

Senate Study Bill 3135 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON FRAISE)

A BILL FOR

1 An Act relating to civil law and practice including certain
2 insurance and liability provisions and privacy rights.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 515.134A Policy information — duty
2 to provide.

3 1. Upon the written request of a claimant or a claimant's
4 representative, an insurer that is providing or may provide
5 liability insurance coverage of the claimant's claim or a
6 portion of that claim under a policy of insurance, shall,
7 within thirty days, provide a written statement, made by
8 an authorized person, stating the limits of any liability
9 insurance coverage. The statement shall include the limits of
10 liability insurance coverage with respect to each policy of
11 insurance issued by that insurer, including excess or umbrella
12 insurance, under which such coverage is being provided or may
13 be provided.

14 2. Information provided to a claimant or a claimant's
15 representative pursuant to this section shall be amended within
16 fourteen days of the discovery that the information provided
17 is incorrect.

18 Sec. 2. Section 516A.2, Code 2011, is amended to read as
19 follows:

20 **516A.2 Construction — minimum coverage — stacking step-down**
21 **provisions.**

22 1. a. ~~Except with respect to a policy containing~~
23 ~~both underinsured motor vehicle coverage and uninsured or~~
24 ~~hit-and-run motor vehicle coverage, nothing~~ Nothing contained
25 in this chapter shall be construed as requiring forms of
26 coverage provided pursuant ~~hereto~~ to this chapter, whether
27 alone or in combination with similar coverage afforded under
28 other automobile liability or motor vehicle liability policies,
29 to afford limits in excess of those that would be afforded had
30 the insured thereunder been involved in an accident with a
31 motorist who was insured under a policy of liability insurance
32 with the minimum limits for bodily injury or death prescribed
33 in ~~subsection 11 of section 321A.1,~~ subsection 11. Such
34 forms of coverage may include terms, exclusions, limitations,
35 conditions, and offsets which are designed to avoid duplication

1 ~~of insurance or other benefits~~ duplicate payment of damages.

2 b. To the extent that *Hernandez v. Farmers Insurance Company*,
3 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking
4 of uninsured or underinsured coverages in contravention of
5 specific contract or policy language, the general assembly
6 declares such decision abrogated and declares that the
7 enforcement of the antistacking provisions contained in a motor
8 vehicle insurance policy does not frustrate the protection
9 given to an insured under section 516A.1.

10 2. Pursuant to chapter 17A, the commissioner of insurance
11 shall, by January 1, 1992, adopt rules to assure the
12 availability, within the state, of motor vehicle insurance
13 policies, riders, endorsements, or other similar forms of
14 coverage, the terms of which shall provide for the stacking of
15 uninsured and underinsured coverages with any similar coverage
16 which may be available to an insured.

17 3. It is the intent of the general assembly that when more
18 than one motor vehicle insurance policy is purchased by or on
19 behalf of an injured insured and which provides uninsured,
20 underinsured, or hit-and-run motor vehicle coverage to an
21 insured injured in an accident, the injured insured is entitled
22 to recover up to an amount equal to the highest single limit
23 for uninsured, underinsured, or hit-and-run motor vehicle
24 coverage under any one of the above described motor vehicle
25 insurance policies insuring the injured person which amount
26 shall be paid by the insurers according to any priority of
27 coverage provisions contained in the policies insuring the
28 injured person.

29 4. A policy to which this chapter applies shall not include
30 exclusions or step-down provisions that eliminate or reduce
31 uninsured or underinsured coverage for a person who would
32 otherwise be covered under the policy for the reason that
33 the person is injured by, or while occupying a vehicle being
34 operated by, another person insured under the policy.

35 Sec. 3. NEW SECTION. 602.1212A Judges for medical

1 **malpractice cases.**

2 1. The supreme court shall designate at least one district
3 judge in each judicial district in the state who shall be
4 subject to assignment by the chief justice to preside as
5 necessary in this state in a medical malpractice action.
6 Designations shall be made on the basis of qualifications and
7 experience, and shall be for the purpose of developing a pool
8 of district judges who will have the knowledge and experience
9 needed to preside in medical malpractice actions.

10 2. Only the district judge assigned by the chief justice
11 shall preside in the particular medical malpractice action.

12 3. For purposes of this section, "*medical malpractice*
13 *action*" means an action founded on injuries to a person or
14 wrongful death against any physician and surgeon, osteopathic
15 physician and surgeon, dentist, podiatric physician,
16 optometrist, pharmacist, chiropractor, physician assistant, or
17 nurse, licensed under chapter 147, or a hospital licensed under
18 chapter 135B, arising out of patient care.

19 **Sec. 4. NEW SECTION. 624.39 Continuance — medical**
20 **malpractice actions.**

21 A motion for a continuance in a medical malpractice action,
22 as defined in section 602.1212A, shall be granted only upon
23 consent of the parties and only in extraordinary circumstances.

24 **Sec. 5.** Section 633.3, subsection 30, Code Supplement 2011,
25 is amended to read as follows:

26 30. *Personal representative* — includes executor and
27 administrator. However, for purposes of obtaining a decedent's
28 medical records or asserting a decedent's rights under the
29 federal Health Insurance Portability and Accountability Act of
30 1996, Pub. L. No. 104-191, the personal representative is the
31 first of the following persons who exist when the request for
32 medical records or assertion of rights is made:

33 a. The executor or administrator.

34 b. The decedent's spouse.

35 c. The decedent's adult child.

1 d. The decedent's adult sibling.

2 Sec. 6. Section 668.11, Code 2011, is amended to read as
3 follows:

4 **668.11 Disclosure of expert witnesses in liability cases**
5 **involving licensed professionals.**

6 1. A party in a professional liability case brought against
7 a licensed professional pursuant to this chapter who intends
8 to call an expert witness of their own selection, shall
9 certify to the court and all other parties the expert's name,
10 qualifications, and the purpose for calling the expert, and
11 the element of the cause of action about which the expert will
12 testify within the following time period:

13 a. The plaintiff within one hundred eighty days of the
14 defendant's answer unless the court for good cause not ex parte
15 extends the time of disclosure.

16 b. The defendant within ninety days of plaintiff's
17 certification.

18 2. If a party fails to disclose an expert pursuant to
19 subsection 1 or does not make ~~the~~ an expert available for
20 discovery, the expert shall be prohibited from testifying in
21 the action unless leave for the expert's testimony is given by
22 the court for good cause shown.

23 3. A party shall disclose at least one but not more than two
24 experts for each element of the cause of action about which an
25 expert or experts will be called to testify.

26 ~~3.~~ 4. This section does not apply to court appointed
27 experts or to rebuttal experts called with the approval of the
28 court.

29

EXPLANATION

30 LIABILITY INSURANCE POLICY INFORMATION. This bill requires
31 insurers to provide certain information about insurance
32 policies that are providing or may provide liability insurance
33 coverage to a claimant, upon the request of the claimant or
34 the claimant's representative, and to update the information
35 provided upon the discovery that it is not correct.

1 AUTOMOBILE INSURANCE COVERAGE — LIABILITY. Code section
2 516A.2(1) relating to uninsured and underinsured and
3 hit-and-run motor vehicle coverage, is amended to provide that
4 such coverage may include provisions that are designed to
5 avoid duplicate payment of damages. Code section 516A.2 is
6 amended to prohibit exclusions or step-down provisions in motor
7 vehicle insurance policies that eliminate or reduce uninsured
8 or underinsured and hit-and-run coverage for a person who would
9 otherwise be covered under the policy because the person is
10 injured by, or while in a vehicle being operated by, another
11 person insured under the policy.

12 MEDICAL MALPRACTICE ACTIONS — JUDGES — MOTION FOR
13 CONTINUANCE. The bill provides that the supreme court
14 shall designate at least one district judge in each judicial
15 district in the state who shall be subject to assignment
16 by the chief justice to preside as necessary in a medical
17 malpractice action. Designations shall be made on the
18 basis of qualifications and experience, and shall be for the
19 purpose of developing a pool of district judges who will have
20 the knowledge and experience needed to preside in medical
21 malpractice actions. Only the district judge assigned shall
22 preside in the particular medical malpractice action.

23 The bill provides that a motion for a continuance in a
24 medical malpractice action shall be granted only upon consent
25 of the parties and only in extraordinary circumstances.

26 For purposes of the bill, "medical malpractice action" means
27 an action founded on injuries to a person or wrongful death
28 against any physician and surgeon, osteopathic physician and
29 surgeon, dentist, podiatric physician, optometrist, pharmacist,
30 chiropractor, physician assistant, or nurse, licensed under
31 Code chapter 147, or a hospital licensed under Code chapter
32 135B, arising out of patient care.

33 PERSONAL REPRESENTATIVE — HIPPA. The bill expands the
34 definition of personal representative under the probate
35 code for purposes of obtaining a decedent's medical records

1 or asserting a decedent's rights under the federal Health
2 Insurance Portability and Accountability Act of 1996, Pub. L.
3 No. 104-191 (HIPPA) and designates the personal representative
4 under such circumstances to be the first of the following
5 persons who exist when the request for medical records or
6 assertion of rights is made: the executor or administrator;
7 the decedent's spouse; the decedent's adult child; or the
8 decedent's adult sibling.

9 DISCLOSURE OF EXPERT WITNESSES — LIABILITY CASES —
10 PROFESSIONALS. Current law requires a party in a professional
11 liability case brought against a licensed professional who
12 intends to call an expert witness to certify to the court and
13 all parties in the case the expert's name, qualifications, the
14 purpose for calling the expert within certain time frames,
15 depending upon whether the party is the plaintiff or defendant
16 in the case. The bill requires a party who intends to call
17 an expert witness to certify to the court and all parties the
18 element of the cause of action about which the expert will
19 testify. The bill also requires a party to disclose at least
20 one but not more than two experts for each element of the cause
21 of action about which an expert or experts will be called to
22 testify.