

Statutory Modifications to Iowa Tort Law 1982 through 2016

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INTRODUCTION

It has been said that the “law lives”. This would be true of not only case law, but statutory law. In 1975-76, I had the opportunity to begin my tenure as legislative counsel for the Iowa State Bar Association (ISBA). It was at that time that Iowa, like many states, was involved in a huge debate regarding medical malpractice. There were statutory modifications made in the mid 70’s which are not covered in the attached summary.

In 1982 the Iowa Supreme Court, in a historic decision (Goetzman), adopted a negligence concept known as “pure comparative fault” and moved away from the long history of “contributory negligence”. The following year in 1983 the Iowa Supreme Court rendered another historic decision (Butler) that held the state could be liable for negligent design in construction of highways. These two Supreme Court decisions set off a continuing waterfall of legislation modifying the Iowa tort law. In each of the past decades there has been some type of liability crisis that has caused the legislature to examine additional modifications. Waves of tort reform have dealt with medical malpractice, product liability, Y2K hysteria, and other crises, almost all of which have been during a downturn in the stock market resulting in reduced investment income for insurance companies.

The attached summary highlights 70 different pieces of legislation covering more than 120 separate revisions to the Iowa tort law. There can be no question that the Iowa legislature has not been responsive to the pressures of tort reformers and business interests which have continually pushed for what has been historically referred to as tort reform and currently referred to as “regulatory reform”. The attached modifications unquestionably are one of the major reasons why the U.S. Chamber of Commerce State Liability Systems Ranking Study has consistently ranked Iowa in the top four states as doing the best job of creating a fair and reasonable litigation environment. The Iowa State Bar Association and its various sections have played an important part in the review of the legislation and the fine-tuning of the legislation while continuing to oppose radical proposals such as caps on recoveries and elimination of the contingency fee.

The attached summary has also, no doubt, played an important role in the reduced number of civil filings and civil jury trials in the state of Iowa, which has been on a downward trend for several years. In particular, there has been an ever-expanding list of immunity provisions which has unquestionably reduced litigation. Over 50 different immunities have been added to the Iowa Code since 1983.

We hope this summary is of assistance to you in understanding how responsive the Iowa legislature has been to various calls to moderate the Iowa law.

Introduction done by Jim Carney

SIGNIFICANT EVENTS AND LEGISLATION RE: IOWA TORT LAW

1982 - Iowa Code - Contributory negligence in effect. If Plaintiff contributes to the cause of his accident, the Plaintiff's recovery is completely barred-no recovery.

1982 - Goetzman - Decision by Supreme Court adopts pure comparative fault. Example: If Plaintiff is 95% at fault and Defendant is only 5% at fault, the Plaintiff can still recover 5% of total damages awarded by jury.

1983 - Butler Court decision stating that State could be liable for negligent design and construction of highways.

1983 - Senate File 531 (an appropriations bill) is passed by the Legislature eliminating cases against state and governmental subdivisions based upon negligent design or construction of highways in response to Butler decision. This bill also applies to all other public facilities. This bill eliminates liability for the state and governmental subdivisions in these types of cases.

1984 - House File 2487 passes the Legislature providing for:

1. Statutory modified comparative fault in Iowa. If the Plaintiff is 51% or more at fault, the Plaintiff is denied any recovery. The Plaintiff can recover only if the Defendant is 50% or more at fault.
2. Modification of joint and several liability. Joint and several liability shall not apply to Defendants who are found to bear less than 50% of the total fault.
3. Comparative fault applies to all cases, including product liability - strict tort liability. Previously comparative fault was applied only in regular negligence cases (automobile accidents) and not to product liability.
4. Eliminates liability for negligent highway sign cases against state and governmental subdivisions. There is no longer liability if the state or governmental subdivision fails to erect a highway sign.
5. Eliminates removal of snow and ice cases against state and governmental subdivisions. State and governmental subdivisions can no longer be liable if they fail to remove snow or ice from highways.

1986 - Senate File 2265 is passed by the Legislature providing:

1. Revision of dram shop liability law. The law is modified to a standard of liability requiring that the bar owner "knew or should have known" he was serving someone who was intoxicated.
2. "Peer review" confidentiality clarified in the medical malpractice area.
3. Tougher expert witness standards in medical malpractice cases adopted.
4. Speeds up the requirement of disclosing expert witnesses. Disclosure of experts in professional liability cases is required by statute. Plaintiffs must designate within 180 days, and Defendant within 90 days of Plaintiff's disclosure.
5. More defenses are provided to manufacturers by the statutory adoption of the state of the art defense in product liability cases.
6. The law of punitive damages is restricted by modifying when punitive damage awards can be awarded.
7. Non-use of safety belt becomes admissible. This allows for the possibility of fault being attributed to a Plaintiff in an automobile accident for the failure to use a seatbelt, which was previously prohibited by statute.

8. Installment judgments allowed by petition to court.
9. Frivolous lawsuit and verification of pleading language is adopted.
10. Municipal employees exempted from claims for punitive damages. This means that a municipal employee cannot be liable for punitive damages.
11. Non-manufacturers-retailers immune from product liability suits. This provides an absolute defense to all retailers and merchants in a product liability suit brought against them if they have not modified the product involved in an accident.

1987 - Senate File 471 is passed by the Legislature providing:

1. No liability for a person performing services for the state government, agency, or subdivision of state government who does not receive compensation. Volunteers cannot be held liable.
2. Provides for the elimination of personal liability of officers and directors of virtually all types of corporation and cooperatives doing business in the state of Iowa, to include nonprofit organizations.
3. A director, officer, employee, or volunteer of a nonprofit organization is not liable for their actions.
4. A volunteer for a municipality, agency of subdivision of a municipality is not liable.

1987 - Senate File 482 is passed by the Legislature providing:

1. Interest on judgments section of the code is modified from 10 percent to floating rate consistent with federal law.
2. Installment judgment provisions upon entry of a judgment is expanded.
3. Subrogation law is modified.
4. Collateral source rule is modified in comparative fault cases to permit court to receive evidence of previous payment for necessary medical care, rehabilitation services, and custodial care.
5. Punitive damages law is once again revised to clarify standard of proof.

1989 - House File 529 is passed by the Legislature providing for an exemption from civil and criminal liability arising from the condition of donated food in certain instances, to include restaurants, food establishments, food service establishments, schools, manufacturers of foodstuffs and other persons who donate food in good faith.

The Legislature enacts Chapter 626B, entitled the “Uniform Foreign Money Judgments Recognition Act”.

House File 585 is passed by the legislature establishing a State Emergency Medical Board authorizing the establishment for a surrogate decision maker mechanism for medical care decisions for patients incapable of making their own decisions and grants immunity from liability to those persons.

1990 - House File 2404 provides for farm mediation. Before making a claim in a civil proceeding the mediator must certify that the party making a claim participated in mediation.

Senate File 2296 provides for the Iowa Council for Dispute Resolution to assist and promote the statewide use of non-judicial dispute resolution.

House File 2552 redefines third party liability, property damages and bodily injury under § 455G of the Iowa Comprehensive Petroleum Underground Storage Tank Fund. The bill specifically provides that third party liability does not include any claim, suit or action for

personal injury in that a personal injury is not a compensible third party liability under the code chapter.

- 1991** - Senate File 441 provides that the State Tort Claims Act immunity from liability is extended to activities of the Insurance Commissioner concerning the oversight and administration of workers' compensation self insurance.

Senate File 327 is passed requiring the terms of all settlements, payments, or other dispositions of claims for damages against governmental bodies insured by third party liability insurers, must be filed with that body as public records.

House File 501 establishes Durable Power of Attorney authorizing health care decisions to be made on behalf of individuals and provides that health care providers are immune from civil liability when relying upon health care decisions made by the attorney in fact designated in the Durable Power of Attorney.

1992 -

- 1993** - House File 645 excludes from civil liability persons who do not exhibit managerial control over a property on which a hazardous environmental condition is located.

House File 200 establishes a volunteer physician program, under which volunteer physicians who register with the Department of Human Services are considered an employee of the State of liability purposes.

- 1994** - House File 2286 increases the Small Claims jurisdictional limit from \$2,000 to \$3,000 (effective July 1, 1994), and provides for another increase to \$4,000 (on July 1, 1995).

- 1995** - Senate File 179 adds advance nurse practitioners, licensed practical nurses to EMS personnel who are exempt from liability if they are following physicians orders at the scene of an emergency. Also adds advance nurse practitioners and registered nurses to the list of persons who are not subject to civil liability solely for not obtaining consent before providing emergency aid.

House File 504 redefines "owner" for purposes of determining liability for damages caused by the driver of a motor vehicle, to mean a person to whom a certificate of title is issued or assigned, or a person to whom the vehicle is leased, thus exempting the lessor from civil liability.

House File 519 provides that if a person receives all required permits for animal feeding operations, a rebuttable presumption arises that the operation is not a public or private nuisance and the operation does not unreasonably and continuously interfere with another person's comfortable use and enjoyment of their life or property. The rebuttable presumption may be overcome by clear and convincing evidence that (1) the operation in reasonably and continuously interferes with another person's comfortable use and enjoyment of their life or property, and (2) the injury or damage is proximately caused by the negligent operation of the feeding operation. Provides that a losing plaintiff must pay costs and expenses incurred in the defense of an action, if the Court determines the claim is frivolous.

- 1996** - House File 2061 is amended by adding the following new paragraph to Section 147.1, subsection 5:

f. "A health care entity, including but not limited to a group medical practice, that provides health care services and follows a formal peer review process for the purpose of furthering quality health care."

- 1997** - House File 132 provides domesticated animal professionals, domesticated animal activity sponsors, owners of domesticated animals, and persons exhibiting domesticated animals

immunity from civil liability for damages, injury, or death suffered by a participant or spectator, which results from inherent risks of domesticated animal activity.

House File 370 makes specific provisions for work comp to professional athletes limiting exposure. This was known as the “Barnstormer’s bill”.

House File 514 provides that notwithstanding Chapter 321A, a person shall not drive a motor vehicle registered in the state on the highways unless financial liability coverage is in effect for the motor vehicle or unless they have provided for proof of financial liability.

House File 693 has passed, which makes the following revisions to tort law:

1. Provides that interest on all judgments, except judgments for child support accrues at the treasury bill rate, plus 2%.
2. Provides a 15 year statute of repose for death or injury caused by product defects.
3. Shortens the statute of limitations for minors who are injured by acts of medical malpractice to require children who are injured while under the age of 8, to commence an action no later than their 10th birthday. Children injured after age 8, must bring an action within two (2) years of the date of injury.
4. Makes substantial changes relating to the provision of medical records, including allowing defense counsel to meet directly with a Plaintiff’s treating physician or medical provider. Also provides immunity from civil liability to medical providers who respond in good faith to requests for records.
5. Requires the Court to adjust future damages to reflect present value.
6. Allows a Plaintiff’s percentage of contributory fault to apply to their spouse’s loss of consortium claim, overruling *Swenan v. Abel*.
7. Allows joint and several liability between Defendants only for economic damages, and not for non-economic damages.

Senate File 280 provides immunity from civil liability to employers who provide work related information about a former or current employee to a prospective employer.

1998 - House File 2211 amends the State Tort Claims Act regarding persons who supervise inmates under the terms of the Chapter 28E Agreement, and provides that the State’s duty to indemnify and hold harmless an employee does not apply where an employee fails to cooperate in the investigation or defense of a claim. Also provides that a county shall not be liable for medical treatment for injuries incurred by a person before the person is transferred to the custody of the sheriff.

House File 2336 provides that a perpetrator of a crime assumes the risk of and is liable for any loss, injury or death which results from or arises out of the perpetrator’s course of criminal conduct. Specifies that a crime victim is not liable for any damages caused by acts of the victim in defending or attempting to defend against the crime if the victim used reasonable force when committing the acts.

House File 2340 expands the volunteer health care provider program to include dentists and obstetrical and gynecological medical providers.

Senate File 2082 provides that persons who tamper with anhydrous ammonia equipment have no cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or a person who lawfully sells the anhydrous ammonia for damages arising out of the tampering.

Senate File 2277 grants immunity from liability to municipalities for any claim based upon or arising out of a claim of negligent design or specification or negligent construction or

reconstruction of a public facility designed for purposes of skateboarding or inline skating. Also grants immunity for claims based upon or arising out of an act or omission of an officer or employee of the municipality when the person who is skateboarding or inline skating knew or reasonably should have known that the activity created a substantial risk of injury to the person, and the person was voluntarily in the place of risk.

1999 - House File 164 allows the award of appellate attorney's fees to any party that successfully establishes a violation of the open meetings law, Iowa Code Chapter 21.

House File 387 adopts a new section, 622.10A, that provides that with respect to communications involving tax advice between a taxpayer and a federally authorized tax practitioner, the same protections of confidentiality which apply to a communication between a taxpayer and an attorney also apply to that communication to the extent that the communication would be considered a privileged communication if it were between a taxpayer and an attorney. Makes the confidentiality privilege applicable to non-criminal tax matters before the Iowa Dept. of Revenue & Finance and non-criminal tax proceedings in federal or state court brought by or against the State of Iowa. Provides definitions and excludes from the confidentiality privileged communications in connection with a promotion of participation in a tax shelter.

Senate File 405 grants tort immunity to financial institutions and public utilities for year 2000 problems, by limiting liability to actual damages, providing an affirmative defense of compliance with regulatory requirements, and a reasonable efforts defense. Requires the plaintiff to prove by clear and convincing evidence that the defendant knew or should have known that its acts or omissions would cause harm to the plaintiff in the specific facts and circumstances of the case. Requires apportionment of damages pursuant to chapter 668.

VETOED.

2000 – Litigation

House File 2473 (Civil and Criminal Immunity for School Employees) grants immunity from civil or criminal liability to employees of a school district, an accredited non-public school, or an area education agency who participate in good faith and acts reasonably in making a report or investigation of threats of violence or other inappropriate inactivity against a school employee or student in a school building, on school grounds or at a school-sponsored function.

House File 2525 (Limitations on Non-Economic Damages) adds a new Code section, 613.20, to generally prohibit, in an action to recover damages arising out of the operation or use of a motor vehicle, a person from recovering non-economic losses including pain and suffering, if the injured person was the operator of a motor vehicle, a passenger in a motor vehicle, or a pedestrian, and the person's injuries were proximately caused by the person's commission of any felony or immediate flight therefrom, and the injured person was convicted of the felony. Provides that the section does not apply if the injured person is found to have no fault in the accident.

Senate File 2313 –(ATVs and Snowmobiles) provides that the owner of all-terrain vehicles or snowmobiles is liable for any injury or damage occasioned by the negligent operation of the ATV or snowmobile, only if the owner was the operator of the ATV at the time the injury occurred or if the operator had the owner's consent. Various effective dates.

2001 – Senate File 355 creates Iowa Code Chapter 232B, the Newborn Safe Haven Act. Allows a parent to voluntarily release custody of a child who is 14 days old or younger to a hospital or other health care facility, or authorize another person to relinquish physical custody on the parent's behalf. Grants immunity to: the individual who receives the child and the

owner of the healthcare facility; a person who helps the parent surrender the child; the parent from provisions regarding the abandonment of a child.

House File 590 provides for the deeming of consent by individuals for AIDS testing, or testing for other contagious or infectious diseases, if a care provider giving assistance to the individual suffers a significant exposure. Grants immunity from civil or criminal liability to a hospital, health care provider, or other participating person for a good faith failure to comply with the notification provision or failure to perform the test authorized under this act.

House File 301 requires rural water districts or rural water associations to establish a rural fire protection program. Provides that a rural water district or association is immune from liability for a claim against the district or association for failure to provide or maintain fire hydrants, facilities, or an adequate supply of water or water pressure for fire protection purposes if the purpose of the hydrant, facility, or water used is not for fire protection. Requires the Legislative Council to provide for a review of the liability exemption no later than July 1, 2006, to assess its effect on the provision of fire protection in areas served by the rural water district or association.

2002 – Senate File 2155 provides for the development and use of out-of-hospital DNR orders. Provides immunity for persons acting in compliance in entering, executing, or otherwise participating in an order.

Senate File 2195 amends provisions of the Uniform Anatomical Gift Act. Contains provisions regarding release of patient information and immunity from civil or criminal liability.

Senate File 2279 makes changes to various provisions in the Iowa Code related to insurance. Adds a new section to Code Chapter 508E, relating to viatical settlement contracts, which provides immunity from liability for any person acting without malice, fraudulent intent, or bad faith who files a report or furnishes information to certain persons concerning alleged acts in violation of the chapter or administrative rules.

House File 2547 adds chiropractors, dental hygienists, and dental assistants to the list of health care providers eligible to participate in the Dept. of Public Health's Volunteer Health Care Provider Program and for which immunity from civil liability applies.

2003 – HF 502 amends Iowa Code Section 321.69 relating to damage disclosure statements required for transfer of ownership of motor vehicles. This Code Section provides that a person, authorized vehicle recycler licensed under Chapter 321H, or motor vehicle dealer licensed under Chapter 322 are not liable to a subsequent owner of a vehicle because a prior owner or lessee 1) gave a false or inaccurate damage disclosure statement; or 2) failed to disclose that the vehicle had previously been damaged and repaired, or had been titled on a salvage or rebuilt certificate of title unless the person, recycler, or dealer knew or reasonably should have known that the prior owner or lessee gave a false statement or failed to disclose. HF 502 extends this liability limitation to subsequent drivers and passengers in addition to subsequent owners.

HF 557 extends civil liability immunity under the volunteer health care provider program to free health care clinics and to additional health care providers (licensed psychologists, social workers, mental health counselors, and pharmacists).

HF 584 provides an exemption from liability regarding a municipality's negligent design, or negligent construction or reconstruction, of a public facility designed for purposes of bicycling, unicycling, scootering, river rafting, canoeing, or kayaking that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards, or design theories in existence at the time of construction

or reconstruction. Provides an exemption from liability for municipalities relating to claims based upon acts or omissions of an officer or employee of the municipality by a person engaged in bicycling, unicycling, scootering, river rafting, canoeing, or kayaking on public property when the person knew or reasonably should have known that these activities created a substantial risk of injury and the person was acting voluntarily. Provides that prior owners of land on which an all-terrain vehicle recreational riding area is established, maintained, or operated owe no duty of care to keep the land safe for entry or use by persons operating an all-terrain vehicle, or to issue warning of a dangerous condition on the premises.

HF 692 included the following changes in the State's tort law:

PUNITIVE DAMAGES – When seeking punitive damages, a plaintiff must prove by a preponderance of clear and convincing evidence that the defendant's conduct constituted actual malice.

CIVIL CONSPIRACY – Eliminates the civil conspiracy cause of action against a manufacturer or seller unless such a 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.

SUPERSEDEAS BONDS – Authorizes the District Court, upon motion for good cause, to stay all proceedings under the judgment or order being appealed and permits the State or any political subdivision to appeal the judgment to the Iowa Supreme Court without the filing of a supersedeas bond. Amends Iowa Code Section 625A.9 to provide that in the case of an appeal from a money judgment or order, the bond shall not exceed 110% of the amount of the money judgment.

The Legislature Passed HF 692 on 6/4/03 during the Special Session, and the Governor signed the bill with item vetoes. The "punitive damages" and "civil conspiracy" changes were item vetoed out of the bill, and the "supersedeas bond" changes were signed into law.

2004 - HF 2170 provides that an assembler, designer, supplier of specifications, distributor, manufacturer, or seller shall not be subject to liability for failure-to-warn claims in product liability actions for product risks and risk-avoidance measures obvious to or generally known by foreseeable product users. The bill further provides that when there is a question as to whether the risk or risk-avoidance measure was obvious or generally known, the issue shall be decided by the trier of fact.

HF 2170 also provides that in any action against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in packaging, warning, or labeling of a product, a product bearing or accompanied by a reasonable and visible warning or instruction that is reasonably safe for use if the warning or instruction is followed shall not be deemed defective or unreasonably dangerous on the basis of failure to warn or instruct. When there is a question as to whether the warning or instruction is reasonable and visible, the issue shall be decided by the trier of fact.

HF 2243 allows the negligence or other fault of the customer, owner, or person possessing or using a liquefied petroleum gas system relating to installation, modification, maintenance, or repair of the system to be admissible evidence if the conduct was a cause in fact of the accident or condition leading to the injuries or damages.

HF 2396 limits recovery of prejudgment interest in any pending or proposed action where an offer to confess judgment is made, but is not accepted, and a subsequent trial results in a

judgment that is less than the amount in the offer to confess judgment. In such a case, no prejudgment interest is to be calculated or is recoverable after the date of the offer to confess judgment. **Vetoed.**

HF 2397 amends Code Section 657.1, relating to the definition of nuisance. Provides that an electric utility may assert a defense of comparative fault in an action to abate a nuisance against the utility if the electric utility has complied with engineering and safety standards and if the electric utility has secured all required permits and approvals.

HF 2440 creates the “Noneconomic Damage Awards Against Health Care Providers Act”. Provides that in any action for noneconomic damages for injury or death against a health care provider, whether based in tort, contract, or otherwise, arising out of an act or omission in connection with the provision of health care services, the injured plaintiff shall be entitled to recover noneconomic damages not to exceed \$250,000, except upon a finding of actual malice on the part of the defendant. Defines a “health care provider” as a physician, an advanced registered nurse practitioner, a hospital, and a health care facility as defined in Code Section 135C.1. **Vetoed.**

SF 2177 requires school districts and accredited nonpublic schools to allow a student to possess and self-administer asthma medication if the student’s parent or guardian submits written authorization and provides a written statement from the student’s physician containing the following: (1) name and purpose of the medication; (2) prescribed dosage; and (3) times at which or special circumstances under which the medication is to be administered.

Also, the student’s parent or guardian must be notified in writing and must sign a statement acknowledging that the school district or nonpublic school and its employees are not liable, except for gross negligence, as a result of any injury arising from self-administration of medication. Provides that a school district or nonpublic school and its employees acting reasonably and in good faith shall incur no liability for any improper use of medication or for supervising, monitoring, or interfering with a student’s self-administration of medication.

SF 2230 provides that a person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies certain ownership-related requirements, is not liable to a third party for any third-party liability arising from such contamination.

Also provides that a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance is not liable to a third party for any third-party liability arising by reason of such contamination, provided that the person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party, and the person is not a potentially responsible party or affiliated with any potentially responsible party by reason of certain relationships.

Also requires a person that holds indicia of title to property as identified in this bill or a person that has acquired property as identified in this bill to provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination; planning or preparing a remedial plan for any abatement of the contamination; and for any required remediation.

States that the legislation does not affect the legal responsibility to the State to conduct response actions regarding cleanup of hazardous substances. **Vetoed.**

SF 2306 amends Code Section 625A.9 to provide that if a civil judgment or order appealed from in a civil action is for money, an appeal bond may not exceed 110% of the amount of the money judgment unless the court makes specific findings justifying exceeding such an amount. In doing so, the court must consider certain criteria. Notwithstanding this provision, the

legislation further provides that in no case shall an appeal bond exceed \$100 million, regardless of the value of the money judgment. However, the limit shall not apply in cases where the court finds that the defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment. The legislation takes effect upon enactment and applies to cases pending and filed on or after the effective date.

2006 - HF 2546 provides limited immunity from premises liability to private landowners who allow bow hunting of deer on their property for the purpose of urban deer control, pursuant to a municipal ordinance. Limited immunity from premises liability is currently available to private landowners who allow public use of their land without charge for recreational purposes such as hunting, trapping, horseback riding, fishing, swimming, and similar activities. The bill provides that such a landowner does not owe a duty of care to keep the premises safe for entry or use by such deer hunters, or to give warnings of dangerous conditions, uses, structures, or activities on the premises to such deer hunters. The bill also provides that the deer hunters do not have the status of invitees or licensees. The landowner's liability is not limited for a malicious failure to warn of danger or for injuries that occur when the landowner charges the hunter to go on the land. The bill does not create a duty of care or ground of liability for injury to persons or property. It does not relieve a deer hunter from any obligation to exercise care in the use of the land and in the deer hunter's activities, or from the legal consequences of the hunter's failure to employ such care.

SF 2318 provides that the emergency medical care requirements for training and certification of and exemptions from liability for emergency medical care providers do not apply to a registered member of the national ski patrol system, an industrial safety officer, a lifeguard, or a person employed or volunteering in a similar capacity when the person provides on-site emergency medical care at a facility solely to the patrons or employees of that facility, provided that the person: 1) provides emergency medical care only within the scope of the person's training and certification, and 2) provided the person does not claim to be a certified emergency medical care provider. The bill also provides that the emergency medical care provisions do not apply to the national ski patrol system or any similar system in which the system provides on-site emergency medical care at a facility solely to the patrons or employees of that facility provided that: 1) the system does not provide transportation to a hospital or other medical facility, and 2) the system does not use any term to indicate or imply authorization to transport patients without having obtained proper authorization to transport patients under the subchapter.

HF 2716 provides that in any civil action for professional negligence, personal injury, or wrongful death, or in any arbitration proceeding relating to such a civil action against: 1) a person in a profession represented by the examining boards listed in Code section 272C.1 and any other licensed profession in this state; 2) a licensed hospital; or 3) a licensed health care facility, any statement, affirmation, gesture, or conduct expressing sorrow, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that was made by the person to the plaintiff, relative of the plaintiff, or decision maker for the plaintiff that relates to the discomfort, pain, suffering, injury, or death of the plaintiff as a result of an alleged breach of the standard of care is inadmissible as evidence. Any response by the plaintiff, relative of the plaintiff, or decision maker for the plaintiff is similarly inadmissible as evidence. The legislation creates the "Iowa Health Care Collaborative" and authorizes the Collaborative to collect information and make morbidity and error reports. New Code Section 505.27 requires insurers providing medical malpractice insurance coverage to Iowa health care providers to file annually with the Insurance Commissioner a report of all medical malpractice insurance claims, both open and closed claims filed during the reporting period, against any Iowa insureds during the preceding calendar year. The Insurance Commissioner is required to make an aggregate report of the information, without including information that could identify the insurer

2007 - SF 509 Revised Uniform Anatomical Gift Act. Revises the Uniform Anatomical Gift Act, Code Chapter 142C. Section 142C.11(1) provides immunity from liability in any civil action, criminal prosecution, or administrative proceeding for persons who comply with this chapter in good faith or with the applicable anatomical gift law of another state, or who attempts in good faith to comply. Section 142C.11(2) provides that an individual who makes an anatomical gift pursuant to Code Chapter 142C and the individual's estate are not liable for any injury or damages that may result from the making or the use of the anatomical gift, if the gift is made in good faith.

SF 593 Court Procedures Bill/Peace Officer Liability. Amends Code section 664A.6 (Mandatory Arrest for Violation of No-Contact Order") to provide that a peace officer shall not be held civilly or criminally liable for acting pursuant to this section if the peace officer acts in good faith and on reasonable grounds, and the peace officer's acts do not constitute a willful or wanton disregard for the rights or safety of another.

2008 - SF 505 Civil Liability & Automated External Defibrillator. Lists persons or entities, while acting reasonably and in good faith, who render emergency care or assistance relating to the preparation for and response to a sudden cardiac arrest emergency who are not liable for civil damages for acts or omissions arising out of the use of an automated external defibrillator, whether occurring at the place of an emergency or accident, while persons are in transit, or while persons are at or being moved to or from an emergency shelter.

HF 2581 Donation of Food to Department of Natural Resources or County Conservation Boards- Liability Iowa Code Section 672.1, Subsection 2, gives immunity from criminal or civil liability to persons who, in good faith, donate food to a charitable or nonprofit organization for free distribution to the needy if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. HF 2581 extends the same liability protection to persons who donate food to the Department of Natural Resources or a county conservation board for use in a free interpretive educational program. The immunity provided by this subsection does not extend to a donor if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

SF 2428 Collection of Delinquent Debt Owed the State and Political Subdivisions. Provides that a claimant agency or licensees under Code Chapter 99D (pari-mutuel wagering) and Code Chapter 99F (gambling boats, structures, and racetracks), acting in good faith, shall not be liable for actions taken to comply with the Act.

2009 - SF 207 Iowa Finance Authority- Immunity for Board Members. Among other provisions, SF 207 provides that members of the authority, or persons acting on behalf of the authority while acting within the scope of their agency or employment, are not subject to personal liability resulting from carrying out the powers and duties in Code Chapter 16.

SF 280 Disaster Emergency Assistance Immunity Amends Code Section 613.17 concerning immunity for emergency assistance in an accident. Provides that, during a disaster or in the period of time immediately following a disaster for which the Governor has issued a proclamation of disaster emergency pursuant to Code Section 29C.6, a person who in good faith renders emergency care or assistance without compensation is not be liable for any civil damages for acts or omissions occurring during the rendering of the emergency assistance at the place of the disaster emergency or while the person is in transit to or from the emergency or while the person is being moved to or from an emergency shelter unless such acts or omissions constitute recklessness or willful and wanton misconduct.

SF 377 Prescription Drug Donation Repository Program/ Immunity Provisions. Provides that in addition to pharmacies and medical facilities that participate in the prescription drug donation repository (Code Chapter 135M), the Department of Public Health may also receive prescription drugs or supplies directly from the prescription drug donation repository contractor and may distribute the prescription drugs and supplies through persons licensed to dispense to eligible individuals pursuant to the program. The Department may receive and distribute such prescription drugs and supplies during or in preparation for a proclaimed state of disaster emergency or a public health disaster. SF 377 provides immunity from civil and criminal liability for the Department, or the Department's employees, agents or volunteers acting reasonably and in good faith under the program. The bill also exempts the Department and its employees, agents, or volunteers from disciplinary action related to the person's acts or omissions with regard to the donation, acceptance, distribution, or dispensing of a donated prescription drug.

2011 - SF 123 Civil Liability Immunity For Board of Educational Examiners' Members/Employees. Provides that a person shall not be civilly liable for their acts, omissions, or decisions as a member, employee, or agent of the Board of Educational Examiners if such actions are reasonable and in good faith. Provides that a person shall not be civilly liable, as long as they do not act with malice, for filing a report or complaint with the board or disclosing to the board various forms of information. Provides that a person shall not be dismissed from employment or discriminated against by an employer for their involvement with the board. Provides that an employer who violates the terms of the legislation shall be liable to the aggrieved person for actual and punitive damages plus reasonable attorney fees.

SF 531 Motor Fuels- Retail Dealers' Limitation on Liability. Division II of SF 531 provides that a retail dealer regulated under Code Chapter 214A is not liable for damages caused to a motor by the use of an incompatible motor fuel dispensed at the retail dealer's retail motor fuel site if the following conditions are met: (1) the motor fuel complies with legal specifications, (2) the retail dealer, including an employee or agent of the retail dealer, did not select the incompatible motor fuel, and (3) the dispensing pump is correctly labeled.

2012 – No Tort Legislation this year.

2013 - HF 649 Landholder Liability for Public Recreational Use of Private Lands & Waters. HF 649 responds to the recent Iowa Supreme Court decision in *Sallee v. Stewart*, (No. 11-0892) (Iowa 2013). Amends Code Chapter 461C, "Public Use of Private Lands and Waters", to apply Chapter 461C to "holders" of land (including tenants and others in control), not just landowners. Amends the definitions of "land", "recreational purpose", and "urban deer control" and includes immunity from liability for landholders with respect to specified activities. HF 649 expands the types of private land and waters that are included in such limitations of liability and provides that such land does not have to be open to the general public to be subject to the protections of Code Chapter 461C. Also defines "land" to include private land within a municipality used for urban deer control. Defines activities that constitute a "recreational purpose" to include educational activities and provides that "recreational purpose" includes a person's activity in accompanying another person who is engaged in a recreational purpose. "Recreational purpose" and "urban deer control" are not limited to active engagement in such activities, but also include entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activities. HF 649 also provides that a holder of land "does not owe a duty of care to others solely because the holder is guiding, directing, supervising, or participating in any recreational purpose or urban deer control undertaken by others on the holder's land".

2014 -- HF 2397 Liability Protection for Volunteers on State Lands. Requires the Department of Natural Resources to establish a state lands volunteer program to authorize nonprofit organizations to provide volunteer services for the benefit of state lands. Provides that nonprofit organizations, and individuals providing services on behalf of the nonprofit organizations, authorized to provide volunteer services for no compensation shall be afforded the liability protections of a state volunteer under the state tort claims Act. Signed by the Governor 3/26/14. Effective 7/1/14.

SF 2255 Iowa Tort Claims Act & Architects and Engineers. Designates registered architects and licensed professional engineers as employees of the state for specified disaster-related activities under the Iowa Tort Claims Act contained in Code Chapter 669. Provides that registered architects and licensed professional engineers shall be considered employees of the state when voluntarily and without compensation they provide initial structural or building systems inspection services for the purposes of determining human occupancy at the scene of a disaster. To be considered an employee of the state, the architect or engineer must act at the request and under the direction of the Commissioner of Public Safety and in coordination with the local emergency management commission. "Compensation" does not include reimbursement for expenses. Signed by the Governor 3/26/14. Effective 7/1/14.

HF 398 Insurance Producer Duties. Deems that an insurance producer has no duty to provide advice unless the producer claims to be a counselor or consultant and receives additional compensation. States that an insurance producer owes duties only to the policy owner, a person who has executed written instruments to become a policyholder, a person in privity of contract with the producer and the principal in an agency relationship with the producer. Defines policy owner as a person who is the legal owner or otherwise has legal title through a valid assignment properly recorded but not a person with only beneficial interest in the policy. Notwithstanding the holdings in *Pitts v. Farm Bureau Life Ins Co*, 818 NW 2d 91 (Iowa 2012) and *St. Malachy Roman Catholic Congregation v. Ingram*, 841 NW 2d 2 (Iowa 2013). The House PASSED the bill 51-44; the Senate PASSED the bill 26-21. Signed by the Governor 5/23/14.

2015 --HF 496--Military Victim Advocate Privilege. With the exception of certain circumstances, HF 496 provides that a military victim advocate is privileged from examination and is not required to give evidence in civil or criminal proceedings relating to confidential communications between a victim and the military victim advocate provided that the victim advocate has completed a military victim advocate course. For purposes of this legislation, "victim" is defined as "a person who consults a military victim advocate for the purpose of securing advice, advocacy, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual crime committed against the person". Signed by the Governor 4/8/15. Effective 7/1/15.

HF 570--Municipal Tort Liability Exemption. Provides that the current municipal tort liability exemption for claims related to the negligent design, specification, construction, or reconstruction of a public facility designed for specific recreational activities be extended to public facilities designed for any recreational activity. Extends the municipal tort liability exemption from injuries a person suffers while participating in one of the recreational activities enumerated in the current statute to injuries a person suffers while participating in any recreational activity, provided that the injury results from the normal and expected risks inherent in the recreational activity. Signed by the Governor 4/1/15. Effective 7/1/15.

SF 426--Privileged Communications Between a Health Care Provider/Health Facility and Patient Following an Adverse Health Care Incident. Allows a health care provider, or a health care provider jointly with a health facility, to engage in an open, confidential discussion with a patient related to an adverse health care incident. Defines "adverse health care incident" as an

objective and definable outcome of patient care that results in the death or serious physical injury of a patient. Defines “health care provider” as a licensed physician, licensed physician assistant, licensed podiatrist, or a licensed advanced registered nurse practitioner. Defines “patient” as a person who receives medical care from a health care provider, or if the person is a minor, deceased, or incapacitated, the person’s legal representative. Defines “health facility” as an institutional health facility as defined in Code section 135.61, licensed hospice, home health agency, certified assisted living program, clinic, or community health center, and includes any corporation, professional corporation, partnership, limited liability company, limited liability partnership, or other entity comprised of such facilities.

If an adverse health care incident occurs, the bill allows a health care provider, or a health care provider jointly with a health facility, to offer to engage in an open discussion with the patient. The notice of an offer to engage in an open discussion must be sent to the patient within 180 days after the date on which the health care provider knew, or through the use of diligence should have known, of the adverse health care incident. If the patient agrees to proceed with an open discussion, the health care provider or health facility may investigate the adverse health care incident, disclose the results to the patient, and discuss steps the health care provider or health facility will take to prevent similar adverse health care incidents. The health care provider or health facility may also communicate to the patient that either the health care provider or health facility has determined that an offer of compensation is not warranted or that an offer of compensation is warranted. An offer of compensation may be conditioned upon the patient executing a release of future liability as to the adverse health care incident. All communications made under the Code Chapter are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release, and are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Provides that a payment made under the Code Chapter is not a written claim or demand for payment, a claim that must be submitted to a licensing board under Code Section 272C.9, or a medical malpractice insurance claim that must be reported to the Commissioner of Insurance under Code Section 505.27. Signed by the Governor 4/14/15. Effective 7/1/15.

SF 462--Maintenance/Administration of Epinephrine in Schools and Other Facilities. Permits the school district Boards of Directors and authorities in charge of an accredited nonpublic school to maintain in a secure location at each school a supply of epinephrine auto-injectors for use as provided in the bill. Permits a licensed health care professional to prescribe epinephrine auto-injectors in the name of a school district or accredited nonpublic school to be maintained for use. Allows personnel authorized to administer epinephrine to provide or administer an epinephrine auto-injector from a school’s supply to a student or other individual if such personnel reasonably and in good faith believe the student or other individual is having an anaphylactic reaction. Provides immunity from legal liability for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector for the following persons, provided they have acted reasonably and in good faith: 1) Any personnel authorized to administer epinephrine who provide, administer, or assist in the administration of an epinephrine auto-injector to a student or other individual present at the school who such personnel believe to be having an anaphylactic reaction; 2) A school district or accredited nonpublic school employing the personnel; 3) The school district Board of Directors or authorities in charge of the accredited nonpublic school; 4) The prescriber of the epinephrine auto-injector. SF 462 additionally permits a food establishment, carnival, recreational camp, youth sports facility, or a sports area to maintain a supply of epinephrine auto-injectors at locations where members of the public may be present, with the same duties, powers, and immunities. Permits a student with a written statement from a licensed health care professional on file to possess and use an epinephrine auto-injector while in school, at school-sponsored activities, under the supervision of school personnel, and before or after normal school activities, such as while in before-school or after-school care on school-operated property.

Requires a school district or nonpublic school to notify a student's parent or guardian before withdrawing the privilege to use an epinephrine auto-injector. Signed by the Governor 4/24/15. Effective 7/1/15.

2016 SF 2218--Administration of Emergency Drugs._Adds a new section to Iowa Code Section 135.190, which permits emergency medical service programs, law enforcement, registered nurses, and the fire department to obtain and maintain a supply of opioid antagonists. It further permits first responders and other individuals in a position to assist, to possess these opioid antagonists for the purposes of administering them to an overdose victim provided that the individual assisting has a good faith belief that the individual is experiencing an opioid-related overdose. It further directs the department of public health to implement and administer the bill including standards and procedures for prescription, distribution, storage, and replacement as well as administration of opioid antagonists and further directs that the department of public safety implement training procedures for first responders in the administration of opioid antagonists. The bill also provides immunity for those individuals who assist with administration of opioid antagonists, stating that an individual in a position to assist who has acted reasonably and in good faith shall not be liable for any injury arising from his or her administration or assistance with administration of the opioid antagonists. Signed on 4/6/16. Effective Date 7/1/16.

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