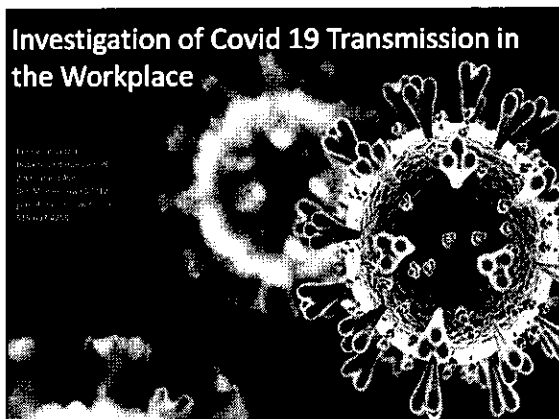


# **SECTION IV**

## **Covid Cases**

Jane Lorentzen, Attorney  
Des Moines

Nate Boulton, Attorney  
Des Moines



---

---

---

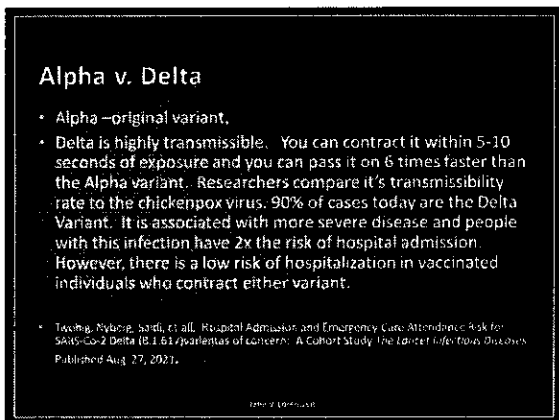
---

---

---

---

---



---

---

---

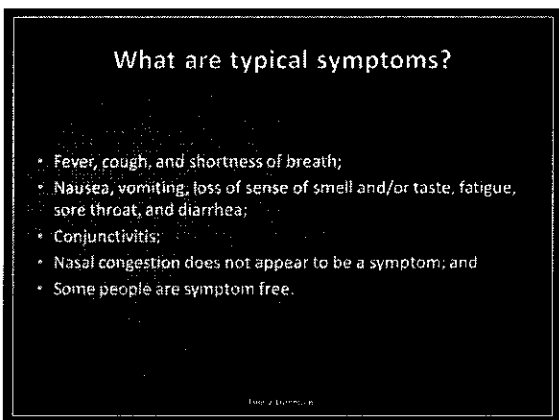
---

---

---

---

---



---

---

---

---

---

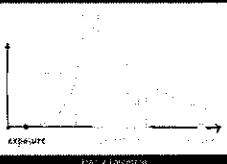
---

---

---

### How long does it take for symptoms to begin after exposure?

- Some people never develop symptoms, however still shed the virus
- Symptoms usually begin within 3-7 days of exposure, but can be anywhere between 2-14 days. The CDC has recently said 4-11 days. The Delta variant symptoms usually begin in 3-4 days after exposure.
- People are thought to be most contagious to others a day or two before the arrival of symptoms.
- "We know that pre-symptomatic transmission drives a significant amount of spread of this virus," Dr. Kobayashi, virologist at Columbia University in New York.



---

---

---

---

---

---

---

---

---

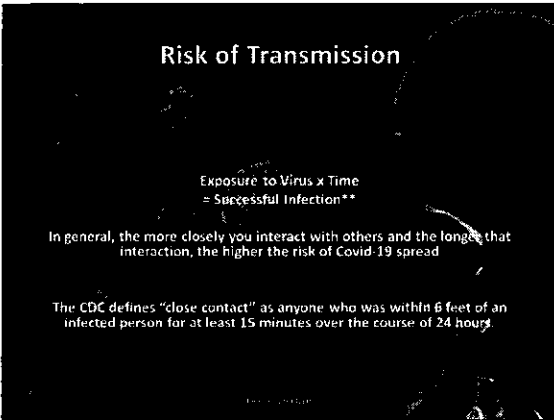
---

### Risk of Transmission

Exposure to Virus x Time = Successful Infection\*\*

In general, the more closely you interact with others and the longer that interaction, the higher the risk of Covid-19 spread.

The CDC defines "close contact" as anyone who was within 6 feet of an infected person for at least 15 minutes over the course of 24 hours.



---

---

---

---

---

---

---

---

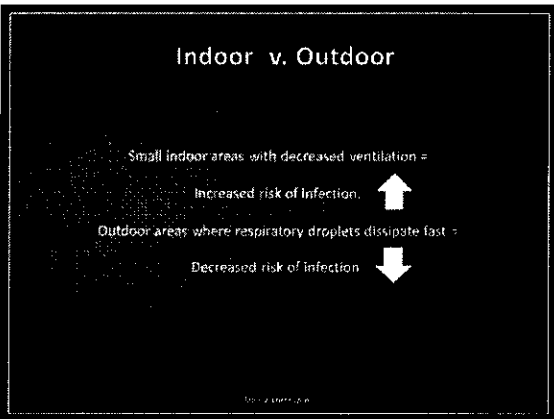
---

---

### Indoor v. Outdoor

Small indoor areas with decreased ventilation =  
Increased risk of infection. ↑

Outdoor areas where respiratory droplets dissipate fast =  
Decreased risk of infection. ↓



---

---

---

---

---

---

---

---

---

---

### Where are people contracting the virus?

- Most frequently in the home.
- Social gatherings such as funerals, weddings, birthday parties.
- Enclosed areas with infected person and speaking. Face to face contact.
- Community spread.

Page 1 of 3

---

---

---

---

---

---

---

---

### Workplace

- Meat packing: In meat processing plants, densely packed workers wearing hearing protection must communicate loudly with one another in a cold-room virus-preserving environment.



Page 2 of 3

---

---

---

---

---

---

---

---

### Workplace exposure

- Health care workers, particularly first responders who may or may not know the patient is suffering from Covid. They tend to have very close contact with the patient and may be performing chest compressions where air is expelled from the lungs.

Page 3 of 3

---

---

---

---

---

---

---

---

**Testing: Not Always Accurate**  
**\*Molecular testing, PCR, Test to go**

- **How is it done?** Nasal swab, throat swab, and tests of saliva or other bodily fluids.
- **Where can you get this test?** At a hospital, in a medical office, in your car.
- **What does the test look for?** Molecular tests look for genetic material that comes only from the virus.
- **How long does it take to get results?** It depends on lab capacity. Results may be ready the same day but usually take at least a day or two.
- **What about accuracy?** False negatives — that is, a test that says you don't have the virus when you actually do have the virus — may occur. The reported rate of false negatives is 2% to 4% (up to 10% in 2020). The reported rate of false positives — that is, a test that says you have the virus when you actually do not — is 5% or lower.
- A molecular test using a deep nasal swab is usually the best option, because it will have fewer false-negative results than other diagnostic tests or samples from throat swab or saliva.

Dr. S. K. Gupta

---

---

---

---

---

---

---

---

---

---

**\*Antigen Testing, Rapid Test**

- **How is it done?** A nasal or throat swab.
- **Where can you get these tests?** At a hospital or doctor's office, drive-through or even at home testing is available.
- **What does the test look for?** This test identifies protein fragments (antigens) from the virus.
- **How long does it take to get results?** The technology involved is similar to a pregnancy test or a rapid strep test, with results available in minutes.
- **What about accuracy?** The reported rate of false negative results is as high as 20%, which is why antigen tests are not favored by the FDA as a single test for active infection. However, because antigen testing is quicker, less expensive, and requires less complex technology to perform than molecular testing, some experts recommend repeated antigen testing as a reasonable strategy. According to one test manufacturer, the false positive rate of antigen testing is 10%.

Dr. S. K. Gupta

---

---

---

---

---

---

---

---

---

---

**\*Antibody test: Antibody tests (also called serologic testing)**

- **How is it done?** A sample of blood is taken.
- **Where can you get these tests?** At a doctor's office, blood testing lab, or hospital.
- **What does the test look for?** These blood tests identify antibodies that the body's immune system has produced in response to the infection. While a serologic test cannot tell you if you have an infection now, it can accurately identify past infection.
- **How long does it take to get results?** Results are usually available within a few days.
- **What about accuracy?** Having an antibody test too early can lead to false negative results. That's because it takes a week or two after infection for your immune system to produce antibodies. The reported rate of false negatives is 20%. However, the range of false negatives is from 0% to 30% depending on the study and when in the course of infection the test is performed.
- Research suggests antibody levels may wane over time. And while a positive antibody test proves you've been exposed to the virus, it's not yet known whether such results indicate a lack of contagiousness or long-lasting, protective immunity.

Dr. S. K. Gupta

---

---

---

---

---

---

---

---

---

---

### Investigative Questions

- Investigating whether an employee with COVID-19 contracted it through their employment, we suggest you inquire into the following. **Start with the date the Claimant first experienced symptoms and walk backwards through all activities and exposures for the prior 2 weeks, concentrating on the prior 3-7 days.** Keep in mind it is critical to obtain exact dates when the activities or potential exposures have occurred. Symptoms usually begin by day 5 after exposure.

Dr. J. [unreadable]

---

---

---

---

---

---

---

---

### What symptoms do you have?



Dr. J. [unreadable]

---

---

---

---

---

---

---

---

### Were they vaccinated?

- If so: what vaccine and when? Did they have a booster shot?

Dr. J. [unreadable]

---

---

---

---

---

---

---

---

How did they become aware they were positive for Covid 19?

- What type of testing did you have and where?
- Have you been tested more than once?
- Did you receive notice from a person they exposed you?
- Did you receive notice you were exposed through contact tracing?
- Did you develop symptoms with no known exposure?

Fig. 2 (continued)

---

---

---

---

---

---

---

---

Can they identify a person they have been in direct contact with during the course of their employment, who has been diagnosed COVID-19? If so:

- What date(s) were you exposed to the infected person?
- What length of time did you spend with the infected person?
- What are the dimensions of the space you were in, i.e. small conference room or warehouse? Inside or outside?
- Did you shake hands or hug?
- How close were you to the person, within 6 feet?

Fig. 3 (continued)

---

---

---

---

---

---

---

---

- Was the person coughing? Did they appear ill?
- Did they share any materials with the person such as pens, computers, paper, etc.? In other words, did they have contact with the same surfaces?
- Were either of you wearing personal protective equipment (PPE)? If so, what?
- Did you share a meal with the person?
- Were other people in the same group or setting? Did they contract Covid-19?

Fig. 4 (continued)

---

---

---

---

---

---

---

---

### Potential for Exposure Outside the Workplace

- Are you in contact with anyone else who has tested positive for Covid 19 or who shows signs of Covid 19?
- Who lives with you? Ages? What do they do outside the home (i.e., school, college, work, travel)?
- Have you had people into your home without wearing a mask?
- Have you attended any social functions involving multiple people? In what type of setting?

John V. Santoro

---

---

---

---

---

---

---

---

- Have you traveled? Where and when? Type of travel, i.e. car, airplane, train? Did you wear PPE?
- What types of activities have you engaged in outside the home?
- What type of testing did you have, deep nasal swab or rapid testing with saliva.
- Has anyone in your house tested positive or shown symptoms of COVID-19? Date of onset of symptoms?
- Has any friend or acquaintance tested positive or shown symptoms of COVID-19? Date you were around them? Date they first showed symptoms.

John V. Santoro

---

---

---

---

---

---

---

---

- What is the positivity rate in the State of Iowa while the claimant had Covid-19? The more people to test positive and the greater the community spread in Iowa, the less likely they can meet their burden of proof they contracted the virus in the work place.

John V. Santoro

---

---

---

---

---

---

---

---



### Current Medical treatment

- Have you seen or been examined by a physician?
- Have they prescribed any medication? OTC meds?
- Do you have any pre-existing conditions such as diabetes, high blood pressure, obesity, lung disease, i.e. asthma, COPD, and/or a weakened immune system?
- Have you been hospitalized and what treatment did you undergo? Ventilator?
- Any indication of long term or permanent disability as a result of Covid 19?

Ben J. Lovvorn

---

---

---

---

---

---

---

---

### W.C. Commissioner Cases

- None published to date.
- Considerations: will contracture of Covid 19 in the workplace be considered an "injury" or "occupational disease"?
- MIWI date? What about long haulers? Brain fog, fatigue, muscle weakness and joint pain.
- PPD?

Ben J. Lovvorn

---

---

---

---

---

---

---

---

Today is the beginning of the end. December 14, 2020.



Ben J. Lovvorn

---

---

---

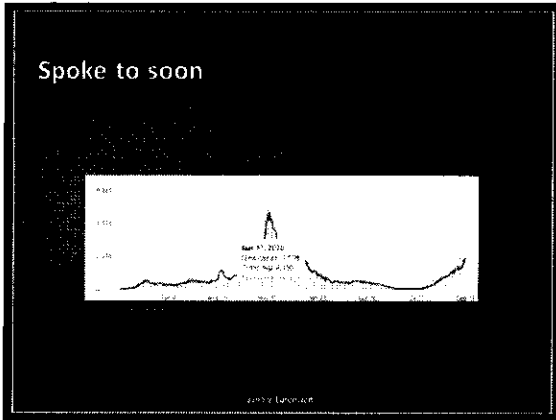
---

---

---

---

---



---

---

---

---

---

---

---

---

### Citations

- **Which Test is Best for COVID-19?** Robert H. Shmerling, MD. Harvard Health Publishing, Updated 17 Aug, 2020 at 12:59 p.m., <https://www.harvard.edu/press-releases/which-test-for-covid-19/>
- **The Risks - Know Them - Avoid Them**, Erin Bromage, May 20, 2020, [www.cdc.gov/media/releases/2020/s0520-covid-19-risks.html](https://www.cdc.gov/media/releases/2020/s0520-covid-19-risks.html)

**Images:**

- Slide 3: Inorganic Ventures
- Slide 4: MedPage Today
- Slide 5: ABC News
- Slide 8: Civil Eats
- Slide 10: BuzzFeed News
- Slide 12: WebMD
- Slide 14: CDC
- Slide 24: Transport Topics
- Slide 25: Covid-19 in Iowa

09/27/2021

---

---

---

---

---

---

---

---

# **SECTION IV**

## **Covid Cases**

Jane Lorentzen, Attorney  
Des Moines

Nate Boulton, Attorney  
Des Moines

Senate File 2338 - Enrolled

Senate File 2338

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.

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

DIVISION I

EVIDENCE OF MEDICAL EXPENSES AND RECOVERABLE DAMAGES FOR MEDICAL EXPENSES

Section 1. NEW SECTION. **622.4 Medical expenses.**

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. Evidence of the amounts actually necessary to satisfy the bills that have been incurred shall not exceed

the amount by which the bills could be satisfied by the claimant's health insurance, regardless of whether such health insurance is used or will be used to satisfy the bills. This section does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.

**Sec. 2. NEW SECTION. 668.14A Recoverable damages for medical expenses.**

1. In an action brought to recover damages for personal injury, the damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered 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 care charges that have been incurred but not yet satisfied.

2. This section does not apply to actions governed by section 147.136.

**DIVISION II**

**COVID-19 RELATED LIABILITY**

**Sec. 3. NEW SECTION. 686D.1 Short title.**

This chapter shall be known and may be cited as the "*COVID-19 Response and Back-to-Business Limited Liability Act*".

**Sec. 4. NEW SECTION. 686D.2 Definitions.**

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

1. "*COVID-19*" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom.

2. "*Disinfecting or cleaning supplies*" means and includes hand sanitizers, disinfectants, sprays, and wipes.

3. "*Health care facility*" means and includes all of the following:

- a. A facility as defined in section 514J.102.
- b. A facility licensed pursuant to chapter 135B.
- c. A facility licensed pursuant to chapter 135C.

d. Residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, intermediate care facilities for persons with intellectual disabilities, hospice programs, elder group homes, and assisted living programs.

4. "*Health care professional*" means physicians and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid, including persons engaged in telemedicine or telehealth. "*Health care professional*" includes the employer or agent of a health care professional who provides or arranges health care.

5. "*Health care provider*" means and includes a health care professional, health care facility, home health care facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment.

6. "*Health care services*" means services for the diagnosis, prevention, treatment, care, cure, or relief of a health condition, illness, injury, or disease.

7. "*Minimum medical condition*" means a diagnosis of COVID-19 that requires inpatient hospitalization or results in death.

8. "*Person*" means the same as defined in section 4.1. "*Person*" includes an agent of a person.

9. "*Personal protective equipment*" means and includes protective clothing, gloves, face shields, goggles, facemasks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or the spread of infection or illness.

10. "*Premises*" means and includes any real property and any appurtenant building or structure serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

11. "*Public health guidance*" means and includes written guidance related to COVID-19 issued by any of the following:

a. The centers for disease control and prevention of the

federal department of health and human services.

b. The centers for Medicare and Medicaid services of the federal department of health and human services.

c. The federal occupational safety and health administration.

d. The office of the governor.

e. Any state agency, including the department of public health.

12. "*Qualified product*" means and includes all of the following:

a. Personal protective equipment used to protect the wearer from COVID-19 or to prevent the spread of COVID-19.

b. Medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19.

c. Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19.

d. Medications used to treat COVID-19, including medications prescribed or dispensed for off-label use to attempt to treat COVID-19.

e. Tests to diagnose or determine immunity to COVID-19.

f. Any component of an item described in paragraphs "a" through "e".

Sec. 5. NEW SECTION. 686D.3 Actual injury requirement in civil actions alleging COVID-19 exposure.

A person shall not bring or maintain a civil action alleging exposure or potential exposure to COVID-19 unless one of the following applies:

1. The civil action relates to a minimum medical condition.

2. The civil action involves an act that was intended to cause harm.

3. The civil action involves an act that constitutes actual malice.

Sec. 6. NEW SECTION. 686D.4 Premises owner's duty of care — limited liability.

A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who

directly or indirectly invites or permits an individual onto a premises, shall not be liable 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 any of the following apply to the person who possesses or is in control of the premises:

1. The person who possesses or is in control of the premises recklessly disregards a substantial and unnecessary risk that the individual would be exposed to COVID-19.

2. The person who possesses or is in control of the premises exposes the individual to COVID-19 through an act that constitutes actual malice.

3. The person who possesses or is in control of the premises intentionally exposes the individual to COVID-19.

**Sec. 7. NEW SECTION. 686D.5 Safe harbor for compliance with regulations, executive orders, or public health guidance.**

A person in this state shall not be held liable for civil damages for any injuries sustained from exposure or potential exposure to COVID-19 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 activity at issue at the time of the alleged exposure or potential exposure.

**Sec. 8. NEW SECTION. 686D.6 Liability of health care providers.**

1. A health care provider shall not be liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the state's response to COVID-19. This subsection shall apply to all of the following:

a. Injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of COVID-19.

b. Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of COVID-19.



c. Acts or omissions while providing health care to individuals unrelated to COVID-19 when those acts or omissions support the state's response to COVID-19, including any of the following:

(1) Delaying or canceling nonurgent or elective dental, medical, or surgical procedures, or altering the diagnosis or treatment of an individual in response to any federal or state statute, regulation, order, or public health guidance.

(2) Diagnosing or treating patients outside the normal scope of the health care provider's license or practice.

(3) Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use.

(4) Conducting tests or providing treatment to any individual outside the premises of a health care facility.

(5) Acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to COVID-19 that renders the health care provider unable to provide the level or manner of care to any person that otherwise would have been required in the absence of COVID-19.

(6) Acts or omissions undertaken by a health care provider relating to use or nonuse of personal protective equipment.

2. This section shall not relieve any person of liability for civil damages for any act or omission which constitutes recklessness or willful misconduct.

**Sec. 9. NEW SECTION. 686D.7 Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to COVID-19.**

1. Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product.

2. Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to COVID-19 shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings.

3. This section shall not apply in the event of any of the following:

a. The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product had actual knowledge of a defect in the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product when put to the use for which the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product was designed, manufactured, sold, distributed, or donated, and the person recklessly disregarded a substantial and unnecessary risk that the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product would cause serious personal injury, death, or serious property damage.

b. The person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product acted with actual malice.

Sec. 10. NEW SECTION. 686D.8 Construction.

This chapter shall not be construed to do any of the following:

1. Create, recognize, or ratify a claim or cause of action of any kind.

2. Eliminate or satisfy a required element of a claim or cause of action of any kind.

3. Affect the rights or limits under workers' compensation as provided in chapter 85, 85A, or 85B, or the rights or limits related to police officers or fire fighters under chapter 410 or 411.

4. Abrogate, amend, repeal, alter, or affect any statutory or common law immunity or limitation of liability.

Sec. 11. RETROACTIVE APPLICABILITY. This division of this Act applies retroactively to January 1, 2020.

---

CHARLES SCHNEIDER  
President of the Senate

---

PAT GRASSLEY  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2338, Eighty-eighth General Assembly.

---

W. CHARLES SMITHSON  
Secretary of the Senate

Approved \_\_\_\_\_, 2020

---

KIM REYNOLDS  
Governor