

February 27, 1963.

Senate File 377

Passed on File. *judicial; 2/25 Pass 3/2 By*
on calendar 4/1/63

By BENEKE, DORAN, FULTON, LONG,
NOLAN, O'MALLEY, SCHROEDER,
SHAFF, TURNER and VANCE.

Passed Senate, Date *4-4-63*

Passed House, Date.....

Vote: Ayes *42* Nays *6*

Vote: Ayes..... Nays.....

Approved..... *Sifting Committee 4/9*

A BILL FOR

An Act to create and establish a state tort claims act; defining terms and conferring upon each state agency in behalf of the state the power to consider, ascertain, adjust, determine, and settle claims against the state; providing for the maximum amount of the claim; permitting the state to be sued; conferring jurisdiction in the district court to hear, determine, and render judgment; and generally providing for the practice and procedure to establish liability of the state.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. This Act may be cited as the "State Tort
2 Claims Act".

1 Sec. 2. As used in this Act, the term "state Agency"
2 includes the executive departments and independent establishments
3 of the state of Iowa, and corporations whose primary function is
4 to act as, and while acting as, instrumentalities or agencies of
5 the state of Iowa, whether or not authorized to sue and be sued
6 in their own names; provided that this shall not be construed to
7 include any contractor with the state of Iowa;

8 "Employee of the state of Iowa" includes officers or
9 employees of any state agency, and persons acting on behalf
10 of state agency in an official capacity, temporarily or
11 permanently in the service of the state of Iowa, whether with
12 or without compensation;

13 "Acting within the scope of his office or employment"
14 means in the employment and acting in his line of duty, and

15 acting within the scope of his office or employment means,
16 in the case of a member of the military forces of Iowa, acting
17 in his line of duty.

1 Sec. 3. Subject to the limitations of this Act, authority
2 is hereby conferred upon the head of each state agency, or his
3 designee for the purpose, acting on behalf of the state of
4 Iowa, subject to the advice and approval of the attorney
5 general, to consider, ascertain, adjust, determine, and settle
6 any claims against the state of Iowa for money only, accruing
7 on and after January 1, 1964, on account of damage to or loss
8 of property or on account of personal injury or death, where
9 the total amount of the claim does not exceed one thousand
10 (1,000) dollars, caused by the negligent or wrongful act or
11 omission of any employee of the state of Iowa while acting
12 within the scope of his office or employment, under circumstances
13 where the state of Iowa, if a private person, would be liable
14 to the claimant for such damage, loss, injury, or death, in
15 accordance with the law of the place where the act or omission
16 occurred.

17 Subject to the provisions of sections five (5), six (6),
18 seven (7) and eight (8) of this Act, any such award or
19 determination shall be final and conclusive on all officers
20 of the state of Iowa, except when procured by means of
21 fraud, notwithstanding any other provisions of law to the
22 contrary.

23 Any award made to any claimant pursuant to this
24 section, and any award, compromise, or settlement of any
25 claim cognizable under this Act made by the attorney
26 general pursuant to section eight (8) of this Act, shall

27 be paid by the head of the state of Iowa agency concerned
28 out of appropriations that may be made therefor, which
29 appropriations are hereby authorized.

30 The acceptance by the claimant of any such award,
31 compromise, or settlement shall be final and conclusive
32 on the claimant, and shall constitute a complete release
33 by the claimant of any claim against the state of Iowa and
34 against the employee of the state of Iowa whose act or
35 omission gave rise to the claim, by reason of the same
36 subject matter.

1 Sec. 4. The head of each state of Iowa agency shall
2 annually make a report to the general assembly of the state
3 of Iowa of all claims paid by such state of Iowa agency under
4 this part. Such report shall include the name of each
5 claimant, a statement of the amount claimed and the amount
6 awarded, and a brief description of the claim.

1 Sec. 5. Subject to the provisions of this Act, the
2 state of Iowa district court for the district wherein the
3 plaintiff is resident or wherein the act or omission
4 complained of occurred, sitting without a jury, shall have
5 exclusive jurisdiction to hear, determine and render judgment on any
6 claim against the state of Iowa, for money only, accruing on
7 and after January 1, 1964, on account of damage to or loss of
8 property or on account of personal injury or death caused by
9 the negligent or wrongful act or omission of any employee of
10 the state of Iowa while acting within the scope of his office
11 or employment, under circumstances where the state of Iowa,
12 if a private person, would be liable to the claimant for such
13 damage, loss, injury or death in accordance with the law of

14 the place where the act or omission occurred. Subject to the
15 provisions of this Act, the state of Iowa shall be liable in
16 respect of such claims to the same claimants, in the same
17 manner, and to the same extent as a private individual under
18 like circumstances, except that the state of Iowa shall not
19 be liable for interest prior to judgment, or for punitive
20 damages. Costs shall be allowed in all courts to the
21 successful claimant to the same extent as if the state of
22 Iowa were a private litigant.

23 The judgment in such an action shall constitute a complete
24 bar to any action by the claimant, by reason of the same
25 subject matter, against the employee of the state of Iowa
26 whose act or omission gave rise to the claim. No suit shall
27 be instituted pursuant to this section upon a claim presented
28 to any state of Iowa agency pursuant to section three (3) of
29 this Act unless such state of Iowa agency has made final
30 disposition of the claim; provided, that the claimant may,
31 upon fifteen (15) days notice given in writing, withdraw the
32 claim from consideration of the state of Iowa agency and
33 commence suit thereon pursuant to this section; provided
34 further, that as to any claim so disposed of or so withdrawn,
35 no suit shall be instituted pursuant to this section for any
36 sum in excess of the amount of the claim presented to the
37 state of Iowa agency, except where the increased amount of the
38 claim is shown to be based upon newly discovered evidence not
39 reasonably discoverable at the time of presentation of the
40 claim to the state of Iowa agency or upon evidence of
41 intervening facts relating to the amount of the claim.
42 Disposition of any claim made pursuant to section three (3)

43 of this Act shall not be competent evidence of liability or
44 amount of damages in proceedings in such claim pursuant to
45 this section.

1 Sec. 6. In actions under section five (5) of this Act,
2 the forms of process, writs, pleadings and actions, and the
3 practice and procedure, shall be in accordance with the rules
4 promulgated and adopted by the supreme court of the state of
5 Iowa; and the same provisions for counterclaim and setoffs;
6 for interest upon judgments, and for payments of judgments,
7 shall be applicable as in cases brought in the district courts
8 of the state of Iowa.

1 Sec. 7. Final judgments in the district courts in cases
2 under section five (5) of this Act shall be subject to review
3 by appeal to the supreme court of the state of Iowa in the
4 same manner and to the same extent as other judgments of the
5 district courts and shall be tried de novo.

1 Sec. 8. With a view to doing substantial justice, the
2 attorney general is authorized to arbitrate, compromise, or
3 settle any claim cognizable under section five (5) of this
4 Act, after the institution of any suit thereon, with the
5 approval of the court in which suit is pending.

1 Sec. 9. Every claim against the state of Iowa cognizable
2 under this Act shall be forever barred, unless within two (2)
3 years after such claim accrued or within two (2) years after
4 the date of enactment of this Act, whichever is later it is
5 presented in writing to the state of Iowa agency out of whose
6 activities it arises, if such claim is for a sum not exceeding
7 one thousand (1,000) dollars; or unless within (2) years

8 after such claim accrued or within two (2) years after the
9 date of enactment of this Act, whichever is later, an action
10 is begun pursuant to section five (5) of this Act. In the
11 event that a claim for a sum not exceeding one thousand (1,000)
12 dollars is presented to a state of Iowa agency as aforesaid,
13 the time to institute a suit pursuant to section five (5) of
14 this Act shall be extended for a period of six (6) months
15 from the date of mailing of notice to the claimant by such
16 state of Iowa agency as to the final disposition of the claim
17 or from the date of withdrawal of the claim from such state
18 of Iowa agency pursuant to section five (5) of this Act, if
19 it would otherwise expire before the end of such period.

1 Sec. 10. The provisions of this Act shall not apply to:
2 Any claim based upon an act or omission of an employee of the
3 state of Iowa, exercising due care, in the execution of a
4 statute or regulation, whether or not such statute or
5 regulation be valid, or based upon the exercise or performance
6 or the failure to exercise or perform a discretionary function
7 or duty on the part of a state of Iowa agency or an employee
8 of the state of Iowa agency, whether or not the discretion
9 involved be abused.

10 Any claim arising in respect to the assessment or
11 collection of any tax or customs duty, or the detention of
12 any goods or merchandise by any law enforcement officer.

13 Any claim for damages caused by the imposition or
14 establishment of a quarantine by the state of Iowa whether
15 such quarantine relates to persons or property.

16 Any claim arising from injury to vessels, or to the cargo,
17 crew, or passengers of vessels while on any state waters.

18 Any claim arising out of assault, battery, false imprison-
19 ment, false arrest, malicious prosecution, abuse of process,
20 libel, slander, misrepresentation, deceit, or interference
21 with the contract rights.

22 Any claim arising in any other state or territory.

1 Sec. 11. The court rendering a judgment for the plaintiff
2 pursuant to section five (5) of this Act, or the head of the
3 state of Iowa agency or his designee, with the advise and
4 approval of the attorney general, making an award pursuant
5 to section three (3) of this Act, or the attorney general
6 making a disposition pursuant to section eight (8), of this
7 Act, as the case may be, shall, as a part of the judgment,
8 award, or settlement, determine and allow reasonable
9 attorney's fees and expenses, to be paid out of but not in
10 addition to the amount of judgment, award, or settlement
11 recovered, to the attorneys representing the claimant. Any
12 attorney who charges, demands, receives, or collects for
13 services rendered in connection with such claim any amount
14 in excess of that allowed under this section, if recovery be
15 had, shall be guilty of a misdemeanor, and shall, upon
16 conviction thereof, be subject to a fine of not more than
17 one thousand (1,000) dollars or imprisonment for not more
18 than one (1) year, or both.

1 Sec. 12. From and after the date of enactment of this
2 Act, the authority of any state of Iowa agency to sue or be
3 sued in its own name shall not be construed to authorize
4 suits against such state of Iowa agency on claims which are
5 cognizable under section five (5) of this Act. The remedies

6 provided by this Act in such cases shall be exclusive.

1 Sec. 13. Nothing contained herein shall be deemed to
2 repeal any provision of law authorizing any state of Iowa
3 agency to consider, ascertain, adjust, settle, determine or
4 pay any claim on account of damage to or loss or property or
5 on account of personal injury or death, in cases in which
6 such damage, loss, injury, or death was not caused by any
7 negligent or wrongful act or omission of any employee of the
8 state of Iowa while acting within the scope of his office or
9 employment, or any other claims not cognizable under section
10 three (3) of this Act.

1 Sec. 14. No writ of execution shall issue against the
2 state of Iowa or any state agency by reason of any judgment
3 rendered under the provisions of this Act.

1 Sec. 15. Nothing contained herein shall be deemed to
2 prevent a claimant, who does not desire to submit his claim
3 to the district court, and who has not received an award
4 under section three (3) of this Act, from filing his claim
5 against the state and having the same treated in the same
6 manner as provided by law.

SENATE FILE 377

1 Amend Senate File 377 by inserting at the end of section 9
2 the following:
3 "This act shall not apply to any claim that has been
4 filed under Chapter 25 of the Code of 1962."

Filed and adopted
April 8, 1968.

By LONG.