

MAR 4 2004
Place On Calendar

HOUSE FILE 2440
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HF 2202)

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

A BILL FOR

1 An Act relating to awards of noneconomic damages against health
2 care providers.

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

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HF 2440

1 Section 1. NEW SECTION. 668B.1 TITLE.

2 This chapter may be cited as the "Noneconomic Damage Awards
3 Against Health Care Providers Act".

4 Sec. 2. NEW SECTION. 668B.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Health care provider" means a physician as defined in
8 section 135.1, a hospital as defined in section 135B.1, and a
9 health care facility as defined in section 135C.1.

10 2. "Health care services" means services that involve
11 diagnosis, treatment, medical evaluation, advice, or such acts
12 as may be permissible under the health care licensing statutes
13 of this state.

14 3. "Noneconomic damages" means damages arising from pain,
15 suffering, inconvenience, physical impairment, mental anguish,
16 emotional pain and suffering, loss of chance, loss of
17 consortium, and any other nonpecuniary damages.

18 Sec. 3. NEW SECTION. 668B.3 DAMAGE AWARDS.

19 In any action for damages for injury or death against any
20 health care provider, whether based in tort, contract, or
21 otherwise, arising out of an act or omission in connection
22 with the provision of health care services, the injured
23 plaintiff shall be entitled to recover noneconomic damages,
24 but such damages shall not exceed two hundred fifty thousand
25 dollars, except upon a finding of actual malice on the part of
26 the defendant.

27 EXPLANATION

28 This bill creates the noneconomic damage awards against
29 health care provider Act.

30 The bill provides that in any action for noneconomic
31 damages for injury or death against any health care provider
32 whether based in tort, contract, or otherwise, arising out of
33 an act or omission in connection with the provision of health
34 care services, the injured plaintiff shall be entitled to
35 recover noneconomic damages not to exceed \$250,000, except

1 upon a finding of actual malice on the part of the defendant.

2 "Noneconomic damages" is defined as damages arising from
3 pain, suffering, inconvenience, physical impairment, mental
4 anguish, emotional pain and suffering, loss of chance, loss of
5 consortium, and any other nonpecuniary damages.

6 "Health care provider" means a physician defined as a
7 person licensed to practice medicine and surgery, osteopathic
8 medicine and surgery, osteopathy, chiropractic, podiatry, or
9 optometry under the laws of this state pursuant to Code
10 section 135.1, a hospital defined as a place which is devoted
11 primarily to the maintenance and operation of facilities for
12 the medical diagnosis, treatment, or care over a period
13 exceeding 24 hours of two or more nonrelated individuals
14 pursuant to Code section 135B.1, and a health care facility
15 defined as a residential care facility, a nursing facility, an
16 intermediate care facility for persons with mental illness, or
17 an intermediate care facility for persons with mental
18 retardation pursuant to Code section 135C.1.

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HOUSE FILE 2440

H-8217

1 Amend the amendment, H-8196, to House File 2440 as
2 follows:

3 1. Page 1, by striking lines 4 through 10.

4 2. Page 1, by striking lines 44 through 46 and
5 inserting the following:

6 "_____. Title page, by striking lines 1 and 2 and
7 inserting the following: "An Act providing for a
8 study relating to medical malpractice awards and
9 insurance premiums.""

10 3. By renumbering as necessary.

By WISE of Lee
HOGG of Linn

H-8217 FILED MARCH 10, 2004
WITHDRAWN

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HOUSE FILE 2440**H-8187**

1 Amend House File 2440 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 519A.14 GOOD LICENSED
5 HEALTH CARE PROVIDER DISCOUNT PLAN.

6 1. A licensed health care provider who is
7 successful in defending all medical malpractice cases
8 filed against the licensed health care provider for a
9 period of five years shall receive a twenty percent
10 discounted rate from what the licensed health care
11 provider would otherwise have been charged from the
12 same coverage.

13 2. A licensed health care provider who is
14 successful in defending all medical malpractice cases
15 filed against the licensed health care provider for a
16 period of ten years shall receive a forty percent
17 discounted rate from what the licensed health care
18 provider would otherwise have been charged from the
19 same coverage."

20 2. Title page, line 1, by striking the words
21 "noneconomic damages against" and inserting the
22 following: "damages against and related premiums
23 charged to".

By HOGG of Linn

H-8187 FILED MARCH 8, 2004

HOUSE FILE 2440**H-8182**

1 Amend House File 2440 as follows:

2 1. Page 1, line 25, by striking the word
3 "actual".

By SWAIM of Davis

H-8182 FILED MARCH 8, 2004

HOUSE FILE 2440

H-8188

1 Amend House File 2440 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 507F.1 CONSUMER
5 ADVOCATE ON INSURANCE -- APPOINTMENT -- POLITICAL
6 ACTIVITY -- REMOVAL.

7 1. The attorney general shall appoint a competent
8 attorney to the office of consumer advocate on
9 insurance. The appointment is subject to senate
10 confirmation in accordance with section 2.32. The
11 advocate's term of office is for four years. The term
12 begins and ends as set forth in section 69.19.

13 2. If a vacancy occurs in the office of consumer
14 advocate on insurance, the vacancy shall be filled for
15 the unexpired term in the same manner as an original
16 appointment.

17 3. The consumer advocate on insurance shall devote
18 the advocate's entire time to the duties of the
19 office. During the advocate's term of office the
20 advocate shall not be a member of a political
21 committee, shall not contribute to a political
22 campaign fund other than through the income tax
23 checkoff for contributions to the Iowa election
24 campaign fund and the presidential election campaign
25 fund, and shall not take part in political campaigns
26 or be a candidate for a political office.

27 4. The attorney general may remove the consumer
28 advocate on insurance for malfeasance or nonfeasance
29 in office, or for any cause which renders the advocate
30 ineligible for appointment, or incapable or unfit to
31 discharge the duties of the advocate's office. The
32 advocate's removal, when so made, is final.

33 5. The office of consumer advocate on insurance
34 shall be limited to regulating insurance markets in
35 Iowa deemed noncompetitive by the commissioner of
36 insurance.

37 Sec. 2. NEW SECTION. 507F.2 DUTIES.

38 The office of the consumer advocate on insurance
39 shall:

40 1. Adopt rules pursuant to chapter 17A and perform
41 other duties necessary to the administration of this
42 chapter.

43 2. Investigate the legality of all rates, charges,
44 rules, regulations, and practices of all persons
45 within the purview of the office of the consumer
46 advocate on insurance, and institute civil proceedings
47 before the insurance division or any court to correct
48 any illegality on the part of any person. In any
49 investigation, the person acting for the office of the
50 consumer advocate on insurance shall have the power to

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1 ask the commissioner of insurance to issue subpoenas,
2 compel the attendance and testimony of witnesses, and
3 the production of papers, books, and documents.
4 3. Make recommendations to the general assembly
5 regarding insurance regulation.
6 4. Make recommendations to the insurance division
7 or any other governmental agency which has an impact
8 on insurance regulation in the state through
9 rulemaking and review and, if the advocate deems it to
10 be in the public interest, appeal the rulemaking or
11 contested case decisions of the insurance division or
12 any other governmental agency which has an impact on
13 insurance regulation in the state.
14 5. Represent the interests of the public relating
15 to insurance reform, coverage, and rates where action
16 is necessary for the protection of public rights.
17 6. Institute judicial review of final or
18 interlocutory actions of the insurance division if the
19 review is deemed to be in the public interest.
20 7. Act as attorney for and represent all consumers
21 generally and the public generally in all proceedings
22 before the insurance division, federal and state
23 agencies, and related judicial review proceedings and
24 appeals.
25 8. Appear for all consumers generally and the
26 public generally in all actions instituted in any
27 state or federal court which involve the validity of a
28 rule, regulation, or order of the insurance division.
29 9. Appear and participate as a party in the name
30 of the office of consumer advocate on insurance in the
31 performance of the duties of the office.
32 Sec. 3. NEW SECTION. 507F.3 OFFICE -- EMPLOYEES
33 -- EXPENSES.
34 1. The office of the consumer advocate on
35 insurance shall be located within the office of the
36 attorney general. Administrative support services
37 shall be provided to the consumer advocate by the
38 office of the attorney general.
39 2. The consumer advocate on insurance may employ
40 attorneys, legal assistants, secretaries, clerks, and
41 other employees the consumer advocate on insurance
42 finds necessary for the full and efficient discharge
43 of the duties and responsibilities of the office. The
44 consumer advocate on insurance may employ consultants
45 as expert witnesses or technical advisors pursuant to
46 contract as the advocate finds necessary for the full
47 and efficient discharge of the duties of the office.
48 Employees of the consumer advocate on insurance, other
49 than the advocate, are subject to merit employment,
50 except as provided in section 19A.3.

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1 3. The salary of the consumer advocate on
2 insurance shall be fixed by the attorney general
3 within the salary range set by the general assembly.
4 The salaries of employees of the consumer advocate on
5 insurance is as provided by law. The appropriation
6 for the office of consumer advocate on insurance shall
7 be separate line item contained in the appropriation
8 from the general fund of the state to the department
9 of justice.

10 Sec. 4. NEW SECTION. 507F.4 INSURANCE DIVISION
11 RECORDS.

12 The consumer advocate on insurance has free access
13 to all the files, records, and documents in the office
14 of the insurance division except:

15 1. Personal information in confidential personnel
16 records of the insurance division.

17 2. Records which represent and constitute the work
18 product of the general counsel of the insurance
19 division where the records relate to a proceeding
20 before the division in which the consumer advocate on
21 insurance is a party or a proceeding in any state or
22 federal court in which both the division and the
23 consumer advocate on insurance are parties.

24 3. Insurer information of a confidential nature
25 which could jeopardize an insurer's competitive status
26 and is provided by an insurer to the division.
27 However, such information shall be provided to the
28 consumer advocate on insurance by the insurance
29 division, if the division determines it to be in the
30 public interest.

31 Sec. 5. NEW SECTION. 507F.5 SERVICE.

32 The consumer advocate on insurance is entitled to
33 service of all documents required by statute or rule
34 to be served on parties in proceedings before the
35 insurance division and all notices, petitions,
36 applications, complaints, answers, motions, and other
37 pleadings filed pursuant to statute or rule with the
38 division.

39 Sec. 6. NEW SECTION. 507F.6 CONSUMER ADVOCATE ON
40 INSURANCE ADVISORY COMMITTEE.

41 The attorney general shall appoint seven members to
42 a consumer advocate on insurance advisory committee to
43 meet at the request of the consumer advocate on
44 insurance for consultation regarding the protection of
45 public rights in insurance regulation. A member shall
46 be appointed from each congressional district with the
47 appointee residing within the district at the time of
48 the appointment. The remaining appointees shall be
49 members at large. Members shall be appointed which
50 represent the various sectors or the population and

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1 appointments shall be made in compliance with sections
2 69.16 and 69.16A. The members shall serve four-year
3 terms and their appointments are not subject to
4 confirmation by the senate. A vacancy shall be filled
5 in the same manner as the original appointment for the
6 unexpired portion of the member's term. Members of
7 the committee shall serve without compensation, but
8 shall be reimbursed for actual expenses from funds
9 appropriated to the office of the consumer advocate on
10 insurance.

11 Sec. 7. NEW SECTION. 519A.5A RATE INCREASES --
12 RIGHT OF REVIEW.

13 1. An insurer subject to this chapter as a member
14 of the association shall not make effective a proposed
15 increase of any medical malpractice insurance rate
16 individually underwritten by the insurer until the
17 proposed increase has been reviewed and approved by
18 the commissioner.

19 2. An insurer under subsection 1 shall give
20 written notice of a proposed increase of any rate to
21 an affected person sixty days prior to the time the
22 application for the increase is filed with the
23 commissioner. The notice to the insured shall state
24 that the insured has a right to file a written
25 objection to the rate increase and that the insured
26 may appeal to the commissioner within thirty days
27 after the commissioner has approved a rate increase.

28 3. After the filing of an application for an
29 increase of any rate by an insurer under subsection 1,
30 the commissioner, prior to the expiration of thirty
31 days after the filing date, shall docket the case as a
32 formal proceeding and set the case for hearing.

33 4. If, after the hearing, the commissioner finds
34 the proposed rate increase to be unlawful, the
35 commissioner shall by order authorize and direct the
36 insurer to file a new or changed rate which, when
37 approved by the commissioner and placed in effect,
38 will satisfy the requirements of this chapter and this
39 title.

40 5. An order of the commissioner made pursuant to
41 this section shall be subject to judicial review as
42 provided in chapter 17A.

43 6. The commissioner shall adopt rules pursuant to
44 chapter 17A to administer this section.

45 Sec. 8. NEW SECTION. 519A.14 INSURANCE RATE --
46 ROLLBACK.

47 1. For any medical malpractice insurance policy
48 underwritten by an insurer subject to this chapter
49 issued or renewed on or after July 1, 2004, the
50 insurer shall reduce its charges to levels which are

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1 twenty percent less than the charges for the same
2 coverage which were in effect on July 1, 2003.

3 2. This section shall not apply to an affected
4 insurer under this chapter who demonstrates on an
5 actuarially sound basis that a reduction pursuant to
6 subsection 1 would deny the affected insurer a fair
7 return.

8 Sec. 9. NEW SECTION. 519A.15 NOTICE OF
9 CANCELLATION AND NONRENEWAL -- REASONS.

10 An insurer subject to this chapter shall not cancel
11 or refuse to renew a policy of medical malpractice
12 insurance issued individually underwritten by the
13 insurer except by notice to the insured. Notice of
14 cancellation or nonrenewal of a policy is not
15 effective unless it is based on one or more of the
16 following reasons:

17 1. Nonpayment of premium.

18 2. Fraud or misrepresentation affecting the policy
19 or the presentation of a claim.

20 3. A determination by the commissioner that a
21 continuation of a policy under this chapter would
22 substantially increase the hazard insured against."

23 2. Title page, line 1, by striking the words
24 "noneconomic damages against" and inserting the
25 following: "damages against and medical malpractice
26 insurance policies issued to".

By JOCHUM of Dubuque

H-8188 FILED MARCH 8, 2004

HOUSE FILE 2440

H-8189

1 Amend House File 2440 as follows:

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

4 "Section 1. Section 147.136, Code 2003, is amended
5 to read as follows:

6 147.136 SCOPE OF RECOVERY.

7 In an action for damages for personal injury
8 against a physician and surgeon, osteopath,
9 osteopathic physician and surgeon, dentist, podiatric
10 physician, optometrist, pharmacist, chiropractor, or
11 nurse licensed to practice that profession in this
12 state, or against a hospital licensed for operation in
13 this state, based on the alleged negligence of the
14 practitioner in the practice of the profession or
15 occupation, or upon the alleged negligence of the
16 hospital in patient care, in which liability is
17 admitted or established, the damages awarded shall not
18 include actual economic losses incurred or to be
19 incurred in the future by the claimant by reason of
20 the personal injury, including but not limited to, the
21 cost of reasonable and necessary medical care,
22 rehabilitation services, and custodial care, and the
23 loss of services and loss of earned income, to the
24 extent that those losses are replaced or are
25 indemnified by insurance, ~~or by governmental,~~
26 ~~employment, or service benefit programs~~ or from any
27 other source except the assets of the claimant or of
28 the members of the claimant's immediate family.
29 However, this section shall not bar recovery of such
30 economic losses to the extent those losses are
31 replaced or indemnified by any benefits provided by an
32 employer through a qualified self-funded health
33 benefit plan, workers' compensation plan, or Medicaid,
34 Medicare, or other governmental benefit program."

35 2. Title page, line 1, by striking the words
36 "awards of noneconomic damages against".

By HOGG of Linn

H-8189 FILED MARCH 8, 2004

HOUSE FILE 2440**H-8194**

1 Amend House File 2440 as follows:

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

4 "Sec. ____ . NEW SECTION. 519A.14 RATES --
5 ROLLBACK.

6 For any coverage for a policy for medical
7 malpractice insurance subject to this chapter which is
8 issued or renewed on or after July 1, 2004, the
9 insurer shall reduce its rates to levels which are ten
10 percent less than the rates for the same coverage
11 which were in effect on July 1, 2003. Rates may be
12 increased except upon an application to the
13 commissioner and a determination by the commissioner
14 that the proposed rates are fair and reasonable. An
15 insurer may not apply for a rate increase until after
16 July 1, 2006.

17 Sec. ____ . NEW SECTION. 519A.15 NONECONOMIC
18 DAMAGE LIMIT.

19 The commissioner may adopt by rule a noneconomic
20 damage limit schedule for medical malpractice cases
21 based upon the life expectancy of the plaintiff, if
22 the commissioner determines that such a schedule would
23 reduce medical malpractice insurance rates."

24 2. By renumbering as necessary.

By HOGG of Linn

H-8194 FILED MARCH 8, 2004

HOUSE FILE 2440**H-8196**

1 Amend House File 2440 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 519A.5A RATE INCREASES
5 -- RIGHT OF REVIEW.

6 An insurer subject to this chapter shall not make
7 effective a proposed increase of any medical
8 malpractice insurance rate individually underwritten
9 by the insurer until the proposed increase has been
10 reviewed and approved by the commissioner.

11 Sec. 2. STUDY.

12 1. The commissioner of insurance shall conduct a
13 study of medical malpractice insurance premiums
14 charged to a licensed health care provider as defined
15 in section 519A.2 to determine whether such premiums
16 are based upon an identified risk assessment and Iowa
17 tort law. The study shall include a report specifying
18 the total amount of premiums charged to a licensed
19 health care provider as well as the total amount of
20 claims paid, including settlements and judgments,
21 during the previous ten-year period. The amount of
22 paid claims reported shall exclude the costs of
23 administration, which shall be reported separately.
24 The study shall also specify the investment income of
25 companies underwriting such coverage during the
26 previous ten-year period and shall identify the
27 factors involved in any increase, decrease, or
28 fluctuation in premiums charged to a licensed health
29 care provider.

30 2. The commissioner of insurance shall provide a
31 statistical report from information gathered from all
32 applicable licensing boards to verify the total amount
33 of moneys paid by settlement or judgment by a licensed
34 health care provider.

35 3. The commissioner of insurance shall include a
36 determination of the effect of the collateral source
37 rule on the reduction of premiums charged to licensed
38 health care providers and the total estimated savings.

39 4. The commissioner of insurance shall include an
40 analysis of the effect of damage award limits,
41 including limits on noneconomic and punitive damages,
42 on premiums charged to licensed health care providers
43 in Iowa."

44 2. Title page, by striking lines 1 and 2 and
45 inserting the following: "An Act relating to health
46 care providers, and providing for a study."

47 3. By renumbering as necessary.

By HOGG of Linn

H-8196 FILED MARCH 8, 2004

HOUSE FILE 2440**H-8197**

1 Amend House File 2440 as follows:

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

4 "Sec. ____ . NEW SECTION. 519A.14 RATES --
5 ROLLBACK.

6 For any coverage for a policy for medical
7 malpractice insurance underwritten by an insurer
8 subject to this chapter which is issued or renewed on
9 or after July 1, 2004, the insurer shall reduce its
10 rates to levels which are ten percent less than the
11 rates for the same coverage which were in effect on
12 July 1, 2003. Rates shall not be increased except
13 upon an application to the commissioner and a
14 determination by the commissioner that the proposed
15 rates are fair and reasonable. An insurer shall not
16 apply for a rate increase until after July 1, 2006.

17 Sec. ____ . NEW SECTION. 519A.15 NONECONOMIC
18 DAMAGE LIMIT.

19 The commissioner may adopt by rule a noneconomic
20 damage limit schedule for medical malpractice
21 insurance cases based upon the life expectancy of the
22 plaintiff, if the commissioner determines that such a
23 schedule would reduce medical malpractice insurance
24 rates."

25 2. By renumbering as necessary.

By HOGG of Linn

H-8197 FILED MARCH 9, 2004

HOUSE FILE 2440**H-8199**

1 Amend House File 2440 as follows:

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

4 "Sec. ____ . NEW SECTION. 519A.14 RATES --

5 ROLLBACK.

6 For any coverage for a policy for medical
7 malpractice insurance underwritten by an insurer
8 subject to this chapter which is issued or renewed on
9 or after July 1, 2004, the insurer shall reduce its
10 rates to levels which are ten percent less than the
11 rates for the same coverage which were in effect on
12 July 1, 2003. Rates shall not be increased except
13 upon an application to the commissioner and a
14 determination by the commissioner that the proposed
15 rates are fair and reasonable. An insurer shall not
16 apply for a rate increase until after July 1, 2006.

17 Sec. ____ . NEW SECTION. 519A.15 NONECONOMIC
18 DAMAGE LIMIT.

19 The commissioner may adopt by rule a noneconomic
20 damage limit schedule for medical malpractice
21 insurance cases based upon the life expectancy of the
22 plaintiff, if the commissioner determines that such a
23 schedule would reduce medical malpractice insurance
24 rates."

25 2. Title page, line 1, by striking the word
26 "against" and inserting the following: "and medical
27 malpractice insurance policies involving".

28 3. By renumbering as necessary.

By HOGG of Linn

H-8199 FILED MARCH 9, 2004

HOUSE FILE 2440**H-8213**

1 Amend House File 2440 as follows:

2 1. Page 1, line 8, by inserting after the figure
3 "135.1," the following: "an advanced registered nurse
4 practitioner licensed pursuant to chapter 152,".

5 2. By renumbering as necessary.

By UPMEYER of Hancock

H-8213 FILED MARCH 9, 2004

HOUSE FILE 2440
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HF 2202)

(As Amended and Passed by the House March 10, 2004)

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

A BILL FOR

1 An Act relating to awards of noneconomic damages against health
2 care providers.

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

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House Amendments _____

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HF 2440

1 Section 1. NEW SECTION. 668B.1 TITLE.

2 This chapter may be cited as the "Noneconomic Damage Awards
3 Against Health Care Providers Act".

4 Sec. 2. NEW SECTION. 668B.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Health care provider" means a physician as defined in
8 section 135.1, an advanced registered nurse practitioner
9 licensed pursuant to chapter 152, a hospital as defined in
10 section 135B.1, and a health care facility as defined in
11 section 135C.1.

12 2. "Health care services" means services that involve
13 diagnosis, treatment, medical evaluation, advice, or such acts
14 as may be permissible under the health care licensing statutes
15 of this state.

16 3. "Noneconomic damages" means damages arising from pain,
17 suffering, inconvenience, physical impairment, mental anguish,
18 emotional pain and suffering, loss of chance, loss of
19 consortium, and any other nonpecuniary damages.

20 Sec. 3. NEW SECTION. 668B.3 DAMAGE AWARDS.

21 In any action for damages for injury or death against any
22 health care provider, whether based in tort, contract, or
23 otherwise, arising out of an act or omission in connection
24 with the provision of health care services, the injured
25 plaintiff shall be entitled to recover noneconomic damages,
26 but such damages shall not exceed two hundred fifty thousand
27 dollars, except upon a finding of actual malice on the part of
28 the defendant.

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HOUSE FILE 2440**S-5095**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, by striking lines 8 and 9 and
4 inserting the following: "section 135.1, a licensed
5 physician assistant as defined in section 148C.1, a
6 nurse, including an advanced registered nurse
7 practitioner, licensed pursuant to chapter 152, a
8 hospital as defined in".

By JOHN PUTNEY
DAVID JOHNSON

S-5095 FILED MARCH 15, 2004

HOUSE FILE 2440**S-5085**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, line 8, by inserting after the figure
4 "135.1," the following: "a licensed physician
5 assistant as defined in section 148C.1,".
6 2. By renumbering as necessary.

By JOHN PUTNEY
DAVID JOHNSON

S-5085 FILED MARCH 11, 2004

HOUSE FILE 2440**S-5145**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, line 10, by striking the word "and".
4 2. Page 1, line 11, by inserting after the figure
5 "135C.1" the following: ", and a federally licensed,
6 regulated, or registered nonprofit blood bank, blood
7 center, or plasma center collecting, processing, or
8 distributing whole human blood, blood components,
9 plasma, blood fractions, or blood derivatives for use
10 by a licensed health care provider".
11 3. By renumbering as necessary.

By MAGGIE TINSMAN

S-5145 FILED MARCH 24, 2004

HOUSE FILE 2440

S-5269

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, line 21, by inserting before the word
4 "In" the following: "1."

5 2. Page 1, by striking lines 27 and 28 and
6 inserting the following: "dollars."

7 2. The noneconomic damage limit in subsection 1
8 shall not apply to the following:

9 a. A court finding of actual malice on the part of
10 the defendant.

11 b. An act or omission of a health care provider
12 that does not meet the minimum standard of skill or
13 care ordinarily possessed and exercised by a health
14 care provider under similar circumstances."

15 3. By renumbering as necessary.

By DONALD B. REDFERN

S-5269 FILED APRIL 5, 2004

LOST

HOUSE FILE 2440**S-5270**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, by inserting after line 28 the
4 following:
5 "Sec. 4. NEW SECTION. 668B.4 CONTINGENT REPEAL.
6 If the commissioner of insurance determines that
7 the rate of increase in the average cost of medical
8 malpractice premiums in the state from July 1, 2004,
9 through June 30, 2005, exceeds the cumulative
10 inflation factor for that period, this chapter is
11 repealed on June 30, 2005."

By STEVEN H. WARNSTADT

S-5270 FILED APRIL 5, 2004

LOST

HOUSE FILE 2440**S-5274**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. NEW SECTION. 519A.14 GOOD LICENSED
6 HEALTH CARE PROVIDER DISCOUNT PLAN.
7 1. A licensed health care provider who is
8 successful in defending all medical malpractice cases
9 filed against the licensed health care provider for a
10 period of five years shall receive a twenty percent
11 discounted rate from what the licensed health care
12 provider would otherwise have been charged from the
13 same coverage.
14 2. A licensed health care provider who is
15 successful in defending all medical malpractice cases
16 filed against the licensed health care provider for a
17 period of ten years shall receive a forty percent
18 discounted rate from what the licensed health care
19 provider would otherwise have been charged from the
20 same coverage."
21 2. Title page, line 1, by striking the words
22 "noneconomic damages against" and inserting the
23 following: "damages against and related premiums
24 charged to".

By WILLIAM A. DOTZLER
JOE BOLKCOM
KEITH A. KREIMAN
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MICHAEL E. GRONSTAL
HERMAN C. QUIRMBACH

S-5274 FILED APRIL 5, 2004

LOST

HOUSE FILE 2440**S-5275**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 507F.1 CONSUMER
6 ADVOCATE ON INSURANCE -- APPOINTMENT -- POLITICAL
7 ACTIVITY -- REMOVAL.

8 1. The attorney general shall appoint a competent
9 attorney to the office of consumer advocate on
10 insurance. The appointment is subject to senate
11 confirmation in accordance with section 2.32. The
12 advocate's term of office is for four years. The term
13 begins and ends as set forth in section 69.19.

14 2. If a vacancy occurs in the office of consumer
15 advocate on insurance, the vacancy shall be filled for
16 the unexpired term in the same manner as an original
17 appointment.

18 3. The consumer advocate on insurance shall devote
19 the advocate's entire time to the duties of the
20 office. During the advocate's term of office the
21 advocate shall not be a member of a political
22 committee, shall not contribute to a political
23 campaign fund other than through the income tax
24 checkoff for contributions to the Iowa election
25 campaign fund and the presidential election campaign
26 fund, and shall not take part in political campaigns
27 or be a candidate for a political office.

28 4. The attorney general may remove the consumer
29 advocate on insurance for malfeasance or nonfeasance
30 in office, or for any cause which renders the advocate
31 ineligible for appointment, or incapable or unfit to
32 discharge the duties of the advocate's office. The
33 advocate's removal, when so made, is final.

34 5. The office of consumer advocate on insurance
35 shall be limited to regulating insurance markets in
36 Iowa deemed noncompetitive by the commissioner of
37 insurance.

38 Sec. 2. NEW SECTION. 507F.2 DUTIES.

39 The office of the consumer advocate on insurance
40 shall:

41 1. Adopt rules pursuant to chapter 17A and perform
42 other duties necessary to the administration of this
43 chapter.

44 2. Investigate the legality of all rates, charges,
45 rules, regulations, and practices of all persons
46 within the purview of the office of the consumer
47 advocate on insurance, and institute civil proceedings
48 before the insurance division or any court to correct
49 any illegality on the part of any person. In any
50 investigation, the person acting for the office of the

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1 consumer advocate on insurance shall have the power to
2 ask the commissioner of insurance to issue subpoenas,
3 compel the attendance and testimony of witnesses, and
4 the production of papers, books, and documents.

5 3. Make recommendations to the general assembly
6 regarding insurance regulation.

7 4. Make recommendations to the insurance division
8 or any other governmental agency which has an impact
9 on insurance regulation in the state through
10 rulemaking and review and, if the advocate deems it to
11 be in the public interest, appeal the rulemaking or
12 contested case decisions of the insurance division or
13 any other governmental agency which has an impact on
14 insurance regulation in the state.

15 5. Represent the interests of the public relating
16 to insurance reform, coverage, and rates where action
17 is necessary for the protection of public rights.

18 6. Institute judicial review of final or
19 interlocutory actions of the insurance division if the
20 review is deemed to be in the public interest.

21 7. Act as attorney for and represent all consumers
22 generally and the public generally in all proceedings
23 before the insurance division, federal and state
24 agencies, and related judicial review proceedings and
25 appeals.

26 8. Appear for all consumers generally and the
27 public generally in all actions instituted in any
28 state or federal court which involve the validity of a
29 rule, regulation, or order of the insurance division.

30 9. Appear and participate as a party in the name
31 of the office of consumer advocate on insurance in the
32 performance of the duties of the office.

33 Sec. 3. NEW SECTION. 507F.3 OFFICE -- EMPLOYEES
34 -- EXPENSES.

35 1. The office of the consumer advocate on
36 insurance shall be located within the office of the
37 attorney general. Administrative support services
38 shall be provided to the consumer advocate by the
39 office of the attorney general.

40 2. The consumer advocate on insurance may employ
41 attorneys, legal assistants, secretaries, clerks, and
42 other employees the consumer advocate on insurance
43 finds necessary for the full and efficient discharge
44 of the duties and responsibilities of the office. The
45 consumer advocate on insurance may employ consultants
46 as expert witnesses or technical advisors pursuant to
47 contract as the advocate finds necessary for the full
48 and efficient discharge of the duties of the office.
49 Employees of the consumer advocate on insurance, other
50 than the advocate, are subject to merit employment,

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1 except as provided in section 8A.412.

2 3. The salary of the consumer advocate on
3 insurance shall be fixed by the attorney general
4 within the salary range set by the general assembly.
5 The salaries of employees of the consumer advocate on
6 insurance is as provided by law. The appropriation
7 for the office of consumer advocate on insurance shall
8 be separate line item contained in the appropriation
9 from the general fund of the state to the department
10 of justice.

11 Sec. 4. NEW SECTION. 507F.4 INSURANCE DIVISION
12 RECORDS.

13 The consumer advocate on insurance has free access
14 to all the files, records, and documents in the office
15 of the insurance division except:

16 1. Personal information in confidential personnel
17 records of the insurance division.

18 2. Records which represent and constitute the work
19 product of the general counsel of the insurance
20 division where the records relate to a proceeding
21 before the division in which the consumer advocate on
22 insurance is a party or a proceeding in any state or
23 federal court in which both the division and the
24 consumer advocate on insurance are parties.

25 3. Insurer information of a confidential nature
26 which could jeopardize an insurer's competitive status
27 and is provided by an insurer to the division.
28 However, such information shall be provided to the
29 consumer advocate on insurance by the insurance
30 division, if the division determines it to be in the
31 public interest.

32 Sec. 5. NEW SECTION. 507F.5 SERVICE.

33 The consumer advocate on insurance is entitled to
34 service of all documents required by statute or rule
35 to be served on parties in proceedings before the
36 insurance division and all notices, petitions,
37 applications, complaints, answers, motions, and other
38 pleadings filed pursuant to statute or rule with the
39 division.

40 Sec. 6. NEW SECTION. 507F.6 CONSUMER ADVOCATE ON
41 INSURANCE ADVISORY COMMITTEE.

42 The attorney general shall appoint seven members to
43 a consumer advocate on insurance advisory committee to
44 meet at the request of the consumer advocate on
45 insurance for consultation regarding the protection of
46 public rights in insurance regulation. A member shall
47 be appointed from each congressional district with the
48 appointee residing within the district at the time of
49 the appointment. The remaining appointees shall be
50 members at large. Members shall be appointed which

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1 represent the various sectors or the population and
2 appointments shall be made in compliance with sections
3 69.16 and 69.16A. The members shall serve four-year
4 terms and their appointments are not subject to
5 confirmation by the senate. A vacancy shall be filled
6 in the same manner as the original appointment for the
7 unexpired portion of the member's term. Members of
8 the committee shall serve without compensation, but
9 shall be reimbursed for actual expenses from funds
10 appropriated to the office of the consumer advocate on
11 insurance.

12 Sec. 7. NEW SECTION. 519A.5A RATE INCREASES --
13 RIGHT OF REVIEW.

14 1. An insurer subject to this chapter as a member
15 of the association shall give written notice of a
16 proposed increase of any rate to an affected person
17 sixty days prior to the time an application for a rate
18 increase is filed with the commissioner. The notice
19 to the insured shall state that the insured has a
20 right to file a written objection to the rate increase
21 and that the insured may appeal to the commissioner
22 within thirty days after the commissioner has approved
23 a rate increase.

24 2. After the filing of an application for an
25 increase of any rate by an insurer under subsection 1,
26 the commissioner, prior to the expiration of thirty
27 days after the filing date, shall docket the case as a
28 formal proceeding and set the case for hearing.

29 3. If, after the hearing, the commissioner finds
30 the proposed rate increase to be unlawful, the
31 commissioner shall by order authorize and direct the
32 insurer to file a new or changed rate which, when
33 approved by the commissioner and placed in effect,
34 will satisfy the requirements of this chapter and this
35 title.

36 4. An order of the commissioner made pursuant to
37 this section shall be subject to judicial review as
38 provided in chapter 17A.

39 5. The commissioner shall adopt rules pursuant to
40 chapter 17A to administer this section.

41 Sec. 8. NEW SECTION. 519A.14 INSURANCE RATE --
42 ROLLBACK.

43 1. For any medical malpractice insurance policy
44 underwritten by an insurer subject to this chapter
45 issued or renewed on or after July 1, 2004, the
46 insurer shall reduce its charges to levels which are
47 twenty percent less than the charges for the same
48 coverage which were in effect on July 1, 2003.

49 2. This section shall not apply to an affected
50 insurer under this chapter who demonstrates on an

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1 actuarially sound basis that a reduction pursuant to
2 subsection 1 would deny the affected insurer a fair
3 return.

4 Sec. 9. NEW SECTION. 519A.15 NOTICE OF
5 CANCELLATION AND NONRENEWAL -- REASONS.

6 An insurer subject to this chapter shall not cancel
7 or refuse to renew a policy of medical malpractice
8 insurance issued individually underwritten by the
9 insurer except by notice to the insured. Notice of
10 cancellation or nonrenewal of a policy is not
11 effective unless it is based on one or more of the
12 following reasons:

- 13 1. Nonpayment of premium.
- 14 2. Fraud or misrepresentation affecting the policy
15 or the presentation of a claim.
- 16 3. A determination by the commissioner that a
17 continuation of a policy under this chapter would
18 substantially increase the hazard insured against."
19 2. Title page, line 1, by striking the words
20 "noneconomic damages against" and inserting the
21 following: "damages against and medical malpractice
22 insurance policies issued to".

By JOE BOLKCOM
WILLIAM A. DOTZLER
KEITH A. KREIMAN
ROBERT E. DVORSKY
JACK HOLVECK

THOMAS G. COURTNEY
AMANDA RAGAN
DARYL BEALL
MICHAEL E. GRONSTAL
HERMAN C. QUIRMBACH

HOUSE FILE 2440**S-5302**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting after line 28 the
4 following:

5 "Sec. ____ . NEW SECTION. 668B.4 APPLICABILITY.

6 This chapter applies to actions filed on or after
7 July 1, 2004."

8 2. Title page, line 2, by inserting after the
9 word "providers" the following: "and including an
10 applicability provision."

By MICHAEL E. GRONSTAL

S-5302 FILED APRIL 12, 2004

LOST

HOUSE FILE 2440**S-5303**

1 Amend House File 2440, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting after line 28 the
4 following:

5 "Sec. ____ . NEW SECTION. 668B.4 COMMISSIONER
6 REPORT.

7 Beginning July 1, 2005, an insurer providing
8 medical malpractice insurance coverage in this state
9 shall submit an annual report to the commissioner of
10 insurance and to the general assembly that shall
11 include, but not be limited to, an actuarial valuation
12 of the cost savings relating to the cost of medical
13 malpractice insurance premiums paid in connection with
14 medical malpractice cases pending on the effective
15 date of this Act compared to the cost of medical
16 malpractice premiums paid in connection with medical
17 malpractice cases filed on or after the effective date
18 of this Act. Such an annual report shall be required
19 until final disposition of all cases pending on the
20 effective date of this Act. The cost savings shall be
21 returned in the form of refunds to the appropriate
22 health care providers in a manner approved by the
23 commissioner."

By MICHAEL E. GRONSTAL

S-5303 FILED APRIL 12, 2004

LOST

HOUSE FILE 2440

S-5305

- 1 Amend House File 2440, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, line 26, by striking the words "two
- 4 hundred fifty thousand" and inserting the following:
- 5 "one million".

By KEITH A. KREIMAN

S-5305 FILED APRIL 12, 2004

LOST

HOUSE FILE 2440

S-5306

- 1 Amend House File 2440, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, line 27, by inserting after the word
- 4 "dollars" the following: "adjusted annually to
- 5 reflect the percentage increase in the consumer price
- 6 index".

By KEITH A. KREIMAN

S-5306 FILED APRIL 12, 2004

LOST

VETO

May 14, 2004

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit **House File 2440**, an Act relating to awards of non-economic damages against health care providers.

I am unable to approve House File 2440 for the following reasons. This legislation purports to address a problem of the cost and availability of medical malpractice liability insurance. I recognize this is a real and growing problem for Iowa health care providers that requires a real solution. However, limiting quality of life damages will not appreciably reduce costs or increase availability of medical malpractice insurance.

The proponents of this legislation believe that it is necessary to prevent doctors from leaving Iowa, yet the statistics of the Iowa Medical Society show that the number of doctors in Iowa has been rising in recent years. For example, the number of obstetrician/gynecologists has increased from 158 in 1999 to 174 in 2003, and the number of family practitioners has increased from 1,008 in 1999 to 1,060 in 2003.

Some suggest that a cap is necessary to prevent frivolous lawsuits against doctors. Iowa has a tradition of fairness and reasonable results, which is why the U.S. Chamber of Commerce ranked Iowa as having one of the top four most favorable climates in the country for fair and reasonable jury awards. This proposal does nothing to discourage frivolous suits, and only penalizes those with legitimate claims who have the greatest injuries.

Others feel that this legislation is necessary because malpractice insurers will leave the state, yet statistics from the National Association of Insurance Commissioners demonstrate that medical malpractice insurance was one of the most profitable lines of insurance in Iowa during the past 10 years. In fact, within the past 10 years an Iowa insurer returned \$70 million in dividends to its policyholders.

Some point to other states that have placed a cap on quality of life damages where premiums have gone down, but in some states premiums were not reduced until insurance reforms were instituted that gave doctors and hospitals the right to object to unreasonable increases.

Malpractice insurance premiums have increased significantly in the last couple of years at the same time that payouts for claims dropped. Iowa's experience does not justify premium increases at the level charged to our doctors and hospitals.

I support a thorough examination of the factors contributing to the rise in medical malpractice insurance premiums for Iowa health care providers, and a thoughtful solution *based on facts* that balances the needs of doctors and hospitals with the rights of patients and interested third parties. I have invited interested stakeholders to participate in a process to develop a comprehensive solution and approach that makes sense for all of us.

For the above reasons, I hereby respectfully disapprove **House File 2440**.

Sincerely,

Thomas J. Vilsack
Governor

TJV:jmc

CC: Secretary of the Senate
Chief Clerk of the House

VETO

HOUSE FILE 2440

AN ACT
RELATING TO AWARDS OF NONECONOMIC DAMAGES AGAINST HEALTH CARE
PROVIDERS.

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

Section 1. NEW SECTION. 668B.1 TITLE.

This chapter may be cited as the "Noneconomic Damage Awards
Against Health Care Providers Act".

Sec. 2. NEW SECTION. 668B.2 DEFINITIONS.

As used in this chapter, unless the context otherwise
requires:

1. "Health care provider" means a physician as defined in
section 135.1, an advanced registered nurse practitioner
licensed pursuant to chapter 152, a hospital as defined in
section 135B.1, and a health care facility as defined in
section 135C.1.

2. "Health care services" means services that involve
diagnosis, treatment, medical evaluation, advice, or such acts
as may be permissible under the health care licensing statutes
of this state.

3. "Noneconomic damages" means damages arising from pain,
suffering, inconvenience, physical impairment, mental anguish,
emotional pain and suffering, loss of chance, loss of
consortium, and any other nonpecuniary damages.

Sec. 3. NEW SECTION. 668B.3 DAMAGE AWARDS.

In any action for damages for injury or death against any
health care provider, whether based in tort, contract, or
otherwise, arising out of an act or omission in connection
with the provision of health care services, the injured
plaintiff shall be entitled to recover noneconomic damages,

but such damages shall not exceed two hundred fifty thousand
dollars, except upon a finding of actual malice on the part of
the defendant.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and
is known as House File 2440, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2004

THOMAS J. VILSACK
Governor