

## A BILL

FOR AN ACT TO ENABLE CITIES AND TOWNS TO RECOVER FROM PERSONS GUILTY OF WILLFUL WRONG-DOING OR CARELESSNESS. DAMAGES WHICH THEY MAY HAVE BEEN COMPELLED TO PAY ON ACCOUNT THEREOF.

*Be it enacted by the General Assembly of the State of Iowa:*

SECTION. 1. Whenever any action shall be brought against any incorporated city or town including those acting under special charters for the recovery of damages sustained either to person or property, by reason of either the willful wrong-doing or carelessness of any person in making excavations or openings in any street alley or public grounds of the city, or in placing any obstructions thereon, or by reason of a failure to properly guard and protect any excavations, improvement structure or thing of danger adjacent to or connected with any such street alley or public ground, the city or town against which such action is brought may cause a notice of pendency thereof to be served on the person or persons who have made such excavations or openings or placed or caused to be placed such obstructions in such street, alley, or public grounds or who have made such excavations, improvement, structure or thing of danger adjacent to or connected with which notice shall contain a statement to the effect that in case of recovery against the city or town the person upon whom it is served will be required to pay the city the amount so recovered and thereafter such person shall have the right to intervene and defend in such action.

SEC. 2. Upon the trial of any action for damages arising as enumerated in section one hereof, it shall be the duty of the court if so requested by the city or town, to instruct the jury to return a finding as to who if any person other than the city, has been guilty of negligence causing such injury and if such other party has appeared in said cause and judgment shall be rendered against him and the said county or town, then the said city or town on paying off said judgment shall be subrogated to the rights of the plaintiff in said cause and enforce said judgment against the party causing such injury. If however said party so causing the injury shall not appear in said cause and a judgment shall be rendered therein against said city or town and it shall have paid the same it shall have a right to recover such damages including costs from the person or persons causing or committing the same. And if it shall appear in an action brought by the city for that purpose against the party causing or permitting such injury that the notice contemplated in section one of this act

13 has been served on such party and that such party failed to appear in said cause against the  
14 city ; the verdict of the jury and the judgment in said cause shall make a prima facie case  
15 in favor of the city or town prosecuting said action.

SEC. 3. This act being deemed of immediate importance shall be in force and take effect  
2 from and after its publication in the Iowa State Register and the Iowa State Leader, news-  
3 papers published in Des Moines, Iowa.