

FILED MAR 11 '03

SENATE FILE 344
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 1155)

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

A BILL FOR

1 An Act concerning regulatory and statutory requirements impacting
2 business relating to liability reform, unemployment
3 compensation benefits eligibility and employer contributions,
4 workers' compensation, occupational safety and health
5 administration training and compliance requirements, financial
6 services and restrictions on property rights, environmental
7 regulatory requirements, and public project contractor
8 requirements.

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

SF 344

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SENATE FILE 344
S-3114
1 Amend Senate File 344 as follows:
2 1. By striking page 43, line 2, through page 44,
3 line 12.
4 2. Title page, line 6, by striking the words "and
5 restrictions on property rights".
6 3. By renumbering, redesignating, and correcting
7 internal references as necessary.
8 **By RON WIECK**
9 **S-3114 FILED APRIL 1, 2003**
10 *filed 4/1/03*

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DIVISION I
LIABILITY REFORM

Section 1. Section 216.2, subsection 11, Code 2003, is amended to read as follows:

11. "Person" means one or more individuals including individuals who are employees and individuals who supervise employees, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

Sec. 2. Section 625A.9, Code 2003, is amended to read as follows:

625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT --
SUPERSEDEAS BOND WAIVED.

1. The taking of the appeal from part of a judgment or order, and the filing of a bond ~~as-above-directed~~, does not stay execution as to that part of the judgment or order not appealed from.

2. If the judgment or order appealed from is for money, such bond shall not exceed any of the following amounts, excluding costs:

a. One hundred percent of the amount of the money judgment up to and including one million dollars.

b. One million dollars, if the amount of the money judgment is in excess of one million dollars, up to and including one hundred million dollars.

c. Twenty-five million dollars, if the amount of the money judgment is in excess of one hundred million dollars.

3. Upon motion and for good cause shown, the district court may stay all proceedings under the order or judgment being appealed and permit the state or any of its political subdivisions to appeal a judgment or order to the supreme court without the filing of a supersedeas bond.

Sec. 3. Section 668A.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

668A.1 CITATION.

1 This chapter may be cited as the "Punitive Damages Standard
2 Act".

3 Sec. 4. NEW SECTION. 668A.2 DEFINITIONS.

4 As used in this chapter, the following terms shall have the
5 following meanings:

6 1. "Clear and convincing evidence" means evidence which
7 leaves no serious or substantial doubt about the correctness
8 of the conclusions drawn from the evidence. It is more than a
9 preponderance of evidence, but less than beyond a reasonable
10 doubt.

11 2. "Compensatory damages" means damages intended to make
12 good the loss of an injured party and no more. The term
13 includes general and special damages and does not include
14 nominal, exemplary, or punitive damages.

15 3. "Defendant" means any party against whom punitive
16 damages are sought.

17 4. "Malice" means either conduct which is specifically
18 intended by the defendant to cause tangible or intangible
19 serious injury to the plaintiff or conduct that is carried out
20 by the defendant both with a flagrant indifference to the
21 rights of the plaintiff and with a subjective awareness that
22 such conduct will result in tangible serious injury.

23 5. "Nominal damages" means damages that are not designed
24 to compensate a plaintiff and that are less than five hundred
25 dollars.

26 6. "Plaintiff" means any plaintiff claiming punitive
27 damages.

28 7. "Punitive damages" means damages awarded against a
29 party in a civil action due to aggravating circumstances and
30 awarded in order to penalize and to provide additional
31 deterrence against a defendant to discourage similar conduct
32 in the future. An award of punitive damages includes
33 exemplary or vindictive damages, but does not include
34 compensatory or nominal damages.

35 Sec. 5. NEW SECTION. 668A.3 PLEADING PUNITIVE DAMAGES --

1 NOTICE.

2 1. An award of punitive damages must be specifically
3 prayed for in the complaint.

4 2. The plaintiff must specifically plead either of the
5 following:

6 a. At least thirty days in advance of filing the
7 complaint, the plaintiff gave notice of a request for damages
8 pursuant to this chapter to the defendant and that in good
9 faith a reasonable settlement could not be reached.

10 b. The thirty-day notice under paragraph "a" could not be
11 given because of exigent circumstances.

12 3. The plaintiff shall not plead a specific amount of
13 punitive damages, but shall plead only that such damages are
14 sought in the action.

15 4. The prayer for punitive damages shall be stricken prior
16 to trial by the court unless the plaintiff presents prima
17 facie evidence sufficient to sustain an award of punitive
18 damages to the court at least thirty days prior to trial.

19 Sec. 6. NEW SECTION. 668A.4 PROCEDURE FOR AWARD OF
20 PUNITIVE DAMAGES.

21 1. If requested by the defendant, all actions tried before
22 a jury involving punitive damages shall be conducted in a
23 bifurcated trial before the same jury.

24 2. In the first stage of a bifurcated trial the jury shall
25 determine liability for compensatory damages and the amount of
26 compensatory damages or nominal damages. Evidence relevant
27 only to the issue of punitive damages shall not be admissible
28 in this stage.

29 3. Punitive damages may be awarded only if compensatory
30 damages have been awarded in the first stage of the trial. An
31 award of nominal damages cannot support an award of punitive
32 damages.

33 4. The jury shall determine if a defendant is liable for
34 punitive damages in the second stage of a bifurcated trial.

35 5. Evidence of a defendant's financial condition or net

1 worth is not admissible in the punitive damage proceeding.

2 6. In determining the amount of punitive damages, the
3 trier of fact shall consider all relevant evidence, including
4 all of the following:

5 a. The severity of the harm caused by the defendant.

6 b. The extent to which the plaintiff's own conduct
7 contributed to the harm.

8 c. The duration of the conduct, the defendant's awareness
9 of the conduct, and any concealment by the defendant.

10 d. The profitability of the conduct to the defendant.

11 e. Any compensatory or punitive damage award to persons
12 similarly situated to the plaintiff.

13 f. Any prospective award of compensatory damages to
14 persons similarly situated to the defendant.

15 g. Any criminal penalties imposed on the defendant as a
16 result of the alleged conduct of the defendant.

17 h. The amount of any civil penalties assessed against the
18 defendant as a result of the conduct complained of by the
19 plaintiff.

20 7. The trier of fact shall not consider the defendant's
21 wealth or financial condition in determining the amount of
22 punitive damages, but such evidence may be considered by the
23 reviewing court in determining whether the award of punitive
24 damages is excessive.

25 8. If a verdict is rendered awarding punitive damages, the
26 court shall review the decision of the trier of fact, upon
27 consideration of all relevant evidence, including the factors
28 identified in subsection 6, to ensure that the award does not
29 exceed an amount necessary for the sake of example and to
30 punish the defendant. The court shall include a statement of
31 findings as to the award of damages.

32 9. The amount of punitive damages shall be reduced
33 pursuant to the contributory or comparative fault principles
34 under the applicable laws of this state. In any action in
35 which there are two or more defendants, an award of punitive

1 damages must be specific as to each defendant, and each
2 defendant is liable only for the amount of the award made
3 against that defendant.

4 Sec. 7. NEW SECTION. 668A.5 AWARD OF PUNITIVE DAMAGES --
5 PROOF -- STANDARD.

6 Punitive damages shall only be awarded where the plaintiff
7 proves by clear and convincing evidence that the plaintiff's
8 harm was the result of actual malice. This burden of proof
9 shall not be satisfied by proof of any degree of negligence,
10 including gross negligence.

11 Sec. 8. NEW SECTION. 668A.6 PUNITIVE DAMAGE LIMITATIONS.

12 1. Except as provided in subsection 2, an award of
13 punitive damages shall not exceed two times the amount of the
14 plaintiff's compensatory damages award or two hundred fifty
15 thousand dollars, whichever is greater.

16 2. If the defendant is a person or a business with fifty
17 or fewer full-time employees, an award of punitive damages
18 shall not exceed two times the amount of the plaintiff's
19 compensatory damages or two hundred fifty thousand dollars,
20 whichever is less.

21 Sec. 9. NEW SECTION. 668A.7 AVAILABILITY.

22 This chapter shall not be construed as creating any claim
23 for punitive damages which is not currently available under
24 the laws of this state.

25 Sec. 10. NEW SECTION. 668B.1 CITATION.

26 This chapter may be cited as the "Noneconomic Damage Awards
27 Act".

28 Sec. 11. NEW SECTION. 668B.2 DEFINITIONS.

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

31 1. "Economic damages" means objectively verifiable
32 pecuniary damages arising from medical expenses and medical
33 care, rehabilitation services, custodial care, loss of
34 earnings and earning capacity, loss of income, burial costs,
35 loss of use of property, costs of repair or replacement of

1 property, costs of obtaining substitute domestic services,
2 loss of employment, loss of business or employment
3 opportunities, and other objectively verifiable monetary
4 losses.

5 2. "Noneconomic damages" means subjective, nonpecuniary
6 damages arising from pain, suffering, inconvenience, physical
7 impairment, disfigurement, mental anguish, emotional distress,
8 loss of services, companionship, society, or consortium,
9 injury to reputation, humiliation, and other nonpecuniary
10 damages.

11 Sec. 12. NEW SECTION. 668B.3 DAMAGE AWARDS.

12 In any personal injury action, the prevailing plaintiff may
13 be awarded all of the following damages:

14 1. Compensation for economic damages suffered by the
15 injured plaintiff.

16 2. Compensation for the noneconomic damages suffered by
17 the injured plaintiff not to exceed the greater of either of
18 the following:

19 a. Two hundred fifty thousand dollars.

20 b. The amount awarded in economic damages.

21 Sec. 13. NEW SECTION. 668B.4 SPECIAL DAMAGES --
22 FINDINGS.

23 1. In any action seeking damages for personal injury or
24 wrongful death in which liability is found, the trier of fact,
25 in addition to other appropriate findings, shall make separate
26 findings for each claimant specifying the amount of both of
27 the following:

28 a. Any past damages.

29 b. Any future damages and the periods over which they will
30 accrue, on an annual basis, for each of the following types of
31 damages:

32 (1) Medical and other costs of health care.

33 (2) Other economic loss.

34 (3) Noneconomic loss.

35 2. The calculation of the costs of any future medical

1 care, other costs of health care, and future noneconomic loss
2 must reflect the costs and losses during the period of time
3 the claimant will sustain those costs and losses. The
4 calculation for other economic loss must be based on the
5 losses during the period of time the claimant would have lived
6 but for the injury upon which the claim is based.

7 Sec. 14. NEW SECTION. 668C.1 CITATION.

8 This chapter may be cited as the "Joint and Several
9 Liability Act".

10 Sec. 15. NEW SECTION. 668C.2 DEFINITIONS.

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

13 1. "Damages" means pain, suffering, inconvenience,
14 physical impairment, disfigurement, mental anguish, emotional
15 distress, loss of services, companionship, society, or
16 consortium, injury to reputation, humiliation, any other
17 theory of damages such as fear of loss or illness or injury,
18 loss of earnings and earning capacity, loss of income, medical
19 expenses and medical care, rehabilitation services, custodial
20 care, burial costs, loss of use of property, costs of repair
21 or replacement of property, costs of obtaining substitute
22 domestic services, loss of employment, loss of business or
23 employment opportunities, and other objectively verifiable
24 monetary losses. "Damages" does not include punitive damages.

25 2. "Fault" means an act or omission of a person which is a
26 proximate cause of injury or death to another person or
27 persons, damage to property, tangible or intangible, or
28 economic injury, including but not limited to negligence,
29 malpractice, strict liability, absolute liability, or failure
30 to warn. "Fault" does not include any tort that results from
31 an act or omission committed with a specific wrongful intent.

32 3. "Person" means any individual, corporation, company,
33 association, firm, partnership, society, joint stock company,
34 or any other entity, including any governmental entity or
35 unincorporated association of persons.

1 Sec. 16. NEW SECTION. 668C.3 SEVERAL LIABILITY.

2 1. In any action involving a claim of personal injury,
3 property damage accompanying personal injury, or wrongful
4 death, the liability of each defendant for damages shall be
5 several only and shall not be joint. Each defendant shall be
6 liable only for the amount of damages allocated to that
7 defendant in direct proportion to that defendant's percentage
8 of fault, and a separate judgment shall be rendered against
9 the defendant for that amount.

10 2. In determining the judgment amount of damages to be
11 entered against each defendant, the court, with regard to each
12 defendant, shall multiply the total amount of damages
13 recoverable by the plaintiff by the percentage of each
14 defendant's fault to determine the maximum amount of damages
15 recoverable against each defendant.

16 Sec. 17. NEW SECTION. 668C.4 FAULT -- NONPARTIES.

17 1. In assessing percentages of fault, the trier of fact
18 shall consider the fault of all persons who contributed to the
19 alleged injury or death or damage to property, tangible or
20 intangible, regardless of whether such person was, or could
21 have been, named as a party to the suit. Negligence or fault
22 of a nonparty may be considered if the plaintiff entered into
23 a settlement agreement with the nonparty or if the defendant
24 gives notice within one hundred twenty days of the date of
25 trial that a nonparty was wholly or partially at fault. The
26 notice shall be given by filing a pleading in the action
27 designating such nonparty and setting forth such nonparty's
28 name and last known address, or the best identification of
29 such nonparty possible under the circumstances, together with
30 a brief statement of the basis for believing such nonparty to
31 be at fault.

32 2. This chapter shall not be construed to eliminate or
33 diminish any defenses or immunities that currently exist,
34 except as expressly noted in this chapter. Assessments of
35 percentages of fault for nonparties are used only as a vehicle

1 for accurately determining the fault of named parties. Where
2 fault is assessed against nonparties, findings of such fault
3 shall not subject any party to liability in this or any other
4 action, or be introduced as evidence of liability in any
5 action.

6 Sec. 18. NEW SECTION. 668C.5 CONCERT OF ACTION.

7 Joint liability shall be imposed on all persons who
8 consciously and deliberately pursue a common plan or design to
9 commit a tortuous act, or actively take part in a tortuous
10 act. Any person held jointly liable under this chapter shall
11 have a right of contribution from any codefendant acting in
12 concert. A defendant shall be held responsible only for the
13 portion of fault assessed to those with whom the defendant
14 acted in concert under this section.

15 Sec. 19. NEW SECTION. 668C.6 BURDEN OF PROOF.

16 The burden of alleging and proving fault shall be upon the
17 party who seeks to establish such fault.

18 Sec. 20. NEW SECTION. 668C.7 LIMITATIONS.

19 This chapter shall not be construed to create a cause of
20 action or to alter the immunity of any person.

21 Sec. 21. NEW SECTION. 668D.1 CITATION.

22 This chapter may be cited and shall be known as the
23 "Product Liability Act".

24 Sec. 22. NEW SECTION. 668D.2 DEFINITIONS.

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

27 1. "Claimant" means a person who brings a product
28 liability action, and if such an action is brought through or
29 on behalf of an estate, includes the claimant's decedent, or
30 if such action is brought through or on behalf of a minor,
31 includes the claimant's parent or guardian.

32 2. "Design" means the intended or known physical and
33 material characteristics of a product and includes any
34 intended or known formulation or content of the product and
35 the usual result of the intended manufacturing or other

1 process used to produce the product.

2 3. "Harm" means any of the following:

3 a. Damage to property other than the product itself.

4 b. Personal physical injury, illness, or death.

5 c. Mental anguish or emotional harm.

6 d. Any loss of consortium or services or other loss
7 deriving from any type of harm described in paragraph "a",
8 "b", or "c".

9 4. "Manufacturer" means any of the following:

10 a. A person who is engaged in a business to design,
11 produce, make, fabricate, construct, or remanufacture a
12 product or component part of a product.

13 b. A product seller not described in paragraph "a" holding
14 itself out as a manufacturer to the user of the product;
15 except that any product seller who acts primarily as a
16 wholesaler, distributor, or retailer of products may be a
17 manufacturer with respect to a product to the extent that such
18 seller designs, produces, makes, fabricates, constructs, or
19 remanufactures the product before sale.

20 5. "Person" means an individual, corporation, company,
21 association, firm, partnership, society, joint stock company,
22 or any other entity including any government entity or
23 unincorporated association of persons.

24 6. "Product" means an object, substance, mixture, or raw
25 material in a gaseous, liquid, or solid state, possessing
26 intrinsic value which is capable of delivery either as an
27 assembled whole or as a component part and is produced for
28 introduction to trade or commerce. "Product" does not include
29 human tissue, blood and blood products, or organs.

30 7. a. "Product seller" means either of the following:

31 (1) A manufacturer.

32 (2) A person who, in the course of business conducted for
33 that purpose, sells, distributes, leases, installs, prepares,
34 packages, labels, markets, repairs, maintains, or otherwise is
35 involved in placing a product in the stream of commerce.

1 b. "Product seller" does not mean any of the following:

2 (1) A seller of real property, unless that person is
3 engaged in the sale of manufactured housing or in the mass
4 production of dwellings.

5 (2) A provider of professional services in any case in
6 which the sale or use of a product is incidental to the
7 transaction and the essence of the transaction involves
8 judgment, skill, or services.

9 (3) A person who acts only in a financial capacity with
10 respect to the sale of a product.

11 (4) A person who leases a product, without having a
12 reasonable opportunity to inspect and discover defects in the
13 product, under a lease arrangement in which the selection,
14 possession, maintenance, and operation of the product are
15 controlled by a person other than the lessor.

16 Sec. 23. NEW SECTION. 668D.3 EFFECT ON OTHER LAWS.

17 1. Except as provided in subsection 2, any civil action
18 brought against a manufacturer or product seller for harm
19 caused by a product is a product liability action and is
20 governed by the provisions of this chapter. This chapter is
21 intended to govern any civil action for harm caused by a
22 product, including any action which before the effective date
23 of this Act would have been based on any of the following
24 theories:

25 a. Strict liability in tort.

26 b. Negligence.

27 c. Breach of express, implied, or statutorily implied
28 warranty.

29 d. Failure to discharge a duty to warn or instruct.

30 e. Misrepresentation, concealment, or nondisclosure.

31 f. Any other common law theory or theory established by
32 statute that is the basis for an award of damages for harm
33 caused by a product.

34 2. A product liability action does not include any civil
35 action against a manufacturer or seller for any of the

1 following:

- 2 a. Harm caused to a product itself.
- 3 b. Damage to property under a breach of warranty theory if
- 4 prohibited by the Iowa uniform commercial code.
- 5 c. Commercial loss, including incidental and consequential
- 6 damages in a commercial setting.
- 7 d. Commercial risks that are the subject of a contract
- 8 between the manufacturer or a seller and a buyer.

9 Civil actions described in this subsection shall be
10 governed by the Iowa uniform commercial code.

11 3. In a product liability action brought pursuant to this
12 chapter, the product seller is not liable to a claimant for
13 mental anguish or emotional harm in the absence of proof of
14 related and contemporaneous personal physical injury, illness,
15 or death.

16 Sec. 24. NEW SECTION. 668D.4 STANDARDS OF LIABILITY.

17 In a product liability action brought pursuant to this
18 chapter, a manufacturer shall be liable to a claimant if the
19 claimant establishes by a preponderance of the evidence all of
20 the following:

21 1. The product was unreasonably dangerous for any of the
22 following reasons:

- 23 a. Faulty construction.
- 24 b. Failure to conform to an express warranty with respect
- 25 to the product made by the manufacturer or product seller.
- 26 c. Faulty design.
- 27 d. Failure of the manufacturer to provide adequate
- 28 warnings or instructions.

29 2. The defendant was the manufacturer of the particular
30 product that caused the claimant's harm.

31 3. The unreasonably dangerous aspect of the product was
32 the proximate cause of the harm complained of by the claimant.

33 Sec. 25. NEW SECTION. 668D.5 GOVERNMENT STANDARDS.

34 In a product liability action brought pursuant to this
35 chapter, a manufacturer shall not be liable to a claimant if

1 the product alleged to have caused the claimant's harm
2 materially complied, at the time the product was manufactured,
3 with standards, conditions, or specifications established,
4 adopted, or approved by a federal or state statute or by a
5 state or federal governmental agency responsible for the
6 design formulation, labeling, packaging, performance, or
7 approval of the product, unless the claimant proves by clear
8 and convincing evidence that the defendant intentionally and
9 fraudulently withheld from or misrepresented to the agency
10 information known to be material and relevant to the harm in
11 question.

12 Sec. 26. NEW SECTION. 668D.6 DEFECTLESS PRODUCTS.

13 In a product liability action brought pursuant to this
14 chapter, a manufacturer shall not be liable for harm caused by
15 an inherent characteristic of the product that would be
16 recognized by the ordinary person who uses or consumes the
17 product with the ordinary knowledge common to the community.

18 Sec. 27. NEW SECTION. 668D.7 MISUSE AND MODIFICATION.

19 In a product liability action brought pursuant to this
20 chapter, a manufacturer shall not be liable for harm caused by
21 product misuse, alteration, or modification. Misuse,
22 alteration, or modification shall include, but is not limited
23 to, the following:

- 24 1. Any use, alteration, or modification contrary to or
25 inconsistent with a manufacturer's warnings or instructions.
- 26 2. Any use, alteration, or modification involving a risk
27 of harm which was known or should have been known by an
28 ordinary person who uses or consumes the product.

29 Sec. 28. NEW SECTION. 668D.8 CONSTRUCTION DEFECTS.

30 In a product liability action brought pursuant to this
31 chapter, a product may be unreasonably dangerous because it is
32 defective in manufacture or construction only if the claimant
33 proves by a preponderance of the evidence that when the
34 product left the control of the manufacturer, it deviated in a
35 material way from the established design specifications,

1 formula, or performance standards of the manufacturer, or from
2 the clear majority of otherwise identical units manufactured
3 to the same design specifications, formula, or performance
4 standards.

5 Sec. 29. NEW SECTION. 668D.9 EXPRESS WARRANTY.

6 1. In a product liability action brought pursuant to this
7 chapter, a product may be unreasonably dangerous because it
8 did not conform to an express warranty only if the claimant
9 proves by a preponderance of the evidence all of the
10 following:

11 a. The claimant, or a person acting on the claimant's
12 behalf, reasonably relied on an express warranty made by the
13 manufacturer about a material fact concerning the safety of
14 the product.

15 b. The express warranty proved to be untrue.

16 c. If the representation had been true, the claimant would
17 not have been harmed.

18 2. For the purposes of this section:

19 a. "Express warranty" means any material, positive
20 statement, affirmation of fact, promise, or description
21 relating to a product, including any sample or model of a
22 product.

23 b. "Material fact" means any specific characteristic or
24 quality of the product, but does not include a general opinion
25 about, or praise of, the product or its quality.

26 3. A manufacturer may be subject to liability under this
27 section although it did not engage in negligent or fraudulent
28 conduct in making the express warranty.

29 Sec. 30. NEW SECTION. 668D.10 KNOWLEDGE OF DANGER.

30 In a product liability action brought pursuant to this
31 chapter, based upon a defective design, a manufacturer shall
32 not be liable unless the claimant proves by a preponderance of
33 the evidence that, at the time the product left the
34 manufacturer's control, the manufacturer knew or, in light of
35 the scientific and technical knowledge in existence at the

1 time the product left the manufacturer's control, reasonably
2 should have known of the danger that caused the claimant's
3 harm.

4 Sec. 31. NEW SECTION. 668D.11 FEASIBLE ALTERNATIVE
5 DESIGN.

6 In a product liability action brought pursuant to this
7 chapter, based upon a defective design, a manufacturer shall
8 not be liable unless the claimant proves by a preponderance of
9 the evidence that, at the time the product left the
10 manufacturer's control, a practical and technically feasible
11 alternative design or formulation existed that would have
12 prevented the harm without significantly impairing the
13 usefulness or desirability of the product to the group of
14 persons who are the intended users of the product.

15 Sec. 32. NEW SECTION. 668D.12 UNAVOIDABLY UNSAFE
16 PRODUCTS.

17 In a product liability action brought pursuant to this
18 chapter, a manufacturer is not liable to a claimant for harm
19 caused by an unavoidably unsafe aspect of a drug, biological,
20 or medical device unless the claimant proves by a
21 preponderance of the evidence both of the following:

22 1. At the time the product left the manufacturer's
23 control, the manufacturer knew or, in light of the then
24 existing and reasonably available scientific and technical
25 knowledge, reasonably should have known of the danger that
26 caused the claimant's harm.

27 2. The manufacturer failed to provide adequate warnings or
28 instructions. A product or any part of a product shall be
29 considered unavoidably unsafe unless the danger could have
30 been eliminated by use of an existing, practical, and
31 technically feasible alternative design or formulation that
32 would have prevented the harm without significantly impairing
33 the usefulness or desirability of the product to the group of
34 persons who are the intended users of the product.

35 3. For the purposes of this section, "adequate warning"

1 means a warning that a reasonably prudent person in the same
2 or similar circumstances would have provided with respect to
3 the danger, or a warning that conforms to the requirements of
4 a federal or state statute or agency regulation, or that is
5 conditioned upon the approval of the product by a federal or
6 state agency that prescribes the form or language of the
7 warning or instruction.

8 Sec. 33. NEW SECTION. 668D.13 ASSUMPTION OF RISK.

9 1. In a product liability action brought pursuant to this
10 chapter, a defendant shall not be liable if the injured person
11 assumed the risk of injury or harm to property.

12 2. "Assumed the risk" means the injured person did both of
13 the following:

14 a. Knew of and appreciated the risk.

15 b. Voluntarily encountered the risk that proximately
16 caused the injury or damage.

17 3. The elements of assumption of risk may be inferred, as
18 a matter of either fact or law, from circumstantial evidence
19 that the injured person should have known and appreciated the
20 risk and voluntarily encountered it.

21 Sec. 34. NEW SECTION. 668D.14 WARNINGS.

22 1. In a product liability action brought pursuant to this
23 chapter, a manufacturer shall not be liable for harm caused by
24 a failure to warn if the product contains an adequate warning
25 or instruction.

26 2. A manufacturer shall not be liable for failure to warn
27 or instruct about any of the following:

28 a. A danger that is an open and obvious risk or that is a
29 matter of common knowledge.

30 b. A product misuse, alteration, or modification as
31 described in section 668D.7.

32 3. For the purposes of this section, "adequate warning"
33 means the same as defined in section 668D.12.

34 Sec. 35. NEW SECTION. 668D.15 WARNINGS TO THIRD PARTIES.

35 In a product liability action brought pursuant to this

1 chapter, based upon the failure to provide adequate warnings
2 or instructions, the manufacturer shall not be liable under
3 any of the following circumstances:

4 1. The claimant used the product in the claimant's
5 workplace, and the manufacturer provided warnings or
6 instructions to the claimant's employer, as the most practical
7 and feasible means of transmitting the warnings or
8 instructions to the claimant.

9 2. The product was sold as a component or material to be
10 incorporated into another product, and the manufacturer
11 provided warnings or instructions to the manufacturer's
12 immediate buyer, and the claimant was exposed to the component
13 or material after it was incorporated or converted into
14 another product.

15 3. The product was intended to be used or dispensed only
16 by or under the supervision of an expert and the manufacturer
17 employed means reasonably calculated to make warnings or
18 instructions available to the using or supervisory expert. As
19 used in this section, "means reasonably calculated to make
20 warnings or instructions available" does not require actual,
21 personal notice to the expert where such personal notice would
22 be impossible or impracticable.

23 Sec. 36. NEW SECTION. 668D.16 PRODUCT SELLER LIABILITY.

24 1. A product seller shall be liable for harm to the
25 claimant caused by a product as if the product seller were the
26 manufacturer of the product under either of the following
27 circumstances:

28 a. The manufacturer is not subject to service of process
29 under the laws of this state.

30 b. The court determines that the claimant would be unable
31 to enforce a judgment against the manufacturer.

32 2. A product seller other than a manufacturer is liable to
33 a claimant for the failure of the product involved in such
34 action to conform to a warranty made with respect to such
35 product if the claimant establishes by a preponderance of the

1 evidence all of the following:

2 a. The product seller sold such product.

3 b. The product seller made an express warranty as to such
4 product independent of any express warranty made by a
5 manufacturer as to such product.

6 c. The product failed to conform to the product seller's
7 warranty.

8 d. The failure of the product to conform to the product
9 seller's warranty caused the harm complained of by the
10 claimant.

11 3. A product seller other than a manufacturer is liable to
12 a claimant on the basis of negligence if the claimant
13 establishes by a preponderance of the evidence all of the
14 following:

15 a. The product seller sold the product involved in such
16 action.

17 b. The product seller did not exercise reasonable care in
18 either of the following:

19 (1) Assembling, inspecting, or maintaining such product.

20 (2) Passing on such warnings or instructions from such
21 product's manufacturer about the dangers and proper use of
22 such product.

23 c. Such failure to exercise reasonable care was a
24 proximate cause of the harm complained of by the claimant.

25 Sec. 37. NEW SECTION. 668D.17 ALCOHOL AND DRUG DEFENSE.

26 In a product liability action brought pursuant to this
27 chapter, a manufacturer shall not be liable if both of the
28 following occur:

29 1. The claimant was under the influence of intoxicating
30 alcohol or a drug not prescribed by a physician for use by the
31 claimant.

32 2. As a result of the influence of the alcohol or drug,
33 the claimant was more than fifty percent at fault for the harm
34 suffered by the claimant.

35 Sec. 38. NEW SECTION. 668D.18 SUBSEQUENT REMEDIAL

1 MEASURES.

2 1. In a product liability action brought pursuant to this
3 chapter, evidence of any measure taken by a manufacturer after
4 the occurrence of a claimant's harm which, if taken prior to
5 the claimant's harm, would have made the harm less likely to
6 occur is not admissible to prove liability.

7 2. Evidence described in subsection 1 may be admitted in a
8 court of law for either of the following reasons:

9 a. To prove ownership, control, or feasibility of
10 precautionary measures, if contested.

11 b. For impeachment purposes.

12 Sec. 39. NEW SECTION. 668D.19 EXPERT OPINION.

13 In a product liability action brought pursuant to this
14 chapter, expert technical, scientific, or medical opinion
15 shall not be admitted in a court of law unless both of the
16 following occur:

17 1. The expert is professionally qualified in the relevant
18 discipline.

19 2. The expert's opinion is corroborated by other objective
20 evidence that is consistent with generally accepted technical,
21 scientific, or medical principles.

22 Sec. 40. NEW SECTION. 668D.20 CONCERT OF ACTION.

23 1. In a product liability action brought pursuant to this
24 chapter, a manufacturer or product seller shall not be liable
25 to the claimant on any theory of express or implied agreement
26 among sellers, parallel behavior, or independent adherence to
27 industrywide standards unless the claimant proves, by a
28 preponderance of the evidence, that the seller engaged in
29 concert of action.

30 2. For the purposes of this section, "concert of action"
31 means the conscious and deliberate agreement, acknowledgement,
32 and collaborative participation in wrongful conduct by two or
33 more persons who do not have the relationship of master and
34 servant, principal and agent, parent and subsidiary or
35 affiliates, or employer and employee.

1 Sec. 41. NEW SECTION. 677.10A PREJUDGMENT INTEREST.

2 If any offer to confess judgment is made under this chapter
3 and is not accepted, and a subsequent trial results in a
4 judgment which is less than the offer to confess judgment,
5 prejudgment interest shall not be calculated or be subject to
6 recovery after the date of the offer to confess judgment.

7 Sec. 42. Sections 668.4 and 668.12, Code 2003, are
8 repealed.

9 Sec. 43. APPLICABILITY. The sections of this Act enacting
10 new chapter 668C shall be effective as to any civil suit for
11 damages commenced on or after the date of enactment of this
12 Act regardless of whether the claim arose prior to the date of
13 enactment.

14 DIVISION II

15 UNEMPLOYMENT COMPENSATION

16 Sec. 44. Section 85.60, Code 2003, is amended to read as
17 follows:

18 85.60 INJURIES WHILE IN EMPLOYMENT TRAINING OR EVALUATION.

19 A person participating in a school-to-work program referred
20 to in section 85.61, or receiving earnings while engaged in
21 employment training or while undergoing an employment
22 evaluation under the direction of a rehabilitation facility
23 approved for purchase-of-service contracts or for referrals by
24 the department of human services or the department of
25 education, who sustains an injury arising out of and in the
26 course of the school-to-work program participation, employment
27 training, or employment evaluation is entitled to benefits as
28 provided in this chapter, chapter 85A, chapter 85B, and
29 chapter 86. Notwithstanding the minimum benefit provisions of
30 this chapter, a person referred to in this section and
31 entitled to benefits under this chapter is entitled to receive
32 a minimum weekly benefit amount for a permanent partial
33 disability under section 85.34, subsection 2, or for a
34 permanent total disability under section 85.34, subsection 3,
35 equal to the weekly benefit amount of a person whose gross

1 weekly earnings are thirty-five percent of the statewide
2 average weekly wage ~~computed-pursuant-to-section-96.3~~
3 determined by the department of workforce development under
4 section 96.19, subsection 36, and in effect at the time of the
5 injury.

6 Sec. 45. Section 96.3, subsection 4, Code 2003, is amended
7 to read as follows:

8 4. DETERMINATION OF BENEFITS. ~~With-respect-to-benefit~~
9 ~~years-beginning-on-or-after-July-17-1983,~~ an An eligible
10 individual's weekly benefit amount for a week of total
11 unemployment shall be an amount equal to the following
12 fractions of the individual's total wages in insured work paid
13 during that quarter of the individual's base period in which
14 such total wages were highest; ~~the director-shall-determine~~
15 ~~annually-a~~ maximum weekly benefit amount shall equal to the
16 following ~~percentages~~ amounts, to vary with the number of
17 dependents, of the statewide average weekly wage computed on
18 the basis of wages reported paid to employees in insured work
19 ~~which-shall-be-effective-the-first-day-of-the-first-full-week~~
20 ~~in-July~~ for calendar year 2001:

21 If the	The weekly	Subject to the
22 number of	benefit amount	following maxi-
23 dependents	shall equal the	mum percentage
24 is:	following frac-	of-the-statewide
25	tion of high	average weekly
26	quarter wages:	wage:
27 0	1/23	53% <u>\$292.18</u>
28 1	1/22	55% <u>\$303.21</u>
29 2	1/21	57% <u>\$314.24</u>
30 3	1/20	60% <u>\$330.77</u>
31 4 or more	1/19	65% <u>\$358.34</u>

32 ~~The-maximum-weekly-benefit-amount,~~ if not a multiple of one
33 ~~dollar-shall-be-rounded-to-the-lower-multiple-of-one-dollar.~~
34 ~~However,~~ until such time as sixty-five percent of the
35 ~~statewide-average-weekly-wage-exceeds-one-hundred-ninety~~

1 ~~dollars, the maximum weekly benefit amounts shall be~~
2 ~~determined using the statewide average weekly wage computed on~~
3 ~~the basis of wages reported for calendar year 1981.~~ As used
4 in this section "dependent" means dependent as defined in
5 section 422.12, subsection 1, paragraph "c", as if the
6 individual claimant was a taxpayer, except that an individual
7 claimant's nonworking spouse shall be deemed to be a dependent
8 under this section. "Nonworking spouse" means a spouse who
9 does not earn more than one hundred twenty dollars in gross
10 wages in one week.

11 Sec. 46. Section 96.3, subsection 5, Code 2003, is amended
12 to read as follows:

13 5. DURATION OF BENEFITS. The maximum total amount of
14 benefits payable to an eligible individual during a benefit
15 year shall not exceed the total of the wage credits accrued to
16 the individual's account during the individual's base period,
17 or twenty-six times the individual's weekly benefit amount,
18 whichever is the lesser. The director shall maintain a
19 separate account for each individual who earns wages in
20 insured work. The director shall compute wage credits for
21 each individual by crediting the individual's account with
22 one-third of the wages for insured work paid to the individual
23 during the individual's base period. ~~However, the director~~
24 ~~shall recompute wage credits for an individual who is laid off~~
25 ~~due to the individual's employer going out of business at the~~
26 ~~factory, establishment, or other premises at which the~~
27 ~~individual was last employed, by crediting the individual's~~
28 ~~account with one-half, instead of one-third, of the wages for~~
29 ~~insured work paid to the individual during the individual's~~
30 ~~base period.~~ Benefits paid to an eligible individual shall be
31 charged against the base period wage credits in the
32 individual's account which have not been previously charged,
33 in the inverse chronological order as the wages on which the
34 wage credits are based were paid. However if the state "off
35 indicator" is in effect and if the individual is laid off due

1 to the individual's employer going out of business at the
2 factory, establishment, or other premises at which the
3 individual was last employed, the maximum benefits payable
4 shall be extended to thirty-nine times the individual's weekly
5 benefit amount, but not to exceed the total of the wage
6 credits accrued to the individual's account.

7 Sec. 47. Section 96.4, subsection 3, Code 2003, is amended
8 to read as follows:

9 3. a. The individual is able to work, is available for
10 work, and is earnestly and actively seeking work. To be
11 eligible under this subsection, the individual must:

12 (1) Be able and available for full-time work for which the
13 individual is fitted by prior training or experience.

14 (2) Reside in a locality where opportunities for work are
15 not less favorable than those in the locality where the
16 individual resided at the time of the individual's most recent
17 separation from employment.

18 (3) Keep a record of where and when the individual has
19 sought work and shall produce such record to the director upon
20 request.

21 (4) Actively seek work during periods of nonseasonal
22 operations where the individual has been customarily employed
23 in seasonal employment.

24 b. If an eligible individual is available for work for
25 less than a full week, the individual's weekly benefit amount
26 shall be reduced by one-sixth of such amount for each day the
27 individual is unavailable for work. If an individual is
28 unavailable for work for four days or more in a week, the
29 individual shall be considered unavailable for the entire
30 week.

31 c. This subsection is waived if the individual is deemed
32 partially unemployed, while employed at the individual's
33 regular job, as defined in section 96.19, subsection 38,
34 paragraph "b", unnumbered paragraph 1, or temporarily
35 unemployed as defined in section 96.19, subsection 38,

1 paragraph "c". The work search requirements of this
2 subsection and the disqualification requirement for failure to
3 apply for, or to accept suitable work of section 96.5,
4 subsection 3 are waived if the individual is not disqualified
5 for benefits under section 96.5, subsection 1, paragraph "h".

6 Sec. 48. Section 96.4, subsection 4, Code 2003, is amended
7 to read as follows:

8 4. The individual has been paid wages for insured work
9 during the individual's base period for a minimum of twenty
10 weeks in an amount at least one and one-quarter times the
11 wages paid to the individual during that quarter of the
12 individual's base period in which the individual's wages were
13 highest; provided that the individual has been paid wages for
14 insured work totaling at least three and five-tenths percent
15 of the statewide average annual wage for insured work,
16 computed for the preceding calendar year if the individual's
17 benefit year begins on or after the first full week in July
18 and computed for the second preceding calendar year if the
19 individual's benefit year begins before the first full week in
20 July, in that calendar quarter in the individual's base period
21 in which the individual's wages were highest, and the
22 individual has been paid wages for insured work totaling at
23 least one-half of the amount of wages required under this
24 subsection in the calendar quarter of the base period in which
25 the individual's wages were highest, in a calendar quarter in
26 the individual's base period other than the calendar quarter
27 in which the individual's wages were highest. The calendar
28 quarter wage requirements shall be rounded to the nearest
29 multiple of ten dollars.

30 If the individual has drawn benefits in any benefit year,
31 the individual must during or subsequent to that year, work in
32 and be paid wages for insured work totaling at least ~~two~~
33 ~~hundred-fifty-dollars~~ ten times the individual's weekly
34 benefit amount, as a condition to receive benefits in the next
35 benefit year.

1 Sec. 49. Section 96.4, Code 2003, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 8. The individual has satisfied one one-
4 week waiting period during the individual's benefit year. To
5 satisfy the one-week waiting period, the individual, with
6 respect to the week in question, must be unemployed, have
7 filed a claim for benefits, and be eligible for benefits from
8 this state, but must not have received benefits from this or
9 another state, and must not be eligible for benefits from
10 another state.

11 Sec. 50. Section 96.5, subsection 4, unnumbered paragraph
12 1, Code 2003, is amended to read as follows:

13 For any week with respect to which the department finds
14 that the individual's total or partial unemployment is due to
15 a stoppage of work which exists because of a strike, lockout,
16 or labor dispute at the factory, establishment, or other
17 premises at which the individual is or was last employed,
18 provided that this subsection shall not apply if it is shown
19 to the satisfaction of the department that:

20 Sec. 51. Section 96.19, subsection 37, paragraph a, Code
21 2003, is amended by striking the paragraph and inserting in
22 lieu thereof the following:

23 a. Nineteen thousand two hundred dollars.

24 DIVISION III
25 WORKERS' COMPENSATION

26 Sec. 52. Section 85.3, subsection 1, Code 2003, is amended
27 to read as follows:

28 1. Every employer, not specifically excepted by the
29 provisions of this chapter, shall provide, secure, and pay
30 compensation according to the provisions of this chapter for
31 any and all personal injuries sustained by an employee arising
32 out of and in the course of the employment, and in such cases,
33 the employer shall be relieved from other liability for
34 recovery of damages or other compensation for such personal
35 injury. For the purposes of this chapter, a personal injury

1 sustained by an employee shall be characterized as either a
2 traumatic injury or a cumulative injury.

3 a. A traumatic injury is an injury to the body, the
4 impairment of health or a disease, not excluded from coverage
5 by this chapter, that comes about not through the natural
6 building up and tearing down of the human body, but because of
7 a traumatic or other hurt or damage to the health or body of
8 an employee.

9 b. A cumulative injury is an injury to the body that is
10 gradual and progressive in nature and does not necessarily
11 result from a sudden and unexpected traumatic event.

12 2. A traumatic injury does not arise out of and in the
13 course of employment for the purposes of this chapter unless
14 the traumatic injury is a natural incident of an employment
15 activity of the employee or a reasonable consequence of a
16 hazard associated with an employment activity of the employee,
17 and would be considered to be more than a slight injury by an
18 average person in the normal nonemployment life of the average
19 person.

20 3. A cumulative injury does not arise out of and in the
21 course of employment for the purposes of this chapter unless
22 all of the following are shown:

23 a. The cumulative injury is caused by, or is a significant
24 aggravation of a preexisting condition caused by, an
25 employment activity that is the single most substantial factor
26 contributing to the cumulative injury.

27 b. The cumulative injury, at the time of its occurrence,
28 would not be expected to occur as the result of the normal
29 aging process absent an employment activity of the employee.

30 c. The employment activity that is alleged to be the
31 single most substantial factor contributing to the cumulative
32 injury is not an activity commonly engaged in by the employee
33 or by an average person in the normal nonemployment life of
34 the employee or average person.

35 Sec. 53. Section 85.3, subsections 2, 3, and 4, Code 2003,

1 are amended by striking the subsections.

2 Sec. 54. NEW SECTION. 85.3A NOTICE TO NONRESIDENT
3 EMPLOYERS.

4 1. Any employer who is a nonresident of this state, for
5 whom services are performed within this state by any employee,
6 is deemed to be doing business in this state by virtue of
7 having such services performed and the employer and employee
8 shall be subject to the jurisdiction of the workers'
9 compensation commissioner and to all of the provisions of this
10 chapter, chapters 85A, 85B, 86, and 87, as to any and all
11 personal injuries sustained by the employee arising out of and
12 in the course of such employment within this state. In
13 addition, every corporation, individual, personal
14 representative, partnership, or association that has the
15 necessary minimum contact with this state shall be subject to
16 the jurisdiction of the workers' compensation commissioner,
17 and the workers' compensation commissioner shall hold such
18 corporation, individual, personal representative, partnership,
19 or association amenable to suit in this state in every case
20 not contrary to the provisions of the Constitution of the
21 United States.

22 2. Service of process or original notice upon a
23 nonresident employer may be performed as provided in section
24 617.3 or as provided in the Iowa rules of civil procedure. In
25 addition, service may be made on any corporation, individual,
26 personal representative, partnership, or association that has
27 the necessary minimum contact with this state as provided in
28 rule of civil procedure 1.305 within or without this state or,
29 if such service cannot be made, in any manner consistent with
30 due process of law prescribed by the workers' compensation
31 commissioner.

32 In addition to those persons authorized to receive personal
33 service as in civil actions as permitted by chapter 17A and
34 this chapter, such employer shall be deemed to have appointed
35 the secretary of state of this state as its lawful attorney

1 upon whom may be served or delivered any and all notices
2 authorized or required by the provisions of this chapter,
3 chapters 85A, 85B, 86, 87, and 17A, and to agree that any and
4 all such services or deliveries of notice on the secretary of
5 state shall be of the same legal force and validity as if
6 personally served upon or delivered to such nonresident
7 employer in this state.

8 This section does not limit or affect the right to serve an
9 original notice upon any corporation, individual, personal
10 representative, partnership, or association within or without
11 this state in any manner otherwise permitted by statute or
12 rule.

13 3. For purposes of this section, a nonresident employer is
14 any employer that is not a resident of Iowa as defined in
15 section 617.3.

16 Sec. 55. Section 85.27, subsection 4, Code 2003, is
17 amended to read as follows:

18 4. For purposes of this section, the employer is obliged
19 to furnish reasonable services and supplies to treat an
20 injured employee, and has the right to choose the care. The
21 treatment must be offered promptly and be reasonably suited to
22 treat the injury without undue inconvenience to the employee.
23 If the employee has reason to be dissatisfied with the care
24 offered, the employee should communicate the basis of such
25 dissatisfaction to the employer, in writing if requested,
26 following which the employer and the employee may agree to
27 alternate care reasonably suited to treat the injury. If the
28 employer and employee cannot agree on such alternate care, the
29 commissioner may, upon application and reasonable proofs of
30 the necessity therefor, allow and order other care. In an
31 emergency, the employee may choose the employee's care at the
32 employer's expense, provided the employer or the employer's
33 agent cannot be reached immediately. An application made
34 under this subsection shall be considered an original
35 proceeding for purposes of commencement and contested case

1 proceedings under section 85.26. The hearing shall be
2 conducted pursuant to chapter 17A no sooner than thirty days
3 from the date that the application is filed. Before a hearing
4 is scheduled, the parties may choose a telephone hearing or an
5 in-person hearing. A request for an in-person hearing shall
6 be approved unless the in-person hearing would be impractical
7 because of the distance between the parties to the hearing.
8 The workers' compensation commissioner shall issue a decision
9 within ten working days of receipt of an application for
10 alternate care made pursuant to a telephone hearing or within
11 fourteen working days of receipt of an application for
12 alternate care made pursuant to an in-person hearing. The
13 employer shall notify an injured employee of the employee's
14 ability to contest the employer's choice of care pursuant to
15 this subsection.

16 Sec. 56. Section 85.34, subsection 2, unnumbered paragraph
17 1, Code 2003, is amended to read as follows:

18 Compensation for permanent partial disability shall begin
19 at the termination of the healing period provided in
20 subsection 1. The compensation shall be in addition to the
21 benefits provided by sections 85.27 and 85.28. The
22 compensation shall be based only upon the extent of the
23 disability related to the injury received and upon the basis
24 of eighty percent per week of the employee's average spendable
25 weekly earnings, but not more than a weekly benefit amount,
26 rounded to the nearest dollar, equal to one hundred eighty-
27 four percent of the statewide average weekly wage paid
28 employees as determined by the department of workforce
29 development under section 96.19, subsection 36, and in effect
30 at the time of the injury. The minimum weekly benefit amount
31 shall be equal to the weekly benefit amount of a person whose
32 gross weekly earnings are thirty-five percent of the statewide
33 average weekly wage. For all cases of permanent partial
34 disability compensation shall be paid as follows:

35 Sec. 57. Section 85.34, Code 2003, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 7. APPORTIONMENT. When an employee
3 suffers successive work-related injuries or illnesses, an
4 employer is not liable for that portion of an employee's
5 disability that is caused by any preexisting injury or illness
6 that is separate and discrete from the injury or illness for
7 which compensation is claimed. Evidence that an employee has
8 received a prior award for payment of benefits or entered into
9 a prior settlement of any claim arising under this chapter or
10 chapter 85A, 85B, or 86 creates a presumption that the
11 employee has suffered a preexisting work-related injury or
12 illness that is separate and discrete from the injury or
13 illness for which benefits are claimed and that the extent of
14 disability caused by that preexisting injury or illness has
15 been determined.

16 Sec. 58. Section 535.3, subsection 1, Code 2003, is
17 amended to read as follows:

18 1. Interest shall be allowed on all money due on judgments
19 and decrees of courts at a rate calculated according to
20 section 668.13, except for interest due pursuant to section
21 85.30 for which the rate shall be ~~ten~~ five percent per year.

22 DIVISION IV

23 OCCUPATIONAL SAFETY

24 Sec. 59. Section 88.16, subsections 1 and 3, Code 2003,
25 are amended to read as follows:

26 1. The commissioner shall conduct directly or by contract,
27 educational programs to provide an adequate supply of
28 qualified personnel to administer this chapter and
29 informational programs on the importance of and proper use of
30 adequate safety and health equipment. In making inspections
31 and investigations under this chapter, the commissioner's
32 representative shall inspect and investigate only those
33 businesses for which the representative received industry-
34 specific training.

35 3. The commissioner shall provide for the establishment

1 and supervision of programs for the education and training of
2 employers and employees in the recognition, avoidance, and
3 prevention of unsafe or unhealthful working conditions in
4 employments covered by this chapter, and consult with and
5 advise employers, employees, and organizations representing
6 employers and employees, as to effective means of preventing
7 occupational injuries and illnesses. The commissioner shall
8 increase training and consultation services prior to
9 implementation of new standards.

10 Sec. 60. NEW SECTION. 88.0A TITLE.

11 This chapter shall be known and may be cited as the
12 "Occupational Safety and Health Inspections and Audit Act".

13 SUBCHAPTER II

14 SAFETY AUDIT PRIVILEGE AND IMMUNITY

15 Sec. 61. NEW SECTION. 88.31 DEFINITIONS.

16 As used in this subchapter, unless the context otherwise
17 requires:

18 1. "Commissioner" means the labor commissioner appointed
19 pursuant to section 91.2 or the commissioner's designee.

20 2. "Inquiring party" means any party appearing before a
21 court or a presiding officer in an administrative proceeding
22 seeking to review or obtain an in camera review of a safety
23 audit report.

24 3. "Privilege" means the protections provided in regard to
25 a safety audit report as provided in this subchapter.

26 4. "Safety audit" means a voluntary evaluation of any
27 factory, plant, establishment, construction site, or other
28 area, workplace, or environment where work is performed by an
29 employee of an employer, of an activity or operation at the
30 business when the activity or operation is regulated under
31 state or federal occupational safety and health laws, rules,
32 or variance conditions, conducted by an employer, an employee
33 of the employer, or an independent contractor retained by the
34 employer, that is designed to identify historical or current
35 noncompliance with state and federal occupational safety and

1 health standards, laws, rules, or variance conditions,
2 discover hazards, and remedy noncompliance or improve
3 compliance with occupational safety and health laws. Once
4 notification is given to the commissioner, a safety audit
5 shall be completed within a reasonable time not to exceed six
6 months unless an extension is approved by the commissioner
7 based on reasonable grounds.

8 5. "Safety audit report" means a document or set of
9 documents generated and developed for the primary purpose and
10 in the course of or as a result of conducting a safety audit.
11 A "safety audit report" includes supporting information that
12 may include, but is not limited to, the report document
13 itself, observations, samples, analytical results, exhibits,
14 findings, opinions, suggestions, recommendations, conclusions,
15 drafts, memoranda, drawings, photographs, computer-generated
16 or electronically recorded information, maps, charts, graphs,
17 surveys, implementation plans, interviews, discussions,
18 correspondence, and communications related to the safety
19 audit. A "safety audit report" may include any of the
20 following components:

21 a. An executive summary prepared by the person conducting
22 the safety audit, which may include the scope of the safety
23 audit, the information gained in the safety audit,
24 conclusions, recommendations, exhibits, and appendices.

25 b. Memoranda and documents analyzing portions or all of
26 the report and discussing implementation issues.

27 c. An implementation plan which addresses correcting past
28 noncompliance, improving current compliance, or preventing
29 future noncompliance.

30 d. Periodic updates documenting progress in completing the
31 implementation plan.

32 Sec. 62. NEW SECTION. 88.32 PRIVILEGE.

33 1. Material included in a safety audit report generated
34 during a safety audit conducted after July 1, 2003, is
35 privileged and confidential and is not discoverable or

1 admissible as evidence in any civil or administrative
2 proceeding, except as otherwise provided in this chapter. The
3 safety audit report shall be labeled "SAFETY AUDIT REPORT:
4 PRIVILEGED DOCUMENT". Failure to label each document within
5 the report does not constitute a waiver of the safety audit
6 privilege or create a presumption that the privilege does or
7 does not apply.

8 2. A person shall not be compelled to testify in regard to
9 or produce a document included in a safety audit report in any
10 of the following circumstances:

11 a. If the testimony or document discloses any component
12 listed in section 88.31, subsection 5, that was made as part
13 of the preparation of a safety audit report and that is
14 addressed in a privileged part of a safety audit report.

15 b. If the person is any of the following:

16 (1) A person who conducted any portion of the safety audit
17 but did not personally observe the physical events of a safety
18 violation.

19 (2) A person to whom the results of the safety audit
20 report are disclosed under section 88.33, subsection 2.

21 (3) A custodian of the safety audit report.

22 3. A person who conducts or participates in the
23 preparation of a safety audit report and who has observed
24 physical events of a safety violation may testify about those
25 events but shall not be compelled to testify about or produce
26 documents related to the preparation of or any privileged part
27 of a safety audit or any component listed in section 88.31,
28 subsection 5.

29 4. An employee of a state agency or other governmental
30 employee shall not request, review, or otherwise use a safety
31 audit report during an agency inspection of a regulated
32 facility or operation, or an activity of a regulated facility
33 or operation.

34 5. A party asserting the privilege under this section has
35 the burden of establishing the applicability of the privilege.

1 6. The privilege provided in this section is in addition
2 to the confidentiality requirements applicable to educational
3 and informational programs under section 88.16.

4 Sec. 63. NEW SECTION. 88.33 WAIVER OF PRIVILEGE --
5 DISCLOSURE.

6 1. The privilege described in section 88.32 shall not
7 apply to the extent that the privilege is expressly waived in
8 writing by the employer who prepared the safety audit report
9 or caused the report to be prepared.

10 2. Disclosure of a safety audit report or any other
11 information generated by a safety audit does not waive the
12 privilege established in section 88.32 if the disclosure meets
13 any of the following criteria:

14 a. The disclosure is made to address or correct a matter
15 raised by the safety audit and the disclosure is made to any
16 of the following:

17 (1) A person employed by the employer, including temporary
18 and contract employees.

19 (2) A legal representative of the employer.

20 (3) An officer or director of the regulated business or a
21 partner of the employer.

22 (4) An independent contractor retained by the employer.

23 b. The disclosure is made under the terms of a
24 confidentiality agreement between any person and the employer
25 of the audited business.

26 3. A party to a confidentiality agreement described in
27 subsection 2, paragraph "b", who violates that agreement is
28 liable for damages caused by the disclosure and for any other
29 penalties stipulated in the confidentiality agreement.

30 4. Information that is disclosed under subsection 2,
31 paragraph "b", is confidential and is not subject to
32 disclosure under chapter 22. A governmental entity,
33 governmental employee, or governmental official who discloses
34 information in violation of this subsection is subject to the
35 penalty provided in section 22.6.

1 5. The protections provided by federal or state law shall
2 be afforded to individuals who disclose information to law
3 enforcement authorities.

4 6. The provisions of this chapter shall not abrogate the
5 protections provided by federal and state law regarding
6 confidentiality and trade secrets.

7 Sec. 64. NEW SECTION. 88.34 REQUIRED DISCLOSURE.

8 1. A court or a presiding officer in an administrative
9 hearing may require disclosure of a portion of a safety audit
10 report in a civil or administrative proceeding if the court or
11 presiding officer affirmatively determines, after an in camera
12 review, that any of the following exists:

13 a. The privilege is asserted for a fraudulent purpose.

14 b. The portion of the safety audit report is not subject
15 to the privilege under section 88.35.

16 c. The portion of the safety audit report shows evidence
17 of noncompliance with a state or federal occupational safety
18 and health standard or other law, rule, or variance condition
19 and appropriate efforts to achieve compliance with the
20 standard or other law, rule, or variance condition were not
21 promptly initiated and pursued with reasonable diligence after
22 discovery of noncompliance.

23 d. The portion of the safety audit report shows clear and
24 convincing evidence of substantial actual personal injury,
25 which information is not otherwise available.

26 e. The portion of the safety audit report shows a clear
27 and present danger to the public health or safety.

28 2. A party seeking disclosure under this section has the
29 burden of proving that subsection 1 applies.

30 3. A decision of a presiding officer in an administrative
31 hearing under subsection 1 may be directly appealed to the
32 district court without disclosure of the safety audit report
33 to any person unless so ordered by the court.

34 4. A determination of a court under this section is
35 subject to interlocutory appeal to an appropriate appellate

1 court.

2 5. If a court finds that a person claiming privilege under
3 this subchapter intentionally claimed the privilege for
4 material not privileged as provided in section 88.35, the
5 person is subject to a fine not to exceed one thousand
6 dollars.

7 6. Privilege provided in this subchapter does not apply if
8 the employer has been found in a civil or administrative
9 proceeding to have committed serious violations in this state
10 that constitute a pattern of continuous or repeated violations
11 of state or federal occupational safety and health laws,
12 administrative rules, or variance conditions, that were due to
13 separate and distinct events giving rise to the violations
14 within the three-year period prior to the date of disclosure.

15 Sec. 65. NEW SECTION. 88.35 MATERIALS NOT PRIVILEGED.

16 1. The privilege described in this subchapter does not
17 apply to any of the following:

18 a. A document, communication, datum, report, or other
19 information the commissioner is required to collect, develop,
20 retain, or report under a state or federal occupational safety
21 and health law, rule, or variance condition.

22 b. Information obtained by observation, sampling, or
23 monitoring by the commissioner or the commissioner's
24 authorized designee.

25 c. Information obtained from a source not involved in the
26 preparation of the safety audit report.

27 2. This section does not limit the right of a person to
28 agree to conduct a safety audit and disclose a safety audit
29 report.

30 Sec. 66. NEW SECTION. 88.36 REVIEW OF PRIVILEGED
31 DOCUMENTS.

32 1. The privileges created in this subchapter shall not
33 apply to criminal investigations or proceedings. A safety
34 audit report, supporting documents, and testimony relating
35 thereto may be obtained by a prosecutor's subpoena pursuant to

1 the rules of criminal procedure. If a safety audit report is
2 obtained, reviewed, or used in a criminal investigation or
3 proceeding, the administrative and civil evidentiary privilege
4 established in this subchapter is not waived or made
5 inapplicable for any purpose other than for the criminal
6 investigation or proceeding.

7 2. Notwithstanding the privilege established in this
8 subchapter, the commissioner may review information in a
9 safety audit report, but such review does not waive or make
10 the administrative and civil evidentiary privilege
11 inapplicable to the report. The commissioner shall not adopt
12 a rule or impose a condition that circumvents the purpose of
13 this subchapter.

14 3. If information is required to be made available to the
15 public by operation of a specific state or federal law, rule,
16 or variance condition, the commissioner shall notify the
17 person claiming the privilege of the potential for public
18 disclosure prior to obtaining such information under
19 subsection 1 or 2.

20 4. If privileged information is disclosed under subsection
21 2 or 3, on the motion of a party, a court or the presiding
22 officer in an administrative hearing shall suppress evidence
23 offered in any civil or administrative proceeding that arises
24 or is derived from review, disclosure, or use of information
25 obtained under this section if the review, disclosure, or use
26 is not authorized under section 88.35. A party having
27 received information under subsection 2 or 3 has the burden of
28 proving that the evidence offered did not arise and was not
29 derived from the review of privileged information.

30 Sec. 67. NEW SECTION. 88.37 VOLUNTARY DISCLOSURE OF
31 SAFETY VIOLATION -- IMMUNITY.

32 1. An employer is eligible for immunity under this section
33 from the time the commissioner receives official notification
34 from the employer of a scheduled safety audit. An employer is
35 immune from any administrative or civil penalty associated

1 with the information disclosed if the employer makes a prompt
2 voluntary disclosure to the commissioner regarding an
3 occupational safety and health violation that is discovered
4 through the safety audit. The employer creates a rebuttable
5 presumption that the disclosure is voluntary by meeting the
6 criteria provided in subsection 2 at the time of disclosure.
7 To rebut the presumption that a disclosure is voluntary, the
8 commissioner or other party has the burden of proving that the
9 disclosure was not voluntary. Immunity is not provided if the
10 violations of state or federal occupational safety and health
11 law, rule, or variance condition are intentional or if the
12 violations of state or federal law, rule, or variance
13 condition resulted in substantial actual injury or imminent
14 and substantial risk of injury to an employee.

15 2. The disclosure of information is voluntary if all of
16 the following circumstances exist:

17 a. The disclosure arises out of a safety audit and relates
18 to privileged information as provided in section 88.32.

19 b. The person making the disclosure uses reasonable
20 efforts to pursue compliance and to correct the noncompliance
21 within a reasonable period of time after completion of the
22 safety audit in accordance with a remediation schedule
23 submitted to and approved by the commissioner. If evidence
24 shows that the noncompliance is due to the failure to obtain a
25 variance, reasonable effort may be demonstrated by the
26 submittal of a complete variance application within a
27 reasonable time. Disclosure of information required to be
28 reported by state or federal law, rule, or variance condition
29 is not considered to be voluntary disclosure and the immunity
30 provisions in this section are not applicable.

31 c. Occupational safety and health violations are
32 identified in a safety audit report and disclosed to the
33 commissioner before there is notice of a citizen suit or a
34 legal complaint by a third party.

35 d. Occupational safety and health violations are

1 identified in a safety audit report and disclosed to the
2 commissioner before the violations are reported by any person
3 not involved in conducting the safety audit or to whom the
4 audit report was disclosed.

5 3. If an employer has not provided the commissioner with
6 notification of a scheduled safety audit prior to performing
7 the audit, a disclosure of information is voluntary if the
8 occupational safety and health violations are identified in a
9 safety audit report and disclosed by certified mail to the
10 commissioner prior to the commissioner's commencement of an
11 investigation.

12 4. If a person is required to make a disclosure relating
13 to a specific issue under a specific variance condition or
14 under an order issued by the commissioner, the disclosure is
15 not voluntary with respect to that issue.

16 5. Except as provided in this section, this section does
17 not impair the authority of the commissioner to require a
18 technical or remedial action or to order injunctive relief.

19 6. Upon application to the commissioner, the time period
20 within which the disclosed violation is corrected under
21 subsection 2 may be extended if it is not practical to correct
22 the noncompliance within the reasonable period of time
23 initially approved by the commissioner. The commissioner
24 shall not unreasonably withhold the grant of an extension. If
25 the commissioner denies an extension, the commissioner shall
26 provide the requesting party with a written explanation of the
27 reasons for the denial. A request for de novo review of the
28 commissioner's decision may be made to the appropriate court.

29 7. Immunity provided under this section from
30 administrative or civil penalties does not apply under any of
31 the following circumstances:

32 a. If an employer has been found in a civil or
33 administrative proceeding to have committed serious violations
34 in this state that constitute a pattern of continuous or
35 repeated violations of occupational safety and health laws,

1 administrative rules, and variance conditions and that were
2 due to separate and distinct events giving rise to the
3 violations within the three-year period prior to the date of
4 disclosure.

5 b. If a violation of an occupational safety and health
6 law, administrative rule, variance condition, settlement
7 agreement, or order on consent, final order, or judicial order
8 results in a substantial economic benefit which gives the
9 violator a clear advantage over its business competitors.

10 8. In cases where the conditions of a voluntary disclosure
11 are not met but a good faith effort was made to voluntarily
12 disclose and resolve a violation detected in a safety audit,
13 the state regulatory authorities shall consider the nature and
14 extent of any good faith effort in deciding the appropriate
15 enforcement response and shall consider reducing any
16 administrative or civil penalties based on mitigating factors
17 showing that one or more of the conditions for voluntary
18 disclosure have been met.

19 9. The immunity provided by this section does not abrogate
20 the responsibility of a person as provided by applicable law
21 to report a violation, correct the violation, conduct
22 necessary remediation, or respond to third-party actions.
23 This chapter shall not be construed to confer immunity from
24 liability in any private civil action.

25 10. Information required by rule to be submitted to the
26 commissioner as part of a disclosure made pursuant to this
27 section is not privileged information.

28 Sec. 68. NEW SECTION. 88.38 OTHER PRIVILEGES NOT
29 AFFECTED.

30 This subchapter shall not limit, waive, or abrogate the
31 scope or nature of any statutory or common-law privilege,
32 including the work product doctrine and the attorney-client
33 privilege.

34 Sec. 69. NEW SECTION. 88.39 SAFETY AUDITOR TRAINING
35 PROGRAM.

1 A training program for, and standards for certification of,
2 safety auditors shall be developed and administered by the
3 commissioner. The program shall provide training on the
4 proper conduct of a safety audit; local, state, and federal
5 environmental ordinances, rules, and laws that apply to
6 businesses in this state; and the safety audit laws in this
7 state. The program shall be made available to small and large
8 business owners and operators, consulting engineers,
9 regulatory personnel, and citizens through the community
10 college system. A fee may be assessed for participation in
11 the program. Upon completion of the training program, program
12 participants may elect to be tested by the commissioner for
13 certification as a safety auditor for the purposes of this
14 subchapter.

15 Sec. 70. NEW SECTION. 88.40 SUMMARY.

16 On or before December 1 of each year, the commissioner
17 shall make available a summary of the number of safety audit
18 notices received, the violations, and the remediation status
19 of the violations reported pursuant to this subchapter during
20 the preceding fiscal year.

21 Sec. 71. NEW SECTION. 88.41 RULEMAKING.

22 The commissioner shall adopt rules pursuant to chapter 17A
23 necessary to administer this subchapter.

24 Sec. 72. NEW SECTION. 88.42 COSTS.

25 The necessary costs incurred by the commissioner under this
26 subchapter shall be funded from appropriations made to the
27 commissioner from the general fund of the state.

28 Sec. 73. CODIFICATION. The Code editor shall codify the
29 provisions of chapter 88, Code 2003, as amended in this Act,
30 as subchapter I of chapter 88 in the Code Supplement 2003.

31 DIVISION V

32 FINANCIAL SERVICES

33 Sec. 74. Section 535.8, subsection 2, paragraph b,
34 unnumbered paragraph 2, Code 2003, is amended to read as
35 follows:

1 The lender shall not charge the borrower for the cost of
2 revenue stamps or real estate commissions which are paid by
3 the seller. Collection of any ~~cost~~ costs other than as
4 expressly permitted by this lettered paragraph is ~~prohibited~~
5 allowed, unless expressly prohibited by other state or federal
6 law.

7 Sec. 75. Section 537.2502, subsections 3 and 6, Code 2003,
8 are amended to read as follows:

9 3. A delinquency charge shall not be collected under
10 subsection 1, paragraph "a", on an installment ~~which that~~ is
11 paid in full within ten days after its scheduled or deferred
12 installment due date even though an earlier maturing
13 installment or a delinquency or deferral charge on an earlier
14 installment may not have been paid in full. For purposes of
15 this subsection, payments associated with a precomputed
16 transaction are applied first to current installments and then
17 to delinquent installments.

18 6. A delinquency charge shall not be collected under
19 subsection 4 on a payment ~~which~~ associated with a precomputed
20 transaction that is paid in full on or before its scheduled or
21 deferred due date even though an earlier maturing payment or a
22 delinquency or deferred charge on an earlier payment has not
23 been paid in full. For purposes of this subsection, payments
24 are applied first to amounts due for the current billing cycle
25 and then to delinquent payments.

26 Sec. 76. Section 537.2601, subsection 1, Code 2003, is
27 amended to read as follows:

28 ~~1. Except-as-provided-in-subsection-27-with~~ With respect
29 to a credit transaction other than a consumer credit
30 transaction, the parties may contract for the payment by the
31 debtor of any finance or other charge as permitted by law.
32 ~~Except-with-respect-to-debt-obligations-issued-by-a~~
33 ~~government, governmental agency or instrumentality, in~~
34 ~~calculating any finance charge contracted for, any month may~~
35 ~~be counted as one-twelfth of a year, but a day is to be~~

1 ~~counted-as-one-three-hundred-sixty-fifth-of-a-year-~~

2 Sec. 77. Section 557.7, Code 2003, is amended to read as
3 follows:

4 557.7 CONTINGENT REMAINDERS.

5 A Except as provided in section 558.68A, a contingent
6 remainder shall take effect, notwithstanding any determination
7 of the particular estate, in the same manner in which it would
8 have taken effect if it had been an executory devise or a
9 springing or shifting use, and shall, as well as such
10 limitations, be subject to the rule respecting remoteness
11 known as the rule against perpetuities, ~~exclusive of any other~~
12 ~~supposed-rule-respecting-limitations-to-successive-generations~~
13 ~~or-double-possibilities.~~

14 Sec. 78. NEW SECTION. 558.68A EXCEPTION TO RULE AGAINST
15 PERPETUITIES.

16 1. Notwithstanding section 558.68, a rule of law against
17 perpetuities, a suspension of the power of alienation of the
18 title to property, or a law restricting or limiting the
19 duration of trusts shall not apply with respect to any
20 interest in real or personal property held in trust if the
21 instrument creating the trust specifically states that such
22 rule or the provisions of section 558.68 shall not apply to
23 the trust and if either the trustee of the trust has unlimited
24 power to sell all trust assets, or one or more persons, one of
25 whom may be the trustee, has unlimited power to terminate the
26 entire trust.

27 2. A trust of real or personal property created by an
28 employer as part of a stock bonus plan, pension plan,
29 disability or death benefit plan, or profit-sharing plan, for
30 the benefit of some or all the employer's employees, to which
31 contributions are made by the employer or employees, or both,
32 for the purposes of distributing to the employees or their
33 beneficiaries the earnings or the principal, or both, such
34 trust is not invalid as violating the rule against
35 perpetuities or any other law restricting or limiting the

1 duration of trusts; but the trust may continue for the time
2 that is necessary to accomplish the purposes for which it was
3 created.

4 3. Subsection 1 shall be effective for interests in real
5 or personal property in trust created by an inter vivos or
6 testamentary trust or will executed on or after July 1, 2003,
7 or pursuant to the exercise of a general power of appointment
8 on or after July 1, 2003. For the purposes of this
9 subsection, "general power of appointment" means a power that
10 is exercisable in favor of the individual possessing the
11 power, the person's estate, the person's creditors, or the
12 creditors of the person's estate.

13 DIVISION VI

14 ENVIRONMENTAL PROVISIONS

15 Sec. 79. NEW SECTION. 455A.14 FEES -- USE.

16 Any fee collected by the department pursuant to a provision
17 of the Code of Iowa or the Iowa administrative code shall be
18 used for the purpose for which the fee is collected.

19 Sec. 80. Section 455B.131, Code 2003, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 6A. "Indoor source" means any emission
22 unit or air contaminant source which is not directly vented or
23 directly exhausted to the outside atmosphere. "Indoor source"
24 includes, without limitation, any air exchange through general
25 ventilation, windows, doors, and cracks.

26 Sec. 81. Section 455B.133, subsection 6, Code 2003, is
27 amended to read as follows:

28 6. a. Require, by rules, notice of the construction of
29 any air contaminant source, other than an indoor source, which
30 may cause or contribute to air pollution, and the submission
31 of plans and specifications to the department, or other
32 information deemed necessary, for the installation of air
33 contaminant sources and related control equipment. The rules
34 shall allow the owner or operator of a major stationary source
35 to elect to obtain a conditional permit in lieu of a

1 construction permit. The rules relating to a conditional
2 permit for an electric power generating facility subject to
3 chapter 476A and other major stationary sources shall allow
4 the submission of engineering descriptions, flow diagrams and
5 schematics that quantitatively and qualitatively identify
6 emission streams and alternative control equipment that will
7 provide compliance with emission standards. Such rules shall
8 not specify any particular method to be used to reduce
9 undesirable levels of emissions, nor type, design, or method
10 of installation of any equipment to be used to reduce such
11 levels of emissions, nor the type, design, or method of
12 installation or type of construction of any manufacturing
13 processes or kinds of equipment, nor specify the kind or
14 composition of fuels permitted to be sold, stored, or used
15 unless authorized by subsection 4 of this section.

16 b. The commission may give technical advice pertaining to
17 the construction or installation of the equipment or any other
18 recommendation.

19 c. A notice or construction permit shall not be required
20 pursuant to this section for any indoor source.

21 d. A notice or construction permit shall not be required
22 to be issued pursuant to this section for any emission unit
23 placed into service before the effective date of this Act
24 which would have been an indoor source if placed into service
25 on or after that date.

26 Sec. 82. Section 455B.134, subsection 3, paragraph a, Code
27 2003, is amended to read as follows:

28 a. No An air contaminant source, other than an indoor
29 source, shall not be installed, altered so that it
30 significantly affects emissions, or placed in use unless a
31 construction or conditional permit has been issued for the
32 source. A permit shall not be required to be issued pursuant
33 to this section for any emission unit placed in service before
34 the effective date of this Act which would have been an indoor
35 source if placed into service on or after that date.

1 Sec. 83. Section 455B.134, subsection 3, Code 2003, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. g. The department shall not establish any
4 permit, registration, licensing, preconstruction notification,
5 or recordkeeping requirements for indoor sources. However,
6 this paragraph shall not limit the authority of the department
7 to implement any of the following:

8 (1) The emission limitations adopted by the administrator
9 of the United States environmental protection agency under
10 section 111 or 112 of the federal Clean Air Act.

11 (2) The maximum achievable control technologies required
12 pursuant to Title V of the federal Clean Air Act Amendments of
13 1990.

14 (3) The prevention of significant deterioration
15 regulations adopted by the administrator of the United States
16 environmental protection agency under the federal Clean Air
17 Act, 42 U.S.C. § 74-79.

18 Sec. 84. Section 455B.135, Code 2003, is amended to read
19 as follows:

20 455B.135 LIMIT ON AUTHORITY.

21 ~~Nothing-contained-in-this~~ This division II or chapter 459,
22 subchapter II, shall not be deemed to grant to the department
23 or the director any authority or jurisdiction with respect to
24 air pollution existing solely within residences; or solely
25 within commercial and industrial plants, works, or shops under
26 the jurisdiction of chapters 88 and 91; or indoor sources; or
27 to affect the relations between employers and employees with
28 respect to, or arising out of, any condition of air pollution.

29 Sec. 85. Section 481B.3, Code 2003, is amended to read as
30 follows:

31 481B.3 INVESTIGATIONS -- STATE LIST.

32 1. The director shall conduct investigations on fish,
33 plants, and wildlife in order to develop information relating
34 to population, distribution, habitat needs, limiting factors,
35 and other biological and ecological data to determine

1 management measures necessary for their continued ability to
2 sustain themselves successfully. ~~On-the-basis-of-these~~
3 ~~determinations-and-other-available-scientific-and-commercial~~
4 ~~data,which-may-include-consultation-with-scientists-and~~
5 ~~others-who-may-have-specialized-knowledge,learning,or~~
6 ~~experience,the~~

7 2. The commission shall pursuant to chapter 17A promulgate
8 ~~a-rule~~ adopt rules listing those species of fish, plants, and
9 wildlife which are determined to be endangered or threatened
10 within the state. The state list shall only include fish,
11 plants, and wildlife which are included on the lists provided
12 in section 481B.5, subsections 2 through 4.

13 3. The commission shall review the state list of
14 endangered and threatened species at least every two years and
15 may amend the list.

16 Sec. 86. Section 481B.5, subsection 1, Code 2003, is
17 amended by striking the subsection.

18 DIVISION VII

19 PUBLIC WORKS CONTRACTS

20 Sec. 87. NEW SECTION. 72.6 PUBLIC WORKS PROJECTS --
21 CONTRACTOR QUALIFICATIONS.

22 1. DEFINITIONS. As used in this section, unless the
23 context otherwise provides:

24 a. "Public owner" means a public body including the state
25 and a political subdivision of the state, an officer,
26 official, agency, authority, board, or commission of the state
27 or of a political subdivision of the state, or an institution
28 supported in whole or in part by public funds.

29 b. "Public works" means a building or other construction
30 work which is constructed under the control of a public owner
31 and is paid for in whole or in part with funds of a public
32 owner. "Public works" does not include any work done by or on
33 behalf of a drainage or levee district or any work funded by
34 federal funds where federal procurement policy applicable to
35 the use of the federal funds is inconsistent with the

1 requirements of this section.

2 c. "Public works project" or "project" means the
3 construction, maintenance, or repair of public works.

4 2. QUALIFICATIONS OF BIDDERS. Prior to awarding a
5 contract to perform a public works project pursuant to a
6 competitive bidding procedure, which contract authorizes the
7 expenditure of twenty-five thousand dollars or more in public
8 funds, a public owner shall tabulate all bids received and
9 shall determine who is the lowest responsible bidder by
10 considering, in addition to the amount of the bid, all of and
11 only the following:

12 a. The past experience of the bidder in the performance of
13 similar projects.

14 b. The qualifications of the bidder to perform the type of
15 work required by the contract.

16 c. The bidder's record of reliability and timely
17 completion of past projects.

18 d. Proof of the financial responsibility of the bidder.

19 3. PROHIBITED CRITERIA. In determining who is the lowest
20 responsible bidder for purposes of awarding a contract to
21 perform a public works project, a public owner shall not do
22 any of the following:

23 a. Select a bidder based in whole or in part on a
24 consideration of whether the bidder's employees belong to or
25 are represented by a labor union or a labor organization.

26 b. Require that the bidder selected enter into an
27 agreement that directly or indirectly limits or requires the
28 bidder to recruit, train, or hire employees from a particular
29 source to perform work on the public works project.

30 c. Require that the bidder selected enter into an
31 agreement that directly or indirectly requires the bidder to
32 offer particular types or amounts of health insurance, life
33 insurance, or disability insurance coverage or retirement
34 benefits to employees hired by the bidder to perform work on
35 the public works project.

1 4. BIDDING DOCUMENTS. The criteria described in this
2 section that are required to be considered by the public owner
3 in determining who is the lowest bidder shall be
4 included **SENATE FILE 344**
5 works pr **S-3117**

6 Amend Senate File 344 as follows:
7 1. Page 49, by inserting after line 5 the
8 following:

9 This 4 "DIVISION VIII
10 various 5 ECONOMIC DEVELOPMENT
11 business 6 Sec. ____ . NEW SECTION. 15E.18 CITIES, COUNTI
12 environm 7 AND REGIONS -- SITE PREPARATION FOR TARGETED ECONOMIC
13 DEVELPMENTS. 8 DEVELOPMENT.

14 DIVIS 9 1. For purposes of this section, "region" means a
15 CIVIL 10 group of two or more contiguous counties that
16 Iowa civ 11 establishes a single, focused economic development
17 effort. 12

18 2. A city, county, or region, subject to the
19 approval of the property owner, may designate an area
20 within the boundaries of the city, county, or region
21 for a specific type of targeted economic development.
22 The specific type of targeted economic development
23 shall be one of the following:

- 24 a. Manufacturing.
- 25 b. Light industrial.
- 26 c. Warehouse and distribution.
- 27 d. Office parks.
- 28 e. Business and commerce parks.
- 29 f. Research and development.

30 3. A city, county, or region that designates an
31 area for a specific type of targeted economic
32 development may apply to the department for purposes
33 of certifying the area as a preapproved development
34 site. The department shall develop criteria for the
35 certification process.

36 4. Prior to a specific project being developed, a
37 city, county, or region designating the area for
38 targeted economic development pursuant to this section
39 may apply for and obtain appropriate licenses,
40 permits, and approvals for the type of targeted
41 economic development project desired for the area."

42 2. Title page, by striking lines 7 and 8 and
43 inserting the following: "regulatory requirements,
44 public project contractor requirements, and economic
45 development."

46 3. By renumbering as necessary.

By RON WIECK

47 trial on **S-3117 FILED APRIL 1, 2003**

Adopted 4/2/03

1 punitive damages, and generally limits the amount of a
2 punitive damages award to twice the amount of compensatory
3 damages.

4 NONECONOMIC DAMAGE AWARDS ACT. The division establishes
5 the noneconomic damage awards Act and provides that an award
6 for noneconomic damages in a personal injury action shall not
7 exceed \$250,000 or the amount awarded in economic damages,
8 whichever amount is greater. Special findings are required by
9 the trier of fact where liability is assessed in a personal
10 injury or wrongful death action.

11 JOINT AND SEVERAL LIABILITY ACT. The division establishes
12 the joint and several liability Act and requires that in any
13 action brought pursuant to this division, each defendant shall
14 be held liable only for the amount of damages allocated to
15 that defendant in direct proportion to that defendant's
16 percentage of fault. A separate judgment would be issued
17 against each defendant for the actual amount of damages
18 assessed against each defendant. In order to determine the
19 amount of damages to be entered against each defendant, the
20 court shall, with regard to each defendant, multiply the total
21 amount of damages recoverable by the plaintiff by the
22 percentage of each defendant's fault, and that amount shall be
23 the maximum amount of damages recoverable against each
24 defendant. The division further allows the trier of fact to
25 assess damages against any person who contributed to the
26 alleged injury, death, or damage to property, regardless of
27 whether the person was, or could have been, named as a party
28 to the action.

29 PRODUCT LIABILITY ACT. The division establishes the
30 product liability Act and adopts defenses to absolute
31 liability, including but not limited to defenses based upon
32 misuse or alteration, state-of-the-art at time of manufacture,
33 compliance with government standards, inherent characteristics
34 known to the ordinary person, unavoidably unsafe products, and
35 warnings to an appropriate third party. The division further

1 limits the liability of nonmanufacturing sellers and prohibits
2 enterprise liability by requiring the plaintiff to prove that
3 the particular product that caused the plaintiff's harm was
4 produced by the defendant manufacturer. The division contains
5 provisions for admission of expert testimony and evidence of
6 subsequent remedial measures.

7 PREJUDGMENT INTEREST. The division limits recovery of
8 prejudgment interest in any pending or proposed action where
9 an offer to confess judgment is made, but is not accepted, and
10 a subsequent trial results in a judgment that is less than the
11 amount in the offer to confess judgment. In such a case, no
12 prejudgment interest is to be calculated or is recoverable
13 after the date of the offer to confess judgment.

14 DIVISION II -- UNEMPLOYMENT COMPENSATION. This division
15 provides for the amount of an eligible individual's maximum
16 weekly benefit to be equal to a specific dollar amount
17 calculated by varying fractions of the statewide average
18 weekly wage reported in calendar year 2001, depending on the
19 number of the individual's dependents. A conforming amendment
20 is made to Code section 85.60.

21 The division eliminates the provision for additional wage
22 credits in cases of plant closings.

23 The division provides for additional requirements for an
24 individual to be considered able and available to work to
25 preclude individuals from being eligible for benefits who are
26 not able or available to work full-time, who change the
27 individual's residence to a locality where opportunities to
28 work are less favorable, and to encourage individuals to seek
29 work by requiring individuals to keep a record of the
30 individual's work search and to seek work during periods of
31 the individual's customary nonseasonal work periods. The
32 division provides that an individual's weekly benefit amount
33 shall be reduced by one-sixth for each day an individual is
34 unavailable for work and that if the individual is unavailable
35 for more than four days in one week, the individual shall be

1 considered unavailable for the entire week.

2 The division requires an individual to qualify for benefits
3 to have been paid wages for insured work during the
4 individual's base period for at least 20 weeks in addition to
5 existing requirements and if the individual draws benefits in
6 any benefit year, the individual must be paid wages at least
7 10 times the individual's weekly benefit amount in that year
8 or in a subsequent year to be eligible for benefits in the
9 subsequent benefit year.

10 The division requires an individual to wait one week after
11 applying for benefits before the individual will be eligible
12 for benefits.

13 An individual is disqualified for any week of unemployment
14 due to a strike or lockout at the individual's last place of
15 employment.

16 The division provides that taxable wages may equal a
17 specific amount of \$19,200 (unless the federal taxable wage
18 base is higher), rather than an amount varying by year
19 calculated by multiplying the statewide average weekly wage by
20 66.66 percent, multiplied by 52. The amount of \$19,200
21 represents 66.66 percent of the statewide average weekly wage
22 for 2001 (\$551.29), multiplied by 52 and rounded to the next
23 highest multiple of \$100.

24 DIVISION III -- WORKERS' COMPENSATION. This division makes
25 several changes to workers' compensation law.

26 Code section 85.3, subsection 1, is amended to provide that
27 for the purposes of Code chapters 85, 85A, and 85B, a personal
28 injury sustained by an employee shall be characterized as
29 either a traumatic injury or a cumulative injury. A traumatic
30 injury is defined to mean an injury to the body, the
31 impairment of health, or a disease not excluded from coverage
32 that comes about not through the natural building up and
33 tearing down of the human body, but because of a traumatic or
34 other hurt or damage to the health or body of an employee. A
35 cumulative injury is defined to mean an injury to the body

1 that is gradual and progressive in nature and does not
2 necessarily result from a sudden and unexpected traumatic
3 event.

4 The bill provides that a traumatic injury does not arise
5 out of and in the course of employment for workers'
6 compensation purposes unless the traumatic injury is a natural
7 incident of an employment activity of the employee or a
8 reasonable consequence of a hazard associated with an
9 employment activity of the employee, and is a traumatic injury
10 that would be considered to be more than slight by an average
11 person in the normal nonemployment life of the average person.

12 The bill provides that a cumulative injury does not arise
13 out of and in the course of employment for workers'
14 compensation purposes unless the cumulative injury is caused
15 by, or is a significant aggravation of a preexisting condition
16 caused by, an employment activity that is the single most
17 substantial factor contributing to the cumulative injury; the
18 cumulative injury, at the time of its occurrence, would not be
19 expected to occur as the result of the normal aging process of
20 the employee, absent an employment activity of the employee;
21 and the employment activity that is alleged to be the single
22 most substantial factor contributing to the cumulative injury
23 is not an activity commonly engaged in by the employee or by
24 an average person in the normal nonemployment life of the
25 employee or average person.

26 Subsections 2, 3, and 4, relating to nonresident employers,
27 are stricken from Code section 85.3 and moved without change
28 to a new Code section 85.3A.

29 Code section 85.27, subsection 4, is amended to provide
30 that a hearing on an application for alternate medical care
31 made under this subsection cannot be held any sooner than 30
32 days from the date the application is filed.

33 Code section 85.34, subsection 2, is amended to provide
34 that an employer's liability to pay workers' compensation
35 benefits for permanent partial disability is reduced to the

1 extent that a portion of the resulting disability is not
2 related to the work-related injury received for which benefits
3 are presently claimed.

4 Code section 85.34 is amended by adding a new subsection
5 providing that when an employee suffers successive work-
6 related injuries or illnesses, an employer is not liable to
7 pay workers' compensation benefits for that portion of an
8 employee's disability that is caused by any preexisting injury
9 or illness that is separate and discrete from the injury or
10 illness for which workers' compensation is claimed. The new
11 subsection also provides that evidence that an employee has
12 received a prior award for payment of benefits or entered into
13 a prior settlement of any claim arising under the workers'
14 compensation laws of this state creates a presumption that the
15 employee has suffered a preexisting work-related injury or
16 illness that is separate and discrete from the injury or
17 illness for which workers' compensation is claimed and that
18 the extent of the employee's disability caused by that
19 preexisting injury or illness has been determined.

20 Code section 535.3, subsection 1, is amended to provide
21 that interest on weekly workers' compensation payments is paid
22 at the rate of 5 percent instead of 10 percent per year.

23 DIVISION IV -- OCCUPATIONAL SAFETY. This division relates
24 to the occupational safety and health provisions of the Code
25 by requiring that the labor commissioner's representatives
26 have industry-specific training for the businesses they
27 inspect, that the commissioner increase training and
28 consultation services prior to the implementation of new
29 standards, and establishing provisions granting privilege and
30 immunity protections to an employer that conducts a safety
31 audit that meets certain criteria.

32 The division provides that a safety audit is a voluntary
33 evaluation of a business or of an activity or operation at the
34 business when the activity or operation is regulated under
35 state or federal occupational safety and health laws, rules,

1 or variance conditions. The audit is conducted by an
2 employer, an employee, or an independent contractor, and is
3 designed to identify historical or current noncompliance with
4 occupational safety and health laws, rules, ordinances, or
5 variance conditions; discover hazards; and remedy
6 noncompliance or improve compliance with occupational safety
7 and health laws. Once notification is given to the
8 commissioner, the audit must be completed within a reasonable
9 time not to exceed six months.

10 Material included in a safety audit report and generated
11 during the audit is privileged and confidential and is not
12 discoverable or admissible as evidence in any civil or
13 administrative proceeding. The bill provides circumstances
14 under which certain persons shall not be compelled to testify
15 about or produce a document related to a safety audit. The
16 privilege may be waived and circumstances are provided under
17 which information is not privileged.

18 Disclosure of a portion of an audit may be required by a
19 court or presiding officer in a civil or administrative
20 proceeding. The division provides an appeal process. If a
21 court finds that a person claiming privilege intentionally
22 claimed the privilege for material that is not entitled to be
23 privileged, the person is subject to a fine not to exceed
24 \$1,000. Privilege does not apply if an employer has been
25 found in a civil or administrative proceeding to have
26 committed serious violations in this state that constitute a
27 pattern of continuous or repeated violations.

28 Privilege for safety audits does not apply to criminal
29 proceedings; however, if an audit report is obtained,
30 reviewed, or used in a criminal investigation or proceeding,
31 or reviewed by the commissioner, the administrative and civil
32 evidentiary privilege is not waived or made inapplicable.

33 The division provides that an employer is eligible for
34 immunity from the time the commissioner receives official
35 notification from the employer of a scheduled safety audit.

1 An employer is immune from any administrative or civil penalty
2 associated with the information disclosed if the employer
3 makes a prompt voluntary disclosure to the commissioner
4 regarding the violation discovered. The division provides for
5 the circumstances under which disclosure is considered
6 voluntary, and provides that immunity does not apply if the
7 violations are intentional or if the violations resulted in
8 substantial actual injury or imminent and substantial risk of
9 injury to an employee. Immunity also does not apply if an
10 employer is found to have committed serious violations that
11 constitute a pattern of continuous or repeated violations or
12 if a violation results in a substantial economic benefit which
13 gives the violator a clear advantage over its business
14 competitors.

15 The division requires the commissioner to develop and
16 administer a training program and standards for certification
17 of safety auditors, and to annually make available a summary
18 of the number of safety audit notices received, the
19 violations, and the remediation status of the violations
20 reported during the preceding fiscal year.

21 DIVISION V -- FINANCIAL SERVICES. Division V modifies
22 several Code provisions related to financial transactions.

23 The amendment to Code section 535.8 provides that a lender
24 may collect other costs in connection with a loan unless
25 expressly prohibited by other state or federal law. Charges
26 expressly permitted by the paragraph include such items as
27 credit reports, appraisal fees, attorney's opinions,
28 abstracting fees, recorder's fees, inspection fees, mortgage
29 guarantee insurance charges, surveying charges, termite
30 inspection fees, and the cost of a title guaranty issued by
31 the Iowa finance authority. Charges which are expressly not
32 permitted include the cost of revenue stamps or real estate
33 commissions which are paid by the seller.

34 The amendment to Code section 537.2502 addresses late fee
35 calculations on consumer credit accounts. The amendment to

1 Code section 537.2502 provides that, with respect to a
2 consumer credit transaction that is not pursuant to an open-
3 end credit arrangement and other than a consumer lease or
4 consumer rental agreement, a delinquency charge on a current
5 paid-in-full installment associated with a precomputed
6 transaction shall not be collected, even if a delinquency on
7 an earlier installment exists. By limiting the provision's
8 applicability to precomputed transactions, the bill allows a
9 delinquency charge to be collected on an installment not part
10 of a precomputed transaction, where the current installment
11 due is paid in full within 10 days after its scheduled or
12 deferred installment due date but an earlier maturing
13 installment or a delinquency or deferral charge on an earlier
14 installment has not been paid in full. The bill, with respect
15 to such transactions, eliminates the requirement that payments
16 be applied first to a current installment and then to
17 delinquent amounts.

18 The amendment likewise provides that with respect to
19 delinquency charges related to an open-end credit transaction,
20 a delinquency charge could be collected on a payment
21 associated with a transaction other than a precomputed
22 transaction where the current payment due is paid in full on
23 or before its scheduled or deferred due date but where an
24 earlier maturing payment or a delinquency or deferred charge
25 on an earlier payment has not been paid in full. The bill,
26 with respect to such transactions, eliminates the requirement
27 that payments be applied first to a current payment and then
28 to delinquent amounts.

29 The amendment to Code section 537.2601 provides that for
30 transactions other than consumer credit transactions, the
31 parties may contract for any charge permitted by law.

32 Division V also creates an exception to the statutory rule
33 against perpetuities codified in Code section 558.68, which is
34 a legal rule related to invalidating interests in property
35 that are intended to belong to a person at some point in the

1 future, but for which the actual determination of ownership
2 cannot or will not be accomplished within a specified period
3 of time. The purpose of the rule is to keep property from
4 being frozen in trust beyond a certain period of years.

5 Division V allows a creator of a trust to suspend,
6 explicitly in the trust document, the rule from applying to a
7 particular trust, but only if the trustee has the power to
8 sell all trust assets or if one or more people, including the
9 trustee, has the power to terminate the trust.

10 Division V further allows suspension of the rule in
11 situations where an employer creates a stock bonus plan,
12 pension plan, disability or death benefit plan, or profit-
13 sharing plan, in trust, for the benefit of the employer's
14 employees, for the purpose of distributing to the employees or
15 their beneficiaries earnings or principal or both.

16 This exception applies to all interests in real or personal
17 property by testamentary or inter vivos trust or will, or to
18 the exercise of a general power of appointment, executed on or
19 created after July 1, 2003.

20 DIVISION VI -- ENVIRONMENTAL PROVISIONS. This division of
21 the bill relates to environmental matters by providing for the
22 use of fees collected by the department of natural resources,
23 applying certain air quality requirements to indoor emission
24 units or air contaminant sources, and relating to endangered
25 species lists of the state.

26 The division provides that any fee collected by the
27 department pursuant to a provision of the Code of Iowa or the
28 Iowa administrative code shall be used for the purpose for
29 which the fee is collected.

30 The division defines "indoor source" as any emission unit
31 or air contaminant source which is not directly vented or
32 directly exhausted to the outside atmosphere which includes,
33 without limitation, any air exchange through general
34 ventilation, windows, doors, and cracks.

35 The division provides that indoor sources and indoor

1 sources that would have qualified as an indoor source and were
2 placed into service prior to the effective date of the bill
3 are not subject to certain notices of construction and other
4 related requirements which are required for other air
5 contaminant sources.

6 The division provides that the department of natural
7 resources shall not establish any permit, registration,
8 licensing, preconstruction notification, or recordkeeping
9 requirements for indoor sources. The division provides that
10 the prohibition shall not limit the department's authority to
11 implement the emission limitations adopted by the United
12 States environmental protection agency under the federal Clean
13 Air Act, the maximum achievable control technologies required
14 pursuant to the federal Clean Air Act Amendments of 1990, and
15 the prevention of significant deterioration regulations
16 adopted by the United States environmental protection agency
17 under the federal Clean Air Act.

18 The division also amends Code section 481B.3 relating to
19 the endangered and threatened fish, plants, and wildlife lists
20 of the state. The division provides that the state lists of
21 endangered and threatened fish, plants, and wildlife shall
22 only include fish, plants, and wildlife listed on the federal
23 lists of endangered and threatened fish, plants, and wildlife.

24 DIVISION VII -- PUBLIC WORKS CONTRACTS. This division of
25 the bill relates to establishing contractor qualifications on
26 public works projects. The division applies to the award of a
27 contract by a public owner to perform a public works project
28 pursuant to a competitive bidding procedure, when the contract
29 authorizes the expenditure of \$25,000 or more in public funds.

30 The division provides that a public owner shall tabulate
31 all bids received and determine who is the lowest responsible
32 bidder by only considering, in addition to the amount of the
33 bid, the past experience of the bidder in performing similar
34 projects; the qualifications of the bidder to perform the type
35 of work required by the contract; the bidder's record of

1 reliability and timely completion of past projects; and proof
2 of the financial responsibility of the bidder.

3 The division also provides that a public owner, in making a
4 determination of who is the lowest responsible bidder for
5 purposes of awarding a contract to perform a public works
6 project, is prohibited from considering whether a bidder's
7 employees belong to a labor union or organization; requiring
8 that the bidder selected must enter into an agreement that
9 directly or indirectly requires the bidder to recruit, train,
10 or hire employees from a particular source to perform work on
11 the public works project; or requiring that the bidder
12 selected must enter into an agreement that directly or
13 indirectly requires the bidder to offer particular types or
14 amounts of health insurance, life insurance, or disability
15 insurance coverage or retirement benefits to employees hired
16 by the bidder to perform work on the public works project.

17 In addition, the division requires that all bidding
18 documents requesting or inviting bids on a public works
19 project indicate what criteria shall be considered in awarding
20 a contract to the lowest responsible bidder.

21 The division defines "public owner" as a public body
22 including the state, a political subdivision of the state, an
23 officer, agency, authority, board, or commission of the state
24 or of a political subdivision, or an institution supported in
25 whole or in part by public funds.

26 The division defines "public works" as a building or other
27 construction work which is constructed under the control of a
28 public owner and is paid for in whole or in part with funds of
29 a public owner. The division provides that "public works"
30 does not include any work done by or on behalf of a drainage
31 or levee district or any work funded by federal funds where
32 federal procurement policy applicable to the use of the
33 federal funds is inconsistent with the requirements of this
34 division.

35 The division defines "public works project" or "project" as

1 the construction, maintenance, or repair of public works.

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SENATE FILE 344

S-3118

- 1 Amend Senate File 344 as follows:
- 2 1. Page 21, line 14, by inserting after the word
- 3 "highest;" the following: "and".
- 4 2. Page 21, line 16, by inserting after the word
- 5 "amounts," the following: "both".
- 6 3. Page 21, by striking lines 17 through 20 and
- 7 inserting the following: "dependents, of the
- 8 ~~statewide average weekly wage paid to employees in~~
- 9 ~~insured work which shall be effective the first day of~~
- 10 ~~the first full week in July:"~~
- 11 4. Page 21, line 27, by striking the figure
- 12 "\$292.18", and inserting the following: "\$292".
- 13 5. Page 21, line 28, by striking the figure
- 14 "\$303.21", and inserting the following: "\$303".
- 15 6. Page 21, line 29, by striking the figure
- 16 "\$314.24", and inserting the following: "\$314".
- 17 7. Page 21, line 30, by striking the figure,
- 18 "\$330.77", and inserting the following: "\$330".
- 19 8. Page 21, line 31, by striking the figure,
- 20 "\$358.34", and inserting the following: "\$358".
- 21 9. Page 23, line 18, by striking the word "Keep"
- 22 and inserting the following: "Actively seek work and
- 23 keep".
- 24 10. Page 23, line 25, by striking the words "a
- 25 full" and inserting the following: "six of seven days
- 26 in a".
- 27 11. Page 25, by inserting after line 19 the
- 28 following:
- 29 "Sec. ____ . Section 96.5, subsection 4, Code 2003,
- 30 is amended by adding the following new paragraph:
- 31 NEW PARAGRAPH. c. The individual is willing to
- 32 work but is prevented from working by the employer's
- 33 lockout."
- 34 12. By renumbering as necessary.

By RON WIECK

S-3118 FILED APRIL 1, 2003

Adopted 4/2/03

SENATE FILE 344

S-3101

1 Amend Senate File 344 as follows:

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

4 "Sec. ____ . Section 321.493, subsection 1,
5 paragraph a, Code 2003, is amended to read as follows:

6 a. Subject to paragraph "b", in all cases where
7 damage is done by any motor vehicle by reason of
8 negligence of the driver, and driven with the consent
9 of the owner, the owner of the motor vehicle shall be
10 liable for such damage. For purposes of this
11 subsection, "owner" means the person to whom the
12 certificate of title for the vehicle has been issued
13 or assigned or to whom a manufacturer's or importer's
14 certificate of origin for the vehicle has been
15 delivered or assigned. However, if the vehicle is
16 leased or rented, "owner" means the person to whom the
17 vehicle is leased or rented, not the person to whom
18 the certificate of title for the vehicle has been
19 issued or assigned or to whom the manufacturer's or
20 importer's certificate of origin for the vehicle has
21 been delivered or assigned. For purposes of this
22 subsection, "leased" means the transfer of the
23 possession or right to possession of a vehicle to a
24 lessee for a valuable consideration for a continuous
25 period of twelve months or more, pursuant to a written
26 agreement. For purposes of this subsection, "rented"
27 means the temporary transfer of the possession or
28 right to possession of a vehicle to a renter as
29 defined in section 522A.2."

30 2. By renumbering as necessary.

By RICHARD F. DRAKE

S-3101 FILED MARCH 27, 2003

Richard F. Drake 4/2/03

SENATE FILE 344

S-3121

1 Amend Senate File 344 as follows:

2 1. Page 44, by striking lines 15 through 18.

3 2. By striking page 46, line 29, through page 47,
4 line 17, and inserting the following:

5 "Sec. ____ . Section 481B.4, Code 2003, is amended
6 by adding the following new unnumbered paragraph after
7 unnumbered paragraph 2:

8 NEW UNNUMBERED PARAGRAPH. If the state department
9 of transportation conducts a highway project using
10 only state moneys, the list in section 481B.5,
11 subsection 1, shall be used to determine whether the
12 project encroaches on the habitat of an endangered
13 species of fish, plants, or wildlife. If the state
14 department of transportation conducts a highway
15 project using, at least in part, federal moneys, the
16 lists in section 481B.5, subsections 2, 3, and 4,
17 shall be used to determine whether the project
18 encroaches on the habitat of an endangered species of
19 fish, plants, or wildlife."

20 3. By renumbering as necessary.

By RON WIECK

S-3121 FILED APRIL 1, 2003

Ron Wieck 4/2/03

SENATE FILE 344

S-3115

1 Amend Senate File 344 as follows:
2 1. Page 26, by striking lines 3 through 5 and
3 inserting the following:
4 "a. A traumatic injury is an injury to the body
5 that comes about not through the natural".
6 2. Page 26, line 16, by striking the word
7 "employee," and inserting the following: "employee."
8 3. Page 26, by striking lines 17 through 19.
9 4. Page 26, by striking lines 23 through 26 and
10 inserting the following:
11 "a. The cumulative injury is caused by an
12 employment activity that is the single most
13 substantial factor contributing to the cumulative
14 injury, or is a significant aggravation of a
15 preexisting condition, that is caused by an employment
16 activity."
17 5. Page 30, by striking lines 20 and 21 and
18 inserting the following: "section 668.13, ~~except for~~
19 ~~interest due pursuant to section 85.30 for which the~~
20 ~~rate shall be ten percent per year.~~"

By RON WIECK

S-3115 FILED APRIL 1, 2003

Adopted 4/2/03

SENATE FILE 344

S-3116

1 Amend Senate File 344 as follows:
2 1. Page 47, by inserting after line 28, the
3 following:
4 "b. "Public road project" means a project under
5 the control of a public owner for the construction,
6 maintenance, or repair of a road or street that is
7 funded, in whole or in part, by moneys from the road
8 use tax fund."
9 2. Page 47, line 29, by striking the letter "b."
10 and inserting the following: "c."
11 3. Page 48, line 2, by striking the letter "c."
12 and inserting the following: "d."
13 4. Page 48, line 3 by inserting after the word
14 "works." the following: "However, "public works
15 project" does not mean a public road project."
16 5. Page 48, line 21, by inserting after the word
17 "project" the following: "or a public road project".
18 6. Page 48, line 29, by inserting after the word
19 "project" the following: "or the public road
20 project".
21 7. Page 48, line 35, by inserting after the word
22 "project" the following: "or the public road
23 project".
24 8. By renumbering, redesignating, and correcting
25 internal references as necessary.

By RON WIECK

RICHARD F. DRAKE

S-3116 FILED APRIL 1, 2003

Adopted 4/2/03

SENATE FILE 344

S-3108

1 Amend Senate File 344 as follows:

2 1. By striking page 1, line 10, through page 20,
3 line 13, and inserting the following:

4 "Sec. ____ . Section 625A.9, Code 2003, is amended
5 to read as follows:

6 625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT --
7 SUPERSEDEAS BOND WAIVED.

8 1. The taking of the appeal from part of a
9 judgment or order, and the filing of a bond as above
10 directed, does not stay execution as to that part of
11 the judgment or order not appealed from.

12 2. If the judgment or order appealed from is for
13 money, such bond shall not exceed any of the following
14 amounts, excluding costs:

15 a. One hundred percent of the amount of the money
16 judgment up to and including one million dollars.

17 b. One million dollars plus ten percent of the
18 amount above one million dollars, if the amount of the
19 money judgment is in excess of one million dollars, up
20 to and including one hundred million dollars.

21 c. Twenty-five million dollars, if the amount of
22 the money judgment is in excess of one hundred million
23 dollars.

24 3. Upon motion and for good cause shown, the
25 district court may stay all proceedings under the
26 order or judgment being appealed and permit the state
27 or any of its political subdivisions to appeal a
28 judgment or order to the supreme court without the
29 filing of a supersedeas bond.

30 Sec. ____ . Section 668.4, Code 2003, is amended to
31 read as follows:

32 668.4 JOINT AND SEVERAL LIABILITY.

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

41 Sec. ____ . Section 668.12, Code 2003, is amended to
42 read as follows:

43 668.12 LIABILITY FOR PRODUCTS -- ~~STATE OF THE ART~~
44 ~~DEFENSE DEFENSES.~~

45 1. In any action brought pursuant to this chapter
46 against an assembler, designer, supplier of
47 specifications, distributor, manufacturer, or seller
48 for damages arising from an alleged defect in the
49 design, testing, manufacturing, formulation,
50 packaging, warning, or labeling of a product, a

S-3108

1 percentage of fault shall not be assigned to such
2 persons if they plead and prove that the product
3 conformed to the state of the art in existence at the
4 time the product was designed, tested, manufactured,
5 formulated, packaged, provided with a warning, or
6 labeled.

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

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

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

34 5. In any action brought pursuant to this chapter
35 against an assembler, designer, supplier of
36 specifications, distributor, manufacturer, or seller
37 for damages arising from an alleged defect in the
38 design which allegedly enhanced injuries, or any
39 action alleging the crashworthiness of a product,
40 evidence of the user's or injured person's fault shall
41 be admissible and, subject to the provisions of
42 section 668.2, shall be compared if such fault was a
43 substantial factor in causing the underlying accident
44 or event producing any injury to the claimant,
45 including an enhanced injury.

46 6. An assembler, designer, supplier of
47 specifications, distributor, manufacturer, or seller
48 shall not be subject to liability under a theory of
49 civil conspiracy unless such persons knowingly entered
50 into a conspiracy with an intent to commit an unlawful

1 act which causes harm.

2 Sec. ____ . Section 668A.1, subsection 1, Code 2003,
3 is amended to read as follows:

4 1. In a trial of a claim involving the request for
5 punitive or exemplary damages, the court shall
6 instruct the jury to answer special interrogatories
7 or, if there is no jury, shall make findings,
8 indicating all of the following:

9 a. Whether, by a preponderance of clear~~7~~ and
10 convincing,~~and satisfactory~~ evidence, the conduct of
11 the defendant from which the claim arose constituted
12 willful and wanton disregard for the rights or safety
13 of another.

14 b. Whether the conduct of the defendant was
15 directed specifically at the claimant, or at the
16 person from which the claimant's claim is derived.

17 c. Whether, by a preponderance of clear and
18 convincing evidence, the conduct of the defendant from
19 which the claim arose constituted actual malice.

20 Sec. ____ . Section 668A.1, subsection 2, paragraph
21 b, Code 2003, is amended to read as follows:

22 b. If the answer or finding pursuant to subsection
23 1, paragraph "b", is negative, after payment of all
24 applicable costs and fees, an amount not to exceed
25 twenty-five percent of the punitive or exemplary
26 damages awarded may be ordered paid to the claimant,
27 with the remainder of the award to be ordered paid
28 into a civil reparations trust fund administered by
29 the state court administrator. Attorney fees shall
30 not be recoverable on any punitive or exemplary
31 damages award to be ordered paid to the civil
32 reparations trust fund. Funds placed in the civil
33 reparations trust shall be under the control and
34 supervision of the executive council, and shall be
35 disbursed only for purposes of indigent civil
36 litigation programs or insurance assistance programs.
37 The state court administrator shall file a report with
38 the general assembly for each fiscal year, relating to
39 the administration of the fund.

40 Sec. ____ . NEW SECTION. 668A.2 DEFINITIONS.

41 As used in this chapter, the following terms shall
42 have the following meanings:

43 1. "Clear and convincing evidence" means evidence
44 which leaves no serious or substantial doubt about the
45 correctness of the conclusions drawn from the
46 evidence. It is more than a preponderance of
47 evidence, but less than beyond a reasonable doubt.

48 2. "Malice" means either conduct which is
49 specifically intended by the defendant to cause
50 tangible or intangible serious injury to the plaintiff

1 or conduct that is carried out by the defendant both
2 with a flagrant indifference to the rights of the
3 plaintiff and with a subjective awareness that such
4 conduct will result in tangible serious injury.

5 Sec. ____ . NEW SECTION. 668A.3 AWARD OF PUNITIVE
6 OR EXEMPLARY DAMAGES -- PROOF -- STANDARD.

7 Punitive or exemplary damages shall only be awarded
8 where the plaintiff proves by clear and convincing
9 evidence that the plaintiff's harm was the result of
10 actual malice. This burden of proof shall not be
11 satisfied by proof of any degree of negligence,
12 including gross negligence.

13 Sec. ____ . NEW SECTION. 668A.4 PUNITIVE OR
14 EXEMPLARY DAMAGE LIMITATIONS.

15 1. Except as provided in subsection 2, an award of
16 punitive or exemplary damages shall not exceed two
17 times the amount of the plaintiff's compensatory
18 damages award or two hundred fifty thousand dollars,
19 whichever is greater.

20 2. If the defendant is a person or a business with
21 fifty or fewer full-time employees, an award of
22 punitive or exemplary damages shall not exceed two
23 times the amount of the plaintiff's compensatory
24 damages or two hundred fifty thousand dollars,
25 whichever is less.

26 Sec. ____ . NEW SECTION. 668B.1 CITATION.

27 This chapter may be cited as the "Noneconomic
28 Damage Awards Act".

29 Sec. ____ . NEW SECTION. 668B.2 DAMAGE AWARDS.

30 In any personal injury action, the prevailing
31 plaintiff may be awarded all of the following damages:

32 1. Compensation for economic damages suffered by
33 the injured plaintiff.

34 2. Compensation for the noneconomic damages
35 suffered by the injured plaintiff not to exceed the
36 greater of either of the following:

37 a. Two hundred fifty thousand dollars, except upon
38 a finding of especially egregious conduct on the part
39 of the defendant.

40 b. The amount awarded in economic damages.

41 Sec. ____ . NEW SECTION. 677.10A PREJUDGMENT
42 INTEREST.

43 If any offer to confess judgment is made under this
44 chapter and is not accepted, and a subsequent trial
45 results in a judgment which is less than the offer to
46 confess judgment, prejudgment interest shall not be
47 calculated or be subject to recovery after the date of
48 the offer to confess judgment."

49 2. By renumbering, redesignating, and correcting
50 internal references as necessary.

By RON WIECK

SENATE FILE 344

S-3130

1 Amend Senate File 344 as follows:

2 1. Page 44, by inserting after line 25 the
3 following:

4 "Sec. ____ . Section 455B.133, subsection 4,
5 unnumbered paragraph 1, Code 2003, is amended to read
6 as follows:

7 Adopt, amend, or repeal emission limitations or
8 standards relating to the maximum quantities of air
9 contaminants that may be emitted from any air
10 contaminant source. The standards or limitations
11 adopted under this section shall not exceed the
12 standards or limitations promulgated by the
13 administrator of the United States environmental
14 protection agency or the requirements of the federal
15 Clean Air Act as amended through January 1, 1991, or
16 air quality standards or limitations promulgated by
17 the United States occupational safety and health
18 administration. This With the exception of ambient
19 air standards, this does not prohibit the commission
20 from adopting a standard for a source or class of
21 sources for which the United States environmental
22 protection agency or the United States occupational
23 safety and health administration has not promulgated a
24 standard. If the United States environmental
25 protection agency has not promulgated ambient air
26 quality standards, this section shall not prohibit the
27 commission from adopting an ambient air standard if
28 the commission utilizes established federal Clean Air
29 Act methodologies under the national ambient air
30 quality standards program. The methodology shall
31 include an economic impact study to ascertain costs
32 associated with compliance with any proposed
33 standards. This also does not prohibit the commission
34 from adopting an emission standard or limitation for
35 infectious medical waste treatment or disposal
36 facilities which exceeds the standards or limitations
37 promulgated by the administrator of the United States
38 environmental protection agency or the requirements of
39 the federal Clean Air Act as amended through January
40 1, 1991. The commission shall not adopt an emission
41 standard or limitation for infectious medical waste
42 treatment or disposal facilities prior to January 1,
43 1995, which exceeds the standards or limitations
44 promulgated by the administrator of the United States
45 environmental protection agency or the requirements of
46 the federal Clean Air Act, as amended through January
47 1, 1991, for a hospital, or a group of hospitals,
48 licensed under chapter 135B which has been operating
49 an infectious medical waste treatment or disposal
50 facility prior to January 1, 1991."

S-3130

S-3130

Page 2

1 2. By renumbering as necessary.
By RON WIECK

S-3130 FILED APRIL 2, 2003

ADOPTED 4/2/03

SENATE FILE 344

S-3131

1 Amend the amendment, S-3121, to Senate File 344 as

2 follows:

3 1. Page 1, by striking lines 16 and 17 and
4 inserting the following: "state department of
5 transportation, after consultation with the department
6 of natural resources, may use lists in section 481B.5,
7 subsections 2, 3, and 4, to determine whether the
8 project".

By BRYAN J. SIEVERS
BOB BRUNKHORST

S-3131 FILED APRIL 2, 2003

ADOPTED 4/2/03

Description

Senate File 344, as amended and passed by the House, makes several changes in Iowa law relating to various statutory and regulatory requirements that impact business, employers, and employees. Changes include, but are not limited to the following:

- Permits the State or any of its political subdivisions to request the district court, upon a showing of good cause, to stay all proceedings under the order or judgment being appealed and waive the requirement that the State or any of its political subdivisions file a supersedeas bond upon appeal to the Iowa Supreme Court.
- Provides that if the judgment or order appealed is for money, an appeal bond shall not exceed 110.0% of the money judgment.
- Prohibits an assembler, designer, supplier of specifications, distributor, manufacturer, or seller from being liable under a theory of civil conspiracy unless the person knowingly and voluntarily entered into an agreement, express or implied, to participate in a common plan with the intent to commit a tortious act upon another.
- Requires a plaintiff seeking punitive or exemplary damages to prove the defendant's actions constituted malice.
- Requires employers only to be responsible for paying workers compensation benefits directly tied to injuries or illness sustained on the job without regard to pre-existing injuries or illness.
- Extends the repeal of the employment security administrative contribution surcharge from July 1, 2003, to July 1, 2006. The surcharge, capped at \$6.5 million, is levied as a percent of an employers gross taxable wage base. The revenue from the surcharge is used to support 56 rural and satellite offices of the Department of Workforce Development and to provide for labor surveys and other labor force related services.
- Requires the employment security administrative contribution surcharge be capped at \$6.5 million for FY 2004 and FY 2005. Caps the surcharge at \$3.2 million for FY 2006.
- Requires the Department of Economic Development to coordinate all regulatory assistance for business for the State and requires each State agency that provides regulatory assistance to businesses to maintain a coordinator to perform specified duties related to regulatory assistance.

Assumptions

1. The Department of Economic Development and other State agencies involved in providing regulatory assistance for business would use existing staff and resources to implement the provisions of the Bill.
2. The employment security administrative contribution surcharge repeal would be extended from July 1, 2003, to July 1, 2006.
3. Approximately \$6.5 million in surcharge revenues would continue to be collected for FY 2004 and FY 2005. Approximately \$3.2 million would be collected for FY 2006.

Fiscal Impact

Senate File 344, as amended and passed by the House, will generate approximately \$6.5 million in revenues for the Department of Iowa Workforce Development annually for FY 2004 and FY 2005. This is no change compared to revenues generated in FY 2003. For FY 2006, these revenues will be reduced by 50.0% to \$3.2 million.

Sources

Department of Workforce Development
Department of Economic Development

/s/ Dennis C Prouty

April 30, 2003

Description

Senate File 344 makes several changes in Iowa law relating to various statutory and regulatory requirements that impact business, employers and employees, property rights, and the environment. Changes include, but are not limited to the following:

- Establishes the Punitive Damages Standard Act and provides a standard of actual malice for liability for punitive damages, provides for a clear and convincing evidence standard, allows a bifurcated trial on the question of whether the defendant is liable for punitive damages, and generally limits the amount of a punitive damages award to twice the amount of compensatory damages.
- Eliminates indexing of the maximum weekly unemployment compensation benefit amount and the taxable wage base by capping the benefit amount for each dependent and by capping the taxable wage base at the current \$19,200.
- Adds a number of new requirements for an individual to be able and available for work in order to be eligible for unemployment benefits.
- Establishes a one-week waiting period in which an individual would not receive unemployment benefits for the first week they are unemployed.
- Requires an individual to have a minimum of 20 weeks of employment in the base period to be eligible for unemployment compensation benefits.
- Increases the earnings requirement for a second unemployment compensation benefit year claim from \$250 to ten times the individual's weekly benefit amount.
- Eliminates plant closing benefits under Unemployment Compensation. An employee who is laid off, due to a plant closing, would receive one half of the wage credits instead of one third of the wage credits.
- Provides that an individual will be disqualified for unemployment compensation if they are in labor negotiations and the employer performs a lock out of the employees.
- Defines traumatic and cumulative injury and provides for apportionment of worker's compensation benefits. Employers will only be responsible for paying workers compensation benefits directly tied to injuries or illness sustained on the job without regard to pre-existing injuries or illness.
- Requires the Labor Commissioner or Commissioner's representative in performing occupational safety inspections and investigations to inspect and investigate only businesses for which the representative received industry-specific training.
- Requires the labor commissioner to increase training and consultation services prior to implementation of new occupational safety standards.
- Specifies disclosure and confidentiality requirements of safety audit reports. Specifies that a person who violates the confidentiality requirement is guilty of a simple misdemeanor.
- Requires the Labor Commissioner to develop a safety auditor training program and allows fees to be charged to cover the cost of the training.
- Specifies that costs associated with implementing the provisions of the Bill related to the safety audit are to be funded by a General Fund appropriation to the Labor Commissioner in the Department of Workforce Development.

Assumptions

1. The provisions of the Bill related to pleading punitive damages would result in a hearing before the court. The hearing would involve a District Court Judge (\$60/hr), a Court Reporter (\$25/hr), and a Court Attendant (\$15/hr). The procedure would take approximately four to eight hours per case. Each case would increase the Clerk's office workload with a half hour of additional work per case (\$15/hr). The number of additional cases as a direct result of this provision of the legislation is unknown. However, the cost per case would be approximately \$400 to \$800.
 2. The provisions of Senate File 344 related to the bifurcated jury trial would increase the courts workload. The bifurcated jury trial would increase the time of the jury (\$260/day) as well as the time of the courts. The additional court time would be approximately 8 to 12 hours per case. Assuming the use of a District Court Judge, Court Reporter, Court Attendant, and 30 minutes additional work for the Clerk's office, the additional court costs would range from approximately \$800 to \$1,200 per case. The number of cases is unknown.
 3. The Department of Workforce Development would be required to verify that an employee has worked at least 20 hours per week in the employees base period in order to receive unemployment compensation. The Department would require 12.0 FTE positions for Workforce Advisors to be able to track and verify this information. The total cost for the FTE positions including fringe benefits and support would be approximately \$645,000 annually. The Department would also need to upgrade or update software programs, forms, pre-programmed telephone functions, databases, and many aspects of Unemployment Compensation record keeping as a direct result of this provision of the Bill at a cost of approximately \$500,000.
 4. The provision of the proposed legislation requiring certain criteria regarding an individual's ability and availability to work would require the Department of Workforce Development to make enhancements to the automated telephone system at a cost of \$300,000 and to the unemployment benefits system and software at a cost of \$500,000. According to the Department, these costs would be in addition to the cost mentioned in Assumption 3.
 5. The provision of the Bill relating to traumatic and cumulative injuries and apportionment of worker's compensation would result in increased litigation to the Department of Workforce Development and would thus require the Department to increase staff. The Department would require two Deputy Worker's Compensation Commissioners at a cost of \$200,000 annually including fringe benefits, and one clerical staff position at a cost of \$50,000 annually including fringe benefits. Additional support costs of \$50,000 annually would be required for the new staff. The total cost to the Department would be \$300,000 annually.
 6. The provision of Senate File 344 relating to occupational safety requires the Labor Commissioner to provide industry-specific training for staff. The Department would require an additional FTE position for an Executive Officer I at \$50,000 annually including fringe benefits to provide the training and one clerical staff position at a cost of \$30,000 annually including fringe benefits. An additional cost of \$20,000 would be incurred for support of the additional FTE positions. The Department would also incur costs associated with the training of \$97,000 annually. Fees are to be established to cover these costs. The total cost to the Department would be \$197,000 annually.
 7. Any potential cost savings that may result from the proposed legislation have not been included in the Fiscal Impact. Due to insufficient information, the estimated cost savings under SF 344 cannot be determined.
 8. A person who violates confidentiality requirements of an occupational safety audit is guilty of a simple misdemeanor under Chapter 22, Code of Iowa. There have been no convictions in recent years under this Chapter.
-

Correctional Impact

No significant correctional impact is expected as a result of Senate File 344.

Fiscal Impact

The Fiscal Impact of Senate File 344 cannot be determined due to insufficient information. However, the following estimated costs would be incurred under SF 344.

- The Department of Workforce Development would incur costs of approximately \$1.0 million annually for additional FTE positions, including fringe benefits and support costs. The Department would incur costs of \$97,000 associated with providing training for industry-specific safety audits. Fees for training are to be charged to cover this cost. The Department would incur one-time costs of approximately \$1.3 million related to software and technology upgrades as well as automated telephone system enhancements.
- There would be additional cost to the courts due to increased workloads. The additional cost would range from \$1,200 to \$2,000 per case not including additional jury time (\$260/day). The number of cases is unknown.

Sources

Department of Workforce Development

Judicial Branch

Department of Human Rights, Division of Criminal and Juvenile Justice Planning

/s/ Dennis C Prouty

April 1, 2003

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DIVISION I
LIABILITY REFORM

Section 1. Section 216.2, subsection 11, Code 2003, is amended to read as follows:

11. "Person" means one or more individuals including individuals who are employees and individuals who supervise employees, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

Sec. 2. Section 625A.9, Code 2003, is amended to read as follows:

625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT -- SUPERSEDEAS BOND WAIVED.

1. The taking of the appeal from part of a judgment or order, and the filing of a bond as-above-directed, does not stay execution as to that part of the judgment or order not appealed from.

2. If the judgment or order appealed from is for money, such bond shall not exceed any of the following amounts, excluding costs:

a. One hundred percent of the amount of the money judgment up to and including one million dollars.

b. One million dollars plus ten percent of the amount above one million dollars, if the amount of the money judgment is in excess of one million dollars, up to and including one hundred million dollars.

c. Twenty-five million dollars, if the amount of the money judgment is in excess of one hundred million dollars.

3. Upon motion and for good cause shown, the district court may stay all proceedings under the order or judgment being appealed and permit the state or any of its political subdivisions to appeal a judgment or order to the supreme court without the filing of a supersedeas bond.

Sec. 3. Section 668.4, Code 2003, is amended to read as 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. However, a defendant found to bear
6 fifty percent or more of fault shall only be jointly and
7 severally liable for economic damages and not for any
8 noneconomic damage awards.

9 Sec. 4. Section 668.12, Code 2003, is amended to read as
10 follows:

11 668.12 LIABILITY FOR PRODUCTS -- STATE-OF-THE-ART-DEFENSE
12 DEFENSES.

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

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

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

1 was obvious or generally known, the issues shall be decided by
2 the trier of fact.

3 4. In any action brought pursuant to this chapter against
4 an assembler, designer, supplier of specifications,
5 distributor, manufacturer, or seller for damages arising from
6 an alleged defect in packaging, warning, or labeling of a
7 product, a product bearing or accompanied by a warning or
8 instruction that is reasonably safe for use if the warning or
9 instruction is followed shall not be deemed defective or
10 unreasonably dangerous on the basis of failure to warn or
11 instruct.

12 5. In any action brought pursuant to this chapter against
13 an assembler, designer, supplier of specifications,
14 distributor, manufacturer, or seller for damages arising from
15 an alleged defect in the design which allegedly enhanced
16 injuries, or any action alleging the crashworthiness of a
17 product, evidence of the user's or injured person's fault
18 shall be admissible and, subject to the provisions of section
19 658.2, shall be compared if such fault was a substantial
20 factor in causing the underlying accident or event producing
21 any injury to the claimant, including an enhanced injury.

22 6. An assembler, designer, supplier of specifications,
23 distributor, manufacturer, or seller shall not be subject to
24 liability under a theory of civil conspiracy unless such
25 persons knowingly entered into a conspiracy with an intent to
26 commit an unlawful act which causes harm.

27 Sec. 5. Section 668A.1, subsection 1, Code 2003, is
28 amended to read as follows:

29 1. In a trial of a claim involving the request for
30 punitive or exemplary damages, the court shall instruct the
31 jury to answer special interrogatories or, if there is no
32 jury, shall make findings, indicating all of the following:

33 a. Whether, by a preponderance of clear, and convincing,
34 and-satisfactory evidence, the conduct of the defendant from
35 which the claim arose constituted willful and wanton disregard

1 for the rights or safety of another.

2 b. Whether the conduct of the defendant was directed
3 specifically at the claimant, or at the person from which the
4 claimant's claim is derived.

5 c. Whether, by a preponderance of clear and convincing
6 evidence, the conduct of the defendant from which the claim
7 arose constituted actual malice.

8 Sec. 6. Section 668A.1, subsection 2, paragraph b, Code
9 2003, is amended to read as follows:

10 b. If the answer or finding pursuant to subsection 1,
11 paragraph "b", is negative, after payment of all applicable
12 costs and fees, an amount not to exceed twenty-five percent of
13 the punitive or exemplary damages awarded may be ordered paid
14 to the claimant, with the remainder of the award to be ordered
15 paid into a civil reparations trust fund administered by the
16 state court administrator. Attorney fees shall not be
17 recoverable on any punitive or exemplary damages award to be
18 ordered paid to the civil reparations trust fund. Funds
19 placed in the civil reparations trust shall be under the
20 control and supervision of the executive council, and shall be
21 disbursed only for purposes of indigent civil litigation
22 programs or insurance assistance programs. The state court
23 administrator shall file a report with the general assembly
24 for each fiscal year, relating to the administration of the
25 fund.

26 Sec. 7. NEW SECTION. 668A.2 DEFINITIONS.

27 As used in this chapter, the following terms shall have the
28 following meanings:

29 1. "Clear and convincing evidence" means evidence which
30 leaves no serious or substantial doubt about the correctness
31 of the conclusions drawn from the evidence. It is more than a
32 preponderance of evidence, but less than beyond a reasonable
33 doubt.

34 2. "Malice" means either conduct which is specifically
35 intended by the defendant to cause tangible or intangible

1 serious injury to the plaintiff or conduct that is carried out
2 by the defendant both with a flagrant indifference to the
3 rights of the plaintiff and with a subjective awareness that
4 such conduct will result in tangible serious injury.

5 Sec. 8. NEW SECTION. 668A.3 AWARD OF PUNITIVE OR
6 EXEMPLARY DAMAGES -- PROOF -- STANDARD.

7 Punitive or exemplary damages shall only be awarded where
8 the plaintiff proves by clear and convincing evidence that the
9 plaintiff's harm was the result of actual malice. This burden
10 of proof shall not be satisfied by proof of any degree of
11 negligence, including gross negligence.

12 Sec. 9. NEW SECTION. 668A:4 PUNITIVE OR EXEMPLARY DAMAGE
13 LIMITATIONS.

14 1. Except as provided in subsection 2, an award of
15 punitive or exemplary damages shall not exceed two times the
16 amount of the plaintiff's compensatory damages award or two
17 hundred fifty thousand dollars, whichever is greater.

18 2. If the defendant is a person or a business with fifty
19 or fewer full-time employees, an award of punitive or
20 exemplary damages shall not exceed two times the amount of the
21 plaintiff's compensatory damages or two hundred fifty thousand
22 dollars, whichever is less.

23 Sec. 10. NEW SECTION. 668B.1 CITATION.

24 This chapter may be cited as the "Noneconomic Damage Awards
25 Act".

26 Sec. 11. NEW SECTION. 668B.2 DAMAGE AWARDS.

27 In any personal injury action, the prevailing plaintiff may
28 be awarded all of the following damages:

29 1. Compensation for economic damages suffered by the
30 injured plaintiff.

31 2. Compensation for the noneconomic damages suffered by
32 the injured plaintiff not to exceed the greater of either of
33 the following:

34 a. Two hundred fifty thousand dollars, except upon a
35 finding of especially egregious conduct on the part of the

1 defendant.

2 b. The amount awarded in economic damages.

3 Sec. 12. NEW SECTION. 677.10A PREJUDGMENT INTEREST.

4 If any offer to confess judgment is made under this chapter
5 and is not accepted, and a subsequent trial results in a
6 judgment which is less than the offer to confess judgment,
7 prejudgment interest shall not be calculated or be subject to
8 recovery after the date of the offer to confess judgment.

9

DIVISION II

10

UNEMPLOYMENT COMPENSATION

11 Sec. 13. Section 85.60, Code 2003, is amended to read as
12 follows:

13 85.60 INJURIES WHILE IN EMPLOYMENT TRAINING OR EVALUATION.

14 A person participating in a school-to-work program referred
15 to in section 85.61, or receiving earnings while engaged in
16 employment training or while undergoing an employment
17 evaluation under the direction of a rehabilitation facility
18 approved for purchase-of-service contracts or for referrals by
19 the department of human services or the department of
20 education, who sustains an injury arising out of and in the
21 course of the school-to-work program participation, employment
22 training, or employment evaluation is entitled to benefits as
23 provided in this chapter, chapter 85A, chapter 85B, and
24 chapter 86. Notwithstanding the minimum benefit provisions of
25 this chapter, a person referred to in this section and
26 entitled to benefits under this chapter is entitled to receive
27 a minimum weekly benefit amount for a permanent partial
28 disability under section 85.34, subsection 2, or for a
29 permanent total disability under section 85.34, subsection 3,
30 equal to the weekly benefit amount of a person whose gross
31 weekly earnings are thirty-five percent of the statewide
32 average weekly wage ~~computed-pursuant-to-section-96-3~~
33 determined by the department of workforce development under
34 section 96.19, subsection 36, and in effect at the time of the
35 injury.

1 Sec. 16. Section 96.4, subsection 3, Code 2003, is amended
2 to read as follows:

3 3. a. The individual is able to work, is available for
4 work, and is earnestly and actively seeking work. To be
5 eligible under this subsection, the individual must:

6 (1) Be able and available for full-time work for which the
7 individual is fitted by prior training or experience.

8 (2) Reside in a locality where opportunities for work are
9 not less favorable than those in the locality where the
10 individual resided at the time of the individual's most recent
11 separation from employment.

12 (3) Actively seek work and keep a record of where and when
13 the individual has sought work and shall produce such record
14 to the director upon request.

15 (4) Actively seek work during periods of nonseasonal
16 operations where the individual has been customarily employed
17 in seasonal employment.

18 b. If an eligible individual is available for work for
19 less than six of seven days in a week, the individual's weekly
20 benefit amount shall be reduced by one-sixth of such amount
21 for each day the individual is unavailable for work. If an
22 individual is unavailable for work for four days or more in a
23 week, the individual shall be considered unavailable for the
24 entire week.

25 c. This subsection is waived if the individual is deemed
26 partially unemployed, while employed at the individual's
27 regular job, as defined in section 96.19, subsection 38,
28 paragraph "b", unnumbered paragraph 1, or temporarily
29 unemployed as defined in section 96.19, subsection 38,
30 paragraph "c". The work search requirements of this
31 subsection and the disqualification requirement for failure to
32 apply for, or to accept suitable work of section 96.5,
33 subsection 3 are waived if the individual is not disqualified
34 for benefits under section 96.5, subsection 1, paragraph "h".

35 Sec. 17. Section 96.4, subsection 4, Code 2003, is amended

1 to read as follows:

2 4. The individual has been paid wages for insured work
3 during the individual's base period for a minimum of twenty
4 weeks in an amount at least one and one-quarter times the
5 wages paid to the individual during that quarter of the
6 individual's base period in which the individual's wages were
7 highest; provided that the individual has been paid wages for
8 insured work totaling at least three and five-tenths percent
9 of the statewide average annual wage for insured work,
10 computed for the preceding calendar year if the individual's
11 benefit year begins on or after the first full week in July
12 and computed for the second preceding calendar year if the
13 individual's benefit year begins before the first full week in
14 July, in that calendar quarter in the individual's base period
15 in which the individual's wages were highest, and the
16 individual has been paid wages for insured work totaling at
17 least one-half of the amount of wages required under this
18 subsection in the calendar quarter of the base period in which
19 the individual's wages were highest, in a calendar quarter in
20 the individual's base period other than the calendar quarter
21 in which the individual's wages were highest. The calendar
22 quarter wage requirements shall be rounded to the nearest
23 multiple of ten dollars.

24 If the individual has drawn benefits in any benefit year,
25 the individual must during or subsequent to that year, work in
26 and be paid wages for insured work totaling at least ~~two~~
27 hundred-fifty-dollars ten times the individual's weekly
28 benefit amount, as a condition to receive benefits in the next
29 benefit year.

30 Sec. 18. Section 96.4, Code 2003, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 8. The individual has satisfied one one-
33 week waiting period during the individual's benefit year. To
34 satisfy the one-week waiting period, the individual, with
35 respect to the week in question, must be unemployed, have

1 filed a claim for benefits, and be eligible for benefits from
2 this state, but must not have received benefits from this or
3 another state, and must not be eligible for benefits from
4 another state.

5 Sec. 19. Section 96.5, subsection 4, unnumbered paragraph
6 1, Code 2003, is amended to read as follows:

7 For any week with respect to which the department finds
8 that the individual's total or partial unemployment is due to
9 a stoppage of work which exists because of a strike, lockout,
10 or labor dispute at the factory, establishment, or other
11 premises at which the individual is or was last employed,
12 provided that this subsection shall not apply if it is shown
13 to the satisfaction of the department that:

14 Sec. 20. Section 96.5, subsection 4, Code 2003, is amended
15 by adding the following new paragraph:

16 NEW PARAGRAPH. c. The individual is willing to work but
17 is prevented from working by the employer's lockout.

18 Sec. 21. Section 96.19, subsection 37, paragraph a, Code
19 2003, is amended by striking the paragraph and inserting in
20 lieu thereof the following:

21 a. Nineteen thousand two hundred dollars.

22 DIVISION III

23 WORKERS' COMPENSATION

24 Sec. 22. Section 85.3, subsection 1, Code 2003, is amended
25 to read as follows:

26 1. Every employer, not specifically excepted by the
27 provisions of this chapter, shall provide, secure, and pay
28 compensation according to the provisions of this chapter for
29 any and all personal injuries sustained by an employee arising
30 out of and in the course of the employment, and in such cases,
31 the employer shall be relieved from other liability for
32 recovery of damages or other compensation for such personal
33 injury. For the purposes of this chapter, a personal injury
34 sustained by an employee shall be characterized as either a
35 traumatic injury or a cumulative injury.

1 a. A traumatic injury is an injury to the body that comes
2 about not through the natural building up and tearing down of
3 the human body, but because of a traumatic or other hurt or
4 damage to the health or body of an employee.

5 b. A cumulative injury is an injury to the body that is
6 gradual and progressive in nature and does not necessarily
7 result from a sudden and unexpected traumatic event.

8 2. A traumatic injury does not arise out of and in the
9 course of employment for the purposes of this chapter unless
10 the traumatic injury is a natural incident of an employment
11 activity of the employee or a reasonable consequence of a
12 hazard associated with an employment activity of the employee.

* 13 3. A cumulative injury does not arise out of and in the
14 course of employment for the purposes of this chapter unless
15 all of the following are shown:

16 a. The cumulative injury is caused by an employment
17 activity that is the single most substantial factor
18 contributing to the cumulative injury, or is a significant
19 aggravation of a preexisting condition, that is caused by an
20 employment activity.

21 b. The cumulative injury, at the time of its occurrence,
22 would not be expected to occur as the result of the normal
23 aging process absent an employment activity of the employee.

24 c. The employment activity that is alleged to be the
25 single most substantial factor contributing to the cumulative
26 injury is not an activity commonly engaged in by the employee
27 or by an average person in the normal nonemployment life of
28 the employee or average person.

29 Sec. 23. Section 85.3, subsections 2, 3, and 4, Code 2003,
30 are amended by striking the subsections.

31 Sec. 24. NEW SECTION. 85.3A NOTICE TO NONRESIDENT
32 EMPLOYERS.

33 1. Any employer who is a nonresident of this state, for
34 whom services are performed within this state by any employee,
35 is deemed to be doing business in this state by virtue of

1 having such services performed and the employer and employee
2 shall be subject to the jurisdiction of the workers'
3 compensation commissioner and to all of the provisions of this
4 chapter, chapters 85A, 85B, 86, and 87, as to any and all
5 personal injuries sustained by the employee arising out of and
6 in the course of such employment within this state. In
7 addition, every corporation, individual, personal
8 representative, partnership, or association that has the
9 necessary minimum contact with this state shall be subject to
10 the jurisdiction of the workers' compensation commissioner,
11 and the workers' compensation commissioner shall hold such
12 corporation, individual, personal representative, partnership,
13 or association amenable to suit in this state in every case
14 not contrary to the provisions of the Constitution of the
15 United States.

16 2. Service of process or original notice upon a
17 nonresident employer may be performed as provided in section
18 617.3 or as provided in the Iowa rules of civil procedure. In
19 addition, service may be made on any corporation, individual,
20 personal representative, partnership, or association that has
21 the necessary minimum contact with this state as provided in
22 rule of civil procedure 1.305 within or without this state or,
23 if such service cannot be made, in any manner consistent with
24 due process of law prescribed by the workers' compensation
25 commissioner.

26 In addition to those persons authorized to receive personal
27 service as in civil actions as permitted by chapter 17A and
28 this chapter, such employer shall be deemed to have appointed
29 the secretary of state of this state as its lawful attorney
30 upon whom may be served or delivered any and all notices
31 authorized or required by the provisions of this chapter,
32 chapters 85A, 85B, 86, 87, and 17A, and to agree that any and
33 all such services or deliveries of notice on the secretary of
34 state shall be of the same legal force and validity as if
35 personally served upon or delivered to such nonresident

1 employer in this state.

2 This section does not limit or affect the right to serve an
3 original notice upon any corporation, individual, personal
4 representative, partnership, or association within or without
5 this state in any manner otherwise permitted by statute or
6 rule.

7 3. For purposes of this section, a nonresident employer is
8 any employer that is not a resident of Iowa as defined in
9 section 617.3.

10 Sec. 25. Section 85.27, subsection 4, Code 2003, is
11 amended to read as follows:

12 4. For purposes of this section, the employer is obliged
13 to furnish reasonable services and supplies to treat an
14 injured employee, and has the right to choose the care. The
15 treatment must be offered promptly and be reasonably suited to
16 treat the injury without undue inconvenience to the employee.
17 If the employee has reason to be dissatisfied with the care
18 offered, the employee should communicate the basis of such
19 dissatisfaction to the employer, in writing if requested,
20 following which the employer and the employee may agree to
21 alternate care reasonably suited to treat the injury. If the
22 employer and employee cannot agree on such alternate care, the
23 commissioner may, upon application and reasonable proofs of
24 the necessity therefor, allow and order other care. In an
25 emergency, the employee may choose the employee's care at the
26 employer's expense, provided the employer or the employer's
27 agent cannot be reached immediately. An application made
28 under this subsection shall be considered an original
29 proceeding for purposes of commencement and contested case
30 proceedings under section 85.26. The hearing shall be
31 conducted pursuant to chapter 17A no sooner than thirty days
32 from the date that the application is filed. Before a hearing
33 is scheduled, the parties may choose a telephone hearing or an
34 in-person hearing. A request for an in-person hearing shall
35 be approved unless the in-person hearing would be impractical

1 because of the distance between the parties to the hearing.
2 The workers' compensation commissioner shall issue a decision
3 within ten working days of receipt of an application for
4 alternate care made pursuant to a telephone hearing or within
5 fourteen working days of receipt of an application for
6 alternate care made pursuant to an in-person hearing. The
7 employer shall notify an injured employee of the employee's
8 ability to contest the employer's choice of care pursuant to
9 this subsection.

10 Sec. 26. Section 85.34, subsection 2, unnumbered paragraph
11 1, Code 2003, is amended to read as follows:

12 Compensation for permanent partial disability shall begin
13 at the termination of the healing period provided in
14 subsection 1. The compensation shall be in addition to the
15 benefits provided by sections 85.27 and 85.28. The
16 compensation shall be based only upon the extent of the
17 disability related to the injury received and upon the basis
18 of eighty percent per week of the employee's average spendable
19 weekly earnings, but not more than a weekly benefit amount,
20 rounded to the nearest dollar, equal to one hundred eighty-
21 four percent of the statewide average weekly wage paid
22 employees as determined by the department of workforce
23 development under section 96.19, subsection 36, and in effect
24 at the time of the injury. The minimum weekly benefit amount
25 shall be equal to the weekly benefit amount of a person whose
26 gross weekly earnings are thirty-five percent of the statewide
27 average weekly wage. For all cases of permanent partial
28 disability compensation shall be paid as follows:

29 Sec. 27. Section 85.34, Code 2003, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 7. APPORTIONMENT. When an employee
32 suffers successive work-related injuries or illnesses, an
33 employer is not liable for that portion of an employee's
34 disability that is caused by any preexisting injury or illness
35 that is separate and discrete from the injury or illness for

1 which compensation is claimed. Evidence that an employee has
2 received a prior award for payment of benefits or entered into
3 a prior settlement of any claim arising under this chapter or
4 chapter 85A, 85B, or 86 creates a presumption that the
5 employee has suffered a preexisting work-related injury or
6 illness that is separate and discrete from the injury or
7 illness for which benefits are claimed and that the extent of
8 disability caused by that preexisting injury or illness has
9 been determined.

10 Sec. 28. Section 535.3, subsection 1, Code 2003, is
11 amended to read as follows:

12 1. Interest shall be allowed on all money due on judgments
13 and decrees of courts at a rate calculated according to
14 section 668.13, except for interest due pursuant to section
15 85.30 for which the rate shall be ten percent per year.

16 DIVISION IV

17 OCCUPATIONAL SAFETY

18 Sec. 29. Section 88.16, subsections 1 and 3, Code 2003,
19 are amended to read as follows:

20 1. The commissioner shall conduct directly or by contract,
21 educational programs to provide an adequate supply of
22 qualified personnel to administer this chapter and
23 informational programs on the importance of and proper use of
24 adequate safety and health equipment. In making inspections
25 and investigations under this chapter, the commissioner's
26 representative shall inspect and investigate only those
27 businesses for which the representative received industry-
28 specific training.

29 3. The commissioner shall provide for the establishment
30 and supervision of programs for the education and training of
31 employers and employees in the recognition, avoidance, and
32 prevention of unsafe or unhealthful working conditions in
33 employments covered by this chapter, and consult with and
34 advise employers, employees, and organizations representing
35 employers and employees, as to effective means of preventing

1 occupational injuries and illnesses. The commissioner shall
2 increase training and consultation services prior to
3 implementation of new standards.

4 Sec. 30. NEW SECTION. 88.0A TITLE.

5 This chapter shall be known and may be cited as the
6 "Occupational Safety and Health Inspections and Audit Act".

7 SUBCHAPTER II

8 SAFETY AUDIT PRIVILEGE AND IMMUNITY

9 Sec. 31. NEW SECTION. 88.31 DEFINITIONS.

10 As used in this subchapter, unless the context otherwise
11 requires:

12 1. "Commissioner" means the labor commissioner appointed
13 pursuant to section 91.2 or the commissioner's designee.

14 2. "Inquiring party" means any party appearing before a
15 court or a presiding officer in an administrative proceeding
16 seeking to review or obtain an in camera review of a safety
17 audit report.

18 3. "Privilege" means the protections provided in regard to
19 a safety audit report as provided in this subchapter.

20 4. "Safety audit" means a voluntary evaluation of any
21 factory, plant, establishment, construction site, or other
22 area, workplace, or environment where work is performed by an
23 employee of an employer, of an activity or operation at the
24 business when the activity or operation is regulated under
25 state or federal occupational safety and health laws, rules,
26 or variance conditions, conducted by an employer, an employee
27 of the employer, or an independent contractor retained by the
28 employer, that is designed to identify historical or current
29 noncompliance with state and federal occupational safety and
30 health standards, laws, rules, or variance conditions,
31 discover hazards, and remedy noncompliance or improve
32 compliance with occupational safety and health laws. Once
33 notification is given to the commissioner, a safety audit
34 shall be completed within a reasonable time not to exceed six
35 months unless an extension is approved by the commissioner

1 based on reasonable grounds.

2 5. "Safety audit report" means a document or set of
3 documents generated and developed for the primary purpose and
4 in the course of or as a result of conducting a safety audit.
5 A "safety audit report" includes supporting information that
6 may include, but is not limited to, the report document
7 itself, observations, samples, analytical results, exhibits,
8 findings, opinions, suggestions, recommendations, conclusions,
9 drafts, memoranda, drawings, photographs, computer-generated
10 or electronically recorded information, maps, charts, graphs,
11 surveys, implementation plans, interviews, discussions,
12 correspondence, and communications related to the safety
13 audit. A "safety audit report" may include any of the
14 following components:

15 a. An executive summary prepared by the person conducting
16 the safety audit, which may include the scope of the safety
17 audit, the information gained in the safety audit,
18 conclusions, recommendations, exhibits, and appendices.

19 b. Memoranda and documents analyzing portions or all of
20 the report and discussing implementation issues.

21 c. An implementation plan which addresses correcting past
22 noncompliance, improving current compliance, or preventing
23 future noncompliance.

24 d. Periodic updates documenting progress in completing the
25 implementation plan.

26 Sec. 32. NEW SECTION. 88.32 PRIVILEGE.

27 1. Material included in a safety audit report generated
28 during a safety audit conducted after July 1, 2003, is
29 privileged and confidential and is not discoverable or
30 admissible as evidence in any civil or administrative
31 proceeding, except as otherwise provided in this chapter. The
32 safety audit report shall be labeled "SAFETY AUDIT REPORT:
33 PRIVILEGED DOCUMENT". Failure to label each document within
34 the report does not constitute a waiver of the safety audit
35 privilege or create a presumption that the privilege does or

1 does not apply.

2 2. A person shall not be compelled to testify in regard to
3 or produce a document included in a safety audit report in any
4 of the following circumstances:

5 a. If the testimony or document discloses any component
6 listed in section 88.31, subsection 5, that was made as part
7 of the preparation of a safety audit report and that is
8 addressed in a privileged part of a safety audit report.

9 b. If the person is any of the following:

10 (1) A person who conducted any portion of the safety audit
11 but did not personally observe the physical events of a safety
12 violation.

13 (2) A person to whom the results of the safety audit
14 report are disclosed under section 88.33, subsection 2.

15 (3) A custodian of the safety audit report.

16 3. A person who conducts or participates in the
17 preparation of a safety audit report and who has observed
18 physical events of a safety violation may testify about those
19 events but shall not be compelled to testify about or produce
20 documents related to the preparation of or any privileged part
21 of a safety audit or any component listed in section 88.31,
22 subsection 5.

23 4. An employee of a state agency or other governmental
24 employee shall not request, review, or otherwise use a safety
25 audit report during an agency inspection of a regulated
26 facility or operation, or an activity of a regulated facility
27 or operation.

28 5. A party asserting the privilege under this section has
29 the burden of establishing the applicability of the privilege.

30 6. The privilege provided in this section is in addition
31 to the confidentiality requirements applicable to educational
32 and informational programs under section 88.16.

33 Sec. 33. NEW SECTION. 88.33 WAIVER OF PRIVILEGE --
34 DISCLOSURE.

35 1. The privilege described in section 88.32 shall not

1 apply to the extent that the privilege is expressly waived in
2 writing by the employer who prepared the safety audit report
3 or caused the report to be prepared.

4 2. Disclosure of a safety audit report or any other
5 information generated by a safety audit does not waive the
6 privilege established in section 88.32 if the disclosure meets
7 any of the following criteria:

8 a. The disclosure is made to address or correct a matter
9 raised by the safety audit and the disclosure is made to any
10 of the following:

11 (1) A person employed by the employer, including temporary
12 and contract employees.

13 (2) A legal representative of the employer.

14 (3) An officer or director of the regulated business or a
15 partner of the employer.

16 (4) An independent contractor retained by the employer.

17 b. The disclosure is made under the terms of a
18 confidentiality agreement between any person and the employer
19 of the audited business.

20 3. A party to a confidentiality agreement described in
21 subsection 2, paragraph "b", who violates that agreement is
22 liable for damages caused by the disclosure and for any other
23 penalties stipulated in the confidentiality agreement.

24 4. Information that is disclosed under subsection 2,
25 paragraph "b", is confidential and is not subject to
26 disclosure under chapter 22. A governmental entity,
27 governmental employee, or governmental official who discloses
28 information in violation of this subsection is subject to the
29 penalty provided in section 22.6.

30 5. The protections provided by federal or state law shall
31 be afforded to individuals who disclose information to law
32 enforcement authorities.

33 6. The provisions of this chapter shall not abrogate the
34 protections provided by federal and state law regarding
35 confidentiality and trade secrets.

1 Sec. 34. NEW SECTION. 88.34 REQUIRED DISCLOSURE.

2 1. A court or a presiding officer in an administrative
3 hearing may require disclosure of a portion of a safety audit
4 report in a civil or administrative proceeding if the court or
5 presiding officer affirmatively determines, after an in camera
6 review, that any of the following exists:

7 a. The privilege is asserted for a fraudulent purpose.

8 b. The portion of the safety audit report is not subject
9 to the privilege under section 88.35.

10 c. The portion of the safety audit report shows evidence
11 of noncompliance with a state or federal occupational safety
12 and health standard or other law, rule, or variance condition
13 and appropriate efforts to achieve compliance with the
14 standard or other law, rule, or variance condition were not
15 promptly initiated and pursued with reasonable diligence after
16 discovery of noncompliance.

17 d. The portion of the safety audit report shows clear and
18 convincing evidence of substantial actual personal injury,
19 which information is not otherwise available.

20 e. The portion of the safety audit report shows a clear
21 and present danger to the public health or safety.

22 2. A party seeking disclosure under this section has the
23 burden of proving that subsection 1 applies.

24 3. A decision of a presiding officer in an administrative
25 hearing under subsection 1 may be directly appealed to the
26 district court without disclosure of the safety audit report
27 to any person unless so ordered by the court.

28 4. A determination of a court under this section is
29 subject to interlocutory appeal to an appropriate appellate
30 court.

31 5. If a court finds that a person claiming privilege under
32 this subchapter intentionally claimed the privilege for
33 material not privileged as provided in section 88.35, the
34 person is subject to a fine not to exceed one thousand
35 dollars.

1 6. Privilege provided in this subchapter does not apply if
2 the employer has been found in a civil or administrative
3 proceeding to have committed serious violations in this state
4 that constitute a pattern of continuous or repeated violations
5 of state or federal occupational safety and health laws,
6 administrative rules, or variance conditions, that were due to
7 separate and distinct events giving rise to the violations
8 within the three-year period prior to the date of disclosure.

9 Sec. 35. NEW SECTION. 88.35 MATERIALS NOT PRIVILEGED.

10 1. The privilege described in this subchapter does not
11 apply to any of the following:

12 a. A document, communication, datum, report, or other
13 information the commissioner is required to collect, develop,
14 retain, or report under a state or federal occupational safety
15 and health law, rule, or variance condition.

16 b. Information obtained by observation, sampling, or
17 monitoring by the commissioner or the commissioner's
18 authorized designee.

19 c. Information obtained from a source not involved in the
20 preparation of the safety audit report.

21 2. This section does not limit the right of a person to
22 agree to conduct a safety audit and disclose a safety audit
23 report.

24 Sec. 36. NEW SECTION. 88.36 REVIEW OF PRIVILEGED
25 DOCUMENTS.

26 1. The privileges created in this subchapter shall not
27 apply to criminal investigations or proceedings. A safety
28 audit report, supporting documents, and testimony relating
29 thereto may be obtained by a prosecutor's subpoena pursuant to
30 the rules of criminal procedure. If a safety audit report is
31 obtained, reviewed, or used in a criminal investigation or
32 proceeding, the administrative and civil evidentiary privilege
33 established in this subchapter is not waived or made
34 inapplicable for any purpose other than for the criminal
35 investigation or proceeding.

1 2. Notwithstanding the privilege established in this
2 subchapter, the commissioner may review information in a
3 safety audit report, but such review does not waive or make
4 the administrative and civil evidentiary privilege
5 inapplicable to the report. The commissioner shall not adopt
6 a rule or impose a condition that circumvents the purpose of
7 this subchapter.

8 3. If information is required to be made available to the
9 public by operation of a specific state or federal law, rule,
10 or variance condition, the commissioner shall notify the
11 person claiming the privilege of the potential for public
12 disclosure prior to obtaining such information under
13 subsection 1 or 2.

14 4. If privileged information is disclosed under subsection
15 2 or 3, on the motion of a party, a court or the presiding
16 officer in an administrative hearing shall suppress evidence
17 offered in any civil or administrative proceeding that arises
18 or is derived from review, disclosure, or use of information
19 obtained under this section if the review, disclosure, or use
20 is not authorized under section 88.35. A party having
21 received information under subsection 2 or 3 has the burden of
22 proving that the evidence offered did not arise and was not
23 derived from the review of privileged information.

24 Sec. 37. NEW SECTION. 88.37 VOLUNTARY DISCLOSURE OF
25 SAFETY VIOLATION -- IMMUNITY.

26 1. An employer is eligible for immunity under this section
27 from the time the commissioner receives official notification
28 from the employer of a scheduled safety audit. An employer is
29 immune from any administrative or civil penalty associated
30 with the information disclosed if the employer makes a prompt
31 voluntary disclosure to the commissioner regarding an
32 occupational safety and health violation that is discovered
33 through the safety audit. The employer creates a rebuttable
34 presumption that the disclosure is voluntary by meeting the
35 criteria provided in subsection 2 at the time of disclosure.

1 To rebut the presumption that a disclosure is voluntary, the
2 commissioner or other party has the burden of proving that the
3 disclosure was not voluntary. Immunity is not provided if the
4 violations of state or federal occupational safety and health
5 law, rule, or variance condition are intentional or if the
6 violations of state or federal law, rule, or variance
7 condition resulted in substantial actual injury or imminent
8 and substantial risk of injury to an employee.

9 2. The disclosure of information is voluntary if all of
10 the following circumstances exist:

11 a. The disclosure arises out of a safety audit and relates
12 to privileged information as provided in section 88.32.

13 b. The person making the disclosure uses reasonable
14 efforts to pursue compliance and to correct the noncompliance
15 within a reasonable period of time after completion of the
16 safety audit in accordance with a remediation schedule
17 submitted to and approved by the commissioner. If evidence
18 shows that the noncompliance is due to the failure to obtain a
19 variance, reasonable effort may be demonstrated by the
20 submittal of a complete variance application within a
21 reasonable time. Disclosure of information required to be
22 reported by state or federal law, rule, or variance condition
23 is not considered to be voluntary disclosure and the immunity
24 provisions in this section are not applicable.

25 c. Occupational safety and health violations are
26 identified in a safety audit report and disclosed to the
27 commissioner before there is notice of a citizen suit or a
28 legal complaint by a third party.

29 d. Occupational safety and health violations are
30 identified in a safety audit report and disclosed to the
31 commissioner before the violations are reported by any person
32 not involved in conducting the safety audit or to whom the
33 audit report was disclosed.

34 3. If an employer has not provided the commissioner with
35 notification of a scheduled safety audit prior to performing

1 the audit, a disclosure of information is voluntary if the
2 occupational safety and health violations are identified in a
3 safety audit report and disclosed by certified mail to the
4 commissioner prior to the commissioner's commencement of an
5 investigation.

6 4. If a person is required to make a disclosure relating
7 to a specific issue under a specific variance condition or
8 under an order issued by the commissioner, the disclosure is
9 not voluntary with respect to that issue.

10 5. Except as provided in this section, this section does
11 not impair the authority of the commissioner to require a
12 technical or remedial action or to order injunctive relief.

13 6. Upon application to the commissioner, the time period
14 within which the disclosed violation is corrected under
15 subsection 2 may be extended if it is not practical to correct
16 the noncompliance within the reasonable period of time
17 initially approved by the commissioner. The commissioner
18 shall not unreasonably withhold the grant of an extension. If
19 the commissioner denies an extension, the commissioner shall
20 provide the requesting party with a written explanation of the
21 reasons for the denial. A request for de novo review of the
22 commissioner's decision may be made to the appropriate court.

23 7. Immunity provided under this section from
24 administrative or civil penalties does not apply under any of
25 the following circumstances:

26 a. If an employer has been found in a civil or
27 administrative proceeding to have committed serious violations
28 in this state that constitute a pattern of continuous or
29 repeated violations of occupational safety and health laws,
30 administrative rules, and variance conditions and that were
31 due to separate and distinct events giving rise to the
32 violations within the three-year period prior to the date of
33 disclosure.

34 b. If a violation of an occupational safety and health
35 law, administrative rule, variance condition, settlement

1 agreement, or order on consent, final order, or judicial order
2 results in a substantial economic benefit which gives the
3 violator a clear advantage over its business competitors.

4 8. In cases where the conditions of a voluntary disclosure
5 are not met but a good faith effort was made to voluntarily
6 disclose and resolve a violation detected in a safety audit,
7 the state regulatory authorities shall consider the nature and
8 extent of any good faith effort in deciding the appropriate
9 enforcement response and shall consider reducing any
10 administrative or civil penalties based on mitigating factors
11 showing that one or more of the conditions for voluntary
12 disclosure have been met.

13 9. The immunity provided by this section does not abrogate
14 the responsibility of a person as provided by applicable law
15 to report a violation, correct the violation, conduct
16 necessary remediation, or respond to third-party actions.
17 This chapter shall not be construed to confer immunity from
18 liability in any private civil action.

19 10. Information required by rule to be submitted to the
20 commissioner as part of a disclosure made pursuant to this
21 section is not privileged information.

22 Sec. 38. NEW SECTION. 88.38 OTHER PRIVILEGES NOT
23 AFFECTED.

24 This subchapter shall not limit, waive, or abrogate the
25 scope or nature of any statutory or common-law privilege,
26 including the work product doctrine and the attorney-client
27 privilege.

28 Sec. 39. NEW SECTION. 88.39 SAFETY AUDITOR TRAINING
29 PROGRAM.

30 A training program for, and standards for certification of,
31 safety auditors shall be developed and administered by the
32 commissioner. The program shall provide training on the
33 proper conduct of a safety audit; local, state, and federal
34 environmental ordinances, rules, and laws that apply to
35 businesses in this state; and the safety audit laws in this

1 state. The program shall be made available to small and large
2 business owners and operators, consulting engineers,
3 regulatory personnel, and citizens through the community
4 college system. A fee may be assessed for participation in
5 the program. Upon completion of the training program, program
6 participants may elect to be tested by the commissioner for
7 certification as a safety auditor for the purposes of this
8 subchapter.

9 Sec. 40. NEW SECTION. 88.40 SUMMARY.

10 On or before December 1 of each year, the commissioner
11 shall make available a summary of the number of safety audit
12 notices received, the violations, and the remediation status
13 of the violations reported pursuant to this subchapter during
14 the preceding fiscal year.

15 Sec. 41. NEW SECTION. 88.41 RULEMAKING.

16 The commissioner shall adopt rules pursuant to chapter 17A
17 necessary to administer this subchapter.

18 Sec. 42. NEW SECTION. 88.42 COSTS.

19 The necessary costs incurred by the commissioner under this
20 subchapter shall be funded from appropriations made to the
21 commissioner from the general fund of the state.

22 Sec. 43. CODIFICATION. The Code editor shall codify the
23 provisions of chapter 88, Code 2003, as amended in this Act,
24 as subchapter I of chapter 88 in the Code Supplement 2003.

25 Sec. 44. Section 730.5, subsection 1, paragraph j, Code
26 2003, is amended to read as follows:

27 j. "Sample" means such sample from the human body capable
28 of revealing the presence of alcohol or other drugs, or their
29 metabolites, including, but not limited to, breath, urine, or
30 oral fluid. However, sample does not mean blood except as
31 authorized pursuant to subsection 7, paragraph "1".

32 DIVISION V

33 FINANCIAL SERVICES

34 Sec. 45. Section 535.8, subsection 2, paragraph b, Code
35 2003, is amended by adding the following new subparagraphs:

1 NEW SUBPARAGRAPH. (11) Underwriting fee.

2 NEW SUBPARAGRAPH. (12) Tax service fee.

3 NEW SUBPARAGRAPH. (13) Flood hazard determination fee.

4 Sec. 46. Section 537.2502, subsections 3 and 6, Code 2003,
5 are amended to read as follows:

6 3. A delinquency charge shall not be collected under
7 subsection 1, paragraph "a", on an installment which that is
8 paid in full within ten days after its scheduled or deferred
9 installment due date even though an earlier maturing
10 installment or a delinquency or deferral charge on an earlier
11 installment may not have been paid in full. For purposes of
12 this subsection, payments associated with a precomputed
13 transaction are applied first to current installments and then
14 to delinquent installments.

15 6. A delinquency charge shall not be collected under
16 subsection 4 on a payment which associated with a precomputed
17 transaction that is paid in full on or before its scheduled or
18 deferred due date even though an earlier maturing payment or a
19 delinquency or deferred charge on an earlier payment has not
20 been paid in full. For purposes of this subsection, payments
21 are applied first to amounts due for the current billing cycle
22 and then to delinquent payments.

23 Sec. 47. Section 537.2601, subsection 1, Code 2003, is
24 amended to read as follows:

25 ~~1. Except-as-provided-in-subsection-27-with~~ With respect
26 to a credit transaction other than a consumer credit
27 transaction, the parties may contract for the payment by the
28 debtor of any finance or other charge as permitted by law.
29 ~~Except-with-respect-to-debt-obligations-issued-by-a~~
30 ~~government7-governmental-agency-or-instrumentality7-in~~
31 ~~calculating-any-finance-charge-contracted-for7-any-month-may~~
32 ~~be-counted-as-one-twelfth-of-a-year7-but-a-day-is-to-be~~
33 ~~counted-as-one-three-hundred-sixty-fifth-of-a-year7~~

34
35

DIVISION VI
ENVIRONMENTAL PROVISIONS

*1 Sec. 48. Section 455B.131, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6A. "Indoor source" means any emission
4 unit or air contaminant source which is not directly vented or
5 directly exhausted to the outside atmosphere. "Indoor source"
6 includes, without limitation, any air exchange through general
7 ventilation, windows, doors, and cracks.

8 Sec. 49. Section 455B.133, subsection 4, unnumbered
9 paragraph 1, Code 2003, is amended to read as follows:

10 Adopt, amend, or repeal emission limitations or standards
11 relating to the maximum quantities of air contaminants that
12 may be emitted from any air contaminant source. The standards
13 or limitations adopted under this section shall not exceed the
14 standards or limitations promulgated by the administrator of
15 the United States environmental protection agency or the
16 requirements of the federal Clean Air Act as amended through
17 January 1, 1991, or air quality standards or limitations
18 promulgated by the United States occupational safety and
19 health administration. This With the exception of ambient air
20 standards, this does not prohibit the commission from adopting
21 a standard for a source or class of sources for which the
22 United States environmental protection agency or the United
23 States occupational safety and health administration has not
24 promulgated a standard. If the United States environmental
25 protection agency has not promulgated ambient air quality
26 standards, this section shall not prohibit the commission from
27 adopting an ambient air standard if the commission utilizes
28 established federal Clean Air Act methodologies under the
29 national ambient air quality standards program. The
30 methodology shall include an economic impact study to
31 ascertain costs associated with compliance with any proposed
32 standards. This also does not prohibit the commission from
33 adopting an emission standard or limitation for infectious
34 medical waste treatment or disposal facilities which exceeds
35 the standards or limitations promulgated by the administrator

1 of the United States environmental protection agency or the
2 requirements of the federal Clean Air Act as amended through
3 January 1, 1991. The commission shall not adopt an emission
4 standard or limitation for infectious medical waste treatment
5 or disposal facilities prior to January 1, 1995, which exceeds
6 the standards or limitations promulgated by the administrator
7 of the United States environmental protection agency or the
8 requirements of the federal Clean Air Act, as amended through
9 January 1, 1991, for a hospital, or a group of hospitals,
10 licensed under chapter 135B which has been operating an
11 infectious medical waste treatment or disposal facility prior
12 to January 1, 1991.

13 Sec. 50. Section 455B.133, subsection 6, Code 2003, is
14 amended to read as follows:

15 6. a. Require, by rules, notice of the construction of
16 any air contaminant source, other than an indoor source, which
17 may cause or contribute to air pollution, and the submission
18 of plans and specifications to the department, or other
19 information deemed necessary, for the installation of air
20 contaminant sources and related control equipment. The rules
21 shall allow the owner or operator of a major stationary source
22 to elect to obtain a conditional permit in lieu of a
23 construction permit. The rules relating to a conditional
24 permit for an electric power generating facility subject to
25 chapter 476A and other major stationary sources shall allow
26 the submission of engineering descriptions, flow diagrams and
27 schematics that quantitatively and qualitatively identify
28 emission streams and alternative control equipment that will
29 provide compliance with emission standards. Such rules shall
30 not specify any particular method to be used to reduce
31 undesirable levels of emissions, nor type, design, or method
32 of installation of any equipment to be used to reduce such
33 levels of emissions, nor the type, design, or method of
34 installation or type of construction of any manufacturing
35 processes or kinds of equipment, nor specify the kind or

1 composition of fuels permitted to be sold, stored, or used
2 unless authorized by subsection 4 of this section.

3 b. The commission may give technical advice pertaining to
4 the construction or installation of the equipment or any other
5 recommendation.

6 c. A notice or construction permit shall not be required
7 pursuant to this section for any indoor source.

8 d. A notice or construction permit shall not be required
9 to be issued pursuant to this section for any emission unit
10 placed into service before the effective date of this Act
11 which would have been an indoor source if placed into service
12 on or after that date.

13 Sec. 51. Section 455B.134, subsection 3, paragraph a, Code
14 2003, is amended to read as follows:

15 a. No An air contaminant source, other than an indoor
16 source, shall not be installed, altered so that it
17 significantly affects emissions, or placed in use unless a
18 construction or conditional permit has been issued for the
19 source. A permit shall not be required to be issued pursuant
20 to this section for any emission unit placed in service before
21 the effective date of this Act which would have been an indoor
22 source if placed into service on or after that date.

23 Sec. 52. Section 455B.134, subsection 3, Code 2003, is
24 amended by adding the following new paragraph:

25 NEW PARAGRAPH. g. The department shall not establish any
26 permit, registration, licensing, preconstruction notification,
27 or recordkeeping requirements for indoor sources. However,
28 this paragraph shall not limit the authority of the department
29 to implement any of the following:

30 (1) The emission limitations adopted by the administrator
31 of the United States environmental protection agency under
32 section 111 or 112 of the federal Clean Air Act.

33 (2) The maximum achievable control technologies required
34 pursuant to Title V of the federal Clean Air Act Amendments of
35 1990.

1 (3) The prevention of significant deterioration
2 regulations adopted by the administrator of the United States
3 environmental protection agency under the federal Clean Air
4 Act, 42 U.S.C. § 74-79.

5 Sec. 53. Section 455B.135, Code 2003, is amended to read
6 as follows:

7 455B.135 LIMIT ON AUTHORITY.

8 ~~Nothing-contained-in-this~~ This division II or chapter 459,
9 subchapter II, shall not be deemed to grant to the department
10 or the director any authority or jurisdiction with respect to
11 air pollution existing solely within residences; or solely
12 within commercial and industrial plants, works, or shops under
13 the jurisdiction of chapters 88 and 91; or indoor sources; or
14 to affect the relations between employers and employees with
15 respect to, or arising out of, any condition of air pollution.

16 Sec. 54. Section 481B.4, Code 2003, is amended by adding
17 the following new unnumbered paragraph after unnumbered
18 paragraph 2:

19 NEW UNNUMBERED PARAGRAPH. If the state department of
20 transportation conducts a highway project using only state
21 moneys, the list in section 481B.5, subsection 1, shall be
22 used to determine whether the project encroaches on the
23 habitat of an endangered species of fish, plants, or wildlife.
24 If the state department of transportation conducts a highway
25 project using, at least in part, federal moneys, the state
26 department of transportation, after consultation with the
27 department of natural resources, may use lists in section
28 481B.5, subsections 2, 3, and 4, to determine whether the
29 project encroaches on the habitat of an endangered species of
30 fish, plants, or wildlife.

31 DIVISION VII

32 PUBLIC WORKS CONTRACTS

33 Sec. 55. NEW SECTION. 72.6 PUBLIC WORKS PROJECTS --
34 CONTRACTOR QUALIFICATIONS.

35 1. DEFINITIONS. As used in this section, unless the

1 context otherwise provides:

2 a. "Public owner" means a public body including the state
3 and a political subdivision of the state, an officer,
4 official, agency, authority, board, or commission of the state
5 or of a political subdivision of the state, or an institution
6 supported in whole or in part by public funds.

7 b. "Public road project" means a project under the control
8 of a public owner for the construction, maintenance, or repair
9 of a road or street that is funded, in whole or in part, by
10 moneys from the road use tax fund.

11 c. "Public works" means a building or other construction
12 work which is constructed under the control of a public owner
13 and is paid for in whole or in part with funds of a public
14 owner. "Public works" does not include any work done by or on
15 behalf of a drainage or levee district or any work funded by
16 federal funds where federal procurement policy applicable to
17 the use of the federal funds is inconsistent with the
18 requirements of this section.

19 d. "Public works project" or "project" means the
20 construction, maintenance, or repair of public works.
21 However, "public works project" does not mean a public road
22 project.

23 2. QUALIFICATIONS OF BIDDERS. Prior to awarding a
24 contract to perform a public works project pursuant to a
25 competitive bidding procedure, which contract authorizes the
26 expenditure of twenty-five thousand dollars or more in public
27 funds, a public owner shall tabulate all bids received and
28 shall determine who is the lowest responsible bidder by
29 considering, in addition to the amount of the bid, all of and
30 only the following:

31 a. The past experience of the bidder in the performance of
32 similar projects.

33 b. The qualifications of the bidder to perform the type of
34 work required by the contract.

35 c. The bidder's record of reliability and timely

1 completion of past projects.

2 d. Proof of the financial responsibility of the bidder.

3 3. PROHIBITED CRITERIA. In determining who is the lowest
4 responsible bidder for purposes of awarding a contract to
5 perform a public works project or a public road project, a
6 public owner shall not do any of the following:

7 a. Select a bidder based in whole or in part on a
8 consideration of whether the bidder's employees belong to or
9 are represented by a labor union or a labor organization.

10 b. Require that the bidder selected enter into an
11 agreement that directly or indirectly limits or requires the
12 bidder to recruit, train, or hire employees from a particular
13 source to perform work on the public works project or the
14 public road project.

15 c. Require that the bidder selected enter into an
16 agreement that directly or indirectly requires the bidder to
17 offer particular types or amounts of health insurance, life
18 insurance, or disability insurance coverage or retirement
19 benefits to employees hired by the bidder to perform work on
20 the public works project or the public road project.

21 4. BIDDING DOCUMENTS. The criteria described in this
22 section that are required to be considered by the public owner
23 in determining who is the lowest responsible bidder shall be
24 included in any document requesting or inviting bids on public
25 works projects subject to this section.

26 DIVISION VIII

27 ECONOMIC DEVELOPMENT

28 Sec. 56. NEW SECTION. 15E.18 CITIES, COUNTIES, AND
29 REGIONS -- SITE PREPARATION FOR TARGETED ECONOMIC DEVELOPMENT.

30 1. For purposes of this section, "region" means a group of
31 two or more contiguous counties that establishes a single,
32 focused economic development effort.

33 2. A city, county, or region, subject to the approval of
34 the property owner, may designate an area within the
35 boundaries of the city, county, or region for a specific type

1 of targeted economic development. The specific type of
2 targeted economic development shall be one of the following:

- 3 a. Manufacturing.
- 4 b. Light industrial.
- 5 c. Warehouse and distribution.
- 6 d. Office parks.
- 7 e. Business and commerce parks.
- 8 f. Research and development.

9 3. A city, county, or region that designates an area for a
10 specific type of targeted economic development may apply to
11 the department for purposes of certifying the area as a
12 preapproved development site. The department shall develop
13 criteria for the certification process.

14 4. Prior to a specific project being developed, a city,
15 county, or region designating the area for targeted economic
16 development pursuant to this section may apply for and obtain
17 appropriate licenses, permits, and approvals for the type of
18 targeted economic development project desired for the area.

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SENATE FILE 344

H-1488

1 Amend Senate File 344, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "DIVISION I

6 LIABILITY REFORM

7 Section 1. Section 625A.9, Code 2003, is amended
8 to read as follows:

9 625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT --
10 SUPERSEDEAS BOND WAIVED.

11 1. The taking of the appeal from part of a
12 judgment or order, and the filing of a bond ~~as above~~
13 ~~directed~~, does not stay execution as to that part of
14 the judgment or order not appealed from.

15 2. If the judgment or order appealed from is for
16 money, such bond shall not exceed one hundred ten
17 percent of the amount of the money judgment.

18 3. Upon motion and for good cause shown, the
19 district court may stay all proceedings under the
20 order or judgment being appealed and permit the state
21 or any of its political subdivisions to appeal a
22 judgment or order to the supreme court without the
23 filing of a supersedeas bond.

24 Sec. 2. Section 668.12, Code 2003, is amended to
25 read as follows:

26 668.12 LIABILITY FOR PRODUCTS -- ~~STATE OF THE ART~~
27 ~~DEFENSE DEFENSES~~.

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

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

48 3. An assembler, designer, supplier of
49 specifications, distributor, manufacturer, or seller
50 shall not be subject to liability under a theory of

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1 civil conspiracy unless the person knowingly and
2 voluntarily entered into an agreement, express or
3 implied, to participate in a common plan with the
4 intent to commit a tortious act upon another. Mere
5 membership in a trade or industrial association or
6 group is not, in and of itself, evidence of such an
7 agreement.

8 Sec. 3. Section 668A.1, subsection 1, Code 2003,
9 is amended to read as follows:

10 1. In a trial of a claim involving the request for
11 punitive or exemplary damages, the court shall
12 instruct the jury to answer special interrogatories
13 or, if there is no jury, shall make findings,
14 indicating all of the following:

15 a. Whether, by a preponderance of clear, and
16 convincing, and satisfactory evidence, the conduct of
17 the defendant from which the claim arose constituted
18 willful and wanton disregard for the rights or safety
19 of another.

20 b. Whether the conduct of the defendant was
21 directed specifically at the claimant, or at the
22 person from which the claimant's claim is derived.

23 c. Whether, by a preponderance of clear and
24 convincing evidence, the conduct of the defendant from
25 which the claim arose constituted actual malice.

26 Sec. 4. NEW SECTION. 668A.2 DEFINITIONS.

27 As used in this chapter, the following terms shall
28 have the following meanings:

29 1. "Clear and convincing evidence" means evidence
30 which leaves no serious or substantial doubt about the
31 correctness of the conclusions drawn from the
32 evidence. It is more than a preponderance of
33 evidence, but less than beyond a reasonable doubt.

34 2. "Malice" means either conduct which is
35 specifically intended by the defendant to cause
36 tangible or intangible serious injury to the plaintiff
37 or conduct that is carried out by the defendant both
38 with a flagrant indifference to the rights of the
39 plaintiff and with a subjective awareness that such
40 conduct will result in tangible serious injury.

41 Sec. 5. NEW SECTION. 668A.3 AWARD OF PUNITIVE OR
42 EXEMPLARY DAMAGES -- PROOF -- STANDARD.

43 Punitive or exemplary damages shall only be awarded
44 where the plaintiff proves by clear and convincing
45 evidence that the plaintiff's harm was the result of
46 actual malice. This burden of proof shall not be
47 satisfied by proof of any degree of negligence,
48 including gross negligence.

1 Sec. 6. Section 85.34, subsection 2, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:
3 Compensation for permanent partial disability shall
4 begin at the termination of the healing period
5 provided in subsection 1. The compensation shall be
6 in addition to the benefits provided by sections 85.27
7 and 85.28. The compensation shall be based only upon
8 the extent of the disability related to the injury
9 received and upon the basis of eighty percent per week
10 of the employee's average spendable weekly earnings,
11 but not more than a weekly benefit amount, rounded to
12 the nearest dollar, equal to one hundred eighty-four
13 percent of the statewide average weekly wage paid
14 employees as determined by the department of workforce
15 development under section 96.19, subsection 36, and in
16 effect at the time of the injury. The minimum weekly
17 benefit amount shall be equal to the weekly benefit
18 amount of a person whose gross weekly earnings are
19 thirty-five percent of the statewide average weekly
20 wage. For all cases of permanent partial disability
21 compensation shall be paid as follows:

22 Sec. 7. Section 85.34, Code 2003, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 7. APPORTIONMENT. When an
25 employee suffers successive work-related injuries or
26 illnesses, an employer is not liable for that portion
27 of an employee's disability that is caused by any
28 preexisting injury or illness that is separate and
29 discrete from the injury or illness for which
30 compensation is claimed. Evidence that an employee
31 has received a prior award for payment of benefits or
32 entered into a prior settlement of any claim arising
33 under this chapter or chapter 85A, 85B, or 86 creates
34 a presumption that the employee has suffered a
35 preexisting work-related injury or illness that is
36 separate and discrete from the injury or illness for
37 which benefits are claimed and that the extent of
38 disability caused by that preexisting injury or
39 illness has been determined. An employee who suffers
40 from a disability caused in part by a preexisting
41 injury or illness that is separate and discrete from
42 the injury or illness for which compensation is
43 claimed, such that the employer is not liable for that
44 portion of the employee's disability, shall receive
45 compensation for the employee's disability at the
46 employee's weekly benefit amount as provided in this
47 section plus an additional ten percent.

48 DIVISION III
49 FINANCIAL SERVICES

50 Sec. 8. Section 537.2502, subsections 3 and 6,

1 Code 2003, are amended to read as follows:
 2 3. A delinquency charge shall not be collected
 3 under subsection 1, paragraph "a", on an installment
 4 ~~which~~ that is paid in full within ten days after its
 5 scheduled or deferred installment due date even though
 6 an earlier maturing installment or a delinquency or
 7 deferral charge on an earlier installment may not have
 8 been paid in full. For purposes of this subsection,
 9 payments associated with a precomputed transaction are
 10 applied first to current installments and then to
 11 delinquent installments.

12 6. A delinquency charge shall not be collected
 13 under subsection 4 on a payment ~~which~~ associated with
 14 a precomputed transaction that is paid in full on or
 15 before its scheduled or deferred due date even though
 16 an earlier maturing payment or a delinquency or
 17 deferred charge on an earlier payment has not been
 18 paid in full. For purposes of this subsection,
 19 payments are applied first to amounts due for the
 20 current billing cycle and then to delinquent payments.

21 Sec. 9. Section 537.2601, subsection 1, Code 2003,
 22 is amended to read as follows:

23 1. ~~Except as provided in subsection 2, with~~ With
 24 respect to a credit transaction other than a consumer
 25 credit transaction, the parties may contract for the
 26 payment by the debtor of any finance or other charge
 27 as permitted by law. ~~Except with respect to debt~~
 28 ~~obligations issued by a government, governmental~~
 29 ~~agency or instrumentality, in calculating any finance~~
 30 ~~charge contracted for, any month may be counted as~~
 31 ~~one-twelfth of a year, but a day is to be counted as~~
 32 ~~one three-hundred sixty-fifth of a year.~~

33 DIVISION IV

34 UNEMPLOYMENT COMPENSATION SURCHARGE

35 Sec. 10. Section 96.7, subsection 12, paragraph a,
 36 Code 2003, is amended to read as follows:

37 a. An employer other than a governmental entity or
 38 a nonprofit organization, subject to this chapter,
 39 shall pay an administrative contribution surcharge
 40 equal in amount to one-tenth of one percent of federal
 41 taxable wages, as defined in section 96.19, subsection
 42 37, paragraph "b", subject to the surcharge formula to
 43 be developed by the department under this paragraph.
 44 The department shall develop a surcharge formula that
 45 provides a target revenue level of no greater than six
 46 million five hundred twenty-five thousand dollars
 47 annually for calendar years 2003, 2004, and 2005 and a
 48 target revenue level of no greater than three million
 49 two hundred sixty-two thousand five hundred dollars
 50 for calendar year 2006 and each subsequent calendar

1 year. The department shall reduce the administrative
2 contribution surcharge established for any calendar
3 year proportionate to any federal government funding
4 that provides an increased allocation of moneys for
5 workforce development offices, under the federal
6 employment services financing reform legislation. Any
7 administrative contribution surcharge revenue that is
8 collected in calendar year 2002 2003, 2004, or 2005 in
9 excess of six million five hundred twenty-five
10 thousand dollars or in calendar year 2006 or a
11 subsequent calendar year in excess of three million
12 two hundred sixty-two thousand five hundred dollars
13 shall be deducted from the amount to be collected in
14 the subsequent calendar year 2003 before the
15 department establishes the administrative contribution
16 surcharge. The department shall recompute the amount
17 as a percentage of taxable wages, as defined in
18 section 96.19, subsection 37, and shall add the
19 percentage surcharge to the employer's contribution
20 rate determined under this section. The percentage
21 surcharge shall be capped at a maximum of seven
22 dollars per employee. The department shall adopt
23 rules prescribing the manner in which the surcharge
24 will be collected. Interest shall accrue on all
25 unpaid surcharges under this subsection at the same
26 rate as on regular contributions and shall be
27 collectible in the same manner. Interest accrued and
28 collected under this paragraph and interest earned and
29 credited to the fund under paragraph "b" shall be used
30 by the department only for the purposes set forth in
31 paragraph "c".

32 Sec. 11. Section 96.7, subsection 12, paragraph d,
33 Code 2003, is amended to read as follows:

34 d. This subsection is repealed July 1, 2003 2006,
35 and the repeal is applicable to contribution rates for
36 calendar year 2004 2007 and subsequent calendar years.

37 Sec. 12. EFFECTIVE DATE. This division of this
38 Act, concerning the unemployment compensation
39 surcharge, being deemed of immediate importance, takes
40 effect upon enactment.

41 DIVISION V
42 ECONOMIC DEVELOPMENT

43 Sec. 13. NEW SECTION. 15E.18 CITIES, COUNTIES,
44 AND REGIONS -- SITE PREPARATION FOR TARGETED ECONOMIC
45 DEVELOPMENT.

46 1. For purposes of this section, "region" means a
47 group of two or more contiguous counties that
48 establishes a single, focused economic development
49 effort.

50 2. A city, county, or region, subject to the

1 approval of the property owner, may designate an area
2 within the boundaries of the city, county, or region
3 for a specific type of targeted economic development.
4 The specific type of targeted economic development
5 shall be one of the following:

- 6 a. Manufacturing.
- 7 b. Light industrial.
- 8 c. Warehouse and distribution.
- 9 d. Office parks.
- 10 e. Business and commerce parks.
- 11 f. Research and development.

12 3. A city, county, or region that designates an
13 area for a specific type of targeted economic
14 development may apply to the department for purposes
15 of certifying the area as a preapproved development
16 site. The department shall develop criteria for the
17 certification process.

18 4. Prior to a specific project being developed, a
19 city, county, or region designating the area for
20 targeted economic development pursuant to this section
21 may apply for and obtain appropriate licenses,
22 permits, and approvals for the type of targeted
23 economic development project desired for the area.

24 Sec. 14. NEW SECTION. 15E.19 REGULATORY
25 ASSISTANCE.

26 1. The department of economic development shall
27 coordinate all regulatory assistance for the state of
28 Iowa. Each state agency with regulatory programs for
29 business shall maintain a coordinator within the
30 office of the director or the administrative division
31 of the state agency. Each coordinator shall do all of
32 the following:

- 33 a. Serve as the department of economic
34 development's primary contact for regulatory affairs.
- 35 b. Provide regulatory requirements to businesses
36 and represent the agency in the private sector.
- 37 c. Monitor permit applications and provide timely
38 permit status information to the department of
39 economic development.
- 40 d. Have the ability to require regulatory staff
41 participation in negotiations and discussions with
42 businesses.
- 43 e. Notify the department of economic development
44 regarding proposed rulemaking activities that impact a
45 regulatory program and any subsequent changes to a
46 regulatory program.

47 2. By January 15 of each year, the department of
48 economic development shall submit a written report to
49 the general assembly regarding the provision of
50 regulatory assistance by state agencies."

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Page 7

1 2. Title page, by striking lines 2 through 7 and
2 inserting the following: "business relating to
3 liability reform, workers' compensation, financial
4 services, unemployment compensation employer
5 surcharges, and economic development, and providing an
6 effective date."

By HORBACH of Tama

H-1488 FILED APRIL 28, 2003

ADOPTED 4/28/03

SENATE FILE 344

H-1493

1 Amend the amendment, H-1488, to Senate File 344, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 2, by inserting after line 48 the
5 following:

6 "Sec. ____ . APPLICABILITY. This division of this
7 Act, relating to liability reform, applies to cases
8 filed on or after July 1, 2003."

9 2. Page 3, by inserting after line 47 the
10 following:

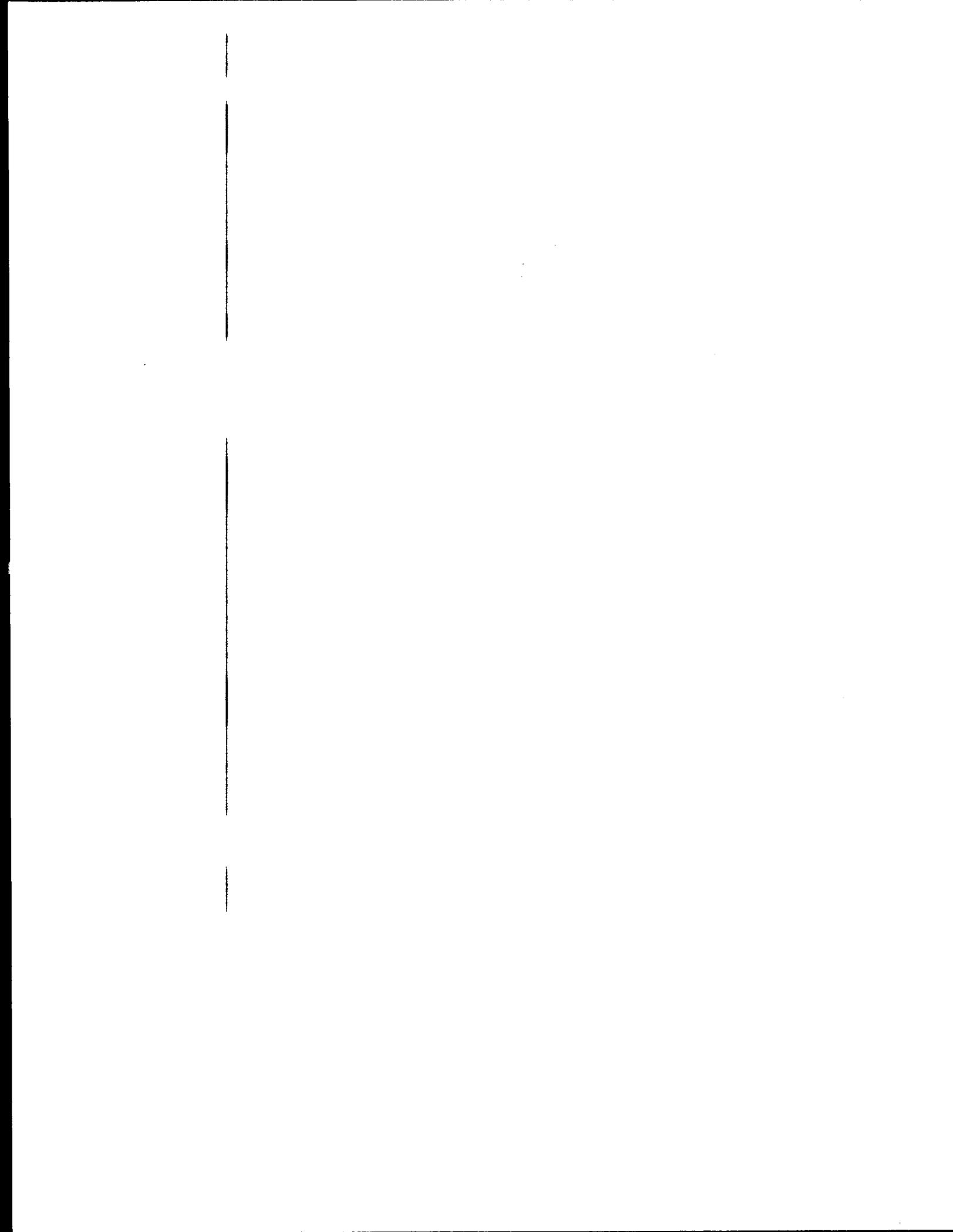
11 "Sec. ____ . APPLICABILITY. This division of this
12 Act, relating to workers' compensation, applies to an
13 injury occurring on or after July 1, 2003."

14 3. By renumbering as necessary.

By HORBACH of Tama

H-1493 FILED APRIL 28, 2003

ADOPTED 4/28/03



HOUSE AMENDMENT TO
SENATE FILE 344

S-3334

1 Amend Senate File 344, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "DIVISION I
6 LIABILITY REFORM

7 Section 1. Section 625A.9, Code 2003, is amende
8 to read as follows:

9 625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT
10 SUPERSEDEAS BOND WAIVED.

11 1. The taking of the appeal from part of a
12 judgment or order, and the filing of a bond as above
13 directed, does not stay execution as to that part of
14 the judgment or order not appealed from.

15 2. If the judgment or order appealed from is for
16 money, such bond shall not exceed one hundred ten
17 percent of the amount of the money judgment.

18 3. Upon motion and for good cause shown, the
19 district court may stay all proceedings under the
20 order or judgment being appealed and permit the state
21 or any of its political subdivisions to appeal a
22 judgment or order to the supreme court without the
23 filing of a supersedeas bond.

24 Sec. 2. Section 668.12, Code 2003, is amended to
25 read as follows:

26 668.12 LIABILITY FOR PRODUCTS -- ~~STATE OF THE ART~~
27 ~~DEFENSE DEFENSES.~~

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

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

48 3. An assembler, designer, supplier of
49 specifications, distributor, manufacturer, or seller
50 shall not be subject to liability under a theory of

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1 civil conspiracy unless the person knowingly and
2 voluntarily entered into an agreement, express or
3 implied, to participate in a common plan with the
4 intent to commit a tortious act upon another. Mere
5 membership in a trade or industrial association or
6 group is not, in and of itself, evidence of such an
7 agreement.

8 Sec. 3. Section 668A.1, subsection 1, Code 2003,
9 is amended to read as follows:

10 1. In a trial of a claim involving the request for
11 punitive or exemplary damages, the court shall
12 instruct the jury to answer special interrogatories
13 or, if there is no jury, shall make findings,
14 indicating all of the following:

15 a. Whether, by a preponderance of clear, and
16 ~~convincing, and satisfactory~~ evidence, the conduct of
17 the defendant from which the claim arose constituted
18 willful and wanton disregard for the rights or safety
19 of another.

20 b. Whether the conduct of the defendant was
21 directed specifically at the claimant, or at the
22 person from which the claimant's claim is derived.

23 c. Whether, by a preponderance of clear and
24 convincing evidence, the conduct of the defendant from
25 which the claim arose constituted actual malice.

26 Sec. 4. NEW SECTION. 668A.2 DEFINITIONS.

27 As used in this chapter, the following terms shall
28 have the following meanings:

29 1. "Clear and convincing evidence" means evidence
30 which leaves no serious or substantial doubt about the
31 correctness of the conclusions drawn from the
32 evidence. It is more than a preponderance of
33 evidence, but less than beyond a reasonable doubt.

34 2. "Malice" means either conduct which is
35 specifically intended by the defendant to cause
36 tangible or intangible serious injury to the plaintiff
37 or conduct that is carried out by the defendant both
38 with a flagrant indifference to the rights of the
39 plaintiff and with a subjective awareness that such
40 conduct will result in tangible serious injury.

41 Sec. 5. NEW SECTION. 668A.3 AWARD OF PUNITIVE OR
42 EXEMPLARY DAMAGES -- PROOF -- STANDARD.

43 Punitive or exemplary damages shall only be awarded
44 where the plaintiff proves by clear and convincing
45 evidence that the plaintiff's harm was the result of
46 actual malice. This burden of proof shall not be
47 satisfied by proof of any degree of negligence,
48 including gross negligence.

49 Sec. 6. APPLICABILITY. This division of this Act,
50 relating to liability reform, applies to cases filed

1 on or after July 1, 2003.

2 DIVISION II

3 WORKERS' COMPENSATION

4 Sec. 7. Section 85.34, subsection 2, unnumbered
5 paragraph 1, Code 2003, is amended to read as follows:

6 Compensation for permanent partial disability shall
7 begin at the termination of the healing period
8 provided in subsection 1. The compensation shall be
9 in addition to the benefits provided by sections 85.27
10 and 85.28. The compensation shall be based only upon
11 the extent of the disability related to the injury
12 received and upon the basis of eighty percent per week
13 of the employee's average spendable weekly earnings,
14 but not more than a weekly benefit amount, rounded to
15 the nearest dollar, equal to one hundred eighty-four
16 percent of the statewide average weekly wage paid
17 employees as determined by the department of workforce
18 development under section 96.19, subsection 36, and in
19 effect at the time of the injury. The minimum weekly
20 benefit amount shall be equal to the weekly benefit
21 amount of a person whose gross weekly earnings are
22 thirty-five percent of the statewide average weekly
23 wage. For all cases of permanent partial disability
24 compensation shall be paid as follows:

25 Sec. 8. Section 85.34, Code 2003, is amended by
26 adding the following new subsection:

27 NEW SUBSECTION. 7. APPORTIONMENT. When an
28 employee suffers successive work-related injuries or
29 illnesses, an employer is not liable for that portion
30 of an employee's disability that is caused by any
31 preexisting injury or illness that is separate and
32 discrete from the injury or illness for which
33 compensation is claimed. Evidence that an employee
34 has received a prior award for payment of benefits or
35 entered into a prior settlement of any claim arising
36 under this chapter or chapter 85A, 85B, or 86 creates
37 a presumption that the employee has suffered a
38 preexisting work-related injury or illness that is
39 separate and discrete from the injury or illness for
40 which benefits are claimed and that the extent of
41 disability caused by that preexisting injury or
42 illness has been determined. An employee who suffers
43 from a disability caused in part by a preexisting
44 injury or illness that is separate and discrete from
45 the injury or illness for which compensation is
46 claimed, such that the employer is not liable for that
47 portion of the employee's disability, shall receive
48 compensation for the employee's disability at the
49 employee's weekly benefit amount as provided in this
50 section plus an additional ten percent.

1 Sec. 9. APPLICABILITY. This division of this Act,
2 relating to workers' compensation, applies to an
3 injury occurring on or after July 1, 2003.

4 DIVISION III
5 FINANCIAL SERVICES

6 Sec. 10. Section 537.2502, subsections 3 and 6,
7 Code 2003, are amended to read as follows:

8 3. A delinquency charge shall not be collected
9 under subsection 1, paragraph "a", on an installment
10 ~~which that~~ is paid in full within ten days after its
11 scheduled or deferred installment due date even though
12 an earlier maturing installment or a delinquency or
13 deferral charge on an earlier installment may not have
14 been paid in full. For purposes of this subsection,
15 payments associated with a precomputed transaction are
16 applied first to current installments and then to
17 delinquent installments.

18 6. A delinquency charge shall not be collected
19 under subsection 4 on a payment ~~which~~ associated with
20 a precomputed transaction that is paid in full on or
21 before its scheduled or deferred due date even though
22 an earlier maturing payment or a delinquency or
23 deferred charge on an earlier payment has not been
24 paid in full. For purposes of this subsection,
25 payments are applied first to amounts due for the
26 current billing cycle and then to delinquent payments.

27 Sec. 11. Section 537.2601, subsection 1, Code
28 2003, is amended to read as follows:

29 ~~1. Except as provided in subsection 2, with~~ With
30 respect to a credit transaction other than a consumer
31 credit transaction, the parties may contract for the
32 payment by the debtor of any finance or other charge
33 as permitted by law. ~~Except with respect to debt~~
34 ~~obligations issued by a government, governmental~~
35 ~~agency or instrumentality, in calculating any finance~~
36 ~~charge contracted for, any month may be counted as~~
37 ~~one-twelfth of a year, but a day is to be counted as~~
38 ~~one three hundred sixty-fifth of a year.~~

39 DIVISION IV
40 UNEMPLOYMENT COMPENSATION SURCHARGE

41 Sec. 12. Section 96.7, subsection 12, paragraph a,
42 Code 2003, is amended to read as follows:

43 a. An employer other than a governmental entity or
44 a nonprofit organization, subject to this chapter,
45 shall pay an administrative contribution surcharge
46 equal in amount to one-tenth of one percent of federal
47 taxable wages, as defined in section 96.19, subsection
48 37, paragraph "b", subject to the surcharge formula to
49 be developed by the department under this paragraph.
50 The department shall develop a surcharge formula that

1 provides a target revenue level of no greater than six
2 million five hundred twenty-five thousand dollars
3 annually for calendar years 2003, 2004, and 2005 and a
4 target revenue level of no greater than three million
5 two hundred sixty-two thousand five hundred dollars
6 for calendar year 2006 and each subsequent calendar
7 year. The department shall reduce the administrative
8 contribution surcharge established for any calendar
9 year proportionate to any federal government funding
10 that provides an increased allocation of moneys for
11 workforce development offices, under the federal
12 employment services financing reform legislation. Any
13 administrative contribution surcharge revenue that is
14 collected in calendar year ~~2002~~ 2003, 2004, or 2005 in
15 excess of six million five hundred twenty-five
16 thousand dollars or in calendar year 2006 or a
17 subsequent calendar year in excess of three million
18 two hundred sixty-two thousand five hundred dollars
19 shall be deducted from the amount to be collected in
20 the subsequent calendar year 2003 before the
21 department establishes the administrative contribution
22 surcharge. The department shall recompute the amount
23 as a percentage of taxable wages, as defined in
24 section 96.19, subsection 37, and shall add the
25 percentage surcharge to the employer's contribution
26 rate determined under this section. The percentage
27 surcharge shall be capped at a maximum of seven
28 dollars per employee. The department shall adopt
29 rules prescribing the manner in which the surcharge
30 will be collected. Interest shall accrue on all
31 unpaid surcharges under this subsection at the same
32 rate as on regular contributions and shall be
33 collectible in the same manner. Interest accrued and
34 collected under this paragraph and interest earned and
35 credited to the fund under paragraph "b" shall be used
36 by the department only for the purposes set forth in
37 paragraph "c".

38 Sec. 13. Section 96.7, subsection 12, paragraph d,
39 Code 2003, is amended to read as follows:

40 d. This subsection is repealed July 1, ~~2003~~ 2006,
41 and the repeal is applicable to contribution rates for
42 calendar year ~~2004~~ 2007 and subsequent calendar years.

43 Sec. 14. EFFECTIVE DATE. This division of this
44 Act, concerning the unemployment compensation
45 surcharge, being deemed of immediate importance, takes
46 effect upon enactment.

47 DIVISION V
48 ECONOMIC DEVELOPMENT

49 Sec. 15. NEW SECTION. 15E.18 CITIES, COUNTIES,
50 AND REGIONS -- SITE PREPARATION FOR TARGETED ECONOMIC

1 DEVELOPMENT.

2 1. For purposes of this section, "region" means a
3 group of two or more contiguous counties that
4 establishes a single, focused economic development
5 effort.

6 2. A city, county, or region, subject to the
7 approval of the property owner, may designate an area
8 within the boundaries of the city, county, or region
9 for a specific type of targeted economic development.
10 The specific type of targeted economic development
11 shall be one of the following:

- 12 a. Manufacturing.
- 13 b. Light industrial.
- 14 c. Warehouse and distribution.
- 15 d. Office parks.
- 16 e. Business and commerce parks.
- 17 f. Research and development.

18 3. A city, county, or region that designates an
19 area for a specific type of targeted economic
20 development may apply to the department for purposes
21 of certifying the area as a preapproved development
22 site. The department shall develop criteria for the
23 certification process.

24 4. Prior to a specific project being developed, a
25 city, county, or region designating the area for
26 targeted economic development pursuant to this section
27 may apply for and obtain appropriate licenses,
28 permits, and approvals for the type of targeted
29 economic development project desired for the area.

30 Sec. 16. NEW SECTION. 15E.19 REGULATORY
31 ASSISTANCE.

32 1. The department of economic development shall
33 coordinate all regulatory assistance for the state of
34 Iowa. Each state agency with regulatory programs for
35 business shall maintain a coordinator within the
36 office of the director or the administrative division
37 of the state agency. Each coordinator shall do all of
38 the following:

- 39 a. Serve as the department of economic
40 development's primary contact for regulatory affairs.
- 41 b. Provide regulatory requirements to businesses
42 and represent the agency in the private sector.
- 43 c. Monitor permit applications and provide timely
44 permit status information to the department of
45 economic development.

46 d. Have the ability to require regulatory staff
47 participation in negotiations and discussions with
48 businesses.

49 e. Notify the department of economic development
50 regarding proposed rulemaking activities that impact a

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Page 7

1 regulatory program and any subsequent changes to a
2 regulatory program.

3 2. By January 15 of each year, the department of
4 economic development shall submit a written report to
5 the general assembly regarding the provision of
6 regulatory assistance by state agencies."

7 2. Title page, by striking lines 2 through 7 and
8 inserting the following: "business relating to
9 liability reform, workers' compensation, financial
10 services, unemployment compensation employer
11 surcharges, and economic development, and providing an
12 effective date."

RECEIVED FROM THE HOUSE

S-3334 FILED APRIL 28, 2003

2/23/04

SENATE FILE 344

S-3349

1 Amend the House amendment, S-3334, to Senate File
2 344, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 7, by inserting after line 6 the
5 following:

6 "DIVISION VI
7 PUBLIC WORKS CONTRACTS
8 Sec. ____ . NEW SECTION. 72.6 PUBLIC WORKS
9 PROJECTS -- CONTRACTOR QUALIFICATIONS.

10 1. DEFINITIONS. As used in this section, unless
11 the context otherwise provides:

12 a. "Public owner" means a public body including
13 the state and a political subdivision of the state, an
14 officer, official, agency, authority, board, or
15 commission of the state or of a political subdivision
16 of the state, or an institution supported in whole or
17 in part by public funds.

18 b. "Public road project" means a project under the
19 control of a public owner for the construction,
20 maintenance, or repair of a road or street that is
21 funded, in whole or in part, by moneys from the road
22 use tax fund.

23 c. "Public works" means a building or other
24 construction work which is constructed under the
25 control of a public owner and is paid for in whole or
26 in part with funds of a public owner. "Public works"
27 does not include any work done by or on behalf of a
28 drainage or levee district or any work funded by
29 federal funds where federal procurement policy
30 applicable to the use of the federal funds is
31 inconsistent with the requirements of this section.

32 d. "Public works project" or "project" means the
33 construction, maintenance, or repair of public works.
34 However, "public works project" does not mean a public
35 road project.

36 2. QUALIFICATIONS OF BIDDERS. Prior to awarding a
37 contract to perform a public works project pursuant to
38 a competitive bidding procedure, which contract
39 authorizes the expenditure of twenty-five thousand
40 dollars or more in public funds, a public owner shall
41 tabulate all bids received and shall determine who is
42 the lowest responsible bidder by considering, in
43 addition to the amount of the bid, all of and only the
44 following:

45 a. The past experience of the bidder in the
46 performance of similar projects.

47 b. The qualifications of the bidder to perform the
48 type of work required by the contract.

49 c. The bidder's record of reliability and timely
50 completion of past projects.

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1 d. Proof of the financial responsibility of the
2 bidder.

3 3. PROHIBITED CRITERIA. In determining who is the
4 lowest responsible bidder for purposes of awarding a
5 contract to perform a public works project or a public
6 road project, a public owner shall not do any of the
7 following:

8 a. Select a bidder based in whole or in part on a
9 consideration of whether the bidder's employees belong
10 to or are represented by a labor union or a labor
11 organization.

12 b. Require that the bidder selected enter into an
13 agreement that directly or indirectly limits or
14 requires the bidder to recruit, train, or hire
15 employees from a particular source to perform work on
16 the public works project or the public road project.

17 c. Require that the bidder selected enter into an
18 agreement that directly or indirectly requires the
19 bidder to offer particular types or amounts of health
20 insurance, life insurance, or disability insurance
21 coverage or retirement benefits to employees hired by
22 the bidder to perform work on the public works project
23 or the public road project.

24 4. BIDDING DOCUMENTS. The criteria described in
25 this section that are required to be considered by the
26 public owner in determining who is the lowest
27 responsible bidder shall be included in any document
28 requesting or inviting bids on public works projects
29 subject to this section."

30 2. Page 7, line 11, by inserting after the word
31 "surcharges," the following: "public works
32 projects,".

33 3. By renumbering as necessary.

By RON WIECK
JERRY BEHN
HUBERT M. HOUSER

KITTY REHBERG
JAMES SEYMOUR
CHARLES W. LARSON, JR.

SENATE AMENDMENT TO
HOUSE AMENDMENT TO
SENATE FILE 344

H-8037

1 Amend the House amendment, S-3334, to Senate File
2 344, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. By striking page 1, line 5, through page 7,
5 line 12, and inserting the following:
6 "Section 1. Section 625A.9, subsection 2, Code
7 Supplement 2003, is amended to read as follows:
8 2. If the judgment or order appealed from is for
9 money, such bond shall not exceed one hundred ten
10 percent of the amount of the money judgment or twenty-
11 five million dollars, whichever is less.
12 Sec. 2. APPLICABILITY. This Act applies to cases
13 filed on or after July 1, 2004."
14 _____. Title page, by striking lines 1 through 7
15 and inserting the following: "An Act relating to a
16 monetary limit on an appeal bond and providing an
17 applicability date.""

RECEIVED FROM THE SENATE

H-8037 FILED FEBRUARY 17, 2004

SENATE FILE 344

S-5006

1 Amend the House amendment, S-3334, to Senate File
2 344, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. By striking page 1, line 5, through page 7,
5 line 12, and inserting the following:
6 "Section 1. Section 625A.9, subsection 2, Code
7 Supplement 2003, is amended to read as follows:
8 2. If the judgment or order appealed from is for
9 money, such bond shall not exceed one hundred ten
10 percent of the amount of the money judgment or twenty-
11 five million dollars, whichever is less.
12 Sec. 2. APPLICABILITY. This Act applies to cases
13 filed on or after July 1, 2004."
14 _____. Title page, by striking lines 1 through 7
15 and inserting the following: "An Act relating to a
16 monetary limit on an appeal bond and providing an
17 applicability date.""

By RON WIECK

S-5006 FILED FEBRUARY 12, 2004

SENATE FILE 344

S-3120

- 1 Amend Senate File 344 as follows:
- 2 1. Page 41, by inserting after line 30 the
- 3 following:
- 4 "Sec. ____ . Section 730.5, subsection 1, paragraph
- 5 j, Code 2003, is amended to read as follows:
- 6 j. "Sample" means such sample from the human body
- 7 capable of revealing the presence of alcohol or other
- 8 drugs, or their metabolites, including, but not
- 9 limited to, breath, urine, or oral fluid. However,
- 10 sample does not mean blood except as authorized
- 11 pursuant to subsection 7, paragraph "1".
- 12 2. Title page, by striking line 5 and inserting
- 13 the following: ", financial".
- 14 3. By renumbering as necessary.

By RON WIECK

S-3120 FILED APRIL 1, 2003

adopted 4/2/03

SENATE FILE 344

S-3129

- 1 Amend Senate File 344 as follows:
- 2 1. By striking page 41, line 33, through page 42,
- 3 line 6, and inserting the following:
- 4 "Sec. ____ . Section 535.8, subsection 2, paragraph
- 5 b, Code 2003, is amended by adding the following new
- 6 subparagraphs:
- 7 NEW SUBPARAGRAPH. (11) Underwriting fee.
- 8 NEW SUBPARAGRAPH. (12) Tax service fee.
- 9 NEW SUBPARAGRAPH. (13) Flood hazard determination
- 10 fee."
- 11 2. By renumbering, redesignating, and correcting
- 12 internal references as necessary.

By RON WIECK

S-3129 FILED APRIL 2, 2003

ADOPTED *4/2/03*

Wieck
Schuerer
Horn

Business + Labor Relations

SSB 1155
Succeeded By
SF/HF 344

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR RELATIONS
BILL BY CHAIRPERSON SCHUERER)

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

A BILL FOR

1 An Act concerning regulatory and statutory requirements impacting
2 business relating to liability reform, unemployment
3 compensation benefits eligibility and employer contributions,
4 workers' compensation, occupational safety and health
5 administration training and compliance requirements, financial
6 services and restrictions on property rights, environmental
7 regulatory requirements, and public project contractor
8 requirements.

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

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DIVISION I

LIABILITY REFORM

1
2
3 Section 1. Section 216.2, subsection 11, Code 2003, is
4 amended to read as follows:

5 11. "Person" means one or more individuals including
6 individuals who are employees and individuals who supervise
7 employees, partnerships, associations, corporations, legal
8 representatives, trustees, receivers, and the state of Iowa
9 and all political subdivisions and agencies thereof.

10 Sec. 2. Section 625A.9, Code 2003, is amended to read as
11 follows:

12 625A.9 EXECUTION ON UNSTAYED PART OF JUDGMENT --
13 SUPERSEDEAS BOND WAIVED.

14 1. The taking of the appeal from part of a judgment or
15 order, and the filing of a bond as-above-directed, does not
16 stay execution as to that part of the judgment or order not
17 appealed from.

18 2. If the judgment or order appealed from is for money,
19 such bond shall not exceed any of the following amounts,
20 excluding costs:

21 a. One hundred percent of the amount of the money judgment
22 up to and including one million dollars.

23 b. One million dollars, if the amount of the money
24 judgment is in excess of one million dollars, up to and
25 including one hundred million dollars.

26 c. Twenty-five million dollars, if the amount of the money
27 judgment is in excess of one hundred million dollars.

28 3. Upon motion and for good cause shown, the district
29 court may stay all proceedings under the order or judgment
30 being appealed and permit the state or any of its political
31 subdivisions to appeal a judgment or order to the supreme
32 court without the filing of a supersedeas bond.

33 Sec. 3. Section 668A.1, Code 2003, is amended by striking
34 the section and inserting in lieu thereof the following:

35 668A.1 CITATION.

1 This chapter may be cited as the "Punitive Damages Standard
2 Act".

3 Sec. 4. NEW SECTION. 668A.2 DEFINITIONS.

4 As used in this chapter, the following terms shall have the
5 following meanings:

6 1. "Clear and convincing evidence" means evidence which
7 leaves no serious or substantial doubt about the correctness
8 of the conclusions drawn from the evidence. It is more than a
9 preponderance of evidence, but less than beyond a reasonable
10 doubt.

11 2. "Compensatory damages" means damages intended to make
12 good the loss of an injured party and no more. The term
13 includes general and special damages and does not include
14 nominal, exemplary, or punitive damages.

15 3. "Defendant" means any party against whom punitive
16 damages are sought.

17 4. "Malice" means either conduct which is specifically
18 intended by the defendant to cause tangible or intangible
19 serious injury to the plaintiff or conduct that is carried out
20 by the defendant both with a flagrant indifference to the
21 rights of the plaintiff and with a subjective awareness that
22 such conduct will result in tangible serious injury.

23 5. "Nominal damages" means damages that are not designed
24 to compensate a plaintiff and that are less than five hundred
25 dollars.

26 6. "Plaintiff" means any plaintiff claiming punitive
27 damages.

28 7. "Punitive damages" means damages awarded against a
29 party in a civil action due to aggravating circumstances and
30 awarded in order to penalize and to provide additional
31 deterrence against a defendant to discourage similar conduct
32 in the future. An award of punitive damages includes
33 exemplary or vindictive damages, but does not include
34 compensatory or nominal damages.

35 Sec. 5. NEW SECTION. 668A.3 PLEADING PUNITIVE DAMAGES --

1 NOTICE.

2 1. An award of punitive damages must be specifically
3 prayed for in the complaint.

4 2. The plaintiff must specifically plead either of the
5 following:

6 a. At least thirty days in advance of filing the
7 complaint, the plaintiff gave notice of a request for damages
8 pursuant to this chapter to the defendant and that in good
9 faith a reasonable settlement could not be reached.

10 b. The thirty-day notice under paragraph "a" could not be
11 given because of exigent circumstances.

12 3. The plaintiff shall not plead a specific amount of
13 punitive damages, but shall plead only that such damages are
14 sought in the action.

15 4. The prayer for punitive damages shall be stricken prior
16 to trial by the court unless the plaintiff presents prima
17 facie evidence sufficient to sustain an award of punitive
18 damages to the court at least thirty days prior to trial.

19 Sec. 6. NEW SECTION. 668A.4 PROCEDURE FOR AWARD OF
20 PUNITIVE DAMAGES.

21 1. If requested by the defendant, all actions tried before
22 a jury involving punitive damages shall be conducted in a
23 bifurcated trial before the same jury.

24 2. In the first stage of a bifurcated trial the jury shall
25 determine liability for compensatory damages and the amount of
26 compensatory damages or nominal damages. Evidence relevant
27 only to the issue of punitive damages shall not be admissible
28 in this stage.

29 3. Punitive damages may be awarded only if compensatory
30 damages have been awarded in the first stage of the trial. An
31 award of nominal damages cannot support an award of punitive
32 damages.

33 4. The jury shall determine if a defendant is liable for
34 punitive damages in the second stage of a bifurcated trial.

35 5. Evidence of a defendant's financial condition or net

1 worth is not admissible in the punitive damage proceeding.

2 6. In determining the amount of punitive damages, the
3 trier of fact shall consider all relevant evidence, including
4 all of the following:

5 a. The severity of the harm caused by the defendant.

6 b. The extent to which the plaintiff's own conduct
7 contributed to the harm.

8 c. The duration of the conduct, the defendant's awareness
9 of the conduct, and any concealment by the defendant.

10 d. The profitability of the conduct to the defendant.

11 e. Any compensatory or punitive damage award to persons
12 similarly situated to the plaintiff.

13 f. Any prospective award of compensatory damages to
14 persons similarly situated to the defendant.

15 g. Any criminal penalties imposed on the defendant as a
16 result of the alleged conduct of the defendant.

17 h. The amount of any civil penalties assessed against the
18 defendant as a result of the conduct complained of by the
19 plaintiff.

20 7. The trier of fact shall not consider the defendant's
21 wealth or financial condition in determining the amount of
22 punitive damages, but such evidence may be considered by the
23 reviewing court in determining whether the award of punitive
24 damages is excessive.

25 8. If a verdict is rendered awarding punitive damages, the
26 court shall review the decision of the trier of fact, upon
27 consideration of all relevant evidence, including the factors
28 identified in subsection 6, to ensure that the award does not
29 exceed an amount necessary for the sake of example and to
30 punish the defendant. The court shall include a statement of
31 findings as to the award of damages.

32 9. The amount of punitive damages shall be reduced
33 pursuant to the contributory or comparative fault principles
34 under the applicable laws of this state. In any action in
35 which there are two or more defendants, an award of punitive

1 damages must be specific as to each defendant, and each
2 defendant is liable only for the amount of the award made
3 against that defendant.

4 Sec. 7. NEW SECTION. 668A.5 AWARD OF PUNITIVE DAMAGES --
5 PROOF -- STANDARD.

6 Punitive damages shall only be awarded where the plaintiff
7 proves by clear and convincing evidence that the plaintiff's
8 harm was the result of actual malice. This burden of proof
9 shall not be satisfied by proof of any degree of negligence,
10 including gross negligence.

11 Sec. 8. NEW SECTION. 668A.6 PUNITIVE DAMAGE LIMITATIONS.

12 1. Except as provided in subsection 2, an award of
13 punitive damages shall not exceed two times the amount of the
14 plaintiff's compensatory damages award or two hundred fifty
15 thousand dollars, whichever is greater.

16 2. If the defendant is a person or a business with fifty
17 or fewer full-time employees, an award of punitive damages
18 shall not exceed two times the amount of the plaintiff's
19 compensatory damages or two hundred fifty thousand dollars,
20 whichever is less.

21 Sec. 9. NEW SECTION. 668A.7 AVAILABILITY.

22 This chapter shall not be construed as creating any claim
23 for punitive damages which is not currently available under
24 the laws of this state.

25 Sec. 10. NEW SECTION. 668B.1 CITATION.

26 This chapter may be cited as the "Noneconomic Damage Awards
27 Act".

28 Sec. 11. NEW SECTION. 668B.2 DEFINITIONS.

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

31 1. "Economic damages" means objectively verifiable
32 pecuniary damages arising from medical expenses and medical
33 care, rehabilitation services, custodial care, loss of
34 earnings and earning capacity, loss of income, burial costs,
35 loss of use of property, costs of repair or replacement of

1 property, costs of obtaining substitute domestic services,
2 loss of employment, loss of business or employment
3 opportunities, and other objectively verifiable monetary
4 losses.

5 2. "Noneconomic damages" means subjective, nonpecuniary
6 damages arising from pain, suffering, inconvenience, physical
7 impairment, disfigurement, mental anguish, emotional distress,
8 loss of services, companionship, society, or consortium,
9 injury to reputation, humiliation, and other nonpecuniary
10 damages.

11 Sec. 12. NEW SECTION. 668B.3 DAMAGE AWARDS.

12 In any personal injury action, the prevailing plaintiff may
13 be awarded all of the following damages:

14 1. Compensation for economic damages suffered by the
15 injured plaintiff.

16 2. Compensation for the noneconomic damages suffered by
17 the injured plaintiff not to exceed the greater of either of
18 the following:

19 a. Two hundred fifty thousand dollars.

20 b. The amount awarded in economic damages.

21 Sec. 13. NEW SECTION. 668B.4 SPECIAL DAMAGES --

22 FINDINGS.

23 1. In any action seeking damages for personal injury or
24 wrongful death in which liability is found, the trier of fact,
25 in addition to other appropriate findings, shall make separate
26 findings for each claimant specifying the amount of both of
27 the following:

28 a. Any past damages.

29 b. Any future damages and the periods over which they will
30 accrue, on an annual basis, for each of the following types of
31 damages:

32 (1) Medical and other costs of health care.

33 (2) Other economic loss.

34 (3) Noneconomic loss.

35 2. The calculation of the costs of any future medical

1 care, other costs of health care, and future noneconomic loss
2 must reflect the costs and losses during the period of time
3 the claimant will sustain those costs and losses. The
4 calculation for other economic loss must be based on the
5 losses during the period of time the claimant would have lived
6 but for the injury upon which the claim is based.

7 Sec. 14. NEW SECTION. 668C.1 CITATION.

8 This chapter may be cited as the "Joint and Several
9 Liability Act".

10 Sec. 15. NEW SECTION. 668C.2 DEFINITIONS.

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

13 1. "Damages" means pain, suffering, inconvenience,
14 physical impairment, disfigurement, mental anguish, emotional
15 distress, loss of services, companionship, society, or
16 consortium, injury to reputation, humiliation, any other
17 theory of damages such as fear of loss or illness or injury,
18 loss of earnings and earning capacity, loss of income, medical
19 expenses and medical care, rehabilitation services, custodial
20 care, burial costs, loss of use of property, costs of repair
21 or replacement of property, costs of obtaining substitute
22 domestic services, loss of employment, loss of business or
23 employment opportunities, and other objectively verifiable
24 monetary losses. "Damages" does not include punitive damages.

25 2. "Fault" means an act or omission of a person which is a
26 proximate cause of injury or death to another person or
27 persons, damage to property, tangible or intangible, or
28 economic injury, including but not limited to negligence,
29 malpractice, strict liability, absolute liability, or failure
30 to warn. "Fault" does not include any tort that results from
31 an act or omission committed with a specific wrongful intent.

32 3. "Person" means any individual, corporation, company,
33 association, firm, partnership, society, joint stock company,
34 or any other entity, including any governmental entity or
35 unincorporated association of persons.

1 Sec. 16. NEW SECTION. 668C.3 SEVERAL LIABILITY.

2 1. In any action involving a claim of personal injury,
3 property damage accompanying personal injury, or wrongful
4 death, the liability of each defendant for damages shall be
5 several only and shall not be joint. Each defendant shall be
6 liable only for the amount of damages allocated to that
7 defendant in direct proportion to that defendant's percentage
8 of fault, and a separate judgment shall be rendered against
9 the defendant for that amount.

10 2. In determining the judgment amount of damages to be
11 entered against each defendant, the court, with regard to each
12 defendant, shall multiply the total amount of damages
13 recoverable by the plaintiff by the percentage of each
14 defendant's fault to determine the maximum amount of damages
15 recoverable against each defendant.

16 Sec. 17. NEW SECTION. 668C.4 FAULT -- NONPARTIES.

17 1. In assessing percentages of fault, the trier of fact
18 shall consider the fault of all persons who contributed to the
19 alleged injury or death or damage to property, tangible or
20 intangible, regardless of whether such person was, or could
21 have been, named as a party to the suit. Negligence or fault
22 of a nonparty may be considered if the plaintiff entered into
23 a settlement agreement with the nonparty or if the defendant
24 gives notice within one hundred twenty days of the date of
25 trial that a nonparty was wholly or partially at fault. The
26 notice shall be given by filing a pleading in the action
27 designating such nonparty and setting forth such nonparty's
28 name and last known address, or the best identification of
29 such nonparty possible under the circumstances, together with
30 a brief statement of the basis for believing such nonparty to
31 be at fault.

32 2. This chapter shall not be construed to eliminate or
33 diminish any defenses or immunities that currently exist,
34 except as expressly noted in this chapter. Assessments of
35 percentages of fault for nonparties are used only as a vehicle

1 for accurately determining the fault of named parties. Where
2 fault is assessed against nonparties, findings of such fault
3 shall not subject any party to liability in this or any other
4 action, or be introduced as evidence of liability in any
5 action.

6 Sec. 18. NEW SECTION. 668C.5 CONCERT OF ACTION.

7 Joint liability shall be imposed on all persons who
8 consciously and deliberately pursue a common plan or design to
9 commit a tortuous act, or actively take part in a tortuous
10 act. Any person held jointly liable under this chapter shall
11 have a right of contribution from any codefendant acting in
12 concert. A defendant shall be held responsible only for the
13 portion of fault assessed to those with whom the defendant
14 acted in concert under this section.

15 Sec. 19. NEW SECTION. 668C.6 BURDEN OF PROOF.

16 The burden of alleging and proving fault shall be upon the
17 party who seeks to establish such fault.

18 Sec. 20. NEW SECTION. 668C.7 LIMITATIONS.

19 This chapter shall not be construed to create a cause of
20 action or to alter the immunity of any person.

21 Sec. 21. NEW SECTION. 668D.1 CITATION.

22 This chapter may be cited and shall be known as the
23 "Product Liability Act".

24 Sec. 22. NEW SECTION. 668D.2 DEFINITIONS.

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

27 1. "Claimant" means a person who brings a product
28 liability action, and if such an action is brought through or
29 on behalf of an estate, includes the claimant's decedent, or
30 if such action is brought through or on behalf of a minor,
31 includes the claimant's parent or guardian.

32 2. "Design" means the intended or known physical and
33 material characteristics of a product and includes any
34 intended or known formulation or content of the product and
35 the usual result of the intended manufacturing or other

1 process used to produce the product.

2 3. "Harm" means any of the following:

3 a. Damage to property other than the product itself.

4 b. Personal physical injury, illness, or death.

5 c. Mental anguish or emotional harm.

6 d. Any loss of consortium or services or other loss
7 deriving from any type of harm described in paragraph "a",
8 "b", or "c".

9 4. "Manufacturer" means any of the following:

10 a. A person who is engaged in a business to design,
11 produce, make, fabricate, construct, or remanufacture a
12 product or component part of a product.

13 b. A product seller not described in paragraph "a" holding
14 itself out as a manufacturer to the user of the product;
15 except that any product seller who acts primarily as a
16 wholesaler, distributor, or retailer of products may be a
17 manufacturer with respect to a product to the extent that such
18 seller designs, produces, makes, fabricates, constructs, or
19 remanufactures the product before sale.

20 5. "Person" means an individual, corporation, company,
21 association, firm, partnership, society, joint stock company,
22 or any other entity including any government entity or
23 unincorporated association of persons.

24 6. "Product" means an object, substance, mixture, or raw
25 material in a gaseous, liquid, or solid state, possessing
26 intrinsic value which is capable of delivery either as an
27 assembled whole or as a component part and is produced for
28 introduction to trade or commerce. "Product" does not include
29 human tissue, blood and blood products, or organs.

30 7. a. "Product seller" means either of the following:

31 (1) A manufacturer.

32 (2) A person who, in the course of business conducted for
33 that purpose, sells, distributes, leases, installs, prepares,
34 packages, labels, markets, repairs, maintains, or otherwise is
35 involved in placing a product in the stream of commerce.

1 b. "Product seller" does not mean any of the following:

2 (1) A seller of real property, unless that person is
3 engaged in the sale of manufactured housing or in the mass
4 production of dwellings.

5 (2) A provider of professional services in any case in
6 which the sale or use of a product is incidental to the
7 transaction and the essence of the transaction involves
8 judgment, skill, or services.

9 (3) A person who acts only in a financial capacity with
10 respect to the sale of a product.

11 (4) A person who leases a product, without having a
12 reasonable opportunity to inspect and discover defects in the
13 product, under a lease arrangement in which the selection,
14 possession, maintenance, and operation of the product are
15 controlled by a person other than the lessor.

16 Sec. 23. NEW SECTION. 668D.3 EFFECT ON OTHER LAWS.

17 1. Except as provided in subsection 2, any civil action
18 brought against a manufacturer or product seller for harm
19 caused by a product is a product liability action and is
20 governed by the provisions of this chapter. This chapter is
21 intended to govern any civil action for harm caused by a
22 product, including any action which before the effective date
23 of this Act would have been based on any of the following
24 theories:

25 a. Strict liability in tort.

26 b. Negligence.

27 c. Breach of express, implied, or statutorily implied
28 warranty.

29 d. Failure to discharge a duty to warn or instruct.

30 e. Misrepresentation, concealment, or nondisclosure.

31 f. Any other common law theory or theory established by
32 statute that is the basis for an award of damages for harm
33 caused by a product.

34 2. A product liability action does not include any civil
35 action against a manufacturer or seller for any of the

1 following:

2 a. Harm caused to a product itself.

3 b. Damage to property under a breach of warranty theory if
4 prohibited by the Iowa uniform commercial code.

5 c. Commercial loss, including incidental and consequential
6 damages in a commercial setting.

7 d. Commercial risks that are the subject of a contract
8 between the manufacturer or a seller and a buyer.

9 Civil actions described in this subsection shall be
10 governed by the Iowa uniform commercial code.

11 3. In a product liability action brought pursuant to this
12 chapter, the product seller is not liable to a claimant for
13 mental anguish or emotional harm in the absence of proof of
14 related and contemporaneous personal physical injury, illness,
15 or death.

16 Sec. 24. NEW SECTION. 668D.4 STANDARDS OF LIABILITY.

17 In a product liability action brought pursuant to this
18 chapter, a manufacturer shall be liable to a claimant if the
19 claimant establishes by a preponderance of the evidence all of
20 the following:

21 1. The product was unreasonably dangerous for any of the
22 following reasons:

23 a. Faulty construction.

24 b. Failure to conform to an express warranty with respect
25 to the product made by the manufacturer or product seller.

26 c. Faulty design.

27 d. Failure of the manufacturer to provide adequate
28 warnings or instructions.

29 2. The defendant was the manufacturer of the particular
30 product that caused the claimant's harm.

31 3. The unreasonably dangerous aspect of the product was
32 the proximate cause of the harm complained of by the claimant.

33 Sec. 25. NEW SECTION. 668D.5 GOVERNMENT STANDARDS.

34 In a product liability action brought pursuant to this
35 chapter, a manufacturer shall not be liable to a claimant if

1 the product alleged to have caused the claimant's harm
2 materially complied, at the time the product was manufactured,
3 with standards, conditions, or specifications established,
4 adopted, or approved by a federal or state statute or by a
5 state or federal governmental agency responsible for the
6 design formulation, labeling, packaging, performance, or
7 approval of the product, unless the claimant proves by clear
8 and convincing evidence that the defendant intentionally and
9 fraudulently withheld from or misrepresented to the agency
10 information known to be material and relevant to the harm in
11 question.

12 Sec. 26. NEW SECTION. 668D.6 DEFECTLESS PRODUCTS.

13 In a product liability action brought pursuant to this
14 chapter, a manufacturer shall not be liable for harm caused by
15 an inherent characteristic of the product that would be
16 recognized by the ordinary person who uses or consumes the
17 product with the ordinary knowledge common to the community.

18 Sec. 27. NEW SECTION. 668D.7 MISUSE AND MODIFICATION.

19 In a product liability action brought pursuant to this
20 chapter, a manufacturer shall not be liable for harm caused by
21 product misuse, alteration, or modification. Misuse,
22 alteration, or modification shall include, but is not limited
23 to, the following:

24 1. Any use, alteration, or modification contrary to or
25 inconsistent with a manufacturer's warnings or instructions.

26 2. Any use, alteration, or modification involving a risk
27 of harm which was known or should have been known by an
28 ordinary person who uses or consumes the product.

29 Sec. 28. NEW SECTION. 668D.8 CONSTRUCTION DEFECTS.

30 In a product liability action brought pursuant to this
31 chapter, a product may be unreasonably dangerous because it is
32 defective in manufacture or construction only if the claimant
33 proves by a preponderance of the evidence that when the
34 product left the control of the manufacturer, it deviated in a
35 material way from the established design specifications,

1 formula, or performance standards of the manufacturer, or from
2 the clear majority of otherwise identical units manufactured
3 to the same design specifications, formula, or performance
4 standards.

5 Sec. 29. NEW SECTION. 668D.9 EXPRESS WARRANTY.

6 1. In a product liability action brought pursuant to this
7 chapter, a product may be unreasonably dangerous because it
8 did not conform to an express warranty only if the claimant
9 proves by a preponderance of the evidence all of the
10 following:

11 a. The claimant, or a person acting on the claimant's
12 behalf, reasonably relied on an express warranty made by the
13 manufacturer about a material fact concerning the safety of
14 the product.

15 b. The express warranty proved to be untrue.

16 c. If the representation had been true, the claimant would
17 not have been harmed.

18 2. For the purposes of this section:

19 a. "Express warranty" means any material, positive
20 statement, affirmation of fact, promise, or description
21 relating to a product, including any sample or model of a
22 product.

23 b. "Material fact" means any specific characteristic or
24 quality of the product, but does not include a general opinion
25 about, or praise of, the product or its quality.

26 3. A manufacturer may be subject to liability under this
27 section although it did not engage in negligent or fraudulent
28 conduct in making the express warranty.

29 Sec. 30. NEW SECTION. 668D.10 KNOWLEDGE OF DANGER.

30 In a product liability action brought pursuant to this
31 chapter, based upon a defective design, a manufacturer shall
32 not be liable unless the claimant proves by a preponderance of
33 the evidence that, at the time the product left the
34 manufacturer's control, the manufacturer knew or, in light of
35 the scientific and technical knowledge in existence at the

1 time the product left the manufacturer's control, reasonably
2 should have known of the danger that caused the claimant's
3 harm.

4 Sec. 31. NEW SECTION. 668D.11 FEASIBLE ALTERNATIVE
5 DESIGN.

6 In a product liability action brought pursuant to this
7 chapter, based upon a defective design, a manufacturer shall
8 not be liable unless the claimant proves by a preponderance of
9 the evidence that, at the time the product left the
10 manufacturer's control, a practical and technically feasible
11 alternative design or formulation existed that would have
12 prevented the harm without significantly impairing the
13 usefulness or desirability of the product to the group of
14 persons who are the intended users of the product.

15 Sec. 32. NEW SECTION. 668D.12 UNAVOIDABLY UNSAFE
16 PRODUCTS.

17 In a product liability action brought pursuant to this
18 chapter, a manufacturer is not liable to a claimant for harm
19 caused by an unavoidably unsafe aspect of a drug, biological,
20 or medical device unless the claimant proves by a
21 preponderance of the evidence both of the following:

22 1. At the time the product left the manufacturer's
23 control, the manufacturer knew or, in light of the then
24 existing and reasonably available scientific and technical
25 knowledge, reasonably should have known of the danger that
26 caused the claimant's harm.

27 2. The manufacturer failed to provide adequate warnings or
28 instructions. A product or any part of a product shall be
29 considered unavoidably unsafe unless the danger could have
30 been eliminated by use of an existing, practical, and
31 technically feasible alternative design or formulation that
32 would have prevented the harm without significantly impairing
33 the usefulness or desirability of the product to the group of
34 persons who are the intended users of the product.

35 3. For the purposes of this section, "adequate warning"

1 means a warning that a reasonably prudent person in the same
2 or similar circumstances would have provided with respect to
3 the danger, or a warning that conforms to the requirements of
4 a federal or state statute or agency regulation, or that is
5 conditioned upon the approval of the product by a federal or
6 state agency that prescribes the form or language of the
7 warning or instruction.

8 Sec. 33. NEW SECTION. 668D.13 ASSUMPTION OF RISK.

9 1. In a product liability action brought pursuant to this
10 chapter, a defendant shall not be liable if the injured person
11 assumed the risk of injury or harm to property.

12 2. "Assumed the risk" means the injured person did both of
13 the following:

14 a. Knew of and appreciated the risk.

15 b. Voluntarily encountered the risk that proximately
16 caused the injury or damage.

17 3. The elements of assumption of risk may be inferred, as
18 a matter of either fact or law, from circumstantial evidence
19 that the injured person should have known and appreciated the
20 risk and voluntarily encountered it.

21 Sec. 34. NEW SECTION. 668D.14 WARNINGS.

22 1. In a product liability action brought pursuant to this
23 chapter, a manufacturer shall not be liable for harm caused by
24 a failure to warn if the product contains an adequate warning
25 or instruction.

26 2. A manufacturer shall not be liable for failure to warn
27 or instruct about any of the following:

28 a. A danger that is an open and obvious risk or that is a
29 matter of common knowledge.

30 b. A product misuse, alteration, or modification as
31 described in section 668D.7.

32 3. For the purposes of this section, "adequate warning"
33 means the same as defined in section 668D.12.

34 Sec. 35. NEW SECTION. 668D.15 WARNINGS TO THIRD PARTIES.

35 In a product liability action brought pursuant to this

1 chapter, based upon the failure to provide adequate warnings
2 or instructions, the manufacturer shall not be liable under
3 any of the following circumstances:

4 1. The claimant used the product in the claimant's
5 workplace, and the manufacturer provided warnings or
6 instructions to the claimant's employer, as the most practical
7 and feasible means of transmitting the warnings or
8 instructions to the claimant.

9 2. The product was sold as a component or material to be
10 incorporated into another product, and the manufacturer
11 provided warnings or instructions to the manufacturer's
12 immediate buyer, and the claimant was exposed to the component
13 or material after it was incorporated or converted into
14 another product.

15 3. The product was intended to be used or dispensed only
16 by or under the supervision of an expert and the manufacturer
17 employed means reasonably calculated to make warnings or
18 instructions available to the using or supervisory expert. As
19 used in this section, "means reasonably calculated to make
20 warnings or instructions available" does not require actual,
21 personal notice to the expert where such personal notice would
22 be impossible or impracticable.

23 Sec. 36. NEW SECTION. 668D.16 PRODUCT SELLER LIABILITY.

24 1. A product seller shall be liable for harm to the
25 claimant caused by a product as if the product seller were the
26 manufacturer of the product under either of the following
27 circumstances:

28 a. The manufacturer is not subject to service of process
29 under the laws of this state.

30 b. The court determines that the claimant would be unable
31 to enforce a judgment against the manufacturer.

32 2. A product seller other than a manufacturer is liable to
33 a claimant for the failure of the product involved in such
34 action to conform to a warranty made with respect to such
35 product if the claimant establishes by a preponderance of the

1 evidence all of the following:

2 a. The product seller sold such product.

3 b. The product seller made an express warranty as to such
4 product independent of any express warranty made by a
5 manufacturer as to such product.

6 c. The product failed to conform to the product seller's
7 warranty.

8 d. The failure of the product to conform to the product
9 seller's warranty caused the harm complained of by the
10 claimant.

11 3. A product seller other than a manufacturer is liable to
12 a claimant on the basis of negligence if the claimant
13 establishes by a preponderance of the evidence all of the
14 following:

15 a. The product seller sold the product involved in such
16 action.

17 b. The product seller did not exercise reasonable care in
18 either of the following:

19 (1) Assembling, inspecting, or maintaining such product.

20 (2) Passing on such warnings or instructions from such
21 product's manufacturer about the dangers and proper use of
22 such product.

23 c. Such failure to exercise reasonable care was a
24 proximate cause of the harm complained of by the claimant.

25 Sec. 37. NEW SECTION. 668D.17 ALCOHOL AND DRUG DEFENSE.

26 In a product liability action brought pursuant to this
27 chapter, a manufacturer shall not be liable if both of the
28 following occur:

29 1. The claimant was under the influence of intoxicating
30 alcohol or a drug not prescribed by a physician for use by the
31 claimant.

32 2. As a result of the influence of the alcohol or drug,
33 the claimant was more than fifty percent at fault for the harm
34 suffered by the claimant.

35 Sec. 38. NEW SECTION. 668D.18 SUBSEQUENT REMEDIAL

1 MEASURES.

2 1. In a product liability action brought pursuant to this
3 chapter, evidence of any measure taken by a manufacturer after
4 the occurrence of a claimant's harm which, if taken prior to
5 the claimant's harm, would have made the harm less likely to
6 occur is not admissible to prove liability.

7 2. Evidence described in subsection 1 may be admitted in a
8 court of law for either of the following reasons:

9 a. To prove ownership, control, or feasibility of
10 precautionary measures, if contested.

11 b. For impeachment purposes.

12 Sec. 39. NEW SECTION. 668D.19 EXPERT OPINION.

13 In a product liability action brought pursuant to this
14 chapter, expert technical, scientific, or medical opinion
15 shall not be admitted in a court of law unless both of the
16 following occur:

17 1. The expert is professionally qualified in the relevant
18 discipline.

19 2. The expert's opinion is corroborated by other objective
20 evidence that is consistent with generally accepted technical,
21 scientific, or medical principles.

22 Sec. 40. NEW SECTION. 668D.20 CONCERT OF ACTION.

23 1. In a product liability action brought pursuant to this
24 chapter, a manufacturer or product seller shall not be liable
25 to the claimant on any theory of express or implied agreement
26 among sellers, parallel behavior, or independent adherence to
27 industrywide standards unless the claimant proves, by a
28 preponderance of the evidence, that the seller engaged in
29 concert of action.

30 2. For the purposes of this section, "concert of action"
31 means the conscious and deliberate agreement, acknowledgement,
32 and collaborative participation in wrongful conduct by two or
33 more persons who do not have the relationship of master and
34 servant, principal and agent, parent and subsidiary or
35 affiliates, or employer and employee.

1 weekly earnings are thirty-five percent of the statewide
 2 average weekly wage ~~computed pursuant to section 96.3~~
 3 determined by the department of workforce development under
 4 section 96.19, subsection 36, and in effect at the time of the
 5 injury.

6 Sec. 45. Section 96.3, subsection 4, Code 2003, is amended
 7 to read as follows:

8 4. DETERMINATION OF BENEFITS. ~~With respect to benefit~~
 9 ~~years beginning on or after July 17, 1983, an~~ An eligible
 10 individual's weekly benefit amount for a week of total
 11 unemployment shall be an amount equal to the following
 12 fractions of the individual's total wages in insured work paid
 13 during that quarter of the individual's base period in which
 14 such total wages were highest; ~~the director shall determine~~
 15 ~~annually a~~ maximum weekly benefit amount shall equal to the
 16 following ~~percentages~~ amounts, to vary with the number of
 17 dependents, of the statewide average weekly wage computed on
 18 the basis of wages reported paid to employees in insured work
 19 ~~which shall be effective the first day of the first full week~~
 20 in July for calendar year 2001:

21 If the	The weekly	Subject to the
22 number of	benefit amount	following maxi-
23 dependents	shall equal the	mum percentage
24 is:	following frac-	of the statewide
25	tion of high	average weekly
26	quarter wages:	wage:
27 0	1/23	53% <u>\$292.18</u>
28 1	1/22	55% <u>\$303.21</u>
29 2	1/21	57% <u>\$314.24</u>
30 3	1/20	60% <u>\$330.77</u>
31 4 or more	1/19	65% <u>\$358.34</u>

32 ~~The maximum weekly benefit amount, if not a multiple of one~~
 33 ~~dollar shall be rounded to the lower multiple of one dollar.~~
 34 ~~However, until such time as sixty-five percent of the~~
 35 ~~statewide average weekly wage exceeds one hundred ninety~~

1 ~~dollars, the maximum weekly benefit amounts shall be~~
2 ~~determined using the statewide average weekly wage computed on~~
3 ~~the basis of wages reported for calendar year 1981.~~ As used
4 in this section "dependent" means dependent as defined in
5 section 422.12, subsection 1, paragraph "c", as if the
6 individual claimant was a taxpayer, except that an individual
7 claimant's nonworking spouse shall be deemed to be a dependent
8 under this section. "Nonworking spouse" means a spouse who
9 does not earn more than one hundred twenty dollars in gross
10 wages in one week.

11 Sec. 46. Section 96.3, subsection 5, Code 2003, is amended
12 to read as follows:

13 5. DURATION OF BENEFITS. The maximum total amount of
14 benefits payable to an eligible individual during a benefit
15 year shall not exceed the total of the wage credits accrued to
16 the individual's account during the individual's base period,
17 or twenty-six times the individual's weekly benefit amount,
18 whichever is the lesser. The director shall maintain a
19 separate account for each individual who earns wages in
20 insured work. The director shall compute wage credits for
21 each individual by crediting the individual's account with
22 one-third of the wages for insured work paid to the individual
23 during the individual's base period. ~~However, the director~~
24 ~~shall recompute wage credits for an individual who is laid off~~
25 ~~due to the individual's employer going out of business at the~~
26 ~~factory, establishment, or other premises at which the~~
27 ~~individual was last employed, by crediting the individual's~~
28 ~~account with one-half, instead of one-third, of the wages for~~
29 ~~insured work paid to the individual during the individual's~~
30 ~~base period.~~ Benefits paid to an eligible individual shall be
31 charged against the base period wage credits in the
32 individual's account which have not been previously charged,
33 in the inverse chronological order as the wages on which the
34 wage credits are based were paid. However if the state "off
35 indicator" is in effect and if the individual is laid off due

1 to the individual's employer going out of business at the
2 factory, establishment, or other premises at which the
3 individual was last employed, the maximum benefits payable
4 shall be extended to thirty-nine times the individual's weekly
5 benefit amount, but not to exceed the total of the wage
6 credits accrued to the individual's account.

7 Sec. 47. Section 96.4, subsection 3, Code 2003, is amended
8 to read as follows:

9 3. a. The individual is able to work, is available for
10 work, and is earnestly and actively seeking work. To be
11 eligible under this subsection, the individual must:

12 (1) Be able and available for full-time work for which the
13 individual is fitted by prior training or experience.

14 (2) Reside in a locality where opportunities for work are
15 not less favorable than those in the locality where the
16 individual resided at the time of the individual's most recent
17 separation from employment.

18 (3) Keep a record of where and when the individual has
19 sought work and shall produce such record to the director upon
20 request.

21 (4) Actively seek work during periods of nonseasonal
22 operations where the individual has been customarily employed
23 in seasonal employment.

24 b. If an eligible individual is available for work for
25 less than a full week, the individual's weekly benefit amount
26 shall be reduced by one-sixth of such amount for each day the
27 individual is unavailable for work. If an individual is
28 unavailable for work for four days or more in a week, the
29 individual shall be considered unavailable for the entire
30 week.

31 c. This subsection is waived if the individual is deemed
32 partially unemployed, while employed at the individual's
33 regular job, as defined in section 96.19, subsection 38,
34 paragraph "b", unnumbered paragraph 1, or temporarily
35 unemployed as defined in section 96.19, subsection 38,

1 paragraph "c". The work search requirements of this
2 subsection and the disqualification requirement for failure to
3 apply for, or to accept suitable work of section 96.5,
4 subsection 3 are waived if the individual is not disqualified
5 for benefits under section 96.5, subsection 1, paragraph "h".

6 Sec. 48. Section 96.4, subsection 4, Code 2003, is amended
7 to read as follows:

8 4. The individual has been paid wages for insured work
9 during the individual's base period for a minimum of twenty
10 weeks in an amount at least one and one-quarter times the
11 wages paid to the individual during that quarter of the
12 individual's base period in which the individual's wages were
13 highest; provided that the individual has been paid wages for
14 insured work totaling at least three and five-tenths percent
15 of the statewide average annual wage for insured work,
16 computed for the preceding calendar year if the individual's
17 benefit year begins on or after the first full week in July
18 and computed for the second preceding calendar year if the
19 individual's benefit year begins before the first full week in
20 July, in that calendar quarter in the individual's base period
21 in which the individual's wages were highest, and the
22 individual has been paid wages for insured work totaling at
23 least one-half of the amount of wages required under this
24 subsection in the calendar quarter of the base period in which
25 the individual's wages were highest, in a calendar quarter in
26 the individual's base period other than the calendar quarter
27 in which the individual's wages were highest. The calendar
28 quarter wage requirements shall be rounded to the nearest
29 multiple of ten dollars.

30 If the individual has drawn benefits in any benefit year,
31 the individual must during or subsequent to that year, work in
32 and be paid wages for insured work totaling at least ~~two~~
33 ~~hundred-fifty-dollars~~ ten times the individual's weekly
34 benefit amount, as a condition to receive benefits in the next
35 benefit year.

1 Sec. 49. Section 96.4, Code 2003, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 8. The individual has satisfied one one-
4 week waiting period during the individual's benefit year. To
5 satisfy the one-week waiting period, the individual, with
6 respect to the week in question, must be unemployed, have
7 filed a claim for benefits, and be eligible for benefits from
8 this state, but must not have received benefits from this or
9 another state, and must not be eligible for benefits from
10 another state.

11 Sec. 50. Section 96.5, subsection 4, unnumbered paragraph
12 1, Code 2003, is amended to read as follows:

13 For any week with respect to which the department finds
14 that the individual's total or partial unemployment is due to
15 a stoppage of work which exists because of a strike, lockout,
16 or labor dispute at the factory, establishment, or other
17 premises at which the individual is or was last employed,
18 provided that this subsection shall not apply if it is shown
19 to the satisfaction of the department that:

20 Sec. 51. Section 96.19, subsection 37, paragraph a, Code
21 2003, is amended by striking the paragraph and inserting in
22 lieu thereof the following:

23 a. Nineteen thousand two hundred dollars.

24 DIVISION III

25 WORKERS' COMPENSATION

26 Sec. 52. Section 85.3, subsection 1, Code 2003, is amended
27 to read as follows:

28 1. Every employer, not specifically excepted by the
29 provisions of this chapter, shall provide, secure, and pay
30 compensation according to the provisions of this chapter for
31 any and all personal injuries sustained by an employee arising
32 out of and in the course of the employment, and in such cases,
33 the employer shall be relieved from other liability for
34 recovery of damages or other compensation for such personal
35 injury. For the purposes of this chapter, a personal injury

1 sustained by an employee shall be characterized as either a
2 traumatic injury or a cumulative injury.

3 a. A traumatic injury is an injury to the body, the
4 impairment of health or a disease, not excluded from coverage
5 by this chapter, that comes about not through the natural
6 building up and tearing down of the human body, but because of
7 a traumatic or other hurt or damage to the health or body of
8 an employee.

9 b. A cumulative injury is an injury to the body that is
10 gradual and progressive in nature and does not necessarily
11 result from a sudden and unexpected traumatic event.

12 2. A traumatic injury does not arise out of and in the
13 course of employment for the purposes of this chapter unless
14 the traumatic injury is a natural incident of an employment
15 activity of the employee or a reasonable consequence of a
16 hazard associated with an employment activity of the employee,
17 and would be considered to be more than a slight injury by an
18 average person in the normal nonemployment life of the average
19 person.

20 3. A cumulative injury does not arise out of and in the
21 course of employment for the purposes of this chapter unless
22 all of the following are shown:

23 a. The cumulative injury is caused by, or is a significant
24 aggravation of a preexisting condition caused by, an
25 employment activity that is the single most substantial factor
26 contributing to the cumulative injury.

27 b. The cumulative injury, at the time of its occurrence,
28 would not be expected to occur as the result of the normal
29 aging process absent an employment activity of the employee.

30 c. The employment activity that is alleged to be the
31 single most substantial factor contributing to the cumulative
32 injury is not an activity commonly engaged in by the employee
33 or by an average person in the normal nonemployment life of
34 the employee or average person.

35 Sec. 53. Section 85.3, subsections 2, 3, and 4, Code 2003,

1 are amended by striking the subsections.

2 Sec. 54. NEW SECTION. 85.3A NOTICE TO NONRESIDENT
3 EMPLOYERS.

4 1. Any employer who is a nonresident of this state, for
5 whom services are performed within this state by any employee,
6 is deemed to be doing business in this state by virtue of
7 having such services performed and the employer and employee
8 shall be subject to the jurisdiction of the workers'
9 compensation commissioner and to all of the provisions of this
10 chapter, chapters 85A, 85B, 86, and 87, as to any and all
11 personal injuries sustained by the employee arising out of and
12 in the course of such employment within this state. In
13 addition, every corporation, individual, personal
14 representative, partnership, or association that has the
15 necessary minimum contact with this state shall be subject to
16 the jurisdiction of the workers' compensation commissioner,
17 and the workers' compensation commissioner shall hold such
18 corporation, individual, personal representative, partnership,
19 or association amenable to suit in this state in every case
20 not contrary to the provisions of the Constitution of the
21 United States.

22 2. Service of process or original notice upon a
23 nonresident employer may be performed as provided in section
24 617.3 or as provided in the Iowa rules of civil procedure. In
25 addition, service may be made on any corporation, individual,
26 personal representative, partnership, or association that has
27 the necessary minimum contact with this state as provided in
28 rule of civil procedure 1.305 within or without this state or,
29 if such service cannot be made, in any manner consistent with
30 due process of law prescribed by the workers' compensation
31 commissioner.

32 In addition to those persons authorized to receive personal
33 service as in civil actions as permitted by chapter 17A and
34 this chapter, such employer shall be deemed to have appointed
35 the secretary of state of this state as its lawful attorney

1 upon whom may be served or delivered any and all notices
2 authorized or required by the provisions of this chapter,
3 chapters 85A, 85B, 86, 87, and 17A, and to agree that any and
4 all such services or deliveries of notice on the secretary of
5 state shall be of the same legal force and validity as if
6 personally served upon or delivered to such nonresident
7 employer in this state.

8 This section does not limit or affect the right to serve an
9 original notice upon any corporation, individual, personal
10 representative, partnership, or association within or without
11 this state in any manner otherwise permitted by statute or
12 rule.

13 3. For purposes of this section, a nonresident employer is
14 any employer that is not a resident of Iowa as defined in
15 section 617.3.

16 Sec. 55. Section 85.27, subsection 4, Code 2003, is
17 amended to read as follows:

18 4. For purposes of this section, the employer is obliged
19 to furnish reasonable services and supplies to treat an
20 injured employee, and has the right to choose the care. The
21 treatment must be offered promptly and be reasonably suited to
22 treat the injury without undue inconvenience to the employee.
23 If the employee has reason to be dissatisfied with the care
24 offered, the employee should communicate the basis of such
25 dissatisfaction to the employer, in writing if requested,
26 following which the employer and the employee may agree to
27 alternate care reasonably suited to treat the injury. If the
28 employer and employee cannot agree on such alternate care, the
29 commissioner may, upon application and reasonable proofs of
30 the necessity therefor, allow and order other care. In an
31 emergency, the employee may choose the employee's care at the
32 employer's expense, provided the employer or the employer's
33 agent cannot be reached immediately. An application made
34 under this subsection shall be considered an original
35 proceeding for purposes of commencement and contested case

1 proceedings under section 85.26. The hearing shall be
2 conducted pursuant to chapter 17A no sooner than thirty days
3 from the date that the application is filed. Before a hearing
4 is scheduled, the parties may choose a telephone hearing or an
5 in-person hearing. A request for an in-person hearing shall
6 be approved unless the in-person hearing would be impractical
7 because of the distance between the parties to the hearing.
8 The workers' compensation commissioner shall issue a decision
9 within ten working days of receipt of an application for
10 alternate care made pursuant to a telephone hearing or within
11 fourteen working days of receipt of an application for
12 alternate care made pursuant to an in-person hearing. The
13 employer shall notify an injured employee of the employee's
14 ability to contest the employer's choice of care pursuant to
15 this subsection.

16 Sec. 56. Section 85.34, subsection 2, unnumbered paragraph
17 1, Code 2003, is amended to read as follows:

18 Compensation for permanent partial disability shall begin
19 at the termination of the healing period provided in
20 subsection 1. The compensation shall be in addition to the
21 benefits provided by sections 85.27 and 85.28. The
22 compensation shall be based only upon the extent of the
23 disability related to the injury received and upon the basis
24 of eighty percent per week of the employee's average spendable
25 weekly earnings, but not more than a weekly benefit amount,
26 rounded to the nearest dollar, equal to one hundred eighty-
27 four percent of the statewide average weekly wage paid
28 employees as determined by the department of workforce
29 development under section 96.19, subsection 36, and in effect
30 at the time of the injury. The minimum weekly benefit amount
31 shall be equal to the weekly benefit amount of a person whose
32 gross weekly earnings are thirty-five percent of the statewide
33 average weekly wage. For all cases of permanent partial
34 disability compensation shall be paid as follows:

35 Sec. 57. Section 85.34, Code 2003, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 7. APPORTIONMENT. When an employee
3 suffers successive work-related injuries or illnesses, an
4 employer is not liable for that portion of an employee's
5 disability that is caused by any preexisting injury or illness
6 that is separate and discrete from the injury or illness for
7 which compensation is claimed. Evidence that an employee has
8 received a prior award for payment of benefits or entered into
9 a prior settlement of any claim arising under this chapter or
10 chapter 85A, 85B, or 86 creates a presumption that the
11 employee has suffered a preexisting work-related injury or
12 illness that is separate and discrete from the injury or
13 illness for which benefits are claimed and that the extent of
14 disability caused by that preexisting injury or illness has
15 been determined.

16 Sec. 58. Section 535.3, subsection 1, Code 2003, is
17 amended to read as follows:

18 1. Interest shall be allowed on all money due on judgments
19 and decrees of courts at a rate calculated according to
20 section 668.13, except for interest due pursuant to section
21 85.30 for which the rate shall be ~~ten~~ five percent per year.

22 DIVISION IV

23 OCCUPATIONAL SAFETY

24 Sec. 59. Section 88.16, subsections 1 and 3, Code 2003,
25 are amended to read as follows:

26 1. The commissioner shall conduct directly or by contract,
27 educational programs to provide an adequate supply of
28 qualified personnel to administer this chapter and
29 informational programs on the importance of and proper use of
30 adequate safety and health equipment. In making inspections
31 and investigations under this chapter, the commissioner's
32 representative shall inspect and investigate only those
33 businesses for which the representative received industry-
34 specific training.

35 3. The commissioner shall provide for the establishment

1 and supervision of programs for the education and training of
2 employers and employees in the recognition, avoidance, and
3 prevention of unsafe or unhealthful working conditions in
4 employments covered by this chapter, and consult with and
5 advise employers, employees, and organizations representing
6 employers and employees, as to effective means of preventing
7 occupational injuries and illnesses. The commissioner shall
8 increase training and consultation services prior to
9 implementation of new standards.

10 Sec. 60. NEW SECTION. 88.0A TITLE.

11 This chapter shall be known and may be cited as the
12 "Occupational Safety and Health Inspections and Audit Act".

13 SUBCHAPTER II

14 SAFETY AUDIT PRIVILEGE AND IMMUNITY

15 Sec. 61. NEW SECTION. 88.31 DEFINITIONS.

16 As used in this subchapter, unless the context otherwise
17 requires:

18 1. "Commissioner" means the labor commissioner appointed
19 pursuant to section 91.2 or the commissioner's designee.

20 2. "Inquiring party" means any party appearing before a
21 court or a presiding officer in an administrative proceeding
22 seeking to review or obtain an in camera review of a safety
23 audit report.

24 3. "Privilege" means the protections provided in regard to
25 a safety audit report as provided in this subchapter.

26 4. "Safety audit" means a voluntary evaluation of any
27 factory, plant, establishment, construction site, or other
28 area, workplace, or environment where work is performed by an
29 employee of an employer, of an activity or operation at the
30 business when the activity or operation is regulated under
31 state or federal occupational safety and health laws, rules,
32 or variance conditions, conducted by an employer, an employee
33 of the employer, or an independent contractor retained by the
34 employer, that is designed to identify historical or current
35 noncompliance with state and federal occupational safety and

1 health standards, laws, rules, or variance conditions,
2 discover hazards, and remedy noncompliance or improve
3 compliance with occupational safety and health laws. Once
4 notification is given to the commissioner, a safety audit
5 shall be completed within a reasonable time not to exceed six
6 months unless an extension is approved by the commissioner
7 based on reasonable grounds.

8 5. "Safety audit report" means a document or set of
9 documents generated and developed for the primary purpose and
10 in the course of or as a result of conducting a safety audit.
11 A "safety audit report" includes supporting information that
12 may include, but is not limited to, the report document
13 itself, observations, samples, analytical results, exhibits,
14 findings, opinions, suggestions, recommendations, conclusions,
15 drafts, memoranda, drawings, photographs, computer-generated
16 or electronically recorded information, maps, charts, graphs,
17 surveys, implementation plans, interviews, discussions,
18 correspondence, and communications related to the safety
19 audit. A "safety audit report" may include any of the
20 following components:

21 a. An executive summary prepared by the person conducting
22 the safety audit, which may include the scope of the safety
23 audit, the information gained in the safety audit,
24 conclusions, recommendations, exhibits, and appendices.

25 b. Memoranda and documents analyzing portions or all of
26 the report and discussing implementation issues.

27 c. An implementation plan which addresses correcting past
28 noncompliance, improving current compliance, or preventing
29 future noncompliance.

30 d. Periodic updates documenting progress in completing the
31 implementation plan.

32 Sec. 62. NEW SECTION. 88.32 PRIVILEGE.

33 1. Material included in a safety audit report generated
34 during a safety audit conducted after July 1, 2003, is
35 privileged and confidential and is not discoverable or

1 admissible as evidence in any civil or administrative
2 proceeding, except as otherwise provided in this chapter. The
3 safety audit report shall be labeled "SAFETY AUDIT REPORT:
4 PRIVILEGED DOCUMENT". Failure to label each document within
5 the report does not constitute a waiver of the safety audit
6 privilege or create a presumption that the privilege does or
7 does not apply.

8 2. A person shall not be compelled to testify in regard to
9 or produce a document included in a safety audit report in any
10 of the following circumstances:

11 a. If the testimony or document discloses any component
12 listed in section 88.31, subsection 5, that was made as part
13 of the preparation of a safety audit report and that is
14 addressed in a privileged part of a safety audit report.

15 b. If the person is any of the following:

16 (1) A person who conducted any portion of the safety audit
17 but did not personally observe the physical events of a safety
18 violation.

19 (2) A person to whom the results of the safety audit
20 report are disclosed under section 88.33, subsection 2.

21 (3) A custodian of the safety audit report.

22 3. A person who conducts or participates in the
23 preparation of a safety audit report and who has observed
24 physical events of a safety violation may testify about those
25 events but shall not be compelled to testify about or produce
26 documents related to the preparation of or any privileged part
27 of a safety audit or any component listed in section 88.31,
28 subsection 5.

29 4. An employee of a state agency or other governmental
30 employee shall not request, review, or otherwise use a safety
31 audit report during an agency inspection of a regulated
32 facility or operation, or an activity of a regulated facility
33 or operation.

34 5. A party asserting the privilege under this section has
35 the burden of establishing the applicability of the privilege.

1 6. The privilege provided in this section is in addition
2 to the confidentiality requirements applicable to educational
3 and informational programs under section 88.16.

4 Sec. 63. NEW SECTION. 88.33 WAIVER OF PRIVILEGE --
5 DISCLOSURE.

6 1. The privilege described in section 88.32 shall not
7 apply to the extent that the privilege is expressly waived in
8 writing by the employer who prepared the safety audit report
9 or caused the report to be prepared.

10 2. Disclosure of a safety audit report or any other
11 information generated by a safety audit does not waive the
12 privilege established in section 88.32 if the disclosure meets
13 any of the following criteria:

14 a. The disclosure is made to address or correct a matter
15 raised by the safety audit and the disclosure is made to any
16 of the following:

17 (1) A person employed by the employer, including temporary
18 and contract employees.

19 (2) A legal representative of the employer.

20 (3) An officer or director of the regulated business or a
21 partner of the employer.

22 (4) An independent contractor retained by the employer.

23 b. The disclosure is made under the terms of a
24 confidentiality agreement between any person and the employer
25 of the audited business.

26 3. A party to a confidentiality agreement described in
27 subsection 2, paragraph "b", who violates that agreement is
28 liable for damages caused by the disclosure and for any other
29 penalties stipulated in the confidentiality agreement.

30 4. Information that is disclosed under subsection 2,
31 paragraph "b", is confidential and is not subject to
32 disclosure under chapter 22. A governmental entity,
33 governmental employee, or governmental official who discloses
34 information in violation of this subsection is subject to the
35 penalty provided in section 22.6.

1 5. The protections provided by federal or state law shall
2 be afforded to individuals who disclose information to law
3 enforcement authorities.

4 6. The provisions of this chapter shall not abrogate the
5 protections provided by federal and state law regarding
6 confidentiality and trade secrets.

7 Sec. 64. NEW SECTION. 88.34 REQUIRED DISCLOSURE.

8 1. A court or a presiding officer in an administrative
9 hearing may require disclosure of a portion of a safety audit
10 report in a civil or administrative proceeding if the court or
11 presiding officer affirmatively determines, after an in camera
12 review, that any of the following exists:

13 a. The privilege is asserted for a fraudulent purpose.

14 b. The portion of the safety audit report is not subject
15 to the privilege under section 88.35.

16 c. The portion of the safety audit report shows evidence
17 of noncompliance with a state or federal occupational safety
18 and health standard or other law, rule, or variance condition
19 and appropriate efforts to achieve compliance with the
20 standard or other law, rule, or variance condition were not
21 promptly initiated and pursued with reasonable diligence after
22 discovery of noncompliance.

23 d. The portion of the safety audit report shows clear and
24 convincing evidence of substantial actual personal injury,
25 which information is not otherwise available.

26 e. The portion of the safety audit report shows a clear
27 and present danger to the public health or safety.

28 2. A party seeking disclosure under this section has the
29 burden of proving that subsection 1 applies.

30 3. A decision of a presiding officer in an administrative
31 hearing under subsection 1 may be directly appealed to the
32 district court without disclosure of the safety audit report
33 to any person unless so ordered by the court.

34 4. A determination of a court under this section is
35 subject to interlocutory appeal to an appropriate appellate

1 court.

2 5. If a court finds that a person claiming privilege under
3 this subchapter intentionally claimed the privilege for
4 material not privileged as provided in section 88.35, the
5 person is subject to a fine not to exceed one thousand
6 dollars.

7 6. Privilege provided in this subchapter does not apply if
8 the employer has been found in a civil or administrative
9 proceeding to have committed serious violations in this state
10 that constitute a pattern of continuous or repeated violations
11 of state or federal occupational safety and health laws,
12 administrative rules, or variance conditions, that were due to
13 separate and distinct events giving rise to the violations
14 within the three-year period prior to the date of disclosure.

15 Sec. 65. NEW SECTION. 88.35 MATERIALS NOT PRIVILEGED.

16 1. The privilege described in this subchapter does not
17 apply to any of the following:

18 a. A document, communication, datum, report, or other
19 information the commissioner is required to collect, develop,
20 retain, or report under a state or federal occupational safety
21 and health law, rule, or variance condition.

22 b. Information obtained by observation, sampling, or
23 monitoring by the commissioner or the commissioner's
24 authorized designee.

25 c. Information obtained from a source not involved in the
26 preparation of the safety audit report.

27 2. This section does not limit the right of a person to
28 agree to conduct a safety audit and disclose a safety audit
29 report.

30 Sec. 66. NEW SECTION. 88.36 REVIEW OF PRIVILEGED
31 DOCUMENTS.

32 1. The privileges created in this subchapter shall not
33 apply to criminal investigations or proceedings. A safety
34 audit report, supporting documents, and testimony relating
35 thereto may be obtained by a prosecutor's subpoena pursuant to

1 the rules of criminal procedure. If a safety audit report is
2 obtained, reviewed, or used in a criminal investigation or
3 proceeding, the administrative and civil evidentiary privilege
4 established in this subchapter is not waived or made
5 inapplicable for any purpose other than for the criminal
6 investigation or proceeding.

7 2. Notwithstanding the privilege established in this
8 subchapter, the commissioner may review information in a
9 safety audit report, but such review does not waive or make
10 the administrative and civil evidentiary privilege
11 inapplicable to the report. The commissioner shall not adopt
12 a rule or impose a condition that circumvents the purpose of
13 this subchapter.

14 3. If information is required to be made available to the
15 public by operation of a specific state or federal law, rule,
16 or variance condition, the commissioner shall notify the
17 person claiming the privilege of the potential for public
18 disclosure prior to obtaining such information under
19 subsection 1 or 2.

20 4. If privileged information is disclosed under subsection
21 2 or 3, on the motion of a party, a court or the presiding
22 officer in an administrative hearing shall suppress evidence
23 offered in any civil or administrative proceeding that arises
24 or is derived from review, disclosure, or use of information
25 obtained under this section if the review, disclosure, or use
26 is not authorized under section 88.35. A party having
27 received information under subsection 2 or 3 has the burden of
28 proving that the evidence offered did not arise and was not
29 derived from the review of privileged information.

30 Sec. 67. NEW SECTION. 88.37 VOLUNTARY DISCLOSURE OF
31 SAFETY VIOLATION -- IMMUNITY.

32 1. An employer is eligible for immunity under this section
33 from the time the commissioner receives official notification
34 from the employer of a scheduled safety audit. An employer is
35 immune from any administrative or civil penalty associated

1 with the information disclosed if the employer makes a prompt
2 voluntary disclosure to the commissioner regarding an
3 occupational safety and health violation that is discovered
4 through the safety audit. The employer creates a rebuttable
5 presumption that the disclosure is voluntary by meeting the
6 criteria provided in subsection 2 at the time of disclosure.
7 To rebut the presumption that a disclosure is voluntary, the
8 commissioner or other party has the burden of proving that the
9 disclosure was not voluntary. Immunity is not provided if the
10 violations of state or federal occupational safety and health
11 law, rule, or variance condition are intentional or if the
12 violations of state or federal law, rule, or variance
13 condition resulted in substantial actual injury or imminent
14 and substantial risk of injury to an employee.

15 2. The disclosure of information is voluntary if all of
16 the following circumstances exist:

17 a. The disclosure arises out of a safety audit and relates
18 to privileged information as provided in section 88.32.

19 b. The person making the disclosure uses reasonable
20 efforts to pursue compliance and to correct the noncompliance
21 within a reasonable period of time after completion of the
22 safety audit in accordance with a remediation schedule
23 submitted to and approved by the commissioner. If evidence
24 shows that the noncompliance is due to the failure to obtain a
25 variance, reasonable effort may be demonstrated by the
26 submittal of a complete variance application within a
27 reasonable time. Disclosure of information required to be
28 reported by state or federal law, rule, or variance condition
29 is not considered to be voluntary disclosure and the immunity
30 provisions in this section are not applicable.

31 c. Occupational safety and health violations are
32 identified in a safety audit report and disclosed to the
33 commissioner before there is notice of a citizen suit or a
34 legal complaint by a third party.

35 d. Occupational safety and health violations are

1 identified in a safety audit report and disclosed to the
2 commissioner before the violations are reported by any person
3 not involved in conducting the safety audit or to whom the
4 audit report was disclosed.

5 3. If an employer has not provided the commissioner with
6 notification of a scheduled safety audit prior to performing
7 the audit, a disclosure of information is voluntary if the
8 occupational safety and health violations are identified in a
9 safety audit report and disclosed by certified mail to the
10 commissioner prior to the commissioner's commencement of an
11 investigation.

12 4. If a person is required to make a disclosure relating
13 to a specific issue under a specific variance condition or
14 under an order issued by the commissioner, the disclosure is
15 not voluntary with respect to that issue.

16 5. Except as provided in this section, this section does
17 not impair the authority of the commissioner to require a
18 technical or remedial action or to order injunctive relief.

19 6. Upon application to the commissioner, the time period
20 within which the disclosed violation is corrected under
21 subsection 2 may be extended if it is not practical to correct
22 the noncompliance within the reasonable period of time
23 initially approved by the commissioner. The commissioner
24 shall not unreasonably withhold the grant of an extension. If
25 the commissioner denies an extension, the commissioner shall
26 provide the requesting party with a written explanation of the
27 reasons for the denial. A request for de novo review of the
28 commissioner's decision may be made to the appropriate court.

29 7. Immunity provided under this section from
30 administrative or civil penalties does not apply under any of
31 the following circumstances:

32 a. If an employer has been found in a civil or
33 administrative proceeding to have committed serious violations
34 in this state that constitute a pattern of continuous or
35 repeated violations of occupational safety and health laws,

1 administrative rules, and variance conditions and that were
2 due to separate and distinct events giving rise to the
3 violations within the three-year period prior to the date of
4 disclosure.

5 b. If a violation of an occupational safety and health
6 law, administrative rule, variance condition, settlement
7 agreement, or order on consent, final order, or judicial order
8 results in a substantial economic benefit which gives the
9 violator a clear advantage over its business competitors.

10 8. In cases where the conditions of a voluntary disclosure
11 are not met but a good faith effort was made to voluntarily
12 disclose and resolve a violation detected in a safety audit,
13 the state regulatory authorities shall consider the nature and
14 extent of any good faith effort in deciding the appropriate
15 enforcement response and shall consider reducing any
16 administrative or civil penalties based on mitigating factors
17 showing that one or more of the conditions for voluntary
18 disclosure have been met.

19 9. The immunity provided by this section does not abrogate
20 the responsibility of a person as provided by applicable law
21 to report a violation, correct the violation, conduct
22 necessary remediation, or respond to third-party actions.
23 This chapter shall not be construed to confer immunity from
24 liability in any private civil action.

25 10. Information required by rule to be submitted to the
26 commissioner as part of a disclosure made pursuant to this
27 section is not privileged information.

28 Sec. 68. NEW SECTION. 88.38 OTHER PRIVILEGES NOT
29 AFFECTED.

30 This subchapter shall not limit, waive, or abrogate the
31 scope or nature of any statutory or common-law privilege,
32 including the work product doctrine and the attorney-client
33 privilege.

34 Sec. 69. NEW SECTION. 88.39 SAFETY AUDITOR TRAINING
35 PROGRAM.

1 A training program for, and standards for certification of,
2 safety auditors shall be developed and administered by the
3 commissioner. The program shall provide training on the
4 proper conduct of a safety audit; local, state, and federal
5 environmental ordinances, rules, and laws that apply to
6 businesses in this state; and the safety audit laws in this
7 state. The program shall be made available to small and large
8 business owners and operators, consulting engineers,
9 regulatory personnel, and citizens through the community
10 college system. A fee may be assessed for participation in
11 the program. Upon completion of the training program, program
12 participants may elect to be tested by the commissioner for
13 certification as a safety auditor for the purposes of this
14 subchapter.

15 Sec. 70. NEW SECTION. 88.40 SUMMARY.

16 On or before December 1 of each year, the commissioner
17 shall make available a summary of the number of safety audit
18 notices received, the violations, and the remediation status
19 of the violations reported pursuant to this subchapter during
20 the preceding fiscal year.

21 Sec. 71. NEW SECTION. 88.41 RULEMAKING.

22 The commissioner shall adopt rules pursuant to chapter 17A
23 necessary to administer this subchapter.

24 Sec. 72. NEW SECTION. 88.42 COSTS.

25 The necessary costs incurred by the commissioner under this
26 subchapter shall be funded from appropriations made to the
27 commissioner from the general fund of the state.

28 Sec. 73. CODIFICATION. The Code editor shall codify the
29 provisions of chapter 88, Code 2003, as amended in this Act,
30 as subchapter I of chapter 88 in the Code Supplement 2003.

31 DIVISION V

32 FINANCIAL SERVICES

33 Sec. 74. Section 535.8, subsection 2, paragraph b,
34 unnumbered paragraph 2, Code 2003, is amended to read as
35 follows:

1 The lender shall not charge the borrower for the cost of
2 revenue stamps or real estate commissions which are paid by
3 the seller. Collection of any ~~cost~~ costs other than as
4 expressly permitted by this lettered paragraph is ~~prohibited~~
5 allowed, unless expressly prohibited by other state or federal
6 law.

7 Sec. 75. Section 537.2502, subsections 3 and 6, Code 2003,
8 are amended to read as follows:

9 3. A delinquency charge shall not be collected under
10 subsection 1, paragraph "a", on an installment ~~which that is~~
11 paid in full within ten days after its scheduled or deferred
12 installment due date even though an earlier maturing
13 installment or a delinquency or deferral charge on an earlier
14 installment may not have been paid in full. For purposes of
15 this subsection, payments associated with a precomputed
16 transaction are applied first to current installments and then
17 to delinquent installments.

18 6. A delinquency charge shall not be collected under
19 subsection 4 on a payment ~~which~~ associated with a precomputed
20 transaction that is paid in full on or before its scheduled or
21 deferred due date even though an earlier maturing payment or a
22 delinquency or deferred charge on an earlier payment has not
23 been paid in full. For purposes of this subsection, payments
24 are applied first to amounts due for the current billing cycle
25 and then to delinquent payments.

26 Sec. 76. Section 537.2601, subsection 1, Code 2003, is
27 amended to read as follows:

28 ~~1. Except-as-provided-in-subsection-27-with~~ With respect
29 to a credit transaction other than a consumer credit
30 transaction, the parties may contract for the payment by the
31 debtor of any finance or other charge as permitted by law.
32 ~~Except-with-respect-to-debt-obligations-issued-by-a~~
33 ~~government, governmental agency or instrumentality, in~~
34 ~~calculating any finance charge contracted for, any month may~~
35 ~~be counted as one-twelfth of a year, but a day is to be~~

1 ~~counted-as-one-three-hundred-sixty-fifth-of-a-year-~~

2 Sec. 77. Section 557.7, Code 2003, is amended to read as
3 follows:

4 557.7 CONTINGENT REMAINDERS.

5 A Except as provided in section 558.68A, a contingent
6 remainder shall take effect, notwithstanding any determination
7 of the particular estate, in the same manner in which it would
8 have taken effect if it had been an executory devise or a
9 springing or shifting use, and shall, as well as such
10 limitations, be subject to the rule respecting remoteness
11 known as the rule against perpetuities, ~~exclusive of any other~~
12 ~~supposed-rule-respecting-limitations-to-successive-generations~~
13 ~~or-double-possibilities.~~

14 Sec. 78. NEW SECTION. 558.68A EXCEPTION TO RULE AGAINST
15 PERPETUITIES.

16 1. Notwithstanding section 558.68, a rule of law against
17 perpetuities, a suspension of the power of alienation of the
18 title to property, or a law restricting or limiting the
19 duration of trusts shall not apply with respect to any
20 interest in real or personal property held in trust if the
21 instrument creating the trust specifically states that such
22 rule or the provisions of section 558.68 shall not apply to
23 the trust and if either the trustee of the trust has unlimited
24 power to sell all trust assets, or one or more persons, one of
25 whom may be the trustee, has unlimited power to terminate the
26 entire trust.

27 2. A trust of real or personal property created by an
28 employer as part of a stock bonus plan, pension plan,
29 disability or death benefit plan, or profit-sharing plan, for
30 the benefit of some or all the employer's employees, to which
31 contributions are made by the employer or employees, or both,
32 for the purposes of distributing to the employees or their
33 beneficiaries the earnings or the principal, or both, such
34 trust is not invalid as violating the rule against
35 perpetuities or any other law restricting or limiting the

1 duration of trusts; but the trust may continue for the time
2 that is necessary to accomplish the purposes for which it was
3 created.

4 3. Subsection 1 shall be effective for interests in real
5 or personal property in trust created by an inter vivos or
6 testamentary trust or will executed on or after July 1, 2003,
7 or pursuant to the exercise of a general power of appointment
8 on or after July 1, 2003. For the purposes of this
9 subsection, "general power of appointment" means a power that
10 is exercisable in favor of the individual possessing the
11 power, the person's estate, the person's creditors, or the
12 creditors of the person's estate.

13 DIVISION VI

14 ENVIRONMENTAL PROVISIONS

15 Sec. 79. NEW SECTION. 455A.14 FEES -- USE.

16 Any fee collected by the department pursuant to a provision
17 of the Code of Iowa or the Iowa administrative code shall be
18 used for the purpose for which the fee is collected.

19 Sec. 80. Section 455B.131, Code 2003, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 6A. "Indoor source" means any emission
22 unit or air contaminant source which is not directly vented or
23 directly exhausted to the outside atmosphere. "Indoor source"
24 includes, without limitation, any air exchange through general
25 ventilation, windows, doors, and cracks.

26 Sec. 81. Section 455B.133, subsection 6, Code 2003, is
27 amended to read as follows:

28 6. a. Require, by rules, notice of the construction of
29 any air contaminant source, other than an indoor source, which
30 may cause or contribute to air pollution, and the submission
31 of plans and specifications to the department, or other
32 information deemed necessary, for the installation of air
33 contaminant sources and related control equipment. The rules
34 shall allow the owner or operator of a major stationary source
35 to elect to obtain a conditional permit in lieu of a

1 construction permit. The rules relating to a conditional
2 permit for an electric power generating facility subject to
3 chapter 476A and other major stationary sources shall allow
4 the submission of engineering descriptions, flow diagrams and
5 schematics that quantitatively and qualitatively identify
6 emission streams and alternative control equipment that will
7 provide compliance with emission standards. Such rules shall
8 not specify any particular method to be used to reduce
9 undesirable levels of emissions, nor type, design, or method
10 of installation of any equipment to be used to reduce such
11 levels of emissions, nor the type, design, or method of
12 installation or type of construction of any manufacturing
13 processes or kinds of equipment, nor specify the kind or
14 composition of fuels permitted to be sold, stored, or used
15 unless authorized by subsection 4 of this section.

16 b. The commission may give technical advice pertaining to
17 the construction or installation of the equipment or any other
18 recommendation.

19 c. A notice or construction permit shall not be required
20 pursuant to this section for any indoor source.

21 d. A notice or construction permit shall not be required
22 to be issued pursuant to this section for any emission unit
23 placed into service before the effective date of this Act
24 which would have been an indoor source if placed into service
25 on or after that date.

26 Sec. 82. Section 455B.134, subsection 3, paragraph a, Code
27 2003, is amended to read as follows:

28 a. No An air contaminant source, other than an indoor
29 source, shall not be installed, altered so that it
30 significantly affects emissions, or placed in use unless a
31 construction or conditional permit has been issued for the
32 source. A permit shall not be required to be issued pursuant
33 to this section for any emission unit placed in service before
34 the effective date of this Act which would have been an indoor
35 source if placed into service on or after that date.

1 Sec. 83. Section 455B.134, subsection 3, Code 2003, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. g. The department shall not establish any
4 permit, registration, licensing, preconstruction notification,
5 or recordkeeping requirements for indoor sources. However,
6 this paragraph shall not limit the authority of the department
7 to implement any of the following:

8 (1) The emission limitations adopted by the administrator
9 of the United States environmental protection agency under
10 section 111 or 112 of the federal Clean Air Act.

11 (2) The maximum achievable control technologies required
12 pursuant to Title V of the federal Clean Air Act Amendments of
13 1990.

14 (3) The prevention of significant deterioration
15 regulations adopted by the administrator of the United States
16 environmental protection agency under the federal Clean Air
17 Act, 42 U.S.C. § 74-79.

18 Sec. 84. Section 455B.135, Code 2003, is amended to read
19 as follows:

20 455B.135 LIMIT ON AUTHORITY.

21 ~~Nothing-contained-in-this~~ This division II or chapter 459,
22 subchapter II, shall not be deemed to grant to the department
23 or the director any authority or jurisdiction with respect to
24 air pollution existing solely within residences; or solely
25 within commercial and industrial plants, works, or shops under
26 the jurisdiction of chapters 88 and 91; or indoor sources; or
27 to affect the relations between employers and employees with
28 respect to, or arising out of, any condition of air pollution.

29 Sec. 85. Section 481B.3, Code 2003, is amended to read as
30 follows:

31 481B.3 INVESTIGATIONS -- STATE LIST.

32 1. The director shall conduct investigations on fish,
33 plants, and wildlife in order to develop information relating
34 to population, distribution, habitat needs, limiting factors,
35 and other biological and ecological data to determine

1 management measures necessary for their continued ability to
2 sustain themselves successfully. ~~On-the-basis-of-these~~
3 ~~determinations-and-other-available-scientific-and-commercial~~
4 ~~data,which-may-include-consultation-with-scientists-and~~
5 ~~others-who-may-have-specialized-knowledge,learning,or~~
6 ~~experience,the~~

7 2. The commission shall pursuant to chapter 17A promulgate
8 ~~a-rule~~ adopt rules listing those species of fish, plants, and
9 wildlife which are determined to be endangered or threatened
10 within the state. The state list shall only include fish,
11 plants, and wildlife which are included on the lists provided
12 in section 481B.5, subsections 2 through 4.

13 3. The commission shall review the state list of
14 endangered and threatened species at least every two years and
15 may amend the list.

16 Sec. 86. Section 481B.5, subsection 1, Code 2003, is
17 amended by striking the subsection.

18 DIVISION VII

19 PUBLIC WORKS CONTRACTS

20 Sec. 87. NEW SECTION. 72.6 PUBLIC WORKS PROJECTS --
21 CONTRACTOR QUALIFICATIONS.

22 1. DEFINITIONS. As used in this section, unless the
23 context otherwise provides:

24 a. "Public owner" means a public body including the state
25 and a political subdivision of the state, an officer,
26 official, agency, authority, board, or commission of the state
27 or of a political subdivision of the state, or an institution
28 supported in whole or in part by public funds.

29 b. "Public works" means a building or other construction
30 work which is constructed under the control of a public owner
31 and is paid for in whole or in part with funds of a public
32 owner. "Public works" does not include any work done by or on
33 behalf of a drainage or levee district or any work funded by
34 federal funds where federal procurement policy applicable to
35 the use of the federal funds is inconsistent with the

1 requirements of this section.

2 c. "Public works project" or "project" means the
3 construction, maintenance, or repair of public works.

4 2. QUALIFICATIONS OF BIDDERS. Prior to awarding a
5 contract to perform a public works project pursuant to a
6 competitive bidding procedure, which contract authorizes the
7 expenditure of twenty-five thousand dollars or more in public
8 funds, a public owner shall tabulate all bids received and
9 shall determine who is the lowest responsible bidder by
10 considering, in addition to the amount of the bid, all of and
11 only the following:

12 a. The past experience of the bidder in the performance of
13 similar projects.

14 b. The qualifications of the bidder to perform the type of
15 work required by the contract.

16 c. The bidder's record of reliability and timely
17 completion of past projects.

18 d. Proof of the financial responsibility of the bidder.

19 3. PROHIBITED CRITERIA. In determining who is the lowest
20 responsible bidder for purposes of awarding a contract to
21 perform a public works project, a public owner shall not do
22 any of the following:

23 a. Select a bidder based in whole or in part on a
24 consideration of whether the bidder's employees belong to or
25 are represented by a labor union or a labor organization.

26 b. Require that the bidder selected enter into an
27 agreement that directly or indirectly limits or requires the
28 bidder to recruit, train, or hire employees from a particular
29 source to perform work on the public works project.

30 c. Require that the bidder selected enter into an
31 agreement that directly or indirectly requires the bidder to
32 offer particular types or amounts of health insurance, life
33 insurance, or disability insurance coverage or retirement
34 benefits to employees hired by the bidder to perform work on
35 the public works project.

1 4. BIDDING DOCUMENTS. The criteria described in this
2 section that are required to be considered by the public owner
3 in determining who is the lowest responsible bidder shall be
4 included in any document requesting or inviting bids on public
5 works projects subject to this section.

6 EXPLANATION

7 This bill makes several changes in Iowa law relating to
8 various statutory and regulatory requirements that impact
9 business, employers and employees, property rights, and the
10 environment.

11 DIVISION I -- LIABILITY REFORM.

12 CIVIL RIGHTS ACT. This division defines a person under the
13 Iowa civil rights Act to include individuals who supervise
14 employees and individuals who are coemployees.

15 SUPERSEDEAS BONDS. The division permits the state or any
16 of its political subdivisions to request the district court
17 upon a showing of good cause to stay all proceedings under the
18 order or judgment being appealed and waive the requirement
19 that the state or any of its political subdivisions file a
20 supersedeas bond upon appeal to the Iowa supreme court.

21 The division further provides that if the judgment or order
22 appealed from is for money, an appeal bond shall not exceed
23 any of the following amounts, excluding costs:

24 1. One hundred percent of the amount of the money judgment
25 up to and including \$1 million.

26 2. One million dollars, if the amount of the money
27 judgment is in excess of \$1 million, up to and including \$100
28 million.

29 3. Twenty-five million dollars, if the amount of the money
30 judgment is in excess of \$100 million.

31 PUNITIVE DAMAGES STANDARD ACT. The division establishes
32 the punitive damages standard Act and provides a standard of
33 actual malice for liability for punitive damages, provides for
34 a clear and convincing evidence standard, allows a bifurcated
35 trial on the question of whether the defendant is liable for

1 punitive damages, and generally limits the amount of a
2 punitive damages award to twice the amount of compensatory
3 damages.

4 NONECONOMIC DAMAGE AWARDS ACT. The division establishes
5 the noneconomic damage awards Act and provides that an award
6 for noneconomic damages in a personal injury action shall not
7 exceed \$250,000 or the amount awarded in economic damages,
8 whichever amount is greater. Special findings are required by
9 the trier of fact where liability is assessed in a personal
10 injury or wrongful death action.

11 JOINT AND SEVERAL LIABILITY ACT. The division establishes
12 the joint and several liability Act and requires that in any
13 action brought pursuant to this division, each defendant shall
14 be held liable only for the amount of damages allocated to
15 that defendant in direct proportion to that defendant's
16 percentage of fault. A separate judgment would be issued
17 against each defendant for the actual amount of damages
18 assessed against each defendant. In order to determine the
19 amount of damages to be entered against each defendant, the
20 court shall, with regard to each defendant, multiply the total
21 amount of damages recoverable by the plaintiff by the
22 percentage of each defendant's fault, and that amount shall be
23 the maximum amount of damages recoverable against each
24 defendant. The division further allows the trier of fact to
25 assess damages against any person who contributed to the
26 alleged injury, death, or damage to property, regardless of
27 whether the person was, or could have been, named as a party
28 to the action.

29 PRODUCT LIABILITY ACT. The division establishes the
30 product liability Act and adopts defenses to absolute
31 liability, including but not limited to defenses based upon
32 misuse or alteration, state-of-the-art at time of manufacture,
33 compliance with government standards, inherent characteristics
34 known to the ordinary person, unavoidably unsafe products, and
35 warnings to an appropriate third party. The division further

1 limits the liability of nonmanufacturing sellers and prohibits
2 enterprise liability by requiring the plaintiff to prove that
3 the particular product that caused the plaintiff's harm was
4 produced by the defendant manufacturer. The division contains
5 provisions for admission of expert testimony and evidence of
6 subsequent remedial measures.

7 PREJUDGMENT INTEREST. The division limits recovery of
8 prejudgment interest in any pending or proposed action where
9 an offer to confess judgment is made, but is not accepted, and
10 a subsequent trial results in a judgment that is less than the
11 amount in the offer to confess judgment. In such a case, no
12 prejudgment interest is to be calculated or is recoverable
13 after the date of the offer to confess judgment.

14 DIVISION II -- UNEMPLOYMENT COMPENSATION. This division
15 provides for the amount of an eligible individual's maximum
16 weekly benefit to be equal to a specific dollar amount
17 calculated by varying fractions of the statewide average
18 weekly wage reported in calendar year 2001, depending on the
19 number of the individual's dependents. A conforming amendment
20 is made to Code section 85.60.

21 The division eliminates the provision for additional wage
22 credits in cases of plant closings.

23 The division provides for additional requirements for an
24 individual to be considered able and available to work to
25 preclude individuals from being eligible for benefits who are
26 not able or available to work full-time, who change the
27 individual's residence to a locality where opportunities to
28 work are less favorable, and to encourage individuals to seek
29 work by requiring individuals to keep a record of the
30 individual's work search and to seek work during periods of
31 the individual's customary nonseasonal work periods. The
32 division provides that an individual's weekly benefit amount
33 shall be reduced by one-sixth for each day an individual is
34 unavailable for work and that if the individual is unavailable
35 for more than four days in one week, the individual shall be

1 considered unavailable for the entire week.

2 The division requires an individual to qualify for benefits
3 to have been paid wages for insured work during the
4 individual's base period for at least 20 weeks in addition to
5 existing requirements and if the individual draws benefits in
6 any benefit year, the individual must be paid wages at least
7 10 times the individual's weekly benefit amount in that year
8 or in a subsequent year to be eligible for benefits in the
9 subsequent benefit year.

10 The division requires an individual to wait one week after
11 applying for benefits before the individual will be eligible
12 for benefits.

13 An individual is disqualified for any week of unemployment
14 due to a strike or lockout at the individual's last place of
15 employment.

16 The division provides that taxable wages may equal a
17 specific amount of \$19,200 (unless the federal taxable wage
18 base is higher), rather than an amount varying by year
19 calculated by multiplying the statewide average weekly wage by
20 66.66 percent, multiplied by 52. The amount of \$19,200
21 represents 66.66 percent of the statewide average weekly wage
22 for 2001 (\$551.29), multiplied by 52 and rounded to the next
23 highest multiple of \$100.

24 DIVISION III -- WORKERS' COMPENSATION. This division makes
25 several changes to workers' compensation law.

26 Code section 85.3, subsection 1, is amended to provide that
27 for the purposes of Code chapters 85, 85A, and 85B, a personal
28 injury sustained by an employee shall be characterized as
29 either a traumatic injury or a cumulative injury. A traumatic
30 injury is defined to mean an injury to the body, the
31 impairment of health, or a disease not excluded from coverage
32 that comes about not through the natural building up and
33 tearing down of the human body, but because of a traumatic or
34 other hurt or damage to the health or body of an employee. A
35 cumulative injury is defined to mean an injury to the body

1 that is gradual and progressive in nature and does not
2 necessarily result from a sudden and unexpected traumatic
3 event.

4 The bill provides that a traumatic injury does not arise
5 out of and in the course of employment for workers'
6 compensation purposes unless the traumatic injury is a natural
7 incident of an employment activity of the employee or a
8 reasonable consequence of a hazard associated with an
9 employment activity of the employee, and is a traumatic injury
10 that would be considered to be more than slight by an average
11 person in the normal nonemployment life of the average person.

12 The bill provides that a cumulative injury does not arise
13 out of and in the course of employment for workers'
14 compensation purposes unless the cumulative injury is caused
15 by, or is a significant aggravation of a preexisting condition
16 caused by, an employment activity that is the single most
17 substantial factor contributing to the cumulative injury; the
18 cumulative injury, at the time of its occurrence, would not be
19 expected to occur as the result of the normal aging process of
20 the employee, absent an employment activity of the employee;
21 and the employment activity that is alleged to be the single
22 most substantial factor contributing to the cumulative injury
23 is not an activity commonly engaged in by the employee or by
24 an average person in the normal nonemployment life of the
25 employee or average person.

26 Subsections 2, 3, and 4, relating to nonresident employers,
27 are stricken from Code section 85.3 and moved without change
28 to a new Code section 85.3A.

29 Code section 85.27, subsection 4, is amended to provide
30 that a hearing on an application for alternate medical care
31 made under this subsection cannot be held any sooner than 30
32 days from the date the application is filed.

33 Code section 85.34, subsection 2, is amended to provide
34 that an employer's liability to pay workers' compensation
35 benefits for permanent partial disability is reduced to the

1 extent that a portion of the resulting disability is not
2 related to the work-related injury received for which benefits
3 are presently claimed.

4 Code section 85.34 is amended by adding a new subsection
5 providing that when an employee suffers successive work-
6 related injuries or illnesses, an employer is not liable to
7 pay workers' compensation benefits for that portion of an
8 employee's disability that is caused by any preexisting injury
9 or illness that is separate and discrete from the injury or
10 illness for which workers' compensation is claimed. The new
11 subsection also provides that evidence that an employee has
12 received a prior award for payment of benefits or entered into
13 a prior settlement of any claim arising under the workers'
14 compensation laws of this state creates a presumption that the
15 employee has suffered a preexisting work-related injury or
16 illness that is separate and discrete from the injury or
17 illness for which workers' compensation is claimed and that
18 the extent of the employee's disability caused by that
19 preexisting injury or illness has been determined.

20 Code section 535.3, subsection 1, is amended to provide
21 that interest on weekly workers' compensation payments is paid
22 at the rate of 5 percent instead of 10 percent per year.

23 DIVISION IV -- OCCUPATIONAL SAFETY. This division relates
24 to the occupational safety and health provisions of the Code
25 by requiring that the labor commissioner's representatives
26 have industry-specific training for the businesses they
27 inspect, that the commissioner increase training and
28 consultation services prior to the implementation of new
29 standards, and establishing provisions granting privilege and
30 immunity protections to an employer that conducts a safety
31 audit that meets certain criteria.

32 The division provides that a safety audit is a voluntary
33 evaluation of a business or of an activity or operation at the
34 business when the activity or operation is regulated under
35 state or federal occupational safety and health laws, rules,

1 or variance conditions. The audit is conducted by an
2 employer, an employee, or an independent contractor, and is
3 designed to identify historical or current noncompliance with
4 occupational safety and health laws, rules, ordinances, or
5 variance conditions; discover hazards; and remedy
6 noncompliance or improve compliance with occupational safety
7 and health laws. Once notification is given to the
8 commissioner, the audit must be completed within a reasonable
9 time not to exceed six months.

10 Material included in a safety audit report and generated
11 during the audit is privileged and confidential and is not
12 discoverable or admissible as evidence in any civil or
13 administrative proceeding. The bill provides circumstances
14 under which certain persons shall not be compelled to testify
15 about or produce a document related to a safety audit. The
16 privilege may be waived and circumstances are provided under
17 which information is not privileged.

18 Disclosure of a portion of an audit may be required by a
19 court or presiding officer in a civil or administrative
20 proceeding. The division provides an appeal process. If a
21 court finds that a person claiming privilege intentionally
22 claimed the privilege for material that is not entitled to be
23 privileged, the person is subject to a fine not to exceed
24 \$1,000. Privilege does not apply if an employer has been
25 found in a civil or administrative proceeding to have
26 committed serious violations in this state that constitute a
27 pattern of continuous or repeated violations.

28 Privilege for safety audits does not apply to criminal
29 proceedings; however, if an audit report is obtained,
30 reviewed, or used in a criminal investigation or proceeding,
31 or reviewed by the commissioner, the administrative and civil
32 evidentiary privilege is not waived or made inapplicable.

33 The division provides that an employer is eligible for
34 immunity from the time the commissioner receives official
35 notification from the employer of a scheduled safety audit.

1 An employer is immune from any administrative or civil penalty
2 associated with the information disclosed if the employer
3 makes a prompt voluntary disclosure to the commissioner
4 regarding the violation discovered. The division provides for
5 the circumstances under which disclosure is considered
6 voluntary, and provides that immunity does not apply if the
7 violations are intentional or if the violations resulted in
8 substantial actual injury or imminent and substantial risk of
9 injury to an employee. Immunity also does not apply if an
10 employer is found to have committed serious violations that
11 constitute a pattern of continuous or repeated violations or
12 if a violation results in a substantial economic benefit which
13 gives the violator a clear advantage over its business
14 competitors.

15 The division requires the commissioner to develop and
16 administer a training program and standards for certification
17 of safety auditors, and to annually make available a summary
18 of the number of safety audit notices received, the
19 violations, and the remediation status of the violations
20 reported during the preceding fiscal year.

21 DIVISION V -- FINANCIAL SERVICES. Division V modifies
22 several Code provisions related to financial transactions.

23 The amendment to Code section 535.8 provides that a lender
24 may collect other costs in connection with a loan unless
25 expressly prohibited by other state or federal law. Charges
26 expressly permitted by the paragraph include such items as
27 credit reports, appraisal fees, attorney's opinions,
28 abstracting fees, recorder's fees, inspection fees, mortgage
29 guarantee insurance charges, surveying charges, termite
30 inspection fees, and the cost of a title guaranty issued by
31 the Iowa finance authority. Charges which are expressly not
32 permitted include the cost of revenue stamps or real estate
33 commissions which are paid by the seller.

34 The amendment to Code section 537.2502 addresses late fee
35 calculations on consumer credit accounts. The amendment to

1 Code section 537.2502 provides that, with respect to a
2 consumer credit transaction that is not pursuant to an open-
3 end credit arrangement and other than a consumer lease or
4 consumer rental agreement, a delinquency charge on a current
5 paid-in-full installment associated with a precomputed
6 transaction shall not be collected, even if a delinquency on
7 an earlier installment exists. By limiting the provision's
8 applicability to precomputed transactions, the bill allows a
9 delinquency charge to be collected on an installment not part
10 of a precomputed transaction, where the current installment
11 due is paid in full within 10 days after its scheduled or
12 deferred installment due date but an earlier maturing
13 installment or a delinquency or deferral charge on an earlier
14 installment has not been paid in full. The bill, with respect
15 to such transactions, eliminates the requirement that payments
16 be applied first to a current installment and then to
17 delinquent amounts.

18 The amendment likewise provides that with respect to
19 delinquency charges related to an open-end credit transaction,
20 a delinquency charge could be collected on a payment
21 associated with a transaction other than a precomputed
22 transaction where the current payment due is paid in full on
23 or before its scheduled or deferred due date but where an
24 earlier maturing payment or a delinquency or deferred charge
25 on an earlier payment has not been paid in full. The bill,
26 with respect to such transactions, eliminates the requirement
27 that payments be applied first to a current payment and then
28 to delinquent amounts.

29 The amendment to Code section 537.2601 provides that for
30 transactions other than consumer credit transactions, the
31 parties may contract for any charge permitted by law.

32 Division V also creates an exception to the statutory rule
33 against perpetuities codified in Code section 558.68, which is
34 a legal rule related to invalidating interests in property
35 that are intended to belong to a person at some point in the

1 future, but for which the actual determination of ownership
2 cannot or will not be accomplished within a specified period
3 of time. The purpose of the rule is to keep property from
4 being frozen in trust beyond a certain period of years.

5 Division V allows a creator of a trust to suspend,
6 explicitly in the trust document, the rule from applying to a
7 particular trust, but only if the trustee has the power to
8 sell all trust assets or if one or more people, including the
9 trustee, has the power to terminate the trust.

10 Division V further allows suspension of the rule in
11 situations where an employer creates a stock bonus plan,
12 pension plan, disability or death benefit plan, or profit-
13 sharing plan, in trust, for the benefit of the employer's
14 employees, for the purpose of distributing to the employees or
15 their beneficiaries earnings or principal or both.

16 This exception applies to all interests in real or personal
17 property by testamentary or inter vivos trust or will, or to
18 the exercise of a general power of appointment, executed on or
19 created after July 1, 2003.

20 DIVISION VI -- ENVIRONMENTAL PROVISIONS. This division of
21 the bill relates to environmental matters by providing for the
22 use of fees collected by the department of natural resources,
23 applying certain air quality requirements to indoor emission
24 units or air contaminant sources, and relating to endangered
25 species lists of the state.

26 The division provides that any fee collected by the
27 department pursuant to a provision of the Code of Iowa or the
28 Iowa administrative code shall be used for the purpose for
29 which the fee is collected.

30 The division defines "indoor source" as any emission unit
31 or air contaminant source which is not directly vented or
32 directly exhausted to the outside atmosphere which includes,
33 without limitation, any air exchange through general
34 ventilation, windows, doors, and cracks.

35 The division provides that indoor sources and indoor

1 sources that would have qualified as an indoor source and were
2 placed into service prior to the effective date of the bill
3 are not subject to certain notices of construction and other
4 related requirements which are required for other air
5 contaminant sources.

6 The division provides that the department of natural
7 resources shall not establish any permit, registration,
8 licensing, preconstruction notification, or recordkeeping
9 requirements for indoor sources. The division provides that
10 the prohibition shall not limit the department's authority to
11 implement the emission limitations adopted by the United
12 States environmental protection agency under the federal Clean
13 Air Act, the maximum achievable control technologies required
14 pursuant to the federal Clean Air Act Amendments of 1990, and
15 the prevention of significant deterioration regulations
16 adopted by the United States environmental protection agency
17 under the federal Clean Air Act.

18 The division also amends Code section 481B.3 relating to
19 the endangered and threatened fish, plants, and wildlife lists
20 of the state. The division provides that the state lists of
21 endangered and threatened fish, plants, and wildlife shall
22 only include fish, plants, and wildlife listed on the federal
23 lists of endangered and threatened fish, plants, and wildlife.

24 DIVISION VII -- PUBLIC WORKS CONTRACTS. This division of
25 the bill relates to establishing contractor qualifications on
26 public works projects. The division applies to the award of a
27 contract by a public owner to perform a public works project
28 pursuant to a competitive bidding procedure, when the contract
29 authorizes the expenditure of \$25,000 or more in public funds.

30 The division provides that a public owner shall tabulate
31 all bids received and determine who is the lowest responsible
32 bidder by only considering, in addition to the amount of the
33 bid, the past experience of the bidder in performing similar
34 projects; the qualifications of the bidder to perform the type
35 of work required by the contract; the bidder's record of

1 reliability and timely completion of past projects; and proof
2 of the financial responsibility of the bidder.

3 The division also provides that a public owner, in making a
4 determination of who is the lowest responsible bidder for
5 purposes of awarding a contract to perform a public works
6 project, is prohibited from considering whether a bidder's
7 employees belong to a labor union or organization; requiring
8 that the bidder selected must enter into an agreement that
9 directly or indirectly requires the bidder to recruit, train,
10 or hire employees from a particular source to perform work on
11 the public works project; or requiring that the bidder
12 selected must enter into an agreement that directly or
13 indirectly requires the bidder to offer particular types or
14 amounts of health insurance, life insurance, or disability
15 insurance coverage or retirement benefits to employees hired
16 by the bidder to perform work on the public works project.

17 In addition, the division requires that all bidding
18 documents requesting or inviting bids on a public works
19 project indicate what criteria shall be considered in awarding
20 a contract to the lowest responsible bidder.

21 The division defines "public owner" as a public body
22 including the state, a political subdivision of the state, an
23 officer, agency, authority, board, or commission of the state
24 or of a political subdivision, or an institution supported in
25 whole or in part by public funds.

26 The division defines "public works" as a building or other
27 construction work which is constructed under the control of a
28 public owner and is paid for in whole or in part with funds of
29 a public owner. The division provides that "public works"
30 does not include any work done by or on behalf of a drainage
31 or levee district or any work funded by federal funds where
32 federal procurement policy applicable to the use of the
33 federal funds is inconsistent with the requirements of this
34 division.

35 The division defines "public works project" or "project" as

1 the construction, maintenance, or repair of public works.

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March 1, 2004

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The Honorable Jeff Lamberti
President of the Senate
State Capitol Building
LOCAL

Dear President Lamberti:

I hereby transmit **Senate File 344**, An Act relating to a monetary limit on an appeal bond and providing an applicability date.

I am unable to approve Senate File 344 in its entirety. This bill maintains the bonding requirement at the level of 110 percent and establishes a capped bonding amount at \$25 million. The current supersedeas bond requirement protects the interests of non-appealing parties by requiring that a party who seeks to stay the execution of a judgment must demonstrate that all costs, interest lost, and damages resulting from an appeal can be recovered. Senate File 344 undermines that level of protection afforded to judgment holders under Iowa law by creating a capped bonding system. The \$25 million cap would provide judgment holders with grossly inadequate security coverage during the pendency of their appeal. Moreover, the cap would disturb the current balance of rights between judgment holders and those seeking to stay the execution of a judgment on appeal.

Nevertheless, the State of Iowa should also look after the interests of those seeking to stay the execution of a judgment on appeal. The State could adequately protect their interests by simply providing a district court judge the discretion to stay a judgment pending appeal upon a showing that a bond amount less than 110 percent is reasonable or that extraordinary circumstances exist. In considering whether a stay is necessary, the district court should weigh the interests of both parties, including the financial hardship on both the appellant and the appellee. However, in this showing, the appellant should bear a heavy burden.

A balance of rights between judgment holders and those seeking to stay the execution of a judgment on appeal is essential to our judicial system. Senate File 344 and its \$25 million cap fall well short of that stability and serves as a detriment to judgment holders. In the alternative, instituting a judicial review process will preserve the current sense of balance while allowing discretion for unique circumstances.

For the above reasons, I respectfully disapprove **Senate File 344** in accordance with Article 3, Section 16 of the Constitution of the State of Iowa. In this effort, I am willing to work with our legislature in passing a bill that will establish this proper balance.

Sincerely,

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House

Sec. 2. APPLICABILITY. This Act applies to cases filed on or after July 1, 2004.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

SENATE FILE 344

AN ACT

RELATING TO A MONETARY LIMIT ON AN APPEAL BOND AND PROVIDING
AN APPLICABILITY DATE.

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

Section 1. Section 625A.9, subsection 2, Code Supplement 2003, is amended to read as follows:

2. If the judgment or order appealed from is for money, such bond shall not exceed one hundred ten percent of the amount of the money judgment or twenty-five million dollars, whichever is less.

I hereby certify that this bill originated in the Senate and is known as Senate File 344, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor