

F I N A L R E P O R T

COMPARATIVE NEGLIGENCE JOINT INTERIM SUBCOMMITTEE

January, 1984

The Comparative Negligence Joint Interim Subcommittee of the Senate Committee on Judiciary, the House Committee on Judiciary and Law Enforcement, the Senate Committee on Commerce and the House Committee on Small Business and Commerce was established by law in Senate File 531 for the purpose of studying the matter of comparative negligence, comparative fault and contributory negligence as they apply generally to the tort law in Iowa. The Subcommittee was authorized five meeting days. The following legislators served on the Subcommittee:

Senator Donald Doyle, Co-chairperson
Representative Daniel Jay, Co-chairperson
Senator James Briles
Senator Richard Drake
Senator William Dieleman
Senator Julia Gentleman
Senator Wally Horn
Senator William Palmer
Senator Arthur Small
Representative Kay Chapman
Representative Roger Halvorson
Representative John McIntee
Representative James O'Kane
Representative Edward Parker
Representative Laverne Schroeder
Representative Bob Skow

The Subcommittee held its first meeting on October 4, 1983. The Subcommittee heard from two speakers at its first meeting.

1. Mr. David Lyons of the Legislative Service Bureau disseminated to the members his Report on Comparative Negligence and Governmental Immunity which he had prepared for the Subcommittee. The majority of the day was devoted to identification and discussion of the major issues which would have to be addressed, and the alternative ways in which to address those issues. The following is a brief outline of the items discussed:

- a. Theories of tort law - their historical use and their present status in Iowa.
- b. Contributory negligence as a tort system and the past legislative and judicial modifications of that system.
- c. The effects of Goetzman v. Wichern on Iowa tort law.
- d. A review of action taken during the last session.

- e. Present negligence systems in the other 49 states.

- f. Issues which must be addressed.
 - (1) System form and type -
 - (a) Contributory negligence.
 - (b) Comparative negligence - Pure.
 - (c) Comparative negligence - Modified.
 - (2) Extent of application -
 - (a) Negligence.
 - (b) Misconduct.
 - (c) Strict liability.
 - (d) Fault.
 - (e) Punitive damages.
 - (3) Traditional elements -
 - (a) Duty of care.
 - (b) Causation - Proximate cause and cause in fact.
 - (4) Multi-party litigation -
 - (a) Setoffs.
 - (b) Absent parties.
 - (c) Joint and several liability.
 - (d) Contribution.
 - (5) Settlements.
 - (6) Costs -
 - (a) Insurance premiums.
 - (b) Judicial administration.
 - (c) Litigation.

- g. Effects of the Butler v. State Supreme Court decision.

2. Mr. James Carney, of the Iowa State Bar Association, outlined briefly for the Subcommittee those areas and issues on which the various attorney groups could or could not agree.

The second and third meetings of the Subcommittee were held on November 1st and 2nd. During those meetings the Subcommittee heard testimony from the interested groups and associations. A brief outline of the groups presenting testimony and the position advocated on comparative negligence is as follows:

1. Association of Trial Lawyers of Iowa -
 - a. Retention of joint and several liability.
 - b. Retention of pure comparative negligence.
 - c. Adoption of equitable contribution among defendants.
 - d. Objection to risk-splitting under U.C.F.A.
2. Iowa Defense Counsel Association -
 - a. Movement to comparative "Fault" rather than "Negligence".
 - b. Movement to modified comparative - 49% type.
 - c. Collective comparison of defendants.
3. Iowa League of Municipalities -
 - a. Restoration of contributory negligence.
 - b. Alternatively - movement to 49% modified comparative with class comparison.
 - c. Total abolition of joint and several liability.
4. Iowa Insurance Institute -
 - a. Movement to modified comparative - 49% or 50% type.
 - b. Total abolition of joint and several liability.
 - c. Interest in Study Bill 88.
5. Independent Insurance Agents of Iowa -
 - a. Movement to modified comparative - 49% or 50% type.
6. National Association of Independent Insurers -
 - a. Retention of contributory negligence.

- b. Alternatively - movement to 49% modified comparative.
 - c. Individual comparison of negligence.
 - d. Total abrogation of joint and several liability.
 - e. Retention of mandatory setoffs.
7. Alliance of American Insurers -
- a. Movement to modified comparative negligence - 49%.
 - b. Individual comparison of negligence.
 - c. Total abrogation of joint and several liability.
8. Iowa Manufacturers Association -
- a. Retention of S.F. 531 limitation on joint and several liability.
9. Iowa State Association of Counties -
- a. Total abrogation of joint and several liability.
10. Iowa Railway Association -
- a. Movement toward modified comparative - 49% or 50%.
 - b. Abolition of joint and several liability.
11. Iowa Farm Bureau Federation -
- a. Movement to modified comparative - 49% or 50%.
 - b. Total abrogation of joint and several liability.
12. Attorney General -
- a. Satisfaction with provisions of S.F. 531.
13. Iowa Association of School Boards -
- a. Total abrogation of joint and several liability.
14. Municipal Attorneys Association -
- a. Movement to modified comparative - 49% or 50%.
 - b. Total abolition of joint and several liability.

The fourth meeting of the Subcommittee was held on November 29, 1983. The majority of the day was devoted to a presentation by, and discussion with, Professor Michael Green of the University of Iowa School of Law. The presentation and discussion centered on the issues and alternatives raised at the previous three meetings.

Before adjournment, the Subcommittee directed that Mr. Lyons of the Legislative Service Bureau prepare three alternative drafts of a comprehensive comparative negligence statute for review by the Subcommittee at its final meeting on December 28, 1983. These alternative drafts have been completed and copies will be available to Council members on request. Further, copies of the Comparative Negligence Report prepared by the Legislative Service Bureau will also be available to Council members upon request.

The fifth and final meeting of the Subcommittee was held on December 28, 1983. Discussion centered on the three alternative drafts prepared by the Legislative Service Bureau at the request of the Committee, and a fourth draft offered by Senator Drake. After thorough discussion of each concept contained in the four alternative drafts, the motion was made and passed that the four bills be sent to the Legislative Council and to the respective Judiciary Committees without recommendation for the Committees' consideration. These four bills are attached to this Final Report.

A motion was also made and passed to direct the Legislative Service Bureau to prepare a study bill, as discussed in Subcommittee, to be sent to the Legislative Council and to the respective Judiciary Committees for consideration. That study bill creates a new procedure for tort claims against the state and governmental subdivisions.

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PROPOSED SENATE/HOUSE FILE _____

BY (PREPARED BY THE LEGISLATIVE SERVICE BUREAU FOR THE COMPARATIVE NEGLIGENCE JOINT INTERIM SUBCOMMITTEE FOR DISCUSSION PURPOSES ONLY.)

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

A BILL FOR

1 An Act establishing comparative fault as the basis for liability
2 in relation to claims for damages arising from injury to or
3 death of a person or harm to property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 668.1 FAULT DEFINED.

2 1. As used in this chapter, "fault" means one or more
3 acts or omissions that:

4 a. Are in any measure negligent, grossly negligent, or
5 constitute reckless, willful, or wanton misconduct toward
6 the person or property of the actor or others.

7 b. Subject a person to strict liability in tort.

8 c. Constitute a breach of warranty, an unreasonable
9 assumption of risk not constituting an enforceable express
10 consent, a misuse of a product, an unreasonable failure to
11 avoid an injury, or a failure to mitigate damages.

12 2. The legal requirements of cause in fact and proximate
13 cause continue to apply under this chapter.

14 Sec. 2. NEW SECTION. 668.2 COMPARATIVE FAULT--EFFECT.

15 1. If a claim alleges fault as the basis for the recovery
16 of damages for injury or death of a person or harm to property,
17 contributory fault that is chargeable to the claimant
18 diminishes proportionately the amount to be awarded to the
19 claimant as compensatory damages for loss to which the
20 claimant's fault contributed, provided that recovery by the
21 claimant for the loss is barred if the contributory fault
22 that is chargeable to the claimant is equal to or greater
23 than the fault that is chargeable to all other parties with
24 respect to the loss. This rule applies whether or not under
25 prior law a claimant's contributory fault constituted a defense
26 or was disregarded under applicable legal doctrines.

27 2. In the trial of a claim involving the fault of more
28 than one party to the claim, including third-party defendants
29 and persons who have been released pursuant to section 668.7,
30 the court, unless otherwise agreed by all parties, shall
31 instruct the jury to answer special interrogatories or, if
32 there is no jury, shall make findings, indicating all of the
33 following:

34 a. The amount of damages each claimant would be entitled
35 to recover if contributory fault is disregarded.

1 b. The percentage of the total fault of all of the parties
2 to each claim that is allocated to each claimant, defendant,
3 third-party defendant, and person who has been released from
4 liability under section 668.7. For this purpose the court
5 may determine that two or more persons are to be treated as
6 a single party.

7 3. In an action to which this section is applicable, the
8 court shall instruct the jury of the effect on awards and
9 liabilities of the percentage of fault allocated to each party
10 by the jury.

11 4. In determining the percentages of fault, the trier
12 of fact shall consider both the nature of the conduct of each
13 party at fault and the extent of the causal relation between
14 the conduct and the damages claimed.

15 5. The court shall determine the award of damages to each
16 claimant in accordance with the findings, subject to any
17 reduction under subsections 1 and 2 of this section and section
18 668.7, and enter judgment against each party liable on the
19 basis of the rules of joint and several liability under section
20 668.4. For purposes of contribution under section 668.5,
21 the court shall also determine and state in the judgment each
22 party's equitable share of the obligation to each claimant
23 in accordance with the respective percentages of fault.

24 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim and
25 counterclaim shall not be set off against each other, except
26 by agreement of both parties. However, if upon motion of
27 either party the court finds that the obligation of either
28 party is likely to be uncollectible the court may order that
29 both parties make payment to the court for distribution.
30 The court shall distribute the funds received, and shall
31 declare obligations discharged as if the payment to the court
32 by either party had been a payment to the other party and
33 as if the distribution of the funds back to the party making
34 payment had been a payment to that party by the other party.

35 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY.

1 Each defendant is jointly and severally liable for the entire
2 amount of the judgment awarded the claimant, except that a
3 defendant whose fault is less than that of the claimant is
4 liable to the claimant only for that portion of the judgment
5 which represents the percentage of fault allocated to the
6 defendant.

7 Sec. 5 NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

8 1. Except as otherwise provided in this chapter, a right
9 of contribution exists between two or more persons who are
10 jointly and severally liable on the same indivisible claim
11 for the same injury, death, or property damage, whether or
12 not judgment has been recovered against all or any of them.
13 The basis for contribution is each person's percentage of
14 fault as determined in the manner specified in section 668.2.

15 2. A person who obtains a release from a claimant under
16 section 668.6 is entitled to contribution only to the extent
17 that the amount paid in settlement was reasonable, and only
18 if the liability of the person from whom contribution is
19 sought has been extinguished. The liability of a person for
20 contribution is subject to the limitation stated in section
21 668.2, subsection 5.

22 3. A person who obtains a release from a claimant under
23 section 668.7 is immune from indemnity or contribution.

24 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

25 1. If the percentages of fault of each of the parties
26 to a claim for contribution have been established previously
27 by the court as provided in section 668.2, subsection 5, a
28 party paying more than the party's percentage share of damages
29 may recover judgment for contribution upon motion to the court
30 or in a separate action.

31 2. If the percentages of fault of each of the parties
32 to a claim for contribution have not been established by the
33 court, contribution may be enforced in a separate action,
34 whether or not a judgment has been rendered against either
35 the person seeking contribution or the person from whom

1 contribution is sought.

2 3. If a judgment has been rendered, an action for
3 contribution must be commenced within one year after the
4 judgment becomes final. If a judgment has not been rendered,
5 a claim for contribution is enforceable only upon satisfaction
6 of one of the following sets of conditions:

7 a. The person bringing the action for contribution must
8 have discharged the liability of the person from whom
9 contribution is sought by payment made within the period of
10 the statute of limitations applicable to the claimant's right
11 of action and must have commenced the action for contribution
12 within one year after the date of that payment.

13 b. The person seeking contribution must have agreed while
14 the action of the claimant was pending to discharge the
15 liability of the person from whom contribution is sought and
16 within one year after the date of the agreement must have
17 discharged that liability and commenced the action for
18 contribution.

19 Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A release,
20 covenant not to sue, or similar agreement entered into by
21 a claimant and a person who is or may be liable to the claimant
22 for damages discharges the person from liability to the
23 claimant. The agreement does not discharge other persons
24 that are or may be liable unless the agreement so provides,
25 but the agreement does reduce the amount of damages that are
26 recoverable from other persons who are or may be liable to
27 the extent of:

28 1. The percentage of liability of the award to claimant
29 that was allocated to the released person as determined by
30 the court in section 668.2, subsection 5.

31 2. The amounts paid by the released person to the claimant
32 in contemplation of the agreement if no determination has
33 been made by the court pursuant to section 668.2, subsection
34 5.

35 Sec. 8. The supreme court shall submit to the general

1 assembly during the 1985 session in the manner provided in
2 section 684.19 changes in the rules of procedure for courts
3 which are necessitated by the enactment of this chapter.

4 Sec. 9. Section 613.3, Code Supplement 1983, is repealed.

5 Sec. 10. Section 619.17, Code 1983, is repealed. This
6 section does not reinstate a rule requiring a claimant to
7 plead and prove freedom from contributory negligence.

8 Sec. 11. This chapter applies only to causes of action
9 which accrue on or after its effective date.

10

EXPLANATION

11 This bill provides for the adoption of comparative fault.

12 The bill generally accomplishes this as follows:

13 Section 1 of the bill sets out the extent of application
14 as including negligence, strict liability, and other specified
15 causes of action.

16 Section 2 of the bill sets out the effect to be given to
17 the finding of fault in that the trier of fact would determine
18 as percentages the relative degrees of fault of the parties
19 to the action. If the claimant is found to be chargeable
20 with a percentage of fault, then the amount of damage is
21 reduced by the same percentage, but if the claimant is found
22 to be chargeable with 50% or more of the fault, the claimant
23 can be barred from recovery. Further, section 2 provides
24 that the court determine, for purposes of contribution, the
25 equitable shares of obligation for all parties.

26 Section 3 of the bill provides that judgment setoffs between
27 claims and counterclaims are no longer mandatory. The section
28 also provides for a system of court collection and distribution
29 of payments.

30 Section 4 of the bill provides that a defendant is no
31 longer jointly and severally liable when the defendant's
32 assigned percentage of fault is less than that assigned to
33 the claimant.

34 Sections 5 and 6 of the bill outline the right to
35 contribution and enforcement of contribution procedures

1 available to parties who have paid a greater share of the
2 obligation than that found to be their respective percentage
3 of fault.

4 Section 7 of the bill allows for the release of a person
5 who is or may be liable to the claimant, and provides for
6 the reduction of the amount which claimant may seek from the
7 remaining parties by the percentage of fault attributed to
8 the released person or by the amount of the payment received
9 from the released person.

10 Sections 8 through 11 of the bill provide for the
11 necessitated changes in rules of procedure, the repeal of
12 contradictory sections of the Code, and the identification
13 of those cases to which the chapter will apply.

14 The bill creates a new chapter and refers to new sections
15 in that chapter. The bill takes effect July 1 following its
16 enactment.

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A BILL FOR

1 An Act establishing comparative negligence as the basis for
2 liability in relation to claims for damages arising from
3 injury to or death of a person or harm to property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 668.1 NEGLIGENCE DEFINED.

2 1. As used in this chapter, "negligence" means one or
3 more acts or omissions that are in any measure negligent,
4 grossly negligent, or constitute reckless, willful, or wanton
5 misconduct toward the person or property of the actor or
6 others.

7 2. The legal requirements of cause in fact and proximate
8 cause apply both to negligence as the basis for liability
9 and to contributory negligence.

10 Sec. 2. NEW SECTION. 668.2 COMPARATIVE NEGLIGENCE--
11 EFFECT.

12 1. If a claim alleges negligence as the basis for the
13 recovery of damages for injury or death of a person or harm
14 to property, contributory negligence that is chargeable to
15 the claimant diminishes proportionately the amount to be
16 awarded to the claimant as compensatory damages for loss to
17 which the claimant's negligence contributed, provided that
18 recovery by the claimant for the loss is barred if contributory
19 negligence that is chargeable to the claimant is greater than
20 the negligence that is chargeable to the person from whom
21 claimant seeks to recover. This rule applies whether or not
22 under prior law a claimant's contributory negligence con-
23 stituted a defense or was disregarded under applicable legal
24 doctrines.

25 2. In the trial of a claim involving the negligence of
26 more than one party to the claim, including thirty-party
27 defendants and persons who have been released pursuant to
28 section 668.7, the court, unless otherwise agreed by all
29 parties, shall instruct the jury to answer special interroga-
30 tories or, if there is no jury, shall make findings, in-
31 dicating all of the following:

32 a. The amount of damages each claimant would be entitled
33 to recover if contributory negligence is disregarded.

34 b. The percentage of the total negligence of all of the
35 parties to each claim that is allocated to each claimant,

1 defendant, third-party defendant, and person who has been
2 released from liability under section 668.7. For this pur-
3 pose the court may determine that two or more persons are
4 to be treated as a single party.

5 3. In any action to which this section is applicable,
6 the court shall instruct the jury of the effect on awards
7 and liabilities of the percentage of negligence allocated
8 to each party by the jury.

9 4. In determining the percentages of negligence, the trier
10 of fact shall consider both the nature of the conduct of each
11 party at fault and the extent of the causal relation between
12 the conduct and the damages claimed.

13 5. The court shall determine the award of damages to each
14 claimant in accordance with the findings, subject to any
15 reduction under subsections 1 and 2 of this section and section
16 668.7, and enter judgment against each party liable on the
17 basis of rules of joint and several liability as contained
18 in section 668.4. For the purpose of contribution under
19 section 668.5, the court also shall determine and state in
20 the judgment each party's equitable share of the obligation
21 to each claimant in accordance with the respective percentages
22 of negligence.

23 6. Upon motion made not later than one year after judgment
24 is entered, the court shall determine whether all or part
25 of a party's equitable share of the obligation is uncollectible
26 from that party, and shall reallocate any uncollectible amount
27 among the other parties, including a negligent claimant, ac-
28 cording to their respective percentages of negligence. The
29 party whose liability is reallocated is nonetheless subject
30 to contribution and to any continuing liability to the claimant
31 on the judgment.

32 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim and counter-
33 claim shall not be set off against each other, except by
34 agreement of both parties. However, if upon motion of either
35 party the court finds that the obligation of either party

1 is likely to be uncollectible, the court may order that both
2 parties make payment to the court for distribution. The court
3 shall distribute the funds received, and shall declare
4 obligations discharged as if the payment to the court by
5 either party had been a payment to the other party and as
6 if the distribution of the funds back to the party making
7 the payment had been a payment to that party by the other
8 party.

9 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY.
10 The common law rule of joint and several liability of joint
11 tort-feasors continues to apply under this chapter.

12 Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

13 1. A right of contribution exists between or among two
14 or more persons who are jointly and severally liable upon
15 the same indivisible claim for the same injury, death, or
16 harm, whether or not judgment has been recovered against all
17 or any of them. It may be enforced either in the original
18 action or by a separate action brought for that purpose.
19 The basis for contribution is each person's equitable share
20 of the obligation, including the equitable share of a negligent
21 claimant, as determined in accordance with section 668.2.

22 2. Contribution is available to a person who enters into
23 a settlement with a claimant only if the liability of the
24 person against whom contribution is sought has been
25 extinguished and only to the extent that the amount paid in
26 settlement was reasonable.

27 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

28 1. If the percentages of negligence of each of the parties
29 to a claim for contribution have been established previously
30 by the court as provided in section 668.2, subsection 5, a
31 party paying more than the party's percentage share of damages
32 may recover judgment for contribution upon motion to the court
33 or in a separate action.

34 2. If the percentage of negligence of each of the parties
35 to a claim for contribution has not been established by the

1 court, contribution may be enforced in a separate action,
2 whether or not a judgment has been rendered against either
3 the person seeking contribution or the person from whom
4 contribution is sought.

5 3. If a judgment has been rendered, an action for contribu-
6 tion must be commenced within one year after the judgment
7 becomes final. If a judgment has not been rendered, a claim
8 for contribution is enforceable only upon satisfaction of
9 one of the following sets of conditions:

10 a. The person bringing the action for contribution must
11 have discharged the liability of the person from whom con-
12 tribution is sought by payment made within the period of the
13 statute of limitations applicable to the claimant's right
14 of action and must have commenced the action for contribution
15 within one year after the date of that payment.

16 b. The person seeking contribution must have agreed while
17 the action of the claimant was pending to discharge the li-
18 ability of the person from whom contribution is sought and
19 within one year after the date of the agreement must have
20 discharged that liability and commenced the action for
21 contribution.

22 Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A release,
23 covenant not to sue, or similar agreement entered into by
24 a claimant and a person liable discharges that person from
25 all liability for contribution, but it does not discharge
26 any other persons liable upon the same claim unless it so
27 provides. However, the claim of the releasing person against
28 other persons is reduced by the amount of the released per-
29 son's equitable share of the obligation, as determined in
30 section 668.2, subsection 5.

31 Sec. 8. The supreme court shall submit to the general
32 assembly during the 1985 Session in the manner provided in
33 section 684.19 changes in the rules of procedure for courts
34 which are necessitated by the enactment of this chapter.

35 Sec. 9. Section 613.3, Code Supplement 1983, is repealed.

1 Sec. 10. Section 619.17, Code 1983, is repealed. This
2 section does not reinstate a rule requiring a claimant to
3 plead and prove freedom from contributory negligence.

4 Sec. 11. This Act applies only to causes of action which
5 accrue on or after its effective date.

6 EXPLANATION

7 This bill provides for the adoption of comparative
8 negligence. The bill generally accomplishes this as follows:

9 Section 1 of the bill sets out the extent of application
10 as including negligence, gross negligence, or reckless, will-
11 ful, or wanton misconduct.

12 Section 2 of the bill sets out the effect to be given to
13 the finding of negligence in that the trier of fact would
14 determine as percentages the relative degrees of negligence
15 of the parties to the action. If the claimant is found to
16 be chargeable with a percentage of negligence, then the amount
17 of damages is reduced by the same percentage, but if the
18 claimant is found to be more negligent than a person from
19 whom the claimant seeks to recover, the claim against that
20 person is barred. Further, section 2 provides that the court
21 determine, for purposes of contribution, the equitable shares
22 of obligation for all parties. The section also provides
23 for the reallocation of uncollectible judgments between the
24 parties according to their respective percentages of fault.

25 Section 3 of the bill provides that judgment setoffs be-
26 tweens claims and counterclaims are no longer mandatory.
27 The section also provides for a system of court collection
28 and distribution of payments.

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30 common law rule of joint and several liability.

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33 available to parties who have paid a greater share of an
34 obligation than that found to be their percentage of negli-
35 gence.

1 Section 7 of the bill provides for the release of a per-
2 son who is or may be liable to the claimant, and provides
3 for the reduction of the amount which the claimant may seek
4 from the remaining parties by the percentage of negligence
5 attributed to the released person.

6 Sections 8 through 11 of the bill provide for the neces-
7 sary changes in rules of procedure, the repeal of contradictory
8 sections of the Code, and the identification of those cases
9 to which the chapter will apply.

10 The bill creates a new chapter 668 of the Code, and refers
11 to some of the new sections.

12 The bill takes effect July 1 following its enactment.

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28 a. The amount of damages each claimant would be entitled
29 to recover if contributory negligence is disregarded.

30 b. The percentage of the total negligence of all of the
31 parties to each claim that is allocated to each claimant,
32 defendant, third-party defendant, and person who has been
33 released from liability under section 668.7. For this pur-
34 pose the court may determine that two or more persons are
35 to be treated as a single party.

1 3. If the claim is tried to a jury, the court shall not
2 give instructions or permit evidence or argument with re-
3 spect to the effects of the answers to be returned to the
4 interrogatories submitted under subsection 2.

5 4. In determining the percentages of negligence, the trier
6 of fact shall consider both the nature of the conduct of each
7 negligent party and the extent of the causal relation between
8 the conduct and the damages claimed.

9 5. The court shall determine the award of damages to each
10 claimant in accordance with the findings, subject to any
11 reduction under subsections 1 and 2 and section 668.7, and
12 enter judgment against each party liable on the basis of rules
13 of joint and several liability as contained within section
14 668.4. For the purpose of contribution under section 668.5,
15 the court shall also determine and state in the judgment each
16 party's equitable share of the obligation to each claimant
17 in accordance with the respective percentages of negligence.

18 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim and counter-
19 claim shall not be set off against each other, except by
20 agreement of both parties. However, if upon motion of either
21 party the court finds that the obligation of either party
22 is likely to be uncollectible the court may order that both
23 parties make payment to the court for distribution. The court
24 shall distribute the funds received, and shall declare
25 obligations discharged as if the payment to the court by
26 either party had been a payment to the other party and as
27 if the distribution of the funds back to the party making
28 the payment had been a payment to that party by the other
29 party.

30 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY.
31 Each defendant is jointly and severally liable for the entire
32 amount of the judgment awarded the claimant, except that the
33 doctrine of joint and several liability does not apply if
34 the claimant is determined to bear any negligence with respect
35 to the claim.

1 Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

2 1. A right of contribution exists between or among two
3 or more persons who are jointly and severally liable upon
4 the same indivisible claim for the same injury, death, or
5 harm, whether or not judgment has been recovered against all
6 or any of them. It may be enforced either in the original
7 action or by a separate action brought for that purpose.
8 The basis for contribution is each person's equitable share
9 of the obligation, including the equitable share of a negligent
10 claimant, as determined in accordance with section 668.2.

11 2. Contribution is available to a person who enters into
12 a settlement with the claimant only if the liability of the
13 person against whom contribution is sought has been extin-
14 quished and only to the extent that the amount paid in set-
15 tlement was reasonable.

16 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBU-
17 TION.

18 1. If the percentages of negligence of each of the parties
19 to a claim for contribution have been established previously
20 by the court as provided in section 668.2, subsection 5, a
21 party paying more than the party's percentage share of damages
22 may recover judgment for contributions upon motion to the
23 court or in a separate action.

24 2. If the percentages of negligence of each of the par-
25 ties to a claim for contribution have not been established
26 by the court, contribution may be enforced in a separate
27 action, whether or not a judgment has been rendered against
28 either the person seeking contribution or the person from
29 whom contribution is sought.

30 3. If a judgment has been rendered, an action for contri-
31 bution must be commenced within one year after the judgment
32 becomes final. If a judgment has not been rendered, a claim
33 for contribution is enforceable only upon satisfaction of
34 one of the following sets of conditions:

35 a. The person bringing the action for contribution must

1 have discharged the liability of the person from whom contri-
2 bution is sought by payment made within the period of the
3 statute of limitations applicable to the claimant's right
4 of action and must have commenced the action for contribution
5 within one year after the date of that payment.

6 b. The person seeking contribution must have agreed while
7 the action of the claimant was pending to discharge the lia-
8 bility of the person from whom contribution is sought and
9 within one year after the date of the agreement must have
10 discharged that liability and commenced the action for
11 contribution.

12 Sec. 7. NEW SECTION. 668.7 RELEASE. A release, covenant
13 not to sue, or similar agreement entered into by a claimant
14 and a person who is or may be liable to the claimant for
15 damages discharges the person from liability to the claimant.
16 The agreement does not discharge other persons that are or
17 may be liable unless the agreement so provides, but the
18 agreement does reduce the amount of damages that are
19 recoverable from other persons who are or may be liable to
20 the extent of the amounts paid by the released person to the
21 claimant in contemplation of the agreement.

22 Sec. 8. The supreme court shall submit to the general
23 assembly during the 1985 session in the manner provided in
24 section 684.19 changes in the rules of procedure for courts
25 which are necessitated by the enactment of this chapter.

26 Sec. 9. Section 613.3, Code Supplement 1983, is repealed.

27 Sec. 10. Section 619.17, Code 1983, is repealed. This
28 section does not reinstate a rule requiring a claimant to
29 plead and prove freedom from contributory negligence.

30 Sec. 11. This chapter applies to all cases tried or retried
31 on or after its effective date.

32 EXPLANATION

33 This bill provides for the adoption of comparative negli-
34 gence. The bill generally accomplishes this as follows:

35 Section 1 of the bill sets out the extent of application

1 as including only what might be termed "ordinary" negligence.
2 Section 2 of the bill sets out the effect to be given to
3 the finding of negligence in that the trier of fact would
4 determine as percentages the relative degrees of negligence
5 of the parties to the action. If the claimant is found to
6 be chargeable with a percentage of negligence, then the amount
7 of damages is reduced by the same percentage. Further, sec-
8 tion 2 provides that the court determine, for purposes of
9 contribution, the equitable shares of obligation for all par-
10 ties.

11 Section 3 of the bill provides that judgment setoffs be-
12 tween claims and counterclaims are no longer mandatory. The
13 section also provides for a system of court collection and
14 distribution of payments.

15 Section 4 of the bill provides that the doctrine of joint
16 and several liability no longer applies if the claimant is
17 also found to be negligent.

18 Sections 5 and 6 of the bill outline the right to contri-
19 bution and the enforcement of contribution procedures avail-
20 able to parties who have paid a greater share of an obligation
21 than that found to be their percentage of negligence.

22 Section 7 of the bill provides for the release of a person
23 who is or may be liable to the claimant, and provides for
24 the reduction of the amount which the claimant may seek from
25 the remaining parties by the amount paid by the released
26 person.

27 Sections 8 through 11 of the bill provide for the necessary
28 changes in rules of procedure, the repeal of contradictory
29 sections of the Code, and the identification of those cases
30 to which the chapter will apply.

31 The bill creates a new chapter 668 and refers to new
32 sections in that chapter. The bill takes effect July 1
33 following its enactment.

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PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED INTERIM SUBCOMMITTEE
ON COMPARATIVE NEGLIGENCE BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act establishing comparative negligence as the basis for
2 liability in relation to claims for damages arising from
3 injury to or death of a person or harm to property.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 668.1 NEGLIGENCE DEFINED.

2 1. As used in this chapter, "negligence" means one or
3 more acts or omissions that are in any measure negligent,
4 grossly negligent, or constitute reckless, willful, or wanton
5 misconduct toward the person or property of the actor or
6 others.

7 2. The legal requirements of cause in fact and proximate
8 cause apply both to negligence as the basis for liability
9 and to contributory negligence.

10 Sec. 2. NEW SECTION. 668.2 COMPARATIVE NEGLIGENCE--EF-
11 FECT.

12 1. Contributory negligence shall not bar recovery in an
13 action by a person or the person's legal representative to
14 recover damages for negligence resulting in death or in injury
15 to person or property, if the contributory negligence was
16 not greater than or equal to the negligence of the person
17 against whom recovery is sought, but any damages allowed shall
18 be diminished in proportion to the amount of negligence
19 attributable to the person recovering.

20 2. In the trial of a claim involving the negligence of
21 more than one party to the claim, including third-party
22 defendants, persons who have been released pursuant to section
23 668.7, or persons who are not parties to the action, the
24 court, unless otherwise agreed by all parties, shall instruct
25 the jury to answer special interrogatories or, if there is
26 no jury, shall make findings, indicating all of the following:

27 a. The amount of damages each claimant will be entitled
28 to recover if contributory negligence is disregarded.

29 b. The percentage of the total negligence allocated to
30 each claimant, defendant, third-party defendant, person who
31 has been released from liability under section 668.7, and
32 person who is determined to have been negligent but who is
33 not a party to the action. For this purpose the court may
34 determine that two or more persons are to be treated as a
35 single party, but the court shall disregard the rule of joint

1 and several liability of defendants.

2 3. If the claim is tried to a jury, the court shall not
3 give instructions or permit evidence or argument with respect
4 to the effects of the answers to be returned to the interroga-
5 tories submitted under subsection 2.

6 4. In determining the percentages of negligence, the trier
7 of fact shall consider both the nature of the conduct of each
8 party and the extent of the causal relation between the conduct
9 and the damages claimed.

10 5. The court shall determine the amount of damages payable
11 to each claimant by each other party, if any, in accordance
12 with the findings of the court or jury.

13 6. The liability of a party, if any, is limited to that
14 percentage of the damages that is equal to the percentage
15 of negligence chargeable to that party and the rule of joint
16 and several liability of defendants does not apply.

17 Sec. 3. NEW SECTION. 668.3 SETOFF. A claim and counter-
18 claim shall not be set off against each other, except by
19 agreement of both parties. However, if upon motion of either
20 party the court finds that the obligation of either party
21 is likely to be uncollectible, the court may order that both
22 parties make payment to the court for distribution. The court
23 shall distribute the funds received, and shall declare
24 obligations discharged as if the payment to the court by
25 either party had been a payment to the other party and as
26 if the distribution of the funds back to the party making
27 the payment had been a payment to that party by the other
28 party.

29 Sec. 4. NEW SECTION. 668.4 JOINT AND SEVERAL LIABILITY.
30 The common law rule of joint and several liability of joint
31 tort-feasors does not apply under this chapter. The liability
32 of a party, if any, is limited to that percentage of the
33 damage that is equal to the percentage of negligence chargeable
34 to that party.

35 Sec. 5. NEW SECTION. 668.5 RIGHT OF CONTRIBUTION.

1 1. Contribution is available to a person who enters into
2 a settlement with a claimant only if the liability of the
3 person against whom contribution is sought has been
4 extinguished and only to the extent that the amount paid in
5 settlement was reasonable. The liability of a person for
6 contribution is subject to the limitation stated in section
7 668.2, subsections 5 and 6.

8 2. A person who obtains a release from a claimant under
9 section 668.7 is immune from indemnity or contribution.

10 Sec. 6. NEW SECTION. 668.6 ENFORCEMENT OF CONTRIBUTION.

11 1. If the percentages of negligence of each of the par-
12 ties to a claim for contribution have not been established
13 by the court, contribution may be enforced in a separate
14 action.

15 2. A claim for contribution is enforceable only upon
16 satisfaction of one of the following sets of conditions:

17 a. The person bringing the action for contribution must
18 have discharged the liability of the person from whom con-
19 tribution is sought by payment made within the period of the
20 statute of limitations applicable to the claimant's right
21 of action and must have commenced the action for contribution
22 within one year after the date of that payment.

23 b. The person seeking contribution must have agreed while
24 the action of the claimant was pending to discharge the
25 liability of the person from whom contribution is sought and
26 within one year after the date of the agreement must have
27 discharged that liability and commenced the action for
28 contribution.

29 Sec. 7. NEW SECTION. 668.7 EFFECT OF RELEASE. A re-
30 lease, covenant not to sue, or similar agreement entered into
31 by a claimant and a person liable discharges that person from
32 all liability for contribution, but it does not discharge
33 any other persons liable upon the same claim unless it so
34 provides. However, the claim of the releasing person against
35 other persons is reduced by the amount of the released person's

1 equitable share of the obligation, as determined in section
2 668.2, subsections 5 and 6.

3 Sec. 8. The supreme court shall submit to the general
4 assembly during the 1985 Session in the manner provided in
5 section 602.4202 changes in the rules of procedure for courts
6 which are necessitated by the enactment of this chapter.

7 Sec. 9. Section 613.3, Code Supplement 1983, is repealed.

8 Sec. 10. Section 619.17, Code 1983, is repealed. This
9 section does not reinstate a rule requiring a claimant to
10 plead and prove freedom from contributory negligence.

11 Sec. 11. This chapter applies to all cases tried or retried
12 on or after its effective date.

13 EXPLANATION

14 This bill provides for the adoption of comparative
15 negligence. The bill generally accomplishes this as follows:

16 Section 1 of the bill sets out the extent of application
17 as including negligence, gross negligence, or reckless, will-
18 ful, or wanton misconduct.

19 Section 2 of the bill sets out the effect to be given to
20 the finding of negligence in that the trier of fact would
21 determine as percentages the relative degrees of negligence
22 of the parties to the action. If the claimant is found to
23 be chargeable with a percentage of negligence, then the amount
24 of damages is reduced by the same percentage, but if the
25 claimant is found to be more negligent than a person from
26 whom the claimant seeks to recover, the claim against that
27 person is barred. Further, section 2 provides that the court
28 determines the equitable shares of obligation for all parties.

29 Section 3 of the bill provides that judgment setoffs be-
30 tween claims and counterclaims are no longer mandatory. The
31 section also provides for a system of court collection and
32 distribution of payments.

33 Section 4 of the bill provides for the abolition of the
34 common law rule of joint and several liability.

35 Sections 5 and 6 of the bill outline the right to con-

1 tribution and the enforcement of contribution procedures
2 available to parties who have paid a greater share of an
3 obligation than that found to be their percentage of negli-
4 gence.

5 Section 7 of the bill provides for the release of a per-
6 son who is or may be liable to the claimant, and provides
7 for the reduction of the amount which the claimant may seek
8 from the remaining parties by the percentage of negligence
9 attributed to the released person.

10 Sections 8 through 11 of the bill provide for the neces-
11 sary changes in rules of procedure, the repeal of contradictory
12 sections of the Code, and the identification of those cases
13 to which the chapter will apply.

14 The bill creates a new chapter 668 of the Code, and refers
15 to some of the new sections.

16 The bill takes effect July 1 following its enactment.

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PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED COMMITTEE ON JUDICIARY
BILL BY COMPARATIVE NEGLIGENCE
JOINT INTERIM SUBCOMMITTEE)

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

A BILL FOR

1 An Act relating to claims against the state and municipalities
2 by establishing a state court of claims and a district court
3 of claims for each judicial district in the state, trans-
4 ferring jurisdiction for the adjudication of claims against
5 the state or against municipalities to the court of claims,
6 modifying the timing and procedural requirements for claims
7 against the state or against municipalities, reestablishing
8 sovereign immunity of the state and of municipalities for
9 all actions except those brought pursuant to this Act, and
10 making an appropriation.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. PURPOSE OF ACT. This Act shall be liberally
2 construed to the end that claims brought against the state
3 or a municipality are handled in a uniform and expeditious
4 manner, and only as provided for by this Act.

5 Sec. 2. NEW SECTION. 25A.1 DEFINITIONS. As used in
6 this chapter, unless the context otherwise requires:

7 1. "State agency" means all executive departments,
8 agencies, boards, bureaus, and commissions of the state of
9 Iowa, and corporations whose primary function is to act as,
10 and while acting as, instrumentalities or agencies of the
11 state of Iowa, whether or not authorized to sue and be sued
12 in their own names. However, the definition does not include
13 a contractor with the state of Iowa.

14 2. "Commissioner" means the state commissioner of claims,
15 appointed by the state court of claims for the purpose of
16 handling and investigating claims under this chapter.

17 3. "Employee of the state" means an officer, agent, or
18 employee of the state or a state agency, including members
19 of the general assembly, and persons acting on behalf of the
20 state or a state agency in an official capacity, temporarily
21 or permanently in the service of the state of Iowa, whether
22 with or without compensation but does not include a contractor
23 doing business with the state. Professional personnel who
24 render services to patients and inmates of state institutions
25 under the jurisdiction of the department of human services
26 or the Iowa department of corrections are to be considered
27 employees of the state, whether the personnel are employed
28 on a full-time basis or render services on a part-time basis
29 on a fee schedule or other arrangement.

30 4. "Acting within the scope of office or employment" means
31 acting in the person's line of duty as an employee of the
32 state.

33 5. "Claim" means:

34 a. A claim against the state of Iowa for money only, on
35 account of damage to or loss of property or on account of

1 personal injury or death, alleged to have been caused by the
2 negligent or wrongful act or omission of an employee of the
3 state while acting within the scope of office or employment,
4 under circumstances where the state, if a private person,
5 could be liable to the claimant for the loss.

6 b. A claim against an employee of the state for money
7 only, on account of damage to or loss of property or on account
8 of personal injury or death, alleged to have been caused by
9 the negligent or wrongful act or omission, except an act of
10 malfeasance in office or negligence amounting to wanton
11 disregard for the person or property of another, of an employee
12 of the state while acting within the scope of office or
13 employment.

14 Sec. 3. NEW SECTION. 25A.2 ALLOWANCE OF CLAIMS. The
15 immunity of the state from liability and suit upon claims
16 made pursuant to this chapter is waived to the extent provided
17 in this chapter. However, a suit is subject to the limitations
18 set out in sections 25A.3 and 25A.4.

19 Sec. 4. NEW SECTION. 25A.3 LIMITATIONS OF ACTIONS.
20 A claim or suit otherwise permitted under this chapter is
21 barred unless within ninety days after the claim accrues
22 notice of the claim is made in writing to the state court
23 of claims.

24 If a claim is made or filed under any other law of this
25 state and a determination is made by a court or state agency
26 that this chapter provides the exclusive remedy for the claim,
27 the time to make a notice of claim shall be extended to ninety
28 days from the date of the court order making that determination
29 or the date of mailing of notice to the claimant of that
30 determination by a state agency, if the time to make the claim
31 under this chapter would otherwise expire before the end of
32 the extended period.

33 Sec. 5. NEW SECTION. 25A.4 CLAIMS PROCEDURE. A claim
34 filed with the state court of claims shall be handled in the
35 following manner:

1 1. Within thirty days of the filing of the notice of
2 claim, the state court of claims shall determine whether the
3 claim is a proper claim for action under this chapter.

4 If the determination is that the claim is not actionable
5 under this chapter, the court shall notify the claimant in
6 writing of the court's denial of the claim, the notice to
7 set forth the reasons for denial. The claimant may, within
8 thirty days of the mailing of the notice of denial, file an
9 appeal with the supreme court. If the supreme court upholds
10 the denial it is a final adjudication and the claim is barred
11 from further action under this chapter. If the supreme court
12 overrules the denial, the claim shall be sent to the state
13 court of claims for adjudication under this chapter. If the
14 claimant fails to appeal the denial within thirty days of
15 the mailing of the notice of denial, the claim is barred from
16 further action under this chapter.

17 If the claim is determined to be one proper for further
18 action under this chapter, the state court of claims shall
19 forward the claim to the state commissioner of claims.

20 2. Upon receipt of a claim, the state commissioner of
21 claims shall proceed as follows:

22 a. The commissioner shall determine a time and place for
23 a hearing on the claim and cause notification to the parties
24 to be served personally or by registered mail not less than
25 five days before the hearing. The commissioner may postpone
26 a hearing for good cause shown. The commissioner may allow
27 the hearing to proceed and the taking of evidence even if
28 a party duly notified fails to appear.

29 b. The commissioner shall appoint a hearing officer to
30 conduct the hearing.

31 3. The hearing officer for the claim may issue subpoenas
32 for the attendance of witnesses and for the production of
33 books, records, documents, and other evidence, and may
34 administer oaths. Subpoenas shall be served and enforced
35 in the manner provided by law for the service and enforcement

1 of subpoenas in a civil action.

2 4. The hearing shall be conducted to ensure that parties
3 are entitled to be heard, to present evidence material to
4 the claim and to cross-examine witnesses appearing at the
5 hearing. A party has the right to be represented by an
6 attorney at the hearing. On application of a party and for
7 use as evidence, the hearing officer may permit a deposition
8 to be taken, in the manner and upon the terms designated by
9 the hearing officer, of a witness who cannot be subpoenaed
10 or is unable to attend the hearing.

11 5. Upon the evidence presented at the hearing, the hearing
12 officer shall prepare a hearing report on the claim to be
13 forwarded to the state commissioner.

14 6. Upon receipt of the hearing report, the commissioner
15 shall, within thirty days, prepare the final report of the
16 claim and forward the final report to the state court of
17 claims. The final report shall contain all evidence heard
18 and make one of the following findings:

19 a. That the claim is one which does not obligate the state
20 to make any payment upon the claim.

21 b. That the claim is one upon which the court of claims
22 should make an award, and specifying the award.

23 c. That the claim is one upon which the state may be ob-
24 ligated but that the commissioner is unable to ascertain the
25 proper award.

26 7. Upon receipt of the commissioner's final report, the
27 court of claims shall review the report and enter one of the
28 following judgments:

29 a. That the claim is one which does not obligate the state
30 to make payment, and setting forth the reasons.

31 b. That the claim is one which does obligate the state
32 to make payment in a specified dollar amount, and setting
33 forth the reasons.

34 8. Decisions of the state court of claims are subject
35 to appeal to the supreme court of the state for review upon

1 the record. The review by the supreme court shall not be
2 de novo. Upon appeal, the supreme court may affirm, reverse
3 or modify the judgment, granting the award or judgment the
4 state court of claims should have granted, or may dismiss
5 the appeal or remit the claim to the state court of claims
6 for further proceedings ordered by the supreme court.

7 An appeal to the supreme court must be taken within thirty
8 days after the court of claims decision is final. If the
9 appeal is not taken within thirty days, further action on
10 the claim under this chapter is barred.

11 9. An award made under this chapter, if accepted by the
12 claimant, is final and conclusive on all officers of the state
13 of Iowa, except when procured by means of fraud. The
14 acceptance by the claimant of the award is final and con-
15 clusive on the claimant, and constitutes a complete release
16 by the claimant of any claim against the state and against
17 the employee of the state whose act or omission gave rise
18 to the claim, by reason of the same subject matter. The award
19 shall be paid promptly out of appropriations, if any, made
20 for that purpose. However, if no money has been appropriated
21 for the purpose the amount shall be paid promptly out of any
22 money in the state treasury not otherwise appropriated.

23 Sec. 6. NEW SECTION. 25A.5 COMPROMISE AND SETTLEMENT.
24 The attorney general may compromise or settle any claim
25 permitted under this chapter, with the approval of the state
26 court of claims, in order to do substantial justice.

27 Sec. 7. NEW SECTION. 25A.6 EXCEPTIONS. This chapter
28 does not apply to any of the following claims:

29 1. A claim based upon an act or omission of an employee
30 of the state, exercising due care, in the execution of a
31 statute or rule, whether or not the statute or rule is valid,
32 or based upon the exercise or performance or the failure to
33 exercise or perform a discretionary function or duty on the
34 part of a state agency or an employee of the state, whether
35 or not the discretion is abused.

- 1 2. A claim arising in respect to the assessment or col-
2 lection of a tax or fee, or the detention of any goods or
3 merchandise by a law enforcement officer.
- 4 3. A claim for damages caused by the imposition or es-
5 tablishment of a quarantine by the state, whether the
6 quarantine relates to persons or property.
- 7 4. A claim arising out of assault, battery, false imprison-
8 ment, false arrest, malicious prosecution, abuse of process,
9 libel, slander, misrepresentation, deceit, or interference
10 with contract rights.
- 11 5. A claim by an employee of the state which is covered
12 by the Iowa workers' compensation law or the Iowa occupational
13 disease law.
- 14 6. A claim by an inmate as defined in section 85.59.
- 15 7. A claim based upon damage to or loss or destruction
16 of private property, either real or personal, or both, or
17 personal injury or death, when the damage, loss, destruction,
18 injury or death occurred as an incident to the training,
19 operation, or maintenance of the national guard while not
20 in "active state service" as defined in section 29A.1,
21 subsection 5.
- 22 8. A claim based upon or arising out of a claim of
23 negligent design or specification, negligent adoption of
24 design or specification, or negligent construction or
25 reconstruction of a highway, secondary road, or street as
26 defined in section 321.1, subsection 48, that was constructed
27 or reconstructed in accordance with a generally recognized
28 engineering or safety standard, criteria, or design theory
29 in existence at the time of the construction or reconstruction.
30 A claim under this chapter shall not be allowed for failure
31 to upgrade, improve, or alter any aspect of an existing
32 highway, secondary road, or street, to new, changed, or altered
33 design standards. In respect to highways and roads,
34 sealcoating, asphaltting, patching, resurfacing, ditching,
35 draining, repairing, graveling, rocking, blading, or

1 maintaining an existing highway or road does not constitute
2 reconstruction. This subsection does not apply to claims
3 based upon gross negligence.

4 9. A claim based upon or arising out of a claim of
5 negligent design or specification, negligent adoption of
6 design or specification, or negligent construction or
7 reconstruction of a public improvement as defined in section
8 384.37, subsection 1, or other public facility that was
9 constructed or reconstructed in accordance with a generally
10 recognized engineering or safety standard, criteria, or design
11 theory in existence at the time of the construction or
12 reconstruction. A claim under this chapter shall not be
13 allowed for failure to upgrade, improve, or alter any aspect
14 of an existing public improvement or other public facility
15 to new, changed, or altered design standards. This subsection
16 does not apply to claims based upon gross negligence.

17 Sec. 8. NEW SECTION. 25A.7 ATTORNEY'S FEES AND EXPENSES.

18 The court rendering a judgment for the claimant under this
19 chapter, as a part of the judgment or award, shall determine
20 and allow reasonable attorney's fees and expenses, to be paid
21 out of but not in addition to the amount of judgment or award
22 recovered, to the attorneys representing the claimant. An
23 attorney who charges, demands, receives, or collects for
24 services rendered in connection with a claim an amount in
25 excess of that allowed under this section, if recovery is
26 had, is guilty of a serious misdemeanor.

27 Sec. 9. NEW SECTION. 25A.8 REMEDIES EXCLUSIVE. The
28 authority of a state agency to sue or be sued in its own name
29 does not authorize suits against the state agency on claims
30 as defined in this chapter. The remedies provided by this
31 chapter in such cases are exclusive.

32 Sec. 10. NEW SECTION. 25A.9 ADJUSTMENT OF OTHER CLAIMS.

33 This chapter does not repeal any provision of law authorizing
34 a state agency to consider, ascertain, adjust, compromise,
35 settle, determine, allow, or pay any claim other than a claim

1 as defined in this chapter.

2 Sec. 11. NEW SECTION. 25A.10 EMPLOYEES DEFENDED AND
3 INDEMNIFIED. The state shall defend and, except in cases
4 of malfeasance in office or conduct amounting to wanton
5 disregard for the person or property of another, shall
6 indemnify and hold harmless any employee of the state against
7 a claim as defined in section 25A.1, subsection 5, paragraph
8 "b", including claims arising under the Constitution, statutes,
9 or rules of the United States or of any state.

10 Sec. 12. NEW SECTION. 25A.11 ACTIONS IN FEDERAL COURT.
11 The state shall defend, indemnify and hold harmless an employee
12 of the state in any action commenced in federal court under
13 section 1983, Title 42, United States Code, against the
14 employee for acts of the employee while acting in the scope
15 of employment. If the acts or omissions of the employee,
16 upon which the action is based, are within the exceptions
17 to a claim as defined in section 25A.1, subsection 5, paragraph
18 "b", the state shall not indemnify or hold harmless the
19 employee.

20 Sec. 13. Section 46.12, Code 1983, is amended to read
21 as follows:

22 46.12 NOTIFICATION OF VACANCY AND RESIGNATION. When a
23 vacancy occurs or will occur within sixty days in the supreme
24 court, the court of appeals, the state court of claims, a
25 district court of claims, or district court, the state
26 commissioner of elections shall forthwith so notify the
27 ~~chairman~~ chairperson of the proper judicial nominating
28 commission. The ~~chairman~~ chairperson shall call a meeting
29 of the commission within ten days after ~~such~~ notice; if he
30 the chairperson fails to do so, the chief justice shall call
31 ~~such~~ the meeting.

32 When a judge of the supreme court, court of appeals, state
33 court of claims, district court of claims, or district court
34 resigns, he the judge shall submit a copy of ~~his~~ the
35 resignation to the state commissioner of elections at the

1 time ~~he~~ the judge submits ~~his~~ the resignation to the governor;
2 and when a judge of the supreme court, court of appeals, state
3 court of claims, district court of claims, or district court
4 dies, the clerk of the district court of the county of ~~his~~
5 the judge's residence shall in writing forthwith notify the
6 state commissioner of elections of ~~such-fact~~ the death.

7 Sec. 14. Section 46.15, unnumbered paragraph 1, Code
8 Supplement 1983, is amended to read as follows:

9 All appointments to the supreme court, ~~and~~ court of appeals
10 and state court of claims shall be made from the nominees
11 of the state judicial nominating commission, and all
12 appointments to the district court and district court of
13 claims shall be made from the nominees of the district judicial
14 nominating commission. Nominees to the court of appeals shall
15 have the qualifications prescribed for nominees to the supreme
16 court.

17 Sec. 15. Section 46.16, subsection 1, paragraph a, Code
18 Supplement 1983, is amended to read as follows:

19 a. The initial term of office of judges of the supreme
20 court, court of appeals, state court of claims, district court
21 of claims, and district court shall be for one year after
22 appointment and until January 1 following the next judicial
23 election after expiration of ~~such~~ that year; and

24 Sec. 16. Section 46.16, subsection 1, paragraph b, Code
25 Supplement 1983, is amended to read as follows:

26 b. The regular term of office of judges of the supreme
27 court retained at a judicial election ~~shall-be~~ is eight years,
28 and of judges of the court of appeals, state court of claims,
29 district court of claims, and district court so retained ~~shall~~
30 be is six years, from the expiration of their initial or
31 previous regular term ~~as-the-case-may-be~~.

32 Sec. 17. Section 46.20, Code Supplement 1983, is amended
33 to read as follows:

34 46.20 DECLARATION OF CANDIDACY. At least ninety days
35 prior to the judicial election preceding expiration of the

1 initial or regular term of office, a judge of the supreme
2 court, court of appeals, state court of claims, district court
3 of claims, or district court including district associate
4 judges, or a clerk of the district court who is required to
5 stand for retention under section 602.1216 may file a
6 declaration of candidacy with the state commissioner of
7 elections to stand for retention or rejection at that election.
8 If a judge or clerk fails to file the declaration, the office
9 ~~shall-be~~ is vacant at the end of the term. District associate
10 judges filing the declaration shall stand for retention in
11 the judicial election district of their residence.

12 Sec. 18. Section 46.21, Code Supplement 1983, is amended
13 to read as follows:

14 46.21 CONDUCT OF ELECTIONS. At least fifty-five days
15 prior to each judicial election, the state commissioner of
16 elections shall certify to the county commissioner of elections
17 of each county a list of the judges of the supreme court,
18 court of appeals, state court of claims, district court of
19 claims, and district court including district associate judges,
20 and clerks of the district court to be voted on in each county
21 at that election. The county commissioner of elections shall
22 place the names upon the ballot in the order in which they
23 appear in the certificate, unless only one county is voting
24 ~~thereon~~. The state commissioner of elections shall rotate
25 the names in the certificate by county, or the county
26 commissioner of elections shall rotate them upon the ballot
27 by precinct if only one county is voting ~~thereon~~. The names
28 of all judges and clerks to be voted on shall be placed upon
29 one ballot, which shall be in substantially the following
30 form:

31 STATE OF IOWA
32 JUDICIAL BALLOT
33 (Date)

34 VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER
35 EACH NAME.

1 SUPREME COURT

2 Shall the following judges of the Supreme Court be retained
3 in office?

4 JOHN DOE YES ___ NO ___
5 RICHARD ROE YES ___ NO ___

6 COURT OF APPEALS

7 Shall the following judges of the Court of Appeals be
8 retained in office?

9 JOHN DOE YES ___ NO ___
10 RICHARD ROE YES ___ NO ___

11 STATE COURT OF CLAIMS

12 Shall the following judges of the State Court of Claims
13 be retained in office?

14 JOHN DOE YES NO
15 MARY SMITH YES NO

16 DISTRICT COURT OF CLAIMS

17 Shall the following judge of the District Court of Claims
18 be retained in office?

19 JANE SMITH YES NO

20 DISTRICT COURT

21 Shall the following judge or associate judge of the District
22 Court be retained in office?

23 JOHN SMITH YES ___ NO ___

24 Shall the following clerk of the District Court be retained
25 in office?

26 JANE DOE YES ___ NO ___

27 Sec. 19. Section 46.24, Code Supplement 1983, is amended to
28 read as follows:

29 46.24 RESULTS OF ELECTION. A judge of the supreme court,
30 court of appeals, state court of claims, district court

31 of claims, or district court including a district

32 associate judge, or a clerk of the district court must receive
33 more affirmative than negative votes to be retained in office.

34 When the poll is closed, the election judges shall publicly

35 canvass the vote forthwith. The board of supervisors shall

1 canvass the returns at its meeting on Monday after the
2 election, and shall promptly certify the number of affirmative
3 and negative votes on each judge or clerk to the state
4 commissioner of elections.

5 The state board of canvassers shall, at the time of canvassing
6 the vote cast at a general election, open and canvass all
7 of the returns for the judicial election. Each judge of the
8 supreme court, court of appeals, state court of claims,
9 district court of claims, or district court including
10 a district associate judge, or a clerk of the district court
11 who has received more affirmative than negative votes shall
12 receive from the state board of canvassers an appropriate
13 certificate so stating.

14 Sec. 20. Chapter 602, Code Supplement 1983, is amended by
15 adding the following new article:

16 ARTICLE 12

17 COURTS OF CLAIMS

18 PART I

19 STATE COURT OF CLAIMS

20 Sec. 21. NEW SECTION. 602.12101 STATE COURT OF CLAIMS.
21 A state court of claims is established. The court has
22 exclusive, general, and original jurisdiction of all actions,
23 proceedings or remedies for claims against the state, as
24 identified in chapter 25A. The court has all the powers
25 necessary to carry out properly the jurisdiction granted and
26 the duties imposed by this article.

27 Sec. 22. NEW SECTION. 602.12102 ORGANIZATION.

28 1. JUDGES. The governor shall appoint, subject to
29 confirmation by the senate, three persons to serve as state
30 court of claims judges. Judges of the state court of claims
31 shall be nominated and appointed and shall stand for retention
32 in office as provided in chapter 46.

33 2. CHIEF JUDGE. One member of the state court of claims
34 shall be selected as chief judge, as provided in section
35 602.1202, to serve during that judge's term of office. The

1 chief judge is eligible for reselection. The chief judge
2 shall appoint one of the other judges to act during the ab-
3 sence or inability of the chief judge to act, and when so
4 acting the appointee has all the rights, duties, and powers
5 of the chief judge.

6 3. COMMISSIONER. There is established in the state court
7 of claims the office of the state commissioner of claims,
8 which shall serve the state court of claims in all matters
9 assigned to the court by this article. The chief judge of
10 the state court of claims shall appoint a commissioner of
11 claims and hearing officers for the office of state
12 commissioner of claims as the chief judge deems necessary
13 for the efficient operation of the office in performing the
14 duties assigned by this division. All appointees shall serve
15 at the pleasure of the chief judge.

16 Sec. 23. NEW SECTION. 602.12103. POWERS AND DUTIES OF
17 COMMISSIONER. The powers and duties of the state commissioner
18 of claims shall be:

19 1. Employ staff and office personnel as needed for the
20 efficient operation of the office of state commissioner of
21 claims.

22 2. Conduct investigations into filed claims forwarded
23 to the office by the state court of claims and make final
24 reports of the investigations, together with the commissioner's
25 recommendations, to the state court of claims.

26 3. Exercise other powers and duties as necessary to fulfill
27 the requirements of the office.

28 Sec. 24. NEW SECTION. 602.12104 TIME AND PLACE COURT
29 MEETS. The state court of claims shall meet at the seat of
30 state government and elsewhere as the court orders, and at
31 times the court orders.

32 Sec. 25. NEW SECTION. 602.12105 RULES. The state court
33 of claims, subject to approval of the supreme court, may
34 prescribe rules for the conduct of business of the state court
35 of claims. Rules prescribed shall not abridge, enlarge, or

1 modify a substantive right.

2 Sec. 26. NEW SECTION. 602.12106. FEES--COSTS. Costs
3 to be collected and awarded in the state court of claims shall
4 be as prescribed from time to time by the supreme court.
5 Fees and costs may be awarded to a party to any claim in the
6 discretion of the presiding judge.

7

PART II

8

DISTRICT COURTS OF CLAIMS

9 Sec. 27. NEW SECTION. 602.12201 DISTRICT COURT OF CLAIMS.
10 Eight Iowa district courts of claims are established, divided
11 as provided in section 602.6107. Each district court of
12 claims has exclusive, general, and original jurisdiction of
13 all actions, proceedings or remedies for claims against a
14 municipality, as identified in chapter 613A. The courts have
15 all the powers necessary to carry out properly the jurisdiction
16 granted and the duties imposed by this article.

17 Sec. 28. NEW SECTION. 602.12202 ORGANIZATION.

18 1. JUDGES. The governor shall appoint, subject to
19 confirmation by the senate, fourteen persons, one from each
20 of the judicial election districts as provided in section
21 602.6109, to serve as district court of claims judges. A
22 judge of the district court of claims must be an attorney-
23 at-law admitted to practice in the courts of this state, of
24 at least ten years experience in the practice of law and at
25 least five years experience as a judicial officer of a court
26 of this state.

27 2. COMMISSIONERS. There is established in each district
28 court of claims the office of the commissioner of claims,
29 which shall serve the district court of claims of that judicial
30 district in all matters assigned to the court by this article.
31 The judge or judges of each district court of claims shall
32 appoint a commissioner of claims and hearing officers for
33 the office of commissioner of claims as the judge or judges
34 deem necessary to the efficient operation of the office in
35 performing the duties assigned by this article. All appointees

1 shall serve at the pleasure of the judge or judges of the
2 district court of claims.

3 Sec. 29. NEW SECTION. 602.12203 POWERS AND DUTIES OF
4 COMMISSIONER. A commissioner of claims shall:

5 1. Employ staff and office personnel as needed for the
6 efficient operation of the office of commissioner of claims.

7 2. Conduct investigations into filed claims forwarded
8 to the commissioner by the district court of claims and make
9 a final report of the investigation, together with the com-
10 missioner's recommendations, to the district court of claims.

11 3. Exercise other powers and duties as necessary to fulfill
12 the requirements of the office.

13 Sec. 30. NEW SECTION. 602.12204 COURT IN CONTINUOUS
14 SESSION. The district court of claims of each judicial
15 district shall be in continuous session in all the several
16 counties comprising the district.

17 Sec. 31. NEW SECTION. 602.12205 JUDGES.

18 1. The jurisdiction of the Iowa district courts of claims
19 shall be exercised by judges of the district courts of claims.

20 2. The judges of the district court of claims shall not
21 sit together on any claim. They may hold court in the same
22 county at the same time.

23 Sec. 32. NEW SECTION. 602.12206 RULES. The judges of
24 each district court of claims, subject to approval of the
25 supreme court, may prescribe rules for the conduct of business
26 of the district courts of claims. Rules prescribed shall
27 not abridge, enlarge, or modify a substantive right.

28 Sec. 33. NEW SECTION. 602.12207 FEES--COSTS. Costs
29 to be collected and awarded in the district courts of claims
30 shall be as prescribed from time to time by the supreme court.
31 Fees and costs may be awarded to a party to any claim in the
32 discretion of the presiding judge.

33 Sec. 34. Section 602.1101, subsection 8, Code Supplement
34 1983, is amended to read as follows:

35 8. "Judicial officer" means a supreme court justice, a

1 judge of the court of appeals, a state court of claims judge,
2 a district court of claims judge, a district judge, a district
3 associate judge, or a magistrate. The term also includes
4 a person who is temporarily serving as a justice, judge, or
5 magistrate as permitted by section 602.1612 or 602.9206.

6 Sec. 35. Section 602.1102, Code Supplement 1983, is amended
7 by adding the following new subsections and renumbering the
8 subsequent subsections as necessary:

9 NEW SUBSECTION. 3. The state court of claims.

10 NEW SUBSECTION. 4. The district courts of claims.

11 Sec. 36. Section 602.1202, Code Supplement 1983, is amended
12 to read as follows:

13 602.1202 JUDICIAL COUNCIL. A judicial council is
14 established, consisting of the chief judges of the judicial
15 districts, the chief judge of the court of appeals, the chief
16 judge of the state court of claims, and the chief justice
17 who ~~shall be~~ is the chairperson. The council shall convene
18 not less than twice each year at times and places as ordered
19 by the chief justice. The council shall advise the supreme
20 court with respect to the supervision and administration of
21 the department.

22 Sec. 37. Section 602.1210, Code Supplement 1983, is amended
23 to read as follows:

24 602.1210 SELECTION OF CHIEF JUDGES. Not later than
25 December 15 in each odd-numbered year the chief justice shall
26 appoint chief judges of the judicial districts, and a chief
27 judge of the state court of claims, subject to the approval
28 of the supreme court. The chief judge of a judicial district
29 shall be appointed from those district judges who are serving
30 within the district. A chief judge shall serve for a two-
31 year term and is eligible for reappointment. The supreme
32 court, by majority vote, may remove a person from the position
33 of chief judge. Vacancies in the office of chief judge shall
34 be filled in the same manner. An order appointing a chief
35 judge shall be filed with the clerk of the supreme court,

1 who shall mail a copy to the clerk of the district court in
2 each county in the judicial district.

3 Sec. 38. Section 602.1211, Code Supplement 1983, is amended
4 by adding the following new subsection:

5 NEW SUBSECTION. 4. In addition to judicial duties, the
6 chief judge of the state court of claims shall supervise all
7 judicial officers and court employees of the court of claims.
8 The chief judge shall fix the times and places of holding
9 court, and shall designate the respective presiding judges,
10 supervise the performance of all administrative and judicial
11 business of the court, and conduct conferences to consider,
12 study, and plan for improvement of the administration of
13 justice. The chief judge shall not attempt to direct or
14 influence a judicial officer in a ruling or decision.

15 Sec. 39. Section 602.1501, Code Supplement 1983, is amended
16 by adding the following new subsections and renumbering the
17 subsequent subsections as necessary:

18 NEW SUBSECTION. 3. The chief judge and each judge of
19 the state court of claims shall receive the salary set by
20 the general assembly.

21 NEW SUBSECTION. 4. Each judge of the district courts
22 of claims shall receive the salary set by the general assembly.

23 Sec. 40. Section 602.1603, Code Supplement 1983, is amended
24 to read as follows:

25 602.1603 JUDGE TO BE ATTORNEY. A person is not eligible
26 for, and shall not hold the office of supreme court justice,
27 court of appeals judge, state court of claims judge, district
28 court of claims judge, district judge, or district associate
29 judge unless admitted to the practice of law in this state.

30 Sec. 41. Section 602.1604, Code Supplement 1983, is amended
31 to read as follows:

32 602.1604 JUDGES SHALL NOT PRACTICE LAW. While holding
33 office, a supreme court justice, court of appeals judge, state
34 court of claims judge, district court of claims judge, district
35 judge, or district associate judge shall not practice as an

1 attorney or counselor or give advice in relation to any action
2 pending or about to be brought in any of the courts of the
3 state. A person whose appointment as an alternate district
4 associate judge is authorized under section 602.6303 may
5 practice law except when actually serving as a district
6 associate judge.

7 Sec. 42. Section 602.1610, subsection 1, paragraph b,
8 Code Supplement 1983, is amended to read as follows:

9 b. The mandatory retirement age is seventy-two years for
10 all justices of the supreme court, judges of the court of
11 appeals, judges of the state court of claims, judges of the
12 district court of claims, and district judges appointed to
13 office after July 1, 1965.

14 Sec. 43. Section 602.1611, subsection 1, Code Supplement
15 1983, is amended to read as follows:

16 1. Justices of the supreme court, judges of the court
17 of appeals, judges of the state court of claims, judges of
18 the district court of claims, and district judges are members
19 of either the judicial retirement system or the Iowa public
20 employees' retirement system, as determined under section
21 97B.69 and article 9, part 1.

22 Sec. 44. NEW SECTION. 613A.1 DEFINITIONS. As used in
23 this chapter, unless the context otherwise requires:

24 1. "Municipality" means city, county, township, school
25 district, and any other unit of local government except a
26 soil conservation district as defined in section 467A.3,
27 subsection 1.

28 2. "Governing body" means the council of a city, county
29 board of supervisors, board of township trustees, local school
30 board, and other boards and commissions exercising quasi-
31 legislative, quasi-executive, or quasi-judicial power over
32 territory comprising a municipality.

33 3. "Commissioner" means the district commissioner of
34 claims appointed by the judicial district court of claims
35 for the purpose of handling and investigating claims under

1 this chapter.

2 4. "Employee of the municipality" means an officer, agent,
3 or employee of a municipality, including members of a governing
4 body, and persons acting on behalf of a municipality in an
5 official capacity, temporarily or permanently in the service
6 of a municipality, whether with or without compensation but
7 does not include a contractor doing business with a
8 municipality.

9 5. "Acting within the scope of office or employment" means
10 acting in the person's line of duty as an employee of the
11 municipality.

12 6. "Claim" means:

13 a. A claim against a municipality for money only, on ac-
14 count of damage to or loss of property or on account of per-
15 sonal injury or death, alleged to have been caused by the
16 negligent or wrongful act or omission of an employee of the
17 municipality while acting within the scope of office or employ-
18 ment, under circumstances where the municipality, if a private
19 person, could be liable to the claimant for the loss.

20 b. A claim against an employee of a municipality for money
21 only, on account of damage to or loss of property or on account
22 of personal injury or death, alleged to have been caused by
23 the negligent or wrongful act or omission, except an act of
24 malfeasance in office or negligence amounting to wanton
25 disregard for the person or property of another, of an employee
26 of the municipality while acting within the scope of office
27 or employment.

28 Sec. 45. NEW SECTION. 613A.2 ALLOWANCE OF CLAIMS. The
29 immunity of a municipality from liability and suit upon claims
30 made pursuant to this chapter is waived to the extent provided
31 in this chapter. However, a claim is subject to the
32 limitations set out in sections 613A.3 and 613A.4.

33 Sec. 46. NEW SECTION. 613A.3 LIMITATIONS OF ACTIONS.
34 A claim or suit otherwise permitted under this chapter is
35 barred unless within ninety days after the claim has accrued,

1 notice of the claim is made in writing to the district court
2 of claims for the judicial district in which the claim arose.

3 If a claim is made or filed under any other law of this
4 state and a determination is made by a court or a state or
5 municipal body that this chapter provides the exclusive remedy
6 for the claim, the time to make a notice of claim shall be
7 extended to ninety days from the date of the court order
8 making that determination or the date of mailing of notice
9 to the claimant of that determination by a state or municipal
10 body, if the time to make the claim under this chapter would
11 otherwise expire before the end of the extended period.

12 Sec. 47. NEW SECTION. 613A.4 CLAIMS PROCEDURE. A claim
13 filed with a district court of claims shall be handled in
14 the following manner:

15 1. Within thirty days of the filing of the notice of
16 claim, the district court of claims shall determine whether
17 the claim is a proper claim for action under this chapter.

18 If the determination is that the claim is not actionable
19 under this chapter, the court shall notify the claimant in
20 writing of the court's denial of the claim, the notice to
21 set forth the reasons for denial. The claimant may, within
22 thirty days of the mailing of the notice of denial, file an
23 appeal with the state court of claims. If the state court
24 of claims upholds the denial it is a final adjudication and
25 the claim is barred from further action under this chapter.
26 If the state court of claims overrules the denial, the claim
27 shall be sent to the district court of claims for adjudication
28 under this chapter. If the claimant fails to appeal the
29 denial within thirty days of the mailing of the notice of
30 denial, the claim is barred from further action under this
31 chapter.

32 If the claim is determined to be one proper for further
33 action under this chapter, the district court of claims shall
34 forward the claim to the district commissioner of claims.

35 2. Upon receipt of a claim, the district commissioner

1 of claims shall proceed as follows:

2 a. The commissioner shall determine a time and place for
3 a hearing on the claim and cause notification to the parties
4 to be served personally or by registered mail not less than
5 five days before the hearing. The commissioner may postpone
6 a hearing for good cause shown. The commissioner may allow
7 the hearing to proceed and the taking of evidence even if
8 a party duly notified fails to appear.

9 b. The commissioner shall appoint a hearing officer to
10 conduct the hearing.

11 3. The hearing officer for the claim may issue subpoenas
12 for the attendance of witnesses and for the production of
13 books, records, documents, and other evidence, and may
14 administer oaths. Subpoenas shall be served and enforced
15 in the manner provided by law for the service and enforcement
16 of subpoenas in a civil action.

17 4. The hearing shall be conducted to ensure that parties
18 are entitled to be heard, to present evidence material to
19 the claim and to cross-examine witnesses appearing at the
20 hearing. A party has the right to be represented by an at-
21 torney at the hearing. On application of a party and for
22 use as evidence, the hearing officer may permit a deposition
23 to be taken, in the manner and upon the terms designated by
24 the hearing officer, of a witness who cannot be subpoenaed
25 or is unable to attend the hearing.

26 5. Upon the evidence presented at the hearing, the hearing
27 officer shall prepare a hearing report on the claim to be
28 forwarded to the district commissioner of claims.

29 6. Upon receipt of the hearing report, the commissioner
30 shall, within thirty days, prepare the final report of the
31 claim and forward the final report to the district court of
32 claims. The final report shall contain all evidence heard
33 and make one of the following findings:

34 a. That the claim is one which does not obligate the
35 municipality to make any payment upon the claim.

1 b. That the claim is one upon which the district court
2 of claims should make an award, and specifying the award.

3 c. That the claim is one upon which the municipality may
4 be obligated but that the commissioner is unable to ascertain
5 the proper award.

6 7. Upon receipt of the commissioner's final report, the
7 district court of claims shall review the report and enter
8 one of the following judgments:

9 a. That the claim is one which does not obligate the
10 municipality to make payment, and setting forth the reasons.

11 b. That the claim is one which does obligate the state
12 to make payment in a specified dollar amount, and setting
13 forth the reasons.

14 8. Decisions of the district court of claims are sub-
15 ject to appeal to the state court of claims. The state court
16 of claims may affirm, reverse, or modify the judgment, granting
17 the award or judgment the district court of claims should
18 have granted, or may dismiss the appeal or remit the claim
19 to the district court of claims for further proceedings ordered
20 by the state court of claims.

21 An appeal to the state court of claims must be taken within
22 thirty days after the district court of claims decision is
23 final.

24 Decisions by the state court of claims under this subsec-
25 tion are subject to appeal to the supreme court of the state
26 for review upon the record. The review by the supreme court
27 shall not be de novo. The supreme court may take any action
28 authorized to be taken by the state court of claims under
29 this subsection. An appeal to the supreme court must be taken
30 within thirty days after the state court of claims decision
31 is final.

32 9. An award made under this chapter, if accepted by the
33 claimant, is final and conclusive on the claimant, and
34 constitutes a complete release by the claimant of any claim
35 against the municipality and against the employee of the

1 municipality whose act or omission gave rise to the claim,
2 by reason of the same subject matter.

3 Sec. 48. NEW SECTION. 613A.5 COMPROMISE AND SETTLEMENT.
4 The governing body of a municipality may compromise and settle
5 any claim permitted under this chapter, with the approval
6 of the district court of claims, in order to do substantial
7 justice.

8 Sec. 49. NEW SECTION. 613A.6 EXCEPTIONS. This chapter
9 does not apply to any of the following:

- 10 1. A claim by an employee of the municipality who is
11 covered by the Iowa workers' compensation law.
- 12 2. A claim in connection with the assessment or collec-
13 tion of taxes.
- 14 3. A claim based upon an act or omission of an officer
15 or employee of the municipality, exercising due care, in the
16 execution of a statute, ordinance, or regulation, whether
17 or not the statute, ordinance or regulation is valid, or based
18 upon the exercise or performance or the failure to exercise
19 or perform a discretionary function or duty on the part of
20 the municipality or an officer or employee of the municipality,
21 whether or not the discretion is abused.
- 22 4. A claim against a municipality as to which the
23 municipality is immune from liability by the provisions of
24 any other statute or where the action based upon the claim
25 has been barred or abated by operation of statute or rule
26 of civil procedure.
- 27 5. A claim for punitive damages.
- 28 6. A claim for damages caused by a municipality's failure
29 to discover a latent defect in the course of an inspection.
- 30 7. Any claim based upon or arising out of a claim of
31 negligent design or specification, negligent adoption of
32 design or specification, or negligent construction or
33 reconstruction of a highway, secondary road, or street as
34 defined in section 321.1, subsection 48, that was constructed
35 or reconstructed in accordance with a generally recognized

1 engineering or safety standard, criteria, or design theory
2 in existence at the time of the construction or reconstruction.
3 A claim under this chapter shall not be allowed for failure
4 to upgrade, improve, or alter any aspect of an existing
5 highway, secondary road, street, to new, changed, or altered
6 design standards. In respect to highways and roads,
7 sealcoating, asphaltting, patching, resurfacing, ditching,
8 draining, repairing, graveling, rocking, blading, or
9 maintaining an existing highway or road does not constitute
10 reconstruction. This subsection does not apply to claims
11 based upon gross negligence.

12 8. A claim based upon or arising out of a claim of
13 negligent design or specification, negligent adoption of
14 design or specification, or negligent construction or
15 reconstruction of a public improvement as defined in section
16 384.37, subsection 1, or other public facility that was
17 constructed or reconstructed in accordance with a generally
18 recognized engineering or safety standard, criteria, or design
19 theory in existence at the time of the construction or
20 reconstruction. A claim under this chapter shall not be
21 allowed for failure to upgrade, improve, or alter any aspect
22 of an existing public improvement or other public facility
23 to new, changed, or altered design standards. This subsection
24 does not apply to claims based upon gross negligence.

25 Sec. 50. NEW SECTION. 613A.7 INSURANCE. The governing
26 body of a municipality may purchase a policy of liability
27 insurance insuring against all or any part of liability which
28 might be incurred by the municipality or its officers,
29 employees and agents under the provisions of section 613A.2
30 and section 613A.8. The premium costs of the insurance may
31 be paid out of the general fund or any available funds or
32 may be levied in excess of any tax limitation imposed by
33 statute. An independent or autonomous board or commission
34 in the municipality having authority to disburse funds for
35 a particular municipal function without approval of the

1 governing body may similarly procure liability insurance
2 within the field of its operation. The procurement of
3 liability insurance constitutes a waiver of the defense of
4 governmental immunity as to those exceptions listed in section
5 613A.6 to the extent stated in the policy but has no further
6 effect on the liability of the municipality beyond the scope
7 of this chapter. The existence of insurance which covers
8 in whole or in part a judgment or award which may be rendered
9 in favor of the plaintiff, or lack of any such insurance,
10 is not material in the consideration of an action brought
11 against the governing body of a municipality, or its officers,
12 employees or agents and any reference to liability insurance,
13 or lack of it, shall be disregarded.

14 Sec. 51. NEW SECTION. 613A.8 OFFICERS AND EMPLOYEES
15 DEFENDED. The governing body shall defend its officers and
16 employees, whether elected or appointed, and shall save
17 harmless and indemnify the officers and employees against
18 any claim or demand, whether groundless or otherwise, arising
19 out of an alleged act or omission occurring within the scope
20 of their employment or duties. However, the duty to save
21 harmless and indemnify does not apply to awards for punitive
22 damages. The exception for punitive damages does not prohibit
23 a governing body from purchasing insurance to protect its
24 officers and employees from punitive damages. The duty to
25 save harmless and indemnify does not apply and the municipality
26 is entitled to restitution by an officer or employee if, in
27 an action commenced by the municipality against the officer
28 or employee, it is determined that the conduct of the officer
29 or employee upon which the claim or demand was based was an
30 act or omission constituting a wanton disregard for the person
31 or property of another. An independent or autonomous board
32 or commission of a municipality having authority to disburse
33 funds for a particular municipal function without approval
34 of the governing body shall similarly defend, save harmless
35 and indemnify its officers and employees against such claims

1 or demands.

2 The duties to defend and to save harmless and indemnify
3 apply whether or not the municipality is a party to the action
4 and include but are not limited to cases arising under 42
5 U.S.C. sec. 1983.

6 If the officer or employee fails to cooperate in the defense
7 against the claim or demand, the municipality has a right
8 of indemnification against that officer or employee.

9 Sec. 52. NEW SECTION. 613A.9 TAX TO PAY JUDGMENT OR
10 SETTLEMENT. When a final judgment is entered against or a
11 settlement is made by a municipality for a claim within the
12 scope of this chapter, payment shall be made and the same
13 remedies apply in the case of nonpayment as in the case of
14 other judgments against the municipality. If the judgment
15 or settlement is unpaid at the time of the adoption of the
16 annual budget, the municipality shall budget an amount
17 sufficient to pay the judgment or settlement together with
18 interest accruing thereon to the expected date of payment.
19 This tax may be levied in excess of any limitation imposed
20 by statute.

21 Sec. 53. NEW SECTION. 613A.10 OFFICERS AND EMPLOYEES-
22 -PERSONAL LIABILITY. An officer or employee of a municipality
23 is not personally liable for any claim which is exempted under
24 section 613A.6, except a claim for punitive damages, and
25 actions permitted under section 85.20. An officer or employee
26 of a municipality is not liable for punitive damages as a
27 result of acts in the performance of a law enforcement or
28 emergency duty, unless actual malice or recklessness is proven.

29 Sec. 54. Chapters 25A and 613A, Code 1983 and Code
30 Supplement 1983, are repealed.

31 EXPLANATION

32 Section 1 of this bill sets out the purpose of the Act.

33 Sections 2 through 12 create a new state tort claims system,
34 and identify when and how a claimant may proceed on a claim
35 against the state.

1 Sections 13 through 19 of the bill modify the chapter
2 relating to the nomination and election of judges to include
3 judges of the new state court of claims and district courts
4 of claims.

5 Sections 20 through 33 of the bill create a new article
6 of chapter 602, which establishes the state court of claims
7 and the district courts of claims and sets out the
8 organization, duties, powers, and procedures of these courts.

9 Sections 34 through 43 of this bill make corresponding
10 changes to chapter 602 necessitated by the creation of the
11 new courts.

12 Sections 44 through 53 create a new municipal tort claims
13 system, and identify when and how a claimant may proceed on
14 a claim against a municipality.

15 Section 54 repeals chapters 25A and 613A which are replaced
16 by the new chapters created in sections 13 through 19 and
17 sections 44 through 53 of this bill. References are made
18 within sections to these new sections.

19 This bill will require further collateral amendments to
20 the Code.

21 This bill takes effect July 1 following its enactment.

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