

SF 2338: A Proposed Fix for "Pexa" and the Pandemic

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This summer—on June 18, 2020—the Iowa legislature passed and Governor Kim Reynolds approved SF 2338 to address a long-standing evidentiary issue concerning medical expenses stemming from *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 156 (Iowa 2004), and the more recent liability issues created by the COVID-19 pandemic. Entitled “An Act Relating to Civil Actions, Including Recoverable Damages for Medical Expenses, Evidence Offered to Prove Past Medical Expenses, and Civil Actions Related to the Novel Coronavirus, and Including Retroactive Applicability Provisions,” SF 2338 is broken down into two divisions. The first addresses “Evidence of Medical Expenses and Recoverable Damages for Medical Expenses” and represents the legislature’s latest attempt to limit damages of medical expenses. The second addresses “COVID-19 Related Liability” and represents part of the legislature’s reaction to the pandemic. The main provisions of this bill, along with some background into *Pexa*, are summarized below.

Division I: Evidence of Medical Expenses and Recoverable Damages for Medical Expenses

- In *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 156 (Iowa 2004), the Iowa Supreme Court held that “[a]n injured plaintiff may recover only the reasonable and necessary costs of medical care.” In so holding, the Court stated that “[t]he amount charged, standing alone, is not evidence of the reasonable and fair value of the services rendered.” *Id.* (emphasis added). As a result, proof of medical expenses is normally equated to “the amount paid for such services or through the testimony of a qualified expert witness.” *Id.* (emphasis added). However, and as *Pexa* recognized, it is error to “limit[] the plaintiff’s proof of the reasonable value of his medical expenses to the amount paid to and accepted by the medical providers.” *Id.*
- In SF2338 the legislature sought to remove any possibility that the plaintiff could, under *Pexa*, recover more than the amount paid for medical care. The division states, “Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied.”

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- The division “does not impose upon any party an affirmative duty to seek a reduction in billed charges,” and makes it clear that the total damages for medical care in a personal injury case “shall not exceed the sum of the amounts actually paid by or on behalf of the injured person to the health care providers who rendered treatment and any amounts actually necessary to satisfy the medical charges that have been incurred but not yet satisfied.”

Division II: COVID-19 Related Liability

- This division of the bill creates a new chapter in the Iowa Code, Chapter 686D, known as the “COVID-19 Responses and Back-to-Business Limited Liability Act.”
- The division starts by defining several terms, including “Minimum medical condition” as “a diagnosis of COVID-19 that requires inpatient hospitalization or results in death.”
- The division next limits the kind of COVID-19 civil actions that may be brought by prohibiting any person from suing another for the “exposure or potential exposure to COVID-19 unless” one of three circumstances are present: 1) the suit “relates to a minimum medical condition”; 2) the suit “involves an act that was intended to cause harm”; or 3) the suit “involves an act that constitutes actual malice.” Actual malice is not defined in the bill, but Iowa law defines it as “ill-will, hatred or desire to do another harm[, and] may also result from a reckless or wanton disregard of the rights of others.” *Vojak v. Jensen*, 161 N.W.2d 100, 107 (Iowa 1968) (citations omitted).
- The division also limits the liability of a “premises owner” by prohibiting an individual from suing the owner “for civil damages for any injuries sustained from the individual’s exposure to COVID-19, whether the exposure occurs on the premises or during any activity managed by the person who possesses or is in control of a premises, unless” 1) the owner “recklessly disregards a substantial and unnecessary risk that the individual would be exposed”; 2) the owner “exposes the individual to COVID-19 through an act that constitutes actual malice”; 3) the owner “intentionally exposes the individual to COVID-19.”
- The division also provides a safe harbor (i.e., an affirmative defense) to any person sued for COVID-19 related injuries “if the act or omission alleged to violate a duty of care was in substantial compliance or was consistent with any federal or state statute, regulation, order, or public health guidance related to COVID-19 that was applicable to the person or the activity at issue at the time.”
- The division also limits the liability of health care providers “while providing or arranging health care in support of the state’s response to COVID-19” by immunizing such providers from suit. The bill specifically identifies a wide range of activities in which the health providers are immune from suit, including the “screening, assessing, diagnosing, caring for, or treating individuals” with the disease but also the administering of a prescription drug “for off-label use to treat a patient” and “treating patients outside the normal scope of the health care provider’s license or practice” and “using medical devices, equipment, or supplies outside of their normal use.” It also prohibits suit against providers for “delaying or cancelling nonurgent or elective” procedures “or altering the diagnosis or treatment of an individual in response to any federal or state statute, regulation, order, or public health guidance.” A more comprehensive list can be found at section 686D.6(1). The section providing immunity to health care providers, however, “shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.”
- Finally, the division provides protection for anyone that “designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, [PPE], or a qualified product in response to COVID-19.” Such persons “shall not be

liable in a civil action alleging personal injury, death, or property damage” that is caused by such action or product, and similarly protects such persons from suits alleging a failure to provide proper instructions or sufficient warnings” on these products. However, these protections do not apply when the person acts with “actual malice” or has “actual knowledge of a defect” or “recklessly disregarded a substantial and unnecessary risk” that the product “would cause serious personal injury, death, or serious property damage.”

- The division does not affect worker’s compensation cases, and is retroactive to January 1, 2020.

Overall, the law limits the amounts a party can recover in a civil case involving medical expenses, but practically speaking it may not have much impact on cases tried in Iowa courts because introducing evidence of the charged but unpaid amount was seldom used since *Pexa*. The legislation will, however, have significant practical impacts related to COVID-19 lawsuits by providing significant immunity to defendants unless a plaintiff can generally prove willful, malicious, intentional, or reckless conduct.