9 "counsel" the following: "in a manner consistent with
10 the Iowa rules of civil procedure providing for notice
11 of deposition".
12 15. Page 5, line 26, by inserting after the words
13 "physician assistant," the following: "advanced
14 registered nurse practitioner,".
15 16. Page 5, line 27, by striking the words "may
16 be" and inserting the following: "has the right to
17 be".
18 17. Page 5, line 30, by inserting after the word
19 "assistant," the following: "advanced registered
20 nurse practitioner,".
21 18. Page 6, line 3, by inserting after the word
22 "assistant," the following: "advanced registered
23 nurse practitioner,".
24 19. Page 6, line 6, by inserting after the word
25 "assistant," the following: "advanced registered
26 nurse practitioner,".
27 20. Page 6, line 7, by inserting after the words
28 "physician assistant," the following: "advanced
29 registered nurse practitioner,".
30 21. Page 6, line 10, by inserting after the words
31 "physician assistant," the following: "advanced
32 registered nurse practitioner,".
33 22. Page 6, line 17, by inserting after the words
34 "physician assistant," the following: "advanced
35 registered nurse practitioner,".
36 23. Page 9, by inserting after line 4 the
37 following:
38 "Sec. 13. Section 668.13, subsection 3, Code 1997,
39 is amended to read as follows:
40 3. Interest shall be calculated as of the date of
41 judgment at a rate equal to the coupon issue yield
42 equivalent, as determined by the United States
43 secretary of the treasury, of the average accepted
44 auction price for the last auction of fifty-two week
45 United States treasury bills settled immediately prior
46 to the date of the judgment plus two percent. The
47 state court administrator shall distribute notice
48 monthly of that rate and any changes to that rate to
49 all district courts.
50 Sec. _____. If any provision of this Act or the

H-1815

-2-

H-1815

Page 3

1 application thereof to any person is invalid, the
2 invalidity shall not affect the provisions or
3 applications of this Act which can be given effect
4 without the invalid provisions or application, and to
5 this end the provisions of this Act are severable.
6 Sec. . EFFECTIVE DATES Sections 1, 2, 3, 7, 8,
7 9, 10, 11, 12, and 13 of this Act shall apply to
8 actions filed after July 1, 1997. Section 4 of this
9 Act shall apply to actions filed after July 1, 1997,
10 except that any cause of action having actually
11 accrued as of the date of enactment of this Act shall
12 be preserved according to the law applicable to the
13 statute of limitations in effect at the time of
14 accrual. Sections 5 and 6 of this Act shall apply to
15 all causes of action accruing on or after July 1,
16 1997, and to all causes of action accruing before July
17 1, 1997, and filed after July 1, 1999."
18 24. Title page, by striking line 5 and inserting
19 the following: "actions, joint and several liability,
20 and providing effective dates."
21 25. By renumbering, relettering, or redesignating
22 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-1815 FILED APRIL 21, 1997

*House Concurred 4-22-97
(p. 1406)*

Lamberti, CH
Dinkla
Chapman

HSB 149

JUDICIARY

House File 693
Sponsored By
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON LAMBERTI)

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

A BILL FOR

1 An Act relating to civil actions and statutes of limitations in
2 civil actions, the rate of interest on judgments and decrees,
3 testimony by expert witnesses, procedures for furnishing
4 patient records of plaintiffs, comparative fault in consortium
5 claims, damages in civil actions, joint and several liability,
6 and disclosure of psychological test material.

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

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1 Section 1. FINDINGS. The general assembly finds that the
2 exception to the general statute of limitations provided
3 minors in section 614.8, Code 1997, impedes efforts of the
4 state to make maternal and child health care widely available
5 in order to provide for the health and welfare of children and
6 pregnant women of this state. Because providers of health
7 care rendering services to children and pregnant women remain
8 liable to claims made by the children involved for as long as
9 nineteen years after the service is rendered, or even longer
10 if the child claims the injury was prenatal, a disincentive
11 results for the provision of these services. The long period
12 of limitation influences medical students not to pursue
13 obstetrical and pediatric practices and physicians practicing
14 in those areas to cease practice many years in advance of
15 normal retirement in order to avoid defending claims during
16 their advanced years. Such influence has exhibited itself in
17 the less populated areas of the state where these medical
18 services are in dangerously short supply. Because of the
19 extended period of limitation provided minors, a significant
20 number of primary care physicians have stopped providing
21 obstetrical services. These trends also have an adverse
22 impact upon the state's efforts to provide for the economic
23 development of less populated areas of the state. The
24 shortage of physicians providing obstetrical care in those
25 areas is a significant impediment to attracting new economic
26 activity. Available data show that nearly all such claims are
27 brought within eight years of occurrence. Claims brought
28 after such a passage of time would logically be very difficult
29 to prove or defend successfully. Fading of memories, the
30 absence of records, and changes in the standard of care make
31 litigating claims after such a period prohibitively expensive
32 and difficult. Public policy should encourage claimants to
33 bring claims within a more reasonable period of time when
34 there is greater likelihood of success. Providers of health
35 care, to the extent that a reasonable period of limitation can

1 provide protection, should be relieved of concern that they or
2 their estates could be placed in the position of having to
3 defend actions based upon events that occurred many years in
4 the past. The general assembly recognizes the potentially
5 conflicting public interests between access to the courts and
6 access to health care and finds that the state has a
7 compelling interest in access to health care which must be
8 paramount in furtherance of the government's obligation to
9 provide for the general health and welfare of its citizens.
10 These findings relate only to Code section 614.8 as amended in
11 this Act.

12 Sec. 2. FINDINGS. The general assembly finds that in
13 civil actions the amount of noneconomic damages awarded a
14 successful party varies widely from case-to-case without any
15 rational basis by which to justify the difference in amounts
16 awarded in similar cases. As a result, great uncertainty
17 exists in civil actions regarding the potential value of a
18 claim for noneconomic damages. This uncertainty causes
19 excessive delays in compensation to worthy parties,
20 constitutes a disincentive for compromise, greatly prolongs
21 the time and expense involved in litigating claims, restrains
22 economic expansion, and adversely affects competitiveness.
23 Because no economic basis exists for calculating an award for
24 noneconomic damages, noneconomic damages are not subject to
25 testing against marketplace values. As a result, such
26 noneconomic damage awards are necessarily based upon the
27 emotional reaction of a jury or court to a particular party
28 and the plight of that party without any rational economic
29 basis for the amount of compensation.

30 The general assembly further finds that it should exercise
31 its authority and determine the maximum amount of an award for
32 noneconomic damage in civil actions. By so acting the general
33 assembly can eliminate a significant element of uncertainty in
34 the civil litigation process and thereby enhance the
35 credibility of the state's civil justice system, reduce the

1 burden on the courts, and expedite the process whereby civil
2 actions are compromised and just compensation rendered. These
3 findings relate only to Code section 668B.1 as enacted in this
4 Act.

5 Sec. 3. Section 147.139, Code 1997, is amended to read as
6 follows:

7 147.139 EXPERT WITNESS STANDARDS.

8 If the standard of care given by a physician and surgeon
9 licensed pursuant to chapter 148, or osteopathic physician and
10 surgeon licensed pursuant to chapter 150A, or a dentist
11 licensed pursuant to chapter 153, is at issue, the court shall
12 only allow a person to qualify as an expert witness and to
13 testify on the issue of the appropriate standard of care if
14 the person's medical or dental qualifications relate directly
15 to the medical problem or problems at issue and the type of
16 treatment administered in the case and the person is licensed
17 by the same examining board as the licensee whose standard of
18 care is at issue.

19 Sec. 4. Section 535.3, Code 1997, is amended to read as
20 follows:

21 535.3 INTEREST ON JUDGMENTS AND DECREES.

22 ~~Interest shall be allowed on all money due on judgments~~
23 ~~and decrees of courts at-the-rate-of-ten-percent-per-year,~~
24 ~~unless-a~~ as follows:

25 1. At a rate equal to the coupon issue yield equivalent,
26 as determined by the United States secretary of the treasury,
27 of the average accepted auction price for the last auction of
28 fifty-two-week United States treasury bills settled
29 immediately prior to the date of the judgment.

30 2. A different rate which is fixed by the contract on
31 which the judgment or decree is rendered, in which case the
32 judgment or decree shall draw interest at the rate expressed
33 in the contract, not exceeding the maximum applicable rate
34 permitted by the provisions of section 535.2, which rate must
35 be expressed in the judgment or decree.

1 3. The state court administrator shall distribute notice
2 monthly of the rate set under subsection 1 and any changes to
3 that rate to all district courts.

4 4. The interest shall accrue from the date of the
5 commencement of the action, except as otherwise provided in
6 subsection 3 5.

7 ~~2.---This-section-does-not-apply-to-the-award-of-interest~~
8 ~~for-judgments-and-decrees-subject-to-section-668-13-~~

9 ~~3-~~ 5. Interest on periodic payments for child, spousal, or
10 medical support shall not accrue until thirty days after the
11 payment becomes due and owing.

12 Sec. 5. Section 614.1, Code 1997, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 2A. WITH RESPECT TO PRODUCTS. Those
15 founded on the death of the person or injuries to the person
16 or property brought against the manufacturer, assembler,
17 designer, supplier of specifications, seller, or distributor
18 of a product based upon an alleged defect in the design,
19 inspection, testing, manufacturing, formulation, marketing,
20 packaging, warning, labeling of the product, or any other
21 alleged defect or failure of whatever nature or kind, based on
22 the theories of strict liability in tort, negligence, or
23 breach of an implied warranty shall not be commenced more than
24 ten years after the product was first purchased, leased,
25 bailed, or installed for use or consumption. This subsection
26 shall not affect the time during which a person found liable
27 may seek and obtain contribution or indemnity from another
28 person whose actual fault caused a product to be defective.

29 Sec. 6. Section 614.1, subsection 9, Code 1997, is amended
30 to read as follows:

31 9. MALPRACTICE. a. These Except as provided in paragraph
32 "b", those founded on injuries to the person or wrongful death
33 against any physician and surgeon, osteopath, osteopathic
34 physician and surgeon, dentist, podiatric physician,
35 optometrist, pharmacist, chiropractor, or nurse, licensed

1 under chapter 147, or a hospital licensed under chapter 135B,
2 arising out of patient care, within two years after the date
3 on which the claimant knew, or through the use of reasonable
4 diligence should have known, or received notice in writing of
5 the existence of, the injury or death for which damages are
6 sought in the action, whichever of the dates occurs first, but
7 in no event shall any action be brought more than six years
8 after the date on which occurred the act or omission or
9 occurrence alleged in the action to have been the cause of the
10 injury or death unless a foreign object unintentionally left
11 in the body caused the injury or death.

12 b. An action brought pursuant to paragraph "a" on behalf
13 of a minor who was under the age of six years when the act,
14 omission, or occurrence alleged in the action occurred, shall
15 be commenced no later than the minor's eighth birthday.

16 Sec. 7. Section 614.1, subsection 11, Code 1997, is
17 amended to read as follows:

18 11. IMPROVEMENTS TO REAL PROPERTY. In addition to
19 limitations contained elsewhere in this section, an action
20 arising out of the unsafe or defective condition of an
21 improvement to real property based on tort and implied
22 warranty and for contribution and indemnity, and founded on
23 injury to property, real or personal, or injury to the person
24 or wrongful death, shall not be brought more than ~~fifteen~~
25 eight years after the date on which occurred the act or
26 omission of the defendant alleged in the action to have been
27 the cause of the injury or death. However, this subsection
28 does not bar an action against a person solely in the person's
29 capacity as an owner, occupant, or operator of an improvement
30 to real property.

31 Sec. 8. Section 614.1, Code 1997, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 14. FINANCIAL EXAMINATION AND REPORTING
34 -- TAX RETURN PREPARATION AND ADVICE. Those arising out of
35 the following acts or omissions within three years after the

1 date on which the claimant knew of, or through the use of
2 reasonable diligence should have known of, or received notice
3 in writing of the existence of, the injury for which damages
4 are sought in the action, whichever of the dates occurs first,
5 but in no event shall any action be brought more than six
6 years after the date on which occurred the act, omission, or
7 occurrence alleged in the action to have been the cause of the
8 injury:

9 a. The performance or nonperformance of a financial audit,
10 financial examination, financial opinion, financial
11 projection, financial report, or preparation of a financial
12 statement.

13 b. The examination, compilation, review, certification, or
14 audit of financial information.

15 c. The performance or nonperformance of other accounting
16 services.

17 d. Tax return preparation and advice.

18 Sec. 9. Section 614.8, Code 1997, is amended to read as
19 follows:

20 614.8 MINORS AND PERSONS WITH MENTAL ILLNESS.

21 a. The times limited for actions herein in this chapter,
22 except those brought for penalties and forfeitures, shall be
23 are extended in favor of minors and persons with mental
24 illness, so that they shall have one year from and after the
25 termination of such the disability within which to commence
26 said an action.

27 b. Except as provided in section 614.1, subsection 9, the
28 times limited for actions in this chapter, except those
29 brought for penalties and forfeitures, are extended in favor
30 of minors, so that they shall have one year from and after
31 attainment of majority within which to commence an action.

32 Sec. 10. Section 622.10, Code 1997, is amended to read as
33 follows:

34 622.10 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE --
35 EXCEPTIONS -- REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS

1 -- APPLICATION TO COURT.

2 1. A practicing attorney, counselor, physician, surgeon,
3 physician assistant, mental health professional, or the
4 stenographer or confidential clerk of any such person, who
5 obtains information by reason of the person's employment, or a
6 member of the clergy shall not be allowed, in giving
7 testimony, to disclose any confidential communication properly
8 entrusted to the person in the person's professional capacity,
9 and necessary and proper to enable the person to discharge the
10 functions of the person's office according to the usual course
11 of practice or discipline.

12 2. The prohibition does not apply to cases where the
13 person in whose favor the prohibition is made waives the
14 rights conferred; nor does the prohibition apply to physicians
15 or surgeons, physician assistants, mental health
16 professionals, or to the stenographer or confidential clerk of
17 any physicians or surgeons, physician assistants, or mental
18 health professionals, in a civil action in which the condition
19 of the person in whose favor the prohibition is made is an
20 element or factor of the claim or defense of the person or of
21 any party claiming through or under the person. The evidence
22 is admissible upon trial of the action only as it relates to
23 the condition alleged.

24 3. a. If a written request is made to a physician or
25 surgeon, physician assistant, or mental health professional by
26 an adverse party for the patient records of a plaintiff in a
27 civil action in which the condition of the plaintiff in whose
28 favor the prohibition is made is an element or factor of the
29 claim or a defense of the adverse party or of any party
30 claiming through or under the adverse party, and the records
31 relate to the condition alleged, the physician or surgeon,
32 physician assistant, or mental health professional shall
33 notify the plaintiff of the request and the plaintiff shall
34 sign a consent within twenty-eight days of receipt of the
35 notification, authorizing the physician or surgeon, physician

1 assistant, or mental health professional to do all of the
2 following:

3 (1) Provide a complete copy of the patient's records,
4 including but not limited to any reports of third parties or X
5 rays relating to the condition.

6 (2) Allow the adverse party to review the original patient
7 records relating to the condition alleged.

8 (3) Review other health care records, films, and documents
9 relating to the condition alleged and furnished by the
10 attorney of the adverse party, prior to providing testimony.

11 (4) Confer with the attorney of the adverse party prior to
12 providing testimony regarding the plaintiff's medical history
13 and the condition alleged, opinions regarding health etiology
14 and prognosis for the condition alleged, and opinions
15 regarding the care provided to the plaintiff by other health
16 care providers for the condition alleged.

17 b. If a plaintiff fails to sign a consent within the
18 prescribed time period, or if a physician or surgeon,
19 physician assistant, or mental health professional fails to
20 comply with the request, the court may order disclosure or
21 compliance or the failure may be grounds for dismissal of the
22 action.

23 4. If an adverse party desires the oral deposition, either
24 discovery or evidentiary, of a physician or surgeon, physician
25 assistant, or mental health professional to which the
26 prohibition would otherwise apply or the stenographer or
27 confidential clerk of a physician or surgeon, physician
28 assistant, or mental health professional or desires to call a
29 physician or surgeon, physician assistant, or mental health
30 professional to which the prohibition would otherwise apply or
31 the stenographer or confidential clerk of a physician or
32 surgeon, physician assistant, or mental health professional as
33 a witness at the trial of the action, the adverse party shall
34 file an application with the court for permission to do so.
35 The court upon hearing, which shall not be ex parte, shall

1 grant permission unless the court finds that the evidence
2 sought does not relate to the condition alleged and shall fix
3 a reasonable fee to be paid to the physician or surgeon,
4 physician assistant, or mental health professional by the
5 party taking the deposition or calling the witness.

6 5. For the purposes of this section, "mental health
7 professional" means a psychologist licensed under chapter
8 154B, a registered nurse licensed under chapter 152, a social
9 worker licensed under chapter 154C, a marital and family
10 therapist licensed under chapter 154D, a mental health
11 counselor licensed under chapter 154D, or an individual
12 holding at least a master's degree in a related field as
13 deemed appropriate by the board of behavioral science
14 examiners.

15 6. ~~No~~ A qualified school guidance counselor, who has met
16 the certification and accreditation standards of the
17 department of education as provided in section 256.11,
18 subsection 10, who obtains information by reason of the
19 counselor's employment as a qualified school guidance
20 counselor shall not be allowed, in giving testimony, to
21 disclose any confidential communications properly entrusted to
22 the counselor by a pupil or the pupil's parent or guardian in
23 the counselor's capacity as a qualified school guidance
24 counselor and necessary and proper to enable the counselor to
25 perform the counselor's duties as a qualified school guidance
26 counselor.

27 Sec. 11. Section 624.18, Code 1997, is amended to read as
28 follows:

29 624.18 ~~DISTINCTION-BETWEEN-DEBT-AND~~ DESIGNATION AND
30 CALCULATION OF DAMAGES.

31 1. In all actions where the plaintiff recovers a sum of
32 money, the amount to which the plaintiff is entitled may be
33 awarded the plaintiff by the judgment generally, without any
34 distinction being therein made as to whether such sum is
35 recovered by way of debt or damages.

1 2. In all personal injury actions where the plaintiff
2 recovers a sum of money that, according to special verdict, is
3 intended, in whole or in part, to address the future damages
4 of the plaintiff, that portion of the judgment that reflects
5 the future damages shall be adjusted by the court to reflect
6 the present value of the sum, if the finder of fact has not
7 already adjusted the sum to reflect the present value. The
8 court may inquire of the jury whether the calculation of
9 future damages reflects adjustment for present value.

10 Sec. 12. Section 668.3, subsection 1, Code 1997, is
11 amended to read as follows:

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

21 b. Contributory fault shall not bar recovery in an action
22 by a claimant to recover damages for loss of services,
23 companionship, society, or consortium, unless the fault
24 attributable to the person whose injury or death provided the
25 basis for the damages is greater in percentage than the
26 combined percentage of fault attributable to the defendants,
27 third-party defendants, and persons who have been released
28 pursuant to section 668.7, but any damages allowed shall be
29 diminished in proportion to the amount of fault attributable
30 to the person whose injury or death provided the basis for the
31 damages.

32 Sec. 13. Section 668.3, subsection 2, paragraph b, Code
33 1997, is amended to read as follows:

34 b. The percentage of the total fault allocated to each
35 claimant, defendant, third-party defendant, and person who has

1 been released from liability under section 668.7, and injured
2 or deceased person whose injury or death provides a basis for
3 a claim to recover damages for loss of consortium, services,
4 companionship, or society. For this purpose the court may
5 determine that two or more persons are to be treated as a
6 single party.

7 Sec. 14. Section 668.3, subsection 8, Code 1997, is
8 amended to read as follows:

9 8. In an action brought pursuant to this chapter the court
10 shall instruct the jury to answer special interrogatories or,
11 if there is no jury, shall make findings on each specific item
12 of requested or awarded damages indicating that portion of the
13 judgment or decree awarded for past damages and that portion
14 of the judgment or decree awarded for future damages. All
15 awards of future damages shall be calculated according to the
16 method set forth in section 624.18.

17 Sec. 15. NEW SECTION. 668.3A IMMUNITY DUE TO MISUSE,
18 FAILURE TO MAINTAIN, OR ALTERATION.

19 Notwithstanding any other provisions of the Code, in an
20 action seeking recovery of damages for personal injury, death,
21 or property damage alleged to have been caused by a product,
22 no fault shall be allocated to a manufacturer, assembler,
23 designer, supplier of specifications, seller, or distributor,
24 where the primary cause of the injury was a misuse of the
25 product by the plaintiff or some third person or was a failure
26 to properly maintain, service, or repair the product or was
27 due to an alteration, modification, or change in the product
28 which was made by a person other than, and without the
29 direction or consent of, the manufacturer, assembler,
30 designer, supplier of specifications, seller, or distributor
31 from whom recovery of damages is being sought. This
32 allocation of no fault shall apply whether or not any of the
33 conduct described in this section was foreseeable.

34 Sec. 16. Section 668.4, Code 1997, is amended to read as
35 follows:

1 668.4 JOINT AND SEVERAL LIABILITY.

2 In actions brought under this chapter, the rule of joint
3 and several liability shall not apply ~~to defendants who are~~
4 ~~found to bear less than fifty percent of the total fault~~
5 ~~assigned to all parties.~~

6 Sec. 17. Section 668.13, Code 1997, is amended to read as
7 follows:

8 668.13 INTEREST ON JUDGMENTS.

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

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

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

18 3. Interest shall be calculated as of the date of judgment
19 ~~at a rate equal to the coupon issue yield equivalent, as~~
20 ~~determined by the United States secretary of the treasury, of~~
21 ~~the average accepted auction price for the last auction of~~
22 ~~fifty-two week United States treasury bills settled~~
23 ~~immediately prior to the date of the judgment pursuant to~~
24 section 535.3, subsection 1. The state court administrator
25 shall distribute notice monthly of that rate and any changes
26 to that rate to all district courts.

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

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

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

1 of care must be licensed by the examining board that licenses
2 the person whose standard of care is at issue.

3 Code section 535.3 is amended to provide that the rate of
4 interest on judgments and decrees is to be equal to the coupon
5 issue rate of a 52-week United States treasury bill unless a
6 different issue rate is set by contract and expressed in the
7 judgment or decree. The bill also amends Code section 668.13
8 to refer to the method of calculating interest used in Code
9 section 535.3. Currently, Code section 668.13 contains the
10 same interest rate formula as is adopted in amended Code
11 section 535.3.

12 Code section 614.1 is amended to provide that the statute
13 of limitations for a products liability action brought against
14 the manufacturer, assembler, designer, supplier of
15 specifications, seller, or distributor of a product is 10
16 years from the date the product is first purchased, leased,
17 bailed, or otherwise installed for use or consumption.

18 Code sections 614.1 and 614.8 are amended to provide that
19 the time period for commencing an action for medical
20 malpractice for a minor under six years of age when the act,
21 omission, or occurrence alleged in the action occurred, is
22 extended to the minor's eighth birthday. For a minor six
23 years of age or older when such an act, omission, or
24 occurrence alleged in an action occurred, Code section 614.1
25 would generally allow the commencement of an action within two
26 years after the date on which the claimant knew, or through
27 reasonable diligence should have known, or received notice of
28 the injury or death, but in no event more than six years after
29 the date on which occurred the act, omission, or occurrence
30 alleged in the action, unless a foreign object was
31 unintentionally left in the body.

32 Code section 614.1 is also amended to change the statute of
33 limitations for claims involving the defective or unsafe
34 condition of an improvement to real property from 15 years to
35 eight years after the date of the act or omission on which the

1 claim is based.

2 Code section 614.1 is also amended to provide for a statute
3 of limitations for claims involving the performance or
4 nonperformance of accounting services and tax return
5 preparation and advice of three years from the date of the
6 injury or the date of the reasonable discovery or notice of
7 the injury, provided the claims are filed no later than six
8 years from the time the alleged act, omission, or occurrence
9 causing the injury actually took place.

10 Code section 622.10 is amended to provide a procedure for
11 the furnishing of a plaintiff's patient records by a physician
12 or surgeon, physician assistant, or mental health professional
13 to an adverse party in a civil action in which the condition
14 of the plaintiff is an element or factor of the claim or is a
15 defense of the adverse party or of any party claiming through
16 or under the adverse party, if the record relates to the
17 condition alleged. The bill provides that if a request for
18 patient records is made, the plaintiff shall sign a consent
19 form within 28 days of the receipt of notification by the
20 physician or surgeon, physician assistant, or mental health
21 professional of the written request authorizing the physician
22 or surgeon, physician assistant, or mental health professional
23 to do all of the following: provide a complete copy of the
24 patient's records; allow the adverse party to review the
25 original patient record; review other records, films, and
26 documents relating to the alleged condition; and confer with
27 the adverse party's attorney regarding the patient's medical
28 history, the etiology and prognosis for the condition alleged,
29 and opinions of other health care professionals regarding the
30 condition alleged. If the plaintiff fails to sign the consent
31 form within the 28-day period, the court may order disclosure
32 or compliance with the requirements or may dismiss the action.

33 Code sections 624.18 and 668.3 are amended to specify that
34 calculations of future damages awarded in personal injury
35 actions must be adjusted to reflect present value.

1 Code section 668.3 is also amended to provide that the
2 percentage of fault assigned to the person whose death or
3 injury gave rise to a consortium claim shall apply to reduce
4 or bar a judgment for loss of consortium.

5 New Code section 668.3A is enacted to provide that, in a
6 products liability action, where misuse, failure to maintain,
7 or unauthorized alteration of a product is the primary cause
8 of injury, the manufacturer, assembler, designer, wholesaler,
9 retailer, or distributor from whom recovery of damages is
10 being sought shall not have any percentage of fault allocated
11 against them under Iowa's comparative fault law, whether or
12 not the conduct was foreseeable.

13 Code section 668.4 is amended to eliminate joint and
14 several liability in comparative fault actions. Currently,
15 joint and several liability exists only in the event that a
16 defendant is found to bear at least 50 percent of the total
17 fault assigned to all parties.

18 New Code section 668B.1 is enacted to provide that
19 noneconomic damages awards in civil actions shall not exceed
20 \$250,000. The bill requires that a jury instruction must be
21 given on the noneconomic damages limitation stating that only
22 the most egregious case warrants the maximum award. Also, a
23 separate interrogatory verdict form regarding noneconomic
24 damages shall be submitted to the jury, unless waived by the
25 parties.

26 Code section 228.9 is repealed. That section prohibits the
27 disclosure of psychological test material information to any
28 person, including the individual who is the subject of the
29 test, but provides that the subject of the test may request
30 that the material be disclosed to a licensed psychologist.

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HOUSE FILE 693

AN ACT

RELATING TO CIVIL ACTIONS AND STATUTES OF LIMITATIONS IN CIVIL ACTIONS, THE RATE OF INTEREST ON JUDGMENTS AND DECREES, PROCEDURES FOR FURNISHING PATIENT RECORDS OF PLAINTIFFS, COMPARATIVE FAULT IN CONSORTIUM CLAIMS, DAMAGES IN CIVIL ACTIONS, JOINT AND SEVERAL LIABILITY, AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 135.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 18A. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the university of osteopathic medicine and health sciences entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

Sec. 2. Section 535.3, subsection 1, Code 1997, is amended by striking the subsection and inserting in lieu thereof the following:

1. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section

85.30 for which the rate shall be ten percent per year.

Sec. 3. Section 535.3, subsection 2, Code 1997, is amended by striking the subsection.

Sec. 4. Section 535.3, subsection 3, Code 1997, is amended to read as follows:

3. Interest on periodic payments for child, spousal, or medical support shall not accrue until thirty days after the payment becomes due and owing and shall accrue at a rate of ten percent per annum thereafter.

Sec. 5. Section 614.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. WITH RESPECT TO PRODUCTS.

a. Those founded on the death of a person or injuries to the person or property brought against the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found liable may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm.

b. (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by section 614.1, subsection 11.

(2) As used in this paragraph, "harmful material" means silicon gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

Sec. 6. Section 614.1, subsection 9, Code 1997, is amended to read as follows:

9. MALPRACTICE.

a. Those Except as provided in paragraph "b", those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more

than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

b. An action subject to paragraph "a" and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred, shall be commenced no later than the minor's tenth birthday or as provided in paragraph "a", whichever is later.

Sec. 7. Section 614.8, Code 1997, is amended to read as follows:

614.8 MINORS AND PERSONS WITH MENTAL ILLNESS.

a. The times limited for actions herein in this chapter, except those brought for penalties and forfeitures, shall be extended in favor of ~~minors~~ and persons with mental illness, so that they shall have one year from and after the termination of ~~such~~ the disability within which to commence ~~said~~ an action.

b. Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to commence an action.

Sec. 8. Section 622.10, Code 1997, is amended to read as follows:

622.10 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE -- EXCEPTIONS -- REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS AFTER COMMENCEMENT OF LEGAL ACTION -- APPLICATION TO COURT.

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the

person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. a. In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's counsel for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute the patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including, but not limited to, any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraph "c".

b. If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

c. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

d. Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the counsel for the adverse party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and consultation. Any party seeking consultation shall be responsible for payment of all charges. The fee for copies of any records shall be based upon actual cost of production.

e. Defendant's counsel shall provide a written notice to plaintiff's counsel in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's counsel has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and counsel for

the defendant. Plaintiff's counsel may seek a protective order structuring all communication by making application to the court at any time.

f. The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

4. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. For the purposes of this section, "mental health professional" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science examiners.

6. No A qualified school guidance counselor, who has met the certification and accreditation standards of the department of education as provided in section 256.11, subsection 10, who obtains information by reason of the counselor's employment as a qualified school guidance counselor shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

Sec. 9. Section 624.18, Code 1997, is amended to read as follows:

624.18 DISTINCTION-BETWEEN-DEBT-AND DESIGNATION AND CALCULATION OF DAMAGES.

1. In all actions where the plaintiff recovers a sum of money, the amount to which the plaintiff is entitled may be awarded the plaintiff by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages.

1A. In all personal injury actions where the plaintiff recovers a sum of money that, according to special verdict, is intended, in whole or in part, to address the future damages of the plaintiff, that portion of the judgment that reflects the future damages shall be adjusted by the court or the finder of fact to reflect the present value of the sum.

2. Under no circumstances shall there be a reduction to present value more than one time by either the trier of fact or the court.

Sec. 10. Section 668.3, subsection 1, Code 1997, is amended to read as follows:

1. a. 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.

b. Contributory fault shall not bar recovery in an action by a claimant to recover damages for loss of services, companionship, society, or consortium, unless the fault attributable to the person whose injury or death provided the basis for the damages is greater in percentage than the combined percentage of fault attributable 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 person whose injury or death provided the basis for the damages.

Sec. 11. Section 668.3, subsection 2, paragraph b, Code 1997, is amended to read as follows:

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, and injured or deceased person whose injury or death provides a basis for a claim to recover damages for loss of consortium, services, companionship, or society. For this purpose the court may determine that two or more persons are to be treated as a single party.

Sec. 12. Section 668.3, subsection 8, Code 1997, is amended to read as follows:

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

awards of future damages shall be calculated according to the method set forth in section 624.18.

Sec. 13. Section 668.4, Code 1997, is amended to read as follows:

668.4 JOINT AND SEVERAL LIABILITY.

In actions brought under this chapter, the rule of joint and severable liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. However, a defendant found to bear fifty percent or more of fault shall only be jointly and severally liable for economic damages and not for any noneconomic damage awards.

Sec. 14. Section 668.13, subsection 3, Code 1997, is amended to read as follows:

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

Sec. 15. If any provision of this Act or the application thereof to any person is invalid, the invalidity shall not affect the provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Sec. 16. EFFECTIVE DATES. Sections 2, 3, 4, 8, 9, 10, 11, 12, 13, and 14 of this Act shall apply to actions filed after July 1, 1997. Section 5 of this Act shall apply to actions filed after July 1, 1997, except that any cause of action having actually accrued as of the date of enactment of this Act shall be preserved according to the law applicable to the statute of limitations in effect at the time of accrual.

House File 693, p. 11

Sections 6 and 7 of this Act shall apply to all causes of action accruing on or after July 1, 1997, and to all causes of action accruing before July 1, 1997, and filed after July 1, 1999.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 693, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 29, 1997

TERRY E. BRANSTAD
Governor