TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

Footnotes

Comparative fault; see chapter 668

670.1 Definitions.

As used in this chapter, the following terms shall have the following meanings:

1. *"Governing body"* means the council of a city, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.

2. *"Municipality"* means city, county, township, school district, and any other unit of local government except soil and water conservation districts as defined in section 161A.3, subsection 6.

3. *"Officer"* includes but is not limited to the members of the governing body.

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

[C71, 73, 75, 77, 79, 81, § 613A.1]

86 Acts, ch 1172, § 2; 86 Acts, ch 1238, § 61; 87 Acts, ch 23, §57; 89 Acts, ch 83, §82

C93, § 670.1

670.2 Liability imposed.

Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

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

A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, *"compensation"* does not include payments to reimburse a person for expenses.

[C71, 73, 75, 77, 79, 81, § 613A.2; 82 Acts, ch 1018, § 3]

87 Acts, ch 212, §20

C93, § 670.2

670.3 Actual knowledge of defect as defense.

In any action subject to the provisions of this chapter, an affirmative showing that the injured party had actual knowledge of the existence of the alleged obstruction, disrepair, defect, accumulation, or nuisance at the time of the occurrence of the injury, and a further showing that an alternate safe route was available and known to the injured party, shall constitute a defense to the action.

[C71, 73, 75, 77, 79, 81, § 613A.3]

C93, § 670.3

670.4 Claims exempted.

The liability imposed by section 670.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workers' compensation law.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

5. Any claim for punitive damages.

6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

7. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphalting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or

altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984, and applies to all cases tried or retried on or after July 1, 1984.

9. Any claim based upon an act or omission by an officer or employee of the municipality or the municipality's governing body, in the granting, suspension, or revocation of a license or permit, where the damage was caused by the person to whom the license or permit was issued, unless the act of the officer or employee constitutes actual malice or a criminal offense.

10. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

11. A claim based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communications services.

12. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected by a municipality or the state in accordance with chapter 135I, or a swimming pool or spa inspection program which has been certified by the state in accordance with that chapter, whether or not owned or operated by a municipality, unless the claim is based upon an act or omission of an officer or employee of the municipality and the act or omission constitutes actual malice or a criminal offense.

13. A claim based on an act or omission by a county or city pursuant to section 717.2A or chapter 717B relating to either of the following:

a. Rescuing neglected livestock or another animal by a law enforcement officer.

b. Maintaining or disposing of neglected livestock or another animal by a county or city.

14. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public facility designed for purposes of skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction.

15. Any claim based upon or arising out of an act or omission of an officer or employee of the municipality or the municipality's governing body by a person skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking on public property when the person knew or reasonably should have known that the skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking created a substantial risk of injury to the person and was voluntarily in the place of risk. The exemption from liability contained in this subsection shall only apply to claims for injuries or damage resulting from the risks inherent in the activities of skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking.

The remedy against the municipality provided by section 670.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or the officer's, employee's, or agent's estate.

This section does not expand any existing cause of action or create any new cause of action against a municipality.

[C71, 73, 75, 77, 79, 81, § 613A.4; 82 Acts, ch 1018, § 4, 5]

83 Acts, ch 198, § 2427, 29; 86 Acts, ch 1211, § 33; 88 Acts, ch 1177, §9, 10; 89 Acts, ch 291, §8

C93, § 670.4

94 Acts, ch 1103, §6; 98 Acts, ch 1159, § 1; 2003 Acts, ch 162, §2

Footnotes

Execution of chapter 89B exempt; see § 89B.6

Legislative intent that subsection 7 not apply to areas of litigation other than highway or road construction or reconstruction; applicability of rule of exclusion; see 83 Acts, ch 198, § 27

670.5 Limitation of actions.

Except as provided in section 614.8, a person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss, or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action therefor within two years after the alleged wrongful death, loss, or injury.

[C71, 73, 75, 77, 79, 81, § 613A.5]

C93, § 670.5

2007 Acts, ch 110, §5

2007 amendments to this section apply to complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

670.6 Death claim presented by another.

When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury resulting in such death; but if the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without additional notice.

[C71, 73, 75, 77, 79, 81, § 613A.6]

C93, § 670.6

670.7 Insurance.

The governing body of a municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by the municipality or its officers, employees, and agents under section 670.2 and section 670.8 and may similarly purchase insurance covering torts specified in section 670.4. The governing body of a municipality may adopt a self-insurance program, including but not limited to the investigation and defense of claims, the establishment of a reserve fund for claims, the payment of claims, and the administration and management of the self- insurance program, to cover all or any part of the

liability. The governing body of a municipality may join and pay funds into a local government risk pool to protect itself against any or all liability. The governing body of a municipality may enter into insurance agreements obligating the municipality to make payments beyond its current budget year to provide or procure the policies of insurance, self- insurance program, or local government risk pool. The premium costs of the insurance, the costs of a self-insurance program, the costs of a local government risk pool, and the amounts payable under the insurance agreements may be paid out of the general fund or any available funds or may be levied in excess of any tax limitation imposed by statute. However, for school districts, the costs shall be included in the district management levy as provided in section 296.7 if the district has certified a district management levy. If the district has not certified a district management levy, the cost shall be paid from the general fund. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly enter into insurance agreements, procure liability insurance, adopt a self-insurance program, or join a local government risk pool within the field of its operation.

The procurement of this insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section 670.4 to the extent stated in the policy but shall have no further effect on the liability of the municipality beyond the scope of this chapter, but if a municipality adopts a self-insurance program or joins and pays funds into a local government risk pool the action does not constitute a waiver of the defense of governmental immunity as to the exceptions listed in section 670.4.

The existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of a municipality, or its officers, employees, or agents and any reference to such insurance, or lack of insurance, is grounds for a mistrial. A self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C.

[C71, 73, 75, 77, 79, 81, § 613A.7]

86 Acts, ch 1211, § 34; 89 Acts, ch 135, §123

C93, § 670.7

94 Acts, ch 1175, §17

670.8 Officers and employees defended.

The governing body shall defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties. However, the duty to save harmless and indemnify does not apply to awards for punitive damages. The exception for punitive damages does not prohibit a governing body from purchasing insurance to protect its officers and employees from punitive damages. The duty to save harmless and indemnify does not apply and the municipality is entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against tort claims or demands.

The duties to defend and to save harmless and indemnify shall apply whether or not the municipality is a party to the action and shall include but not be limited to cases arising under title 42 United States Code section 1983.

In the event the officer or employee fails to co-operate in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee.

[C71, 73, 75, 77, 79, 81, § 613A.8; 82 Acts, ch 1018, § 6]

83 Acts, ch 130, § 1

C93, § 670.8

670.9 Compromise and settlement.

The governing body of any municipality may compromise, adjust and settle tort claims against the municipality, its officers, employees and agents, for damages under sections 670.2 or 670.8 and may appropriate money for the payment of amounts agreed upon.

[C71, 73, 75, 77, 79, 81, § 613A.9]

C93, § 670.9

670.10 Tax to pay judgment or settlement.

When a final judgment is entered against or a settlement is made by a municipality for a claim within the scope of section 670.2 or 670.8, payment shall be made and the same remedies apply in the case of nonpayment as in the case of other judgments against the municipality. If a judgment or settlement is unpaid at the time of the adoption of the annual budget, the municipality shall budget an amount sufficient to pay the judgment or settlement together with interest accruing on it to the expected date of payment. A tax may be levied in excess of any limitation imposed by statute. However, for school districts the costs of a judgment or settlement under this section shall be included in the district management levy pursuant to section 298.4.

[C71, 73, 75, 77, 79, 81, § 613A.10]

89 Acts, ch 135, §124

C93, § 670.10

670.11 Claims not retrospective.

This chapter shall have no application to any occurrence or injury claim or action arising prior to January 1, 1968.

[C71, 73, 75, 77, 79, 81, § 613A.11]

C93, § 670.11

670.12 Officers and employees personal liability.

All officers and employees of municipalities are not personally liable for claims which are exempted under section 670.4, except claims for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a duty, unless actual malice or willful, wanton and reckless misconduct is proven.

[82 Acts, ch 1018, § 1]

C83, § 613A.12

83 Acts, ch 130, § 2; 86 Acts, ch 1211, § 35

C93, § 670.12

670.13 Default judgments.

A default judgment shall not be taken against an employee, officer, or agent of a municipality unless the municipality is a party to the action and the time for special appearance, motion or answer by the municipality under rule of civil procedure 1.303 has expired.

[82 Acts, ch 1018, § 2]

C83, § 613A.13

C93, § 670.13