

## CHAPTER 669

### STATE TORT CLAIMS

[P]

Comparative fault, see chapter 668

[P] This chapter not enacted as a part of this title;  
transferred from chapter 25A in Code 1993

|        |                                                  |        |                                          |
|--------|--------------------------------------------------|--------|------------------------------------------|
| 669.1  | Citation and applicability.                      | 669.14 | Exceptions.                              |
| 669.2  | Definitions.                                     | 669.15 | Attorney fees and expenses —<br>penalty. |
| 669.3  | Adjustment and settlement of<br>claims.          | 669.16 | Remedies exclusive.                      |
| 669.4  | District court to hold hearings.                 | 669.17 | Adjustment of other claims.              |
| 669.5  | When suit permitted —<br>employees of the state. | 669.18 | Extension of time.                       |
| 669.6  | Applicable rules.                                | 669.19 | Investigation of claims.                 |
| 669.7  | Appeal.                                          | 669.20 | Liability insurance.                     |
| 669.8  | Judgment as bar.                                 | 669.21 | Employees defended and<br>indemnified.   |
| 669.9  | Compromise and settlement.                       | 669.22 | Actions in federal court.                |
| 669.10 | Award conclusive on state.                       | 669.23 | Employee liability.                      |
| 669.11 | Payment of award.                                | 669.24 | State volunteers.                        |
| 669.12 | Report by director.                              | 669.25 | Liability.                               |
| 669.13 | Limitation of actions.                           |        |                                          |

#### 669.1 Citation and applicability.

This chapter may be cited as the “*Iowa Tort Claims Act*”. Every provision of this chapter is applicable and of full force and effect notwithstanding any inconsistent provision of the Iowa administrative procedure Act, chapter 17A.

[C66, 71, 73, 75, 77, 79, 81, §25A.1]

C93, §669.1

2003 Acts, ch 44, §114

#### 669.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Acting within the scope of the employee’s office or employment*” means acting in the employee’s line of duty as an employee of the state.

2. “*Award*” means any amount determined by the attorney general to be payable to a claimant under section 669.3, and the amount of any compromise or settlement under section 669.9.

3. “*Claim*” means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee’s office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee’s office or employment.

4. a. “*Employee of the state*” includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation, but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists, dentists, nurses, physician assistants, and other medical personnel, who render services to patients or inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections, and employees of the department of veterans affairs, are to be considered employees of the state, whether the personnel are employed

on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement. Criminal defendants while performing unpaid community service ordered by the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, and persons supervising those inmates under and according to the terms of the chapter 28E agreement, are to be considered employees of the state. Members of the Iowa national guard performing duties in a requesting state pursuant to section 29C.21 are to be considered employees of the state solely for the purpose of claims arising out of those duties in the event that the requesting state's tort claims coverage does not extend to such members of the Iowa national guard or is less than that provided under Iowa law.

b. "*Employee of the state*" also includes an individual performing unpaid community service under an order of the district court pursuant to section 598.23A.

5. "*State agency*" includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include a contractor with the state of Iowa. Soil and water conservation districts as defined in section 161A.3, subsection 6, and judicial district departments of correctional services as established in section 905.2 are state agencies for purposes of this chapter.

6. "*State appeal board*" means the state appeal board as defined in section 73A.1.

[C66, 71, 73, 75, 77, 79, 81, §25A.2]

83 Acts, ch 96, §56, 159; 84 Acts, ch 1259, §1; 86 Acts, ch 1172, §1; 87 Acts, ch 23, §1; 89 Acts, ch 83, §13; 90 Acts, ch 1251, §2

C93, §669.2

93 Acts, ch 48, §53; 94 Acts, ch 1171, §51; 96 Acts, ch 1165, §1; 97 Acts, ch 33, §12, 15; 98 Acts, ch 1086, §1; 2001 Acts, ch 158, §37; 2005 Acts, ch 115, §36, 40; 2006 Acts, ch 1185, §104; 2011 Acts, ch 47, §11; 2011 Acts, ch 132, §64, 106

[T] Subsection 4, unnumbered paragraphs 1 and 2 editorially redesignated as paragraphs a and b

[T] Subsection 4, paragraph a amended

[T] Subsection 5 amended

### **669.3 Adjustment and settlement of claims.**

1. The attorney general, on behalf of the state of Iowa, shall consider, ascertain, adjust, compromise, settle, determine, and allow any claim that is subject to this chapter.

2. A claim made under this chapter shall be filed with the director of the department of management, who shall acknowledge receipt on behalf of the state.

3. The state appeal board shall adopt rules and procedures for the handling, processing, and investigation of claims, in accordance with chapter 17A.

[C66, 71, 73, 75, 77, 79, 81, §25A.3]

C93, §669.3

2003 Acts, ch 44, §114; 2006 Acts, ch 1185, §105

### **669.4 District court to hold hearings.**

The district court of the state of Iowa for the district in which the plaintiff is resident or in which the act or omission complained of occurred, or where the act or omission occurred outside of Iowa and the plaintiff is a nonresident, the Polk county district court has exclusive jurisdiction to hear, determine, and render judgment on any suit or claim as defined in this chapter. However, the laws and rules of civil procedure of this state on change of place of trial apply to such suits.

The state shall be liable in respect to such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the state shall not be liable for interest prior to judgment or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the state were a private litigant.

The immunity of the state from suit and liability is waived to the extent provided in this chapter.

A suit is commenced under this chapter by serving the attorney general or the attorney

general's duly authorized delegate in charge of the tort claims division by service of an original notice. The state shall have thirty days within which to enter its general or special appearance.

[C66, 71, 73, 75, 77, 79, 81, §25A.4; 82 Acts, ch 1055, §1, 2]

C93, §669.4

2006 Acts, ch 1185, §106

#### **669.5 When suit permitted — employees of the state.**

1. A suit shall not be permitted for a claim under this chapter unless the attorney general has made final disposition of the claim. However, if the attorney general does not make final disposition of a claim within six months after the claim is made in writing to the director of the department of management, the claimant may, by notice in writing, withdraw the claim from consideration and begin suit under this chapter. Disposition of or offer to settle any claim made under this chapter shall not be competent evidence of liability or amount of damages in any suit under this chapter.

2. a. Upon certification by the attorney general that a defendant in a suit was an employee of the state acting within the scope of the employee's office or employment at the time of the incident upon which the claim is based, the suit commenced upon the claim shall be deemed to be an action against the state under the provisions of this chapter, and if the state is not already a defendant, the state shall be substituted as the defendant in place of the employee.

b. If the attorney general refuses to certify that a defendant was acting within the scope of the defendant's office or employment as described in paragraph "a" at the time of the incident out of which the claim arose, the defendant may petition the court, with notice to the attorney general, for the court to find and certify that the defendant was an employee of the state and was acting within the scope of the defendant's office or employment. The defendant must file the petition within ninety days of the date the attorney general serves notice of the attorney general's refusal to provide certification as provided in paragraph "a". If the court issues the finding and certification, the suit shall be deemed to be brought against the state and subject to the provisions of this chapter and the state shall be substituted as the defendant party unless the state is already a defendant. If the court denies the petition for certification, the order shall not be a final order and is not subject to interlocutory appeal by the defendant.

[C66, 71, 73, 75, 77, 79, 81, §25A.5]

C93, §669.5

2006 Acts, ch 1185, §107

#### **669.6 Applicable rules.**

In suits under this chapter, the forms of process, writs, pleadings, and actions, and the practice and procedure, shall be in accordance with the rules of civil procedure. The same provisions for counterclaims, setoff, interest upon judgments, and payment of judgments, are applicable as in other suits brought in the district court. However, no writ of execution shall issue against the state or any state agency by reason of a judgment under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.6]

83 Acts, ch 186, §10013, 10201

C93, §669.6

#### **669.7 Appeal.**

Judgments in the district courts in suits under this chapter shall be subject to appeal to the supreme court of the state in the same manner and to the same extent as other judgments of the district courts.

[C66, 71, 73, 75, 77, 79, 81, §25A.7]

C93, §669.7

#### **669.8 Judgment as bar.**

The final judgment in any suit under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the state or the employee

of the state whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.8]

C93, §669.8

#### **669.9 Compromise and settlement.**

With a view to doing substantial justice, the attorney general is authorized to compromise or settle any suit permitted under this chapter, with the approval of the court in which suit is pending.

[C66, 71, 73, 75, 77, 79, 81, §25A.9]

C93, §669.9

#### **669.10 Award conclusive on state.**

Any award made under this chapter and accepted by the claimant shall be final and conclusive on all officers of the state of Iowa, except when procured by means of fraud, notwithstanding any other provisions of law to the contrary.

The acceptance by the claimant of such award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim, by reason of the same subject matter.

[C66, 71, 73, 75, 77, 79, 81, §25A.10]

C93, §669.10

#### **669.11 Payment of award.**

Any award to a claimant under this chapter, and any judgment in favor of any claimant under this chapter, shall be paid promptly out of appropriations which have been made for such purpose, if any; but any such amount or part thereof which cannot be paid promptly from such appropriations shall be paid promptly out of any money in the state treasury not otherwise appropriated. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general.

[C66, 71, 73, 75, 77, 79, 81, §25A.11]

C93, §669.11

#### **669.12 Report by director.**

The director of management shall annually report to the general assembly all claims and judgments paid under this chapter. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim.

[C66, 71, 73, 75, 77, 79, 81, §25A.12]

C93, §669.12

#### **669.13 Limitation of actions.**

1. Except as provided in section 614.8, a claim or suit otherwise permitted under this chapter shall be forever barred, unless within two years after the claim accrued, the claim is made in writing and filed with the director of the department of management under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the attorney general as to the final disposition of the claim or from the date of withdrawal of the claim under section 669.5, if the time to begin suit would otherwise expire before the end of the period.

2. If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the two-year period authorized in subsection 1 to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would

otherwise expire before the end of the two-year period. The time to begin a suit under this chapter may be further extended as provided in subsection 1.

3. This section is the only statute of limitations applicable to claims as defined in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.13]

C93, §669.13

2006 Acts, ch 1185, §108; 2007 Acts, ch 110, §4

[SP] 2007 amendment to subsection 1 applies 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

#### **669.14 Exceptions.**

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law, chapter 85A.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "state active duty" as defined in section 29A.1.

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 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, asphaltting, 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.

9. 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.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to chapter 486, Code 1999, and chapters 87, 203, 203C, 203D, 421B,

486A, 488, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

This subsection applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

14. Any claim arising from or related to the collection of a DNA sample for DNA profiling pursuant to section 81.4 or a DNA profiling procedure performed by the division of criminal investigation, department of public safety.

[C66, 71, 73, 75, 77, 79, 81, §25A.14]

83 Acts, ch 198, §11, 12, 27, 29; 84 Acts, ch 1067, §7; 84 Acts, ch 1085, §20; 86 Acts, ch 1211, §8, 9; 88 Acts, ch 1068, §1; 89 Acts, ch 291, §7; 91 Acts, ch 160, §2

C93, §669.14

98 Acts, ch 1216, §37; 99 Acts, ch 129, §18; 2001 Acts, ch 55, §35, 38; 2001 Acts, 2nd Ex, ch 1, §26, 28; 2003 Acts, ch 69, §49; 2004 Acts, ch 1021, §116 – 118; 2004 Acts, ch 1086, §101; 2004 Acts, ch 1101, §90; 2004 Acts, ch 1175, §388; 2005 Acts, ch 3, §114; 2005 Acts, ch 158, §13, 19; 2009 Acts, ch 54, §13

[P] Legislative intent that subsection 8 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

#### **669.15 Attorney fees and expenses — penalty.**

The court rendering a judgment for a claimant under this chapter or the attorney general, making an award under section 669.3 or 669.9, shall, as a part of the judgment or award, determine and allow reasonable attorney fees and expenses. The attorney fees and expenses shall be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a serious misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §25A.15]

C93, §669.15

2006 Acts, ch 1185, §109

#### **669.16 Remedies exclusive.**

From and after March 31, 1965, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on claims as defined in this chapter. The remedies provided by this chapter in such cases shall be exclusive.

[C66, 71, 73, 75, 77, 79, 81, §25A.16]

C93, §669.16

#### **669.17 Adjustment of other claims.**

Nothing contained herein shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a claim as defined in this chapter.

[C66, 71, 73, 75, 77, 79, 81, §25A.17]

C93, §669.17

#### **669.18 Extension of time.**

If a claim is made or a suit is begun under this chapter, and if a determination is made by the attorney general or by the court that the claim or suit is not permitted under this chapter for any reason other than lapse of time, the time to make a claim or to begin a suit under any other applicable law of this state shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant

of such determination by the attorney general, if the time to make the claim or begin the suit under such other law would otherwise expire before the end of such period.

[C66, 71, 73, 75, 77, 79, 81, §25A.18]

C93, §669.18

2006 Acts, ch 1185, §110

[P] Limitations of civil actions, see chapter 614

#### **669.19 Investigation of claims.**

The attorney general shall fully investigate each claim under this chapter and may exercise the authority provided in section 25.5 in performing the investigation.

[C66, 71, 73, 75, 77, 79, 81, §25A.19]

85 Acts, ch 67, §6

C93, §669.19

2006 Acts, ch 1185, §111

#### **669.20 Liability insurance.**

If a claim or suit against the state is covered by liability insurance, the provisions of the liability insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this chapter. The attorney general shall cooperate with the insurance company.

[C66, 71, 73, 75, 77, 79, 81, §25A.20]

C93, §669.20

2006 Acts, ch 1185, §112

#### **669.21 Employees defended and indemnified.**

1. Except as otherwise provided in subsection 2, the state shall defend any employee, and shall indemnify and hold harmless an employee against any claim as defined in section 669.2, subsection 3, paragraph “b”, including claims arising under the Constitution, statutes, or rules of the United States or of any state.

2. a. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim, as defined in this section, or if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which a tort claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

b. The duty to indemnify and hold harmless shall not apply if, in a suit commenced against the employee, the state has been substituted as the defendant in place of the employee, as provided in section 669.5.

[C77, 79, 81, §25A.21]

84 Acts, ch 1259, §2

C93, §669.21

98 Acts, ch 1086, §2; 2006 Acts, ch 1185, §113

#### **669.22 Actions in federal court.**

The state shall defend any employee, and shall indemnify and hold harmless an employee of the state in any action commenced in federal court under 42 U.S.C. § 1983 against the employee for acts of the employee while acting in the scope of employment. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if the employee fails to cooperate in the investigation or defense of the claim or demand, or if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which the claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

[C77, 79, 81, §25A.22]

84 Acts, ch 1259, §3

C93, §669.22

98 Acts, ch 1086, §3; 2010 Acts, ch 1061, §79

**669.23 Employee liability.**

Employees of the state are not personally liable for any claim which is exempted under section 669.14.

84 Acts, ch 1259, §4

C85, §25A.23

C93, §669.23

**669.24 State volunteers.**

A person who performs services for the state government or any agency or subdivision of state government 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.

87 Acts, ch 212, §1

CS87, §25A.24

C93, §669.24

**669.25 Liability.**

A person who performs services for a fair, as defined in section 174.1, and is not a full-time employee of the fair 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.

2004 Acts, ch 1019, §30