

FEB 5 2004  
Place On Calendar

HOUSE FILE 2170  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 587)  
(SUCCESSOR TO HF 427)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to product liability actions.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2170

1 Section 1. Section 668.12, Code 2003, is amended to read  
2 as follows:

3 668.12 LIABILITY FOR PRODUCTS -- ~~STATE-OF-THE-ART-DEFENSE~~  
4 DEFENSES.

5 1. In any action brought pursuant to this chapter against  
6 an assembler, designer, supplier of specifications,  
7 distributor, manufacturer, or seller for damages arising from  
8 an alleged defect in the design, testing, manufacturing,  
9 formulation, packaging, warning, or labeling of a product, a  
10 percentage of fault shall not be assigned to such persons if  
11 they plead and prove that the product conformed to the state  
12 of the art in existence at the time the product was designed,  
13 tested, manufactured, formulated, packaged, provided with a  
14 warning, or labeled.

15 2. Nothing contained in ~~this-section~~ subsection 1 shall  
16 diminish the duty of an assembler, designer, supplier of  
17 specifications, distributor, manufacturer or seller to warn  
18 concerning subsequently acquired knowledge of a defect or  
19 dangerous condition that would render the product unreasonably  
20 dangerous for its foreseeable use or diminish the liability  
21 for failure to so warn.

22 3. An assembler, designer, supplier of specifications,  
23 distributor, manufacturer, or seller shall not be subject to  
24 liability for failure to warn regarding risks and risk-  
25 avoidance measures that should be obvious to, or generally  
26 known by, foreseeable product users. When reasonable minds  
27 may differ as to whether the risk or risk-avoidance measure  
28 was obvious or generally known, the issues shall be decided by  
29 the trier of fact.

30 4. In any action brought pursuant to this chapter against  
31 an assembler, designer, supplier of specifications,  
32 distributor, manufacturer, or seller for damages arising from  
33 an alleged defect in packaging, warning, or labeling of a  
34 product, a product bearing or accompanied by a warning or  
35 instruction that is reasonably safe for use if the warning or

1 instruction is followed shall not be deemed defective or  
2 unreasonably dangerous on the basis of failure to warn or  
3 instruct.

4 5. In any action brought pursuant to this chapter against  
5 an assembler, designer, supplier or specifications,  
6 distributor, manufacturer, or seller for damages arising from  
7 an alleged defect in the design which allegedly enhanced  
8 injuries, or any action alleging the crashworthiness of a  
9 product, evidence of the user's or injured person's fault  
10 shall be admissible and, subject to the provisions of section  
11 668.2, shall be compared if such fault was a substantial  
12 factor in causing the underlying accident or event producing  
13 any injury to the claimant, including an enhanced injury.

14 EXPLANATION

15 This bill relates to product liability actions.

16 The bill provides that an assembler, designer, supplier of  
17 specifications, distributor, manufacturer, or seller shall not  
18 be subject to liability for failure-to-warn claims in product  
19 liability actions for product risks and risk-avoidance  
20 measures obvious to or generally known by foreseeable product  
21 users. The bill further provides that when there is a  
22 question as to whether the risk or risk-avoidance measure was  
23 obvious or generally known, the issue shall be decided by the  
24 trier of fact.

25 The bill provides that in any action against an assembler,  
26 designer, supplier of specifications, distributor,  
27 manufacturer, or seller for damages arising from an alleged  
28 defect in packaging, warning, or labeling of a product, a  
29 product bearing or accompanied by a warning or instruction  
30 that is reasonably safe for use if the warning or instruction  
31 is followed shall not be deemed defective or unreasonably  
32 dangerous on the basis of failure to warn or instruct.

33 The bill provides that in any action against such persons  
34 for damages arising from a defective design which allegedly  
35 enhanced injuries or any action alleging the crashworthiness

1 of a product, evidence of the injured person's conduct is  
2 admissible in court and the injured person's comparative fault  
3 should be assessed if such fault was a substantial factor in  
4 causing the underlying accident or event producing any injury  
5 to the claimant.

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**HOUSE FILE 2170**

**H-8195**

- 1 Amend House File 2170 as follows:
  - 2 1. Page 1, line 34, by inserting after the words
  - 3 "by a" the following: "reasonable and visible".
  - 4 2. Page 2, line 3, by inserting after the word
  - 5 "instruct." the following: "When reasonable minds may
  - 6 differ as to whether the warning or instruction is
  - 7 reasonable and visible, the issues shall be decided by
  - 8 the trier of fact."
  - 9 3. Page 2, by striking lines 4 through 13.
- By** EICHHORN of Hamilton

**H-8195** FILED MARCH 8, 2004

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HOUSE FILE 2170

H-8165

1 Amend House File 2170 as follows:

2 1. Page 1, line 34, by striking the words "by a"  
3 and inserting the following: "by an understandable  
4 and clearly visible".

5 2. Page 2, line 3, by inserting after the word  
6 "instruct." the following: "When reasonable minds may  
7 differ as to whether a warning or instruction is  
8 understandable and clearly visible, the issues shall  
9 be decided by the trier of fact."

10 3. By renumbering as necessary.

By HUSER of Polk

H-8165 FILED MARCH 5, 2004

HOUSE FILE 2170

H-8166

1 Amend House File 2170 as follows:

2 1. Page 2, by striking lines 11 through 13, and  
3 inserting the following: "668.2, shall be compared  
4 only if it is shown to be a proximate cause of the  
5 enhanced injury. If such fault was a proximate cause  
6 of the underlying accident, but not the enhanced  
7 injury, the trier of fact may award up to five percent  
8 of the damages attributable to the enhanced injury to  
9 the state department of transportation for safety belt  
10 and safety harness educational programs established  
11 under section 321.445, subsection 2."

12 2. By renumbering as necessary.

By HUSER of Polk

H-8166 FILED MARCH 5, 2004

## HOUSE FILE 2170

## H-8167

1 . Amend House File 2170 as follows:

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

4 "Section 1. Section 613.18, Code 2003, is amended  
5 to read as follows:

6 613.18 LIMITATION ON PRODUCTS LIABILITY OF  
7 NONMANUFACTURERS WHOLESALERS, RETAILERS, DISTRIBUTORS,  
8 AND SELLERS OF PRODUCTS.

9 1. A person who is not the assembler, designer, or  
10 manufacturer, and who wholesales, retails,  
11 distributes, or otherwise sells a product is:

12 a. Immune from any suit based upon strict  
13 liability in tort or breach of implied warranty of  
14 merchantability which arises solely from an alleged  
15 defect in the original design or manufacture of the  
16 product but only if the assembler, designer, or  
17 manufacturer is either domiciled in the United States  
18 or is subject to the jurisdiction of the courts of  
19 this state and has not been judicially declared  
20 insolvent.

21 b. Not liable for damages based upon strict  
22 liability in tort or breach of implied warranty of  
23 merchantability for the product upon proof that the  
24 assembler, designer, or manufacturer is domiciled in  
25 the United States or is subject to the jurisdiction of  
26 the courts of this state and has not been judicially  
27 declared insolvent.

28 2. A person who is a retailer of a product and who  
29 assembles a product, such assembly having no causal  
30 relationship to the injury from which the claim  
31 arises, is not liable for damages based upon strict  
32 liability in tort or breach of implied warranty of  
33 merchantability which arises from an alleged defect in  
34 the original design or manufacture of the product upon  
35 proof that the assembler, designer, or manufacturer is  
36 domiciled in the United States or is subject to the  
37 jurisdiction of the courts of this state and has not  
38 been judicially declared insolvent.

39 3. An action brought pursuant to this section,  
40 where the claimant certifies that the assembler,  
41 designer, or manufacturer of the product is not yet  
42 identifiable, tolls the statute of limitations against  
43 such assembler, designer, or manufacturer until such  
44 time as discovery in the case has identified the  
45 assembler, designer, or manufacturer.

46 4. Any person entitled to immunity or limited  
47 liability under this section, who knowingly  
48 misrepresents to the public that the product at issue  
49 is assembled, designed, or manufactured in the United  
50 States shall not be entitled to immunity or limited

H-8167

**H-8167**

Page 2

1 liability."

2 2. By renumbering as necessary.

By HUSER of Polk

**H-8167** FILED MARCH 5, 2004**HOUSE FILE 2170****H-8168**

1 Amend House File 2170 as follows:

2 1. Page 1, line 34, by striking the words "by a"  
3 and inserting the following: "by an understandable  
4 and clearly visible".5 2. Page 2, line 3, by inserting after the word  
6 "instruct." the following: "When reasonable minds may  
7 differ as to whether a warning or instruction is  
8 understandable and clearly visible, the issues shall  
9 be decided by the trier of fact."10 3. Page 2, by striking lines 11 through 13 and  
11 inserting the following: "668.2, shall be compared  
12 only if it is shown to be a proximate cause of the  
13 enhanced injury."

14 4. By renumbering as necessary.

By HUSER of Polk

**H-8168** FILED MARCH 5, 2004**HOUSE FILE 2170****H-8192**

1 Amend House File 2170 as follows:

2 1. Page 2, by inserting after line 13 the  
3 following:4 "6. As a condition for writing product liability  
5 and other liability coverage in this state, and in an  
6 effort to determine the fairness of premiums being  
7 charged to Iowa manufacturers and businesses, the  
8 commissioner of insurance shall require insurance  
9 carriers issuing such coverage to provide and document  
10 their claims experience in this state. Insurance  
11 carriers writing product liability coverage and other  
12 liability coverage for Iowa manufacturers and  
13 businesses shall be required to document and report to  
14 the insurance division the number of claims made and  
15 lawsuits filed in this state against Iowa  
16 manufacturers and businesses on a yearly basis. The  
17 commissioner of insurance shall determine the total  
18 premiums collected from Iowa manufacturers and  
19 businesses during the five-year period preceding the  
20 effective date of this Act, and the total amount of  
21 moneys paid for claims by settlement or judgment for  
22 Iowa cases, excluding administration costs. The cost  
23 of claims adjustments and administration shall be  
24 accounted for separately. The commissioner of  
25 insurance shall also determine the investment income  
26 of each company writing product liability coverage and  
27 other liability coverage during the five-year period  
28 preceding the effective date of this Act."

By HOGG of Linn

**H-8192** FILED MARCH 8, 2004

HOUSE FILE 2170  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 587)  
(SUCCESSOR TO HF 427)

(As Amended and Passed by the House March 9, 2004)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to product liability actions.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_  
Deleted Language \*

1 Section 1. Section 668.12, Code 2003, is amended to read  
2 as follows:

3 668.12 LIABILITY FOR PRODUCTS -- ~~STATE-OF-THE-ART-DEFENSE~~  
4 DEFENSES.

5 1. In any action brought pursuant to this chapter against  
6 an assembler, designer, supplier of specifications,  
7 distributor, manufacturer, or seller for damages arising from  
8 an alleged defect in the design, testing, manufacturing,  
9 formulation, packaging, warning, or labeling of a product, a  
10 percentage of fault shall not be assigned to such persons if  
11 they plead and prove that the product conformed to the state  
12 of the art in existence at the time the product was designed,  
13 tested, manufactured, formulated, packaged, provided with a  
14 warning, or labeled.

15 2. Nothing contained in ~~this-section~~ subsection 1 shall  
16 diminish the duty of an assembler, designer, supplier of  
17 specifications, distributor, manufacturer or seller to warn  
18 concerning subsequently acquired knowledge of a defect or  
19 dangerous condition that would render the product unreasonably  
20 dangerous for its foreseeable use or diminish the liability  
21 for failure to so warn.

22 3. An assembler, designer, supplier of specifications,  
23 distributor, manufacturer, or seller shall not be subject to  
24 liability for failure to warn regarding risks and risk-  
25 avoidance measures that should be obvious to, or generally  
26 known by, foreseeable product users. When reasonable minds  
27 may differ as to whether the risk or risk-avoidance measure  
28 was obvious or generally known, the issues shall be decided by  
29 the trier of fact.

30 4. In any action brought pursuant to this chapter against  
31 an assembler, designer, supplier of specifications,  
32 distributor, manufacturer, or seller for damages arising from  
33 an alleged defect in packaging, warning, or labeling of a  
34 product, a product bearing or accompanied by a reasonable and  
35 visible warning or instruction that is reasonably safe for use

1 if the warning or instruction is followed shall not be deemed  
2 defective or unreasonably dangerous on the basis of failure to  
3 warn or instruct. When reasonable minds may differ as to  
4 whether the warning or instruction is reasonable and visible,  
5 the issues shall be decided by the trier of fact.

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HOUSE FILE 2170

AN ACT  
RELATING TO PRODUCT LIABILITY ACTIONS.

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

Section 1. Section 668.12, Code 2003, is amended to read as follows:

668.12 LIABILITY FOR PRODUCTS -- ~~STATE-OF-THE-ART-DEFENSE~~  
DEFENSES.

1. In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled.

2. Nothing contained in ~~this-section~~ subsection 1 shall diminish the duty of an assembler, designer, supplier of specifications, distributor, manufacturer or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn.

3. An assembler, designer, supplier of specifications, distributor, manufacturer, or seller shall not be subject to liability for failure to warn regarding risks and risk-avoidance measures that should be obvious to, or generally known by, foreseeable product users. When reasonable minds may differ as to whether the risk or risk-avoidance measure was obvious or generally known, the issues shall be decided by the trier of fact.

4. In any action brought pursuant to this chapter against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in packaging, warning, or labeling of a product, a product bearing or accompanied by a reasonable and visible warning or instruction that is reasonably safe for use if the warning or instruction is followed shall not be deemed defective or unreasonably dangerous on the basis of failure to warn or instruct. When reasonable minds may differ as to whether the warning or instruction is reasonable and visible, the issues shall be decided by the trier of fact.

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CHRISTOPHER C. RANTS  
Speaker of the House

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JEFFREY M. LAMBERTI  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2170, Eightieth General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

Approved \_\_\_\_\_, 2004

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THOMAS J. VILSACK  
Governor