

February 25, 1949  
Judiciary No. 1

**House File 500**  
By ARMSTRONG.

Passed House, Date .....  
Vote: Ayes..... Nays.....  
Passed Senate, Date.....  
Vote: Ayes..... Nays.....  
Approved .....

## 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 exclusive 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 Claims  
2 Act".

1 Sec. 2. As used in this act, the term:

2 "State Agency" includes the executive departments and inde-  
3 pendent establishments of the State of Iowa, and corporations  
4 whose primary functions is to act as, and while acting as, in-  
5 strumentalities or agencies of the State of Iowa, whether or  
6 not authorized to sue and be sued in their own names; Provided,  
7 that this shall not be construed to include any contractor with  
8 the State of Iowa.

9 "Employee of the State of Iowa" includes officers or em-  
10 ployees of any state agency, and persons acting on behalf of

11 state agency in an official capacity, temporarily or perman-  
12 ently in the service of the State of Iowa, whether with or  
13 without compensation.

14 "Acting within the scope of his office or employment",  
15 means in the employment and acting 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  
3 his designee for the purpose, acting on behalf of the State  
4 of Iowa, to consider, ascertain, adjust, determine, and settle  
5 any claim against the State of Iowa for money only, accruing  
6 on and after January 1, 1950, on account of damage to or loss  
7 of property or on account of personal injury or death, where  
8 the total amount of the claim does not exceed one thousand  
9 dollars, caused by the negligent or wrongful act or omission  
10 of any employee of the State of Iowa while acting within the  
11 scope of his office or employment, under circumstances where  
12 the State of Iowa, if a private person, would be liable to the  
13 claimant for such damage, loss, injury, or death, in accord-  
14 ance with the law of the place where the act or omission occurred.

15 Subject to the provisions of sections five (5), six (6),  
16 seven (7) and eight (8) of this act, any such award or determ-  
17 ination shall be final and conclusive on all officers of the  
18 State of Iowa, except when procured by means of fraud, not-  
19 withstanding any other provisions of law to the contrary.

20 Any award made to any claimant pursuant to this section,  
21 and any award, compromise, or settlement of any claim cognizable

22 under this act made by the attorney general pursuant to section  
23 eight (8) of this act, shall be paid by the head of the State  
24 of Iowa agency concerned out of appropriations that may be  
25 made therefor, which appropriations are hereby authorized.

26 The acceptance by the claimant of any such award, com-  
27 promise, or settlement shall be final and conclusive on the  
28 claimant, and shall constitute a complete release by the  
29 claimant of any claim against the State of Iowa and against  
30 the employee of the State of Iowa whose act or omission gave  
31 rise to the claim, by reason of the same subject matter.

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

1 Sec. 5. Subject to the provisions of this act, the State  
2 of Iowa district court for the district wherein the plaintiff  
3 is resident or wherein the act or omission complained of occur-  
4 ed, sitting with a jury, unless the same shall have been waived  
5 by the plaintiff, shall have exclusive jurisdiction to hear,  
6 determine and render judgment on any claim against the State  
7 of Iowa, for money only, accruing on and after January 1, 1950,  
8 on account of damage to or loss of property or on account of  
9 personal injury or death caused by the negligent or wrongful act  
10 or omission of any employee of the State of Iowa while acting

11 within the scope of his office or employment, under circumstances  
12 where the State of Iowa, if a private person, would be liable to  
13 the claimant for such damage, loss, injury or death in accord-  
14 ance with the law of the place where the act or omission occurred.  
15 Subject to the provisions of this act, the State of Iowa shall  
16 be liable in respect of such claims to the same claimants, in  
17 the same manner, and to the same extent as a private individual  
18 under like circumstances, except that the State of Iowa shall  
19 not be liable for interest prior to judgment, or for punitive  
20 damages. Costs shall be allowed in all courts to the successful  
21 claimant to the same extent as if the State of Iowa were a  
22 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 subject  
25 matter, against the employee of the State of Iowa whose act or  
26 omission gave rise to the claim. No suit shall be instituted  
27 pursuant to this section upon a claim presented to any State of  
28 Iowa agency pursuant to section three (3) of this act unless such  
29 State of Iowa agency has made final disposition of the claim;  
30 provided, that the claimant may, upon fifteen (15) days' notice  
31 given in writing, withdraw the claim from consideration of the  
32 State of Iowa agency and commence suit thereon pursuant to this  
33 section; provided further, that as to any claim so disposed  
34 of or so withdrawn, no suit shall be instituted pursuant to  
35 this section for any sum in excess of the amount of the claim  
36 presented to the State of Iowa agency, except where the increased

37 amount of the claim is shown to be based upon newly discovered  
38 evidence not reasonably discoverable at the time of presentation  
39 of the claim to the State of Iowa agency or upon evidence of  
40 intervening facts, relating to the amount of the claim. Disposi-  
41 tion of any claim made pursuant to section three (3) of this act  
42 shall not be competent evidence of liability or amount of dam-  
43 ages in proceedings on such claim pursuant to this section.

1     Sec. 6. In actions under section five (5) of this act, the  
2 forms of process, writs, pleadings and motions, 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; for  
6 interest upon judgments, and for payment of judgments, shall  
7 be applicable as in cases brought in the district courts of  
8 the State of Iowa.

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

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

1     Sec. 9. Every claim against the State of Iowa cognizable under

2 this act shall be forever barred, unless within one year after  
3 such claim accrued or within one year after the date of enactment  
4 of this act, whichever is later, it is presented in writing to  
5 the State of Iowa agency out of whose activities it arises, if such  
6 claim is for a sum not exceeding one thousand dollars; or unless  
7 within one year after such claim accrued or within one year after  
8 the date of enactment of this act, whichever is later, an action  
9 is begun pursuant to section five (5) of this act. In the event  
10 that a claim for a sum not exceeding one thousand dollars is  
11 presented to a State of Iowa agency as aforesaid, the time to  
12 institute a suit pursuant to section five (5) of this act shall  
13 be extended for a period of six (6) months from the date of  
14 mailing of notice to the claimant by such State of Iowa agency  
15 as to the final disposition of the claim or from the date of  
16 withdrawal of the claim from such State of Iowa agency pursuant  
17 to section five (5) of this act, if it would otherwise expire  
18 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  
3 the State of Iowa, exercising due care, in the execution of a  
4 statute or regulation, whether or not such statute or regulation  
5 be valid, or based upon the exercise or performance or the fail-  
6 ure to exercise or perform a discretionary function or duty on  
7 the part of a State of Iowa agency or an employee of the State  
8 of Iowa agency, whether or not the discretion involved be abused.

9 Any claim arising in respect to the assessment or collection

10 of any tax or customs duty, or the detention of any goods or  
11 merchandise by any law-enforcement officer.

12 Any claim for damages caused by the imposition or establish-  
13 ment of a quarantine by the State of Iowa whether such quarantine  
14 relates to persons or property.

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

17 Any claim arising out of assault, battery, false imprisonment,  
18 false arrest, malicious prosecution, abuse of process, libel,  
19 slander, misrepresentation, deceit, or interference with the con-  
20 tract rights.

21 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 State  
3 of Iowa agency or his designee making an award pursuant to section  
4 three (3) of this act, or the attorney general making a disposition  
5 pursuant to section eight (8) of this act, as the case may be, may,  
6 as a part of the judgment, award, or settlement, determine and  
7 allow reasonable attorney's fees, which, if the recovery is five  
8 hundred dollars or more, shall not exceed ten (10) per centum of  
9 the amount recovered under section three (3), or twenty (20) per  
10 centum of the amount recovered under section five (5) of this act,  
11 to be paid out of but not in addition to the amount of judgment,  
12 award, or settlement recovered, to the attorneys representing the  
13 claimant. Any attorney who charges, demands, receives, or collects  
14 for services rendered in connection with such claim any amount in

15 excess of that allowed under this section, if recovery be had,  
16 shall be guilty of a misdemeanor, and shall, upon conviction there-  
17 of, be subject to a fine of not more than two thousand dollars or  
18 imprisonment for not more than one year, or both.

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

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

#### EXPLANATION OF H. F. 500

This bill will permit tort claims under \$1,000 to be compromised and settled by the various agencies under which they arise. Other claims, and those over \$1,000, may be sued upon in the district court, and with the approval of the court may be compromised and settled. This bill will eliminate the endless work now taken care of by legislative appropriations and will recognize the liability of the state on the same basis it establishes for its citizens.

This bill is the same as Senate File 349, except that in actions in the district court the plaintiff has the right to waive trial by jury.