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JUDICIARY

HOUSE FILE 114
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SUKUP, THOMSON, RANTS, and
METCALF

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

A BILL FOR

1 An Act relating to civil actions by limiting the use of evidence
2 regarding the failure to wear a safety belt; limiting damages;
3 providing immunity due to misuse, failure to maintain, or
4 alteration of a product; eliminating joint and several
5 liability; limiting the admissibility of expert testimony;
6 eliminating restrictions and requirements regarding the
7 disclosure of psychological test material; and including an
8 applicability provision.

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

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1 Section 1. Section 321.445, subsection 4, paragraph b,
2 Code 1999, is amended to read as follows:

3 b. In a cause of action arising on or after July 1, 1986,
4 brought to recover damages arising out of the ownership or
5 operation of a motor vehicle, the failure to wear a safety
6 belt or safety harness in violation of this section ~~shall not~~
7 may be considered evidence of comparative fault under section
8 668.3, subsection 1--~~However, except as provided in section~~
9 ~~321.446, subsection 6,~~ when there is evidence that the failure
10 to wear a safety belt or safety harness in violation of this
11 section may be admitted to mitigate damages, but only under
12 the following circumstances:

13 ~~{1}--Parties seeking to introduce evidence of the failure~~
14 ~~to wear a safety belt or safety harness in violation of this~~
15 ~~section must first introduce substantial evidence that the~~
16 ~~failure to wear a safety belt or safety harness~~ contributed to
17 the injury or injuries claimed by the plaintiff.

18 ~~{2}--If the evidence supports such a finding, the trier of~~
19 ~~fact may find that the plaintiff's failure to wear a safety~~
20 ~~belt or safety harness in violation of this section~~
21 ~~contributed to the plaintiff's claimed injury or injuries, and~~
22 ~~may reduce the amount of plaintiff's recovery by an amount not~~
23 ~~to exceed five percent of the damages awarded after any~~
24 ~~reductions for comparative fault.~~

25 Sec. 2. Section 624.18, Code 1999, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 2A. a. In a civil action in which
28 liability is admitted or established according to special
29 verdict, the present value of the damages awarded for
30 noneconomic losses incurred or to be incurred in the future by
31 the plaintiff by reason of personal injury or death shall not
32 exceed two hundred fifty thousand dollars.

33 b. In an action tried to a jury where damages for
34 noneconomic losses are sought, the court shall submit an
35 instruction to the jury that the maximum allowable award for

1 noneconomic losses in a case of the most egregious nature is
2 two hundred fifty thousand dollars and that damages for
3 noneconomic losses shall be awarded accordingly. A separate
4 interrogatory verdict shall be submitted for damages for
5 noneconomic losses unless waived by all parties.

6 c. As used in this subsection, "noneconomic losses"
7 includes, but is not limited to, pain and suffering, mental
8 anguish, emotional distress, humiliation, loss of consortium,
9 lost opportunity, loss of expectations, and punitive or
10 exemplary damages.

11 Sec. 3. NEW SECTION. 668.3A IMMUNITY DUE TO MISUSE,
12 FAILURE TO MAINTAIN, OR ALTERATION.

13 1. In an action seeking recovery of damages for personal
14 injury, death, or property damage alleged to have been caused
15 by a product, an assembler, lessor, designer, supplier of
16 specifications, distributor, manufacturer, or seller shall not
17 be assigned a percentage of fault if any of the following was
18 a substantial factor in causing the injury, death, or property
19 damage:

20 a. A misuse of the product by the plaintiff or a third
21 person.

22 b. A failure to properly maintain, service, or repair the
23 product.

24 c. An alteration, modification, or change in the product
25 made by a person other than, and without the direction or
26 consent of, the assembler, lessor, designer, supplier of
27 specifications, distributor, manufacturer, or seller from whom
28 recovery of damages is being sought.

29 2. This section shall apply whether or not any of the
30 conduct described in subsection 1 was foreseeable.

31 Sec. 4. Section 668.4, Code 1999, is amended to read as
32 follows:

33 668.4 JOINT AND SEVERAL LIABILITY.

34 In actions brought under this chapter, the rule of joint
35 and several liability shall not apply ~~to-defendants-who-are~~

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

6 Sec. 5. NEW SECTION. 668.17 ADMISSIBILITY OF EXPERT
7 TESTIMONY.

8 In an action brought pursuant to this chapter, the court
9 shall not permit testimony in the form of an expert opinion
10 involving scientific, technical, or specialized knowledge
11 unless the court first makes an affirmative determination
12 regarding both of the following:

13 1. The witness is qualified on the specific subject matter
14 of the testimony.

15 2. The testimony is reliable. In determining whether the
16 testimony is reliable, the court shall consider the following
17 factors relating to the testimony to be offered:

18 a. Whether the theory or technique has been tested or is
19 capable of being tested.

20 b. Whether the theory or technique has been subject to
21 peer review.

22 c. If the testimony is based on a particular technique,
23 the known or potential rate of error related to the technique.

24 d. Whether the theory or technique has been generally
25 accepted in the scientific or technical community to which the
26 testimony pertains.

27 Sec. 6. NEW SECTION. 668A.2 MULTIPLE PUNITIVE OR
28 EXEMPLARY AWARDS FOR SAME ACT OR COURSE OF CONDUCT.

29 1. A defendant against whom punitive or exemplary damages
30 have been awarded pursuant to section 668A.1 may file a
31 separate written motion with the court seeking to have the
32 amount of such damages reduced by the court when all of the
33 following facts exist:

34 a. The defendant was previously sued in one or more
35 actions in state or federal court arising from the same act or

1 course of conduct as the present action. Allegations of
2 substantially the same manufacturing defect, unsafe design, or
3 inadequate warning or labeling of similar units of the same
4 product in both the present and a previous action shall be
5 deemed to arise from the same act or course of conduct.

6 b. Punitive or exemplary damages were awarded against the
7 defendant in a previous action described in paragraph "a".

8 2. The motion shall be filed within the time permitted for
9 the filing of a motion for new trial, and shall include and
10 set forth all of the following:

11 a. The facts and theories of liability involved in any
12 previous action.

13 b. The amount of punitive or exemplary damages awarded in
14 any previous action.

15 c. The reason why and amount by which the present award of
16 punitive or exemplary damages duplicates the punitive damages
17 awarded in any previous action.

18 d. Any other evidence relevant to the determination of the
19 court in reducing punitive or exemplary damages.

20 e. Certified copies of judgments in any previous action
21 and relevant pleadings and other documents that demonstrate
22 the duplicative nature of the punitive or exemplary damages
23 awarded in the present action.

24 3. The party awarded the punitive or exemplary damages may
25 file a responsive motion prior to the hearing on the
26 defendant's motion.

27 4. Upon the proper filing of a motion under this section,
28 the court shall schedule a hearing, and shall determine
29 whether the liability for the punitive or exemplary damages
30 arose out of the same act or course of conduct as in any
31 previous action, and the extent, if any, to which the present
32 award of punitive or exemplary damages duplicates the total
33 amount of punitive or exemplary damages awarded in any
34 previous action.

35 a. The court may consider the facts of any previous

1 action, the basis of liability for the previous punitive or
2 exemplary damages awards, the purposes for which the awards
3 were made, how the awards were determined or calculated, and
4 any other evidence offered by the parties that is relevant to
5 the issue of whether the defendant is subject to duplicative
6 awards of punitive or exemplary damages.

7 b. If the court reduces the present award of punitive or
8 exemplary damages in accordance with this section, the court
9 shall enter its findings and the basis for its decision in the
10 record.

11 5. The decision of the trial court on the issue of
12 reduction of punitive or exemplary damages may be appealed
13 according to the rules of appellate procedure. If the
14 appellate court determines that the decision of the trial
15 court, in reducing or failing to reduce the award of punitive
16 or exemplary damages, was clearly erroneous in light of the
17 record, the appellate court shall reverse the decision of the
18 trial court, and enter appropriate orders.

19 6. The court may stay entry of judgment or execution on
20 the award of punitive or exemplary damages pending a hearing
21 and decision under subsection 4, and enter any other orders as
22 necessary to avoid prejudice or delay. The court may enter a
23 similar stay on execution on the award of punitive or
24 exemplary damages, in addition to any appropriate conditions,
25 pending appeal of the issue if the defendant has made a prima
26 facie showing of the facts in subsection 1.

27 7. The possibility of reduction of an award of punitive or
28 exemplary damages pursuant to this section shall not be
29 disclosed to the jury.

30 Sec. 7. Section 228.9, Code 1999, is repealed.

31 Sec. 8. APPLICABILITY. Section 6 of this Act, relating to
32 multiple punitive or exemplary awards for the same conduct,
33 applies to any civil action, the trial of which commences on
34 or after the effective date of this Act, which civil action
35 shall be considered the present action in order to compare the

1 present action with previous actions. All other sections of
2 this Act apply to civil actions filed on or after the
3 effective date of this Act.

4 EXPLANATION

5 This bill amends Code section 321.445, relating to the use
6 of evidence regarding the failure to wear a safety belt. The
7 bill provides that such evidence may be considered evidence of
8 comparative fault when there is evidence that the failure to
9 wear a safety belt contributed to the injury claimed by the
10 plaintiff.

11 The bill amends Code section 624.18 relating to the
12 designation and calculation of damages. The bill limits
13 damages for noneconomic losses to \$250,000. Noneconomic
14 losses include pain and suffering, mental anguish, emotional
15 distress, humiliation, loss of consortium, lost opportunity,
16 loss of expectations, and punitive or exemplary damages.

17 The bill creates new Code section 668.3A to provide that,
18 in an action for personal injury, death, or property damage
19 alleged to have been caused by a product, an assembler,
20 lessor, designer, supplier of specifications, distributor,
21 manufacturer, or seller will have no percentage of fault
22 assigned to them where one of three factors is determined to
23 be a substantial cause of the injury, death, or property
24 damage. These factors include misuse, failure to maintain, or
25 alteration of the product. The bill provides that this
26 defense is not affected by whether the conduct was
27 foreseeable.

28 The bill amends Code section 668.4 relating to joint and
29 several liability. The bill provides that joint and several
30 liability does not apply to any action brought under Code
31 chapter 668.

32 The bill creates new Code section 668.17 to provide
33 requirements for the admission of testimony in the form of
34 expert opinion involving scientific, technical, or specialized
35 knowledge in a civil action. The bill provides that, in order

1 to be admitted, the court must affirmatively determine that
2 the witness is qualified on the specific subject matter of the
3 testimony and the testimony is reliable.

4 The bill creates new Code section 668A.2 to provide that a
5 defendant who is presently subject to an award of punitive or
6 exemplary damages may file a motion to have the damages
7 reduced when punitive or exemplary damages were awarded
8 against the defendant in a previous action arising out of the
9 same act or course of conduct. The bill provides that, in
10 determining whether to reduce the award, the court may
11 consider the facts of the previous actions, the basis of
12 liability for the previous awards, the purposes for which the
13 awards were made, how the awards were determined or
14 calculated, and any other relevant evidence. The decision by
15 the court may be appealed. The bill provides that the court
16 may stay entry of judgment or execution on the award pending a
17 hearing and decision on a motion to reduce the award or
18 pending an appeal of the issue. The bill provides that the
19 possibility of reduction of an award of punitive or exemplary
20 damages shall not be disclosed to the jury. This provision of
21 the bill applies to any civil action, the trial of which
22 commences on or after the effective date of the bill.

23 The bill repeals Code section 228.9 relating to limitations
24 and requirements regarding the disclosure of psychological
25 test material to individuals, including the individual who is
26 a subject of the test, and in any administrative, judicial, or
27 legislative proceeding.

28 The bill provides that the bill, except for the provisions
29 relating to multiple punitive or exemplary awards for the same
30 conduct, applies to civil actions filed on or after the
31 effective date of the bill.

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