

February 23, 1965.

Passed on File.

Special order of business for 3/9  
action deferred until 3/10  
Passed Senate, Date 3/10

Senate File 322

By COMMITTEE ON CLAIMS.  
(Committee on Claims.)

Vote: Ayes 39 Nays 16

Passed House, Date 3/11

Vote: Ayes 87 Nays 33

Approved March 26, 1965

motion to reconsider vote tabled 3/10

Judiciary 3/12  
Substituted for HF 376 3/12  
motion to reconsider 3/12

# A BILL FOR

An Act to create and establish a state tort claims act; defining terms and conferring upon the state appeal board on behalf of the state the power to determine certain claims against the state; permitting the state to be sued and waiving the state's immunity from liability to the extent provided herein; conferring jurisdiction in the district court to hear, determine, and render judgment; and generally providing for the practice and procedure to establish liability of the state on tort claims.

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

1 Section 1. This Act may be cited as the "Iowa Tort Claims Act".

1 Sec. 2. As used in this Act, unless the context otherwise

2 requires:

3 1. "State agency" includes all executive departments, agencies,  
4 boards, bureaus, and commissions of the state of Iowa, and corpora-  
5 tions whose primary function is to act as, and while acting as,  
6 instrumentalities or agencies of the state of Iowa, whether or not  
7 authorized to sue and be sued in their own names. This definition  
8 shall not be construed to include any contractor with the state of  
9 Iowa.

10 2. "State appeal board" means the state appeal board as defined  
11 in section twenty-three point one (23.1) of the Code.

12 3. "Employee of the state" includes any one (1) or more offi-  
13 cers or employees of the state or any state agency, and persons  
14 acting on behalf of the state or any state agency in any official  
15 capacity, temporarily or permanently in the service of the state  
16 of Iowa, whether with or without compensation.

17 4. "Acting within the scope of his office or employment" means  
18 acting in his line of duty as an employee of the state.

19 5. "Claims" means any claim against the state of Iowa for money  
20 only, on account of damage to or loss of property or on account of  
21 personal injury or death, caused by the negligent or wrongful act  
22 or omission of any employee of the state while acting within the  
23 scope of his office or employment, under circumstances where the  
24 state, if a private person, would be liable to the claimant for  
25 such damage, loss, injury, or death, in accordance with the law of  
26 the place where the act or omission occurred. However, "claim"  
27 includes only such claims accruing on or after January 1, 1963;  
28 and does not include any claim which was presented to the Sixtieth  
29 General Assembly and which is barred under the provisions of sec-  
30 tion twenty-five point seven (25.7) of the Code.

31 6. "Award" means any amount determined by the state appeal  
32 board to be payable to a claimant under section three (3) of this  
33 Act, and the amount of any compromise or settlement under section  
34 nine (9) of this Act.

1 Sec. 3. Authority is hereby conferred upon the state appeal  
2 board, acting on behalf of the state of Iowa, subject to the advice  
3 and approval of the attorney general, to consider, ascertain,  
4 adjust, compromise, settle, determine, and allow any claim as  
5 defined in this Act. If any claim is compromised, settled, or  
6 allowed in an amount of more than five thousand (5,000) dollars,  
7 the unanimous approval of all members of the state appeal board  
8 and the attorney general shall be required.

9 Claims made under this Act shall be filed with the state comp-  
10 troller, who shall acknowledge receipt on behalf of the state

11 appeal board.

12 The state appeal board may adopt rules, regulations, and pro-  
13 cedures for the handling, processing, and investigation of claims.

1 Sec. 4. The district court of the state of Iowa for the dis-  
2 trict in which the plaintiff is resident or in which the act or  
3 omission complained of occurred, sitting without a jury, shall  
4 have exclusive jurisdiction to hear, determine, and render judg-  
5 ment on any suit or claim as defined in this Act. However, the  
6 laws and rules of civil procedure of this state on change of place  
7 of trial shall apply to such suits.

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

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

1 Sec. 5. No suit shall be permitted under this Act unless the  
2 state appeal board has made final disposition of the claim; except  
3 that if the state appcal board does not make *final disposition of*  
4 a claim within six (6) months after the claim is made in writing  
5 to the state appeal board, the claimant may, by notice in writing,  
6 withdraw the claim from consideration of the state appeal board  
7 and begin suit under this Act. Disposition of or offer to settle  
8 any claim made under this Act shall not be competent evidence of  
9 liability or amount of damages in any suit under this Act.

1 Sec. 6. In suits under this Act, the forms of process, writs,

2 pleadings, and actions, and the practice and procedure, shall be  
3 in accordance with the rules of civil procedure promulgated and  
4 adopted by the supreme court of the state. The same provisions  
5 for counterclaims, setoff, interest upon judgments, and payment  
6 of judgments, shall be applicable as in other suits brought in  
7 the district courts of the state. However, no writ of execution  
8 shall issue against the state or any state agency by reason of any  
9 judgment under this Act.

1 Sec. 7. Judgments in the district courts in suits under this  
2 Act shall be subject to appeal to the supreme court of the state  
3 in the same manner and to the same extent as other judgments of  
4 the district courts.

1 Sec. 8. The final judgment in any suit under this Act shall  
2 constitute a complete bar to any action by the claimant, by reason  
3 of the same subject matter, against the employee of the state  
4 whose act or omission gave rise to the claim. However, this sec-  
5 tion shall not apply if the court rules that the claim is not per-  
6 mitted under this Act.

1 Sec. 9. With a view to doing substantial justice, the attorney  
2 general is authorized to compromise or settle any suit permitted  
3 under this Act, with the approval of the court in which suit is  
4 pending.

1 Sec. 10. Any award made under this Act and accepted by the  
2 claimant shall be final and conclusive on all officers of the state  
3 of Iowa, except when procured by means of fraud, notwithstanding  
4 any other provisions of law to the contrary.

5 The acceptance by the claimant of such award shall be final and  
6 conclusive on the claimant, and shall constitute a complete release

7 by the claimant of any claim against the state and against the  
8 employee of the state whose act or omission gave rise to the claim,  
9 by reason of the same subject matter.

1 Sec. 11. Any award to a claimant under this Act, and any judg-  
2 ment in favor of any claimant under this Act, shall be paid promptly  
3 out of appropriations which have been made for such purpose, if  
4 any; but any such amount or part thereof which cannot be paid  
5 promptly from such appropriations shall be paid promptly out of any  
6 money in the state treasury not otherwise appropriated. Payment  
7 shall be made only upon receipt of a written release by the claim-  
8 ant in a form approved by the attorney general.

1 Sec. 12. The state comptroller shall annually report to the  
2 general assembly all claims and judgments paid under this Act.  
3 Such report shall include the name of each claimant, a statement  
4 of the amount claimed and the amount awarded, and a brief descrip-  
5 tion of the claim.

1 Sec. 13. Every claim against the state permitted under this Act  
2 shall be forever barred, unless within two (2) years after such  
3 claim accrued or prior to July 1, 1967, whichever is later, the  
4 claim is made in writing to the state appeal board under this Act  
5 and a suit is begun under this Act. The time to begin a suit under  
6 this Act shall be extended for a period of six (6) months from the  
7 date of mailing of notice to the claimant by the state appeal board  
8 as to the final disposition of the claim or from the date of with-  
9 drawal of the claim from the state appeal board under section five  
10 (5) of this Act, if the time to begin suit would otherwise expire  
11 before the end of such period.

12 If a claim is made or filed under any other law of this state

13 and a determination is made by a state agency or court that this  
14 Act provides the exclusive remedy for the claim, the time to make  
15 a claim and to begin a suit under this Act shall be extended for a  
16 period of six (6) months from the date of the court order making  
17 such determination or the date of mailing of notice to the claimant  
18 of such determination by a state agency, if the time to make the  
19 claim and to begin the suit under this Act would otherwise expire  
20 before the end of such period. The time to begin a suit under this  
21 Act may be further extended as provided in the preceding paragraph.

22 This section is the only statute of limitations applicable to  
23 claims as defined in this Act.

1 Sec. 14. The provisions of this Act shall not apply to:

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

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

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

15 4. Any claim arising out of assault, battery, false imprison-  
16 ment, false arrest, malicious prosecution, abuse or process, libel,  
17 slander, misrepresentation, deceit, or interference with contract

18 rights.

19 5. Any claim by an employee of the state which is covered by  
20 the Iowa workmen's compensation law or the Iowa occupational dis-  
21 ease law.

1 Sec. 15. The court rendering a judgment for the claimant under  
2 this Act, or the state appeal board, with the advice and approval  
3 of the attorney general, making an award under section three (3)  
4 of this Act, or the attorney general making an award under section  
5 nine (9) of this Act, as the case may be, shall, as a part of the  
6 judgment or award, determine and allow reasonable attorney's fees  
7 and expenses, to be paid out of but not in addition to the amount  
8 of judgment or award recovered, to the attorneys representing the  
9 claimant. Any attorney who charges, demands, receives, or collects  
10 for services rendered in connection with such claim any amount in  
11 excess of that allowed under this section, if recovery be had, shall  
12 be guilty of a misdemeanor, and shall, upon conviction thereof, be  
13 subject to a fine of not more than one thousand (1,000) dollars or  
14 imprisonment for not more than one (1) year, or both.

1 Sec. 16. From and after the effective date of this Act, the  
2 authority of any state agency to sue or be sued in its own name  
3 shall not be construed to authorize suits against such state agency  
4 on claims as defined in this Act. The remedies provided by this Act  
5 in such cases shall be exclusive.

1 Sec. 17. Nothing contained herein shall be deemed to repeal any  
2 provisions of law authorizing any state agency to consider, ascertain,  
3 adjust, compromise, settle, determine, allow, or pay any claim other  
4 than a claim as defined in this Act.

1 Sec. 18. If a claim is made or a suit is begun under this Act,

2 and if a determination is made by the state appeal board or by the  
3 court that the claim or suit is not permitted under this Act for  
4 any reason other than lapse of time, the time to make a claim or to  
5 begin a suit under any other applicable law of this state shall be  
6 extended for a period of six (6) months from the date of the court  
7 order making such determination or the date of mailing of notice to  
8 the claimant of such determination by the state appeal board, if  
9 the time to make the claim or begin the suit under such other law  
10 would otherwise expire before the end of such period.

1 Sec. 19. Upon the effective date of this Act, all claims as  
2 defined in this Act which have been filed with the clerk of the  
3 house of representatives and the secretary of the senate under  
4 section twenty-five point two (25.2) of the Code shall be returned  
5 to and processed by the state appeal board in accordance with this  
6 Act.

1 Sec. 20. Section twenty-five point seven (25.7) of the Code  
2 shall not apply to claims as defined in this Act, except as ex-  
3 pressly provided in section one (1) of this Act. The other pro-  
4 visions of chapter twenty-five (25) of the Code shall not apply  
5 to claims as defined in this Act. However, any or all of the pro-  
6 visions of sections twenty-five point one (25.1), twenty-five  
7 point four (25.4), and twenty-five point five (25.5) of the Code  
8 may be made applicable to claims as defined in this Act by agree-  
9 ment between the attorney general and the state appeal board from  
10 time to time.

1 Sec. 21. Whenever a claim or suit against the state is covered  
2 by liability insurance, the provisions of the liability insurance  
3 policy on defense and settlement shall be applicable notwith-

4 standing any inconsistent provisions of this Act. The attorney  
5 general and the state appeal board shall cooperate with the in-  
6 surance company.

1 Sec. 22. Section five hundred seventeen A point one (517A.1),  
2 Code 1962, is hereby amended by adding the following at the end  
3 thereof:

4 "The form and liability limits of any such liability insurance  
5 policy purchased by any commission, department, board, or agency  
6 of the state of Iowa shall be subject to the approval of the  
7 attorney general."

1 Sec. 23. This Act, being deemed of immediate importance, shall  
2 be in full force and effect from and after its publication in the  
3 Muscatine Journal, a newspaper published at Muscatine, Iowa, and  
4 the Cedar Rapids Gazette, a newspaper published at Cedar Rapids,  
5 Iowa.

SENATE FILE 322

- 1 Amend Senate File 322, section 3, by striking the following
- 2 in lines 5, 6, 7, and 8:
- 3 ". If any claim is compromised, settled, or
- 4 allowed in an amount of more than five thousand
- 5 (5,000) dollars, the unanimous approval of all
- 6 members of the state appeal board and the attorney
- 7 general shall be required.", and inserting in lieu
- 8 thereof " , where the total amount of the claim does
- 9 not exceed one thousand (1,000) dollars."

Filed and pending  
March 9, 1965.

*lost 2/10 ays 15  
mays 39*

By STEPHENS.

SENATE FILE 322

- 1 Amend Senate File 322 by striking all of section 23.

Filed  
March 9, 1965.

*lost 3/10*

By RIGLER.

SENATE FILE 322

- 1 Amend Senate File 322 as follows:
- 2 In section 3, strike the period (.) in line 8 and insert
- 3 in lieu thereof the following: "and the approval of the district
- 4 court of the State of Iowa for Polk County shall also be required."

Filed  
March 9, 1965.

*ad. pld 3/10*

By STANLEY, DENMAN and O'MALLEY.

SENATE FILE 322

- 1 Amend Senate File 322, section 3, line 6, by striking the
- 2 words and figures "five thousand (5,000) dollars" and inserting
- 3 in lieu thereof the following "one thousand (1,000) dollars".

Filed  
March 9, 1965.

*lost 3/10*

By RIGLER.

SENATE FILE 322

- 1 Amend Senate File 322 as amended by the Senate as follows:
- 2 1. In section three (3) line eight (8) strike all after the
- 3 word "required" and insert in lieu thereof the following:
- 4 "and the approval of the General Assembly if in session or
- 5 the next session of the General Assembly shall be required."
- 6 2. Amend section seven (7) by striking the period (.) in
- 7 line four (4) and inserting the following: "and shall be
- 8 reviewed de novo."
- 9 3. Amend section thirteen (13) by inserting after the
- 10 period (.) in line five (5) the following new sentence:
- 11 "In no case shall any claim already barred by the statute
- 12 of limitations at the effective date of this Act be revived
- 13 or extended by the provisions of this Act, any provision thereof
- 14 to the contrary notwithstanding."

*lost 3/17  
ays 30 mays 80*  
*lost 3/17  
ays 35 mays 80*

Filed  
March 16, 1965.

GRAHAM of Ida-Sac.

SENATE FILE 322

- 1 Amend Senate File 322 by striking in lines eight (8) and nine
- 2 (9) of section three (3) the words "and the approval of the district
- 3 court of the State of Iowa for Polk County shall also be required"
- 4 and inserting in lieu thereof the following: "and the approval of the
- 5 General Assembly if in session or the next session of the General
- 6 Assembly shall be required".

Filed  
March 17, 1965.

*lost 3/17 ays 32  
mays 80*

BARINGER of Fayette.