

CHAPTER 1263

MUNICIPAL TORT CLAIMS

H. F. 462

AN ACT relating to municipal tort claims.

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

1 SECTION 1. Section six hundred thirteen A point one (613A.1),
2 Code 1973, is amended by adding the following new subsection:

3 NEW SUBSECTION. "Officer" includes but is not limited to the
4 members of the governing body.

1 SEC. 2. Section six hundred thirteen A point one (613A.1), sub-
2 section three (3), Code 1973, is amended to read as follows:

3 3. "Tort" means every civil wrong which results in wrongful death
4 or injury to person or injury to property or *injury to personal or prop-*
5 *erty rights* and includes but is not restricted to actions based upon
6 negligence; *error or omission; nuisance; breach of duty, and nuisance*
7 *whether statutory or other duty or denial or impairment of any right*
8 *under any constitutional provision, statute, or rule of law.*

1 SEC. 3. Section six hundred thirteen A point two (613A.2), Code
2 1973, is amended by adding the following new unnumbered para-
3 graphs:

4 NEW UNNUMBERED PARAGRAPH. A tort shall be deemed to be with-
5 in the scope of employment or duties if the act or omission reasonably
6 relates to the business or affairs of the municipality and the officer,
7 employee, or agent acted in good faith and in a manner a reasonable
8 person would have believed to be in and not opposed to the best inter-
9 ests of the municipality.

10 NEW UNNUMBERED PARAGRAPH. For the purposes of this chapter,
11 employee includes a person who performs services for a municipality
12 whether or not the person is compensated for the services, unless the
13 services are performed only as an incident to the person's attendance
14 at a municipality function.

1 SEC. 4. Section six hundred thirteen A point four (613A.4), un-
2 numbered paragraph two (2), Code 1973, is amended to read as fol-
3 lows:

4 The remedy against the municipality provided by section 613A.2
5 for ~~injury or loss of property or personal injury or death resulting~~
6 ~~from any act or omission of an officer or employee in the execution~~
7 ~~of a statute or ordinance, or officially adopted resolution, rule or~~
8 ~~regulation of a governing body while acting in the scope of his office~~
9 ~~or employment shall hereafter be exclusive of any other civil action or~~
10 proceeding by reason of the same subject matter against the officer
11 ~~or~~, employee, or agent whose act or omission gave rise to the claim, or
12 his estate.

1 SEC. 5. Section six hundred thirteen A point five (613A.5), Code
2 1973, is amended to read as follows:

3 613A.5 **Limitation of actions.** Every person who claims damages
4 for any municipality or any officer, employee, or agent of a munic-
5 ipality for or on account of any wrongful death, loss or injury within
6 the scope of section 613A.2 or section six hundred thirteen A point

7 *eight (613A.8) of the Code or under common law shall commence*
 8 *an action therefor within three months six months, unless said person*
 9 *shall cause to be presented to the governing body of the municipality*
 10 *within sixty days after the alleged wrongful death, loss or injury a*
 11 *written notice stating the time, place, and circumstances thereof and*
 12 *the amount of compensation or other relief demanded. Failure to state*
 13 *time or place or circumstances or the amount of compensation or other*
 14 *relief demanded shall not invalidate the notice; providing, the claimant*
 15 *shall furnish full information regarding the nature and extent of the*
 16 *injuries and damages within fifteen days after demand by the muni-*
 17 *cipality. No action therefor shall be maintained unless such notice has*
 18 *been given and unless the action is commenced within two years after*
 19 *such notice. The time for giving such notice shall include a reasonable*
 20 *length of time, not to exceed ninety days, during which the person*
 21 *injured is incapacitated by his injury from giving such notice.*

1 SEC. 6. Section six hundred thirteen A point seven (613A.7), Code
 2 1973, is amended to read as follows:

3 **613A.7 Insurance.** The governing body of any municipality may
 4 purchase a policy of liability insurance insuring against all or any
 5 part of liability which might be incurred by such municipality or its
 6 officers, employees and agents under the provisions of section 613A.2
 7 and section six hundred thirteen A point eight (613A.8) of the Code
 8 and may similarly purchase insurance covering torts specified in sec-
 9 tion 613A.4. The premium costs of such insurance may be paid out
 10 of the general fund or any available funds or may be levied in excess
 11 of any millage tax limitation imposed by statute. Any independent or
 12 autonomous board or commission in the municipality having authority
 13 to disburse funds for a particular municipal function without ap-
 14 proval of the governing body may similarly procure liability insurance
 15 within the field of its operation. The procurement of such insurance
 16 constitutes a waiver of the defense of governmental immunity as to
 17 those exceptions listed in section 613A.4 to the extent stated in such
 18 policy but shall have no further effect on the liability of the muni-
 19 cipality beyond the scope of this chapter. The existence of any insur-
 20 ance which covers in whole or in part any judgment or award which
 21 may be rendered in favor of the plaintiff, or lack of any such insur-
 22 ance, shall not be material in the trial of any action brought against
 23 the governing body of any municipality, or their officers, employees or
 24 agents and any reference to such insurance, or lack of same, shall be
 25 grounds for a mistrial.

1 SEC. 7. Section six hundred thirteen A point eight (613A.8), Code
 2 1973, is amended to read as follows:

3 **613A.8 Officers and employees defended.** The governing body shall
 4 defend any of its officers and, employees and agents, whether elected
 5 or appointed and, except in cases of malfeasance in office or, willful
 6 and unauthorized injury to persons or property, or willful or wanton
 7 neglect of duty, shall save harmless and indemnify such officers and,
 8 employees, and agents against any tort claim or demand, whether
 9 groundless or otherwise, arising out of an alleged act or omission
 10 occurring in the performance of duty within the scope of their employ-
 11 ment or duties. Any independent or autonomous board or commission
 12 of a municipality having authority to disburse funds for a particular

13 municipal function without approval of the governing body shall sim-
 14 ilarly defend, save harmless and indemnify its officers and, employees,
 15 and agents against such tort claims or demands. This section is
 16 intended to confer power in addition to that conferred by section
 17 368A.1.

18 *The duty to defend, save harmless, and indemnify shall apply*
 19 *whether or not the municipality is a party to the action and shall*
 20 *include but not be limited to cases arising under title forty-two (42)*
 21 *United States Code section one thousand nine hundred eighty-three*
 22 *(1983).*

Approved May 27, 1974

CHAPTER 1264

SCHOOL GUIDANCE COUNSELORS

H. F. 753

AN ACT relating to confidential communications with certified guidance counselors.

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

1 SECTION 1. Section six hundred twenty-two point ten (622.10),
 2 Code 1973, is amended by adding the following new unnumbered para-
 3 graph:
 4 NEW UNNUMBERED PARAGRAPH. No qualified school guidance coun-
 5 selor, who has met the certification and approval standards of the de-
 6 partment of public instruction as provided in section two hundred fifty-
 7 seven point twenty-five (257.25), subsection nine (9) of the Code, who
 8 obtains information by reason of his employment as a qualified school
 9 guidance counselor shall be allowed, in giving testimony, to disclose
 10 any confidential communications properly entrusted to him by a pupil
 11 or his parent or guardian in his capacity as a qualified school guidance
 12 counselor and necessary and proper to enable him to perform his duties
 13 as a qualified school guidance counselor.

Approved May 27, 1974

CHAPTER 1265

PROBATE CODE

S. F. 442

AN ACT relating to the Iowa probate code.

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

1 SECTION 1. Section six hundred thirty-three point three (633.3),
 2 unnumbered paragraph one (1), Code 1973, is amended to read as fol-
 3 lows: