

April 3, 1967

Passed on File

Governmental Subdivision 4/3 Pass as amended 5/4

By SHIRLEY, KLEFSTAD, NURSE,
HEABERLIN, BURNS, FLOY and
NEU

Passed Senate, Date 6-16-67

Passed House, Date 7-1-67

Vote: Ayes 42 Nays 8

Vote: Ayes 89 Nays 11

*Passed Approved
Senate as amended
by House 7-1-67;
42-2*

A BILL FOR

An Act relating to the tort liability of cities and towns.

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

1 Section 1. As used in this Act, the following terms shall
2 have the following meanings:

3 1. "Municipality" means city or town.

4 2. "Governing body" means the council of a city or town,
5 and other boards and commissions exercising quasi-legislative,
6 quasi-executive, and quasi-judicial power over territory com-
7 prising a municipality.

8 3. "Tort" means every civil wrong which results in injury
9 to person or property and includes but is not restricted to
10 actions based upon negligence, breach of duty, and nuisance.

1 Sec. 2. Except as otherwise provided in this Act, every
2 municipality is subject to liability for its torts and those
3 of its officers, employees, and agents acting within the scope
4 of their employment or duties, whether arising out of a
5 governmental or proprietary function.

1 Sec. 3. In any action subject to the provisions of this
2 Act or section three hundred eighty-nine point twelve (389.12)
3 of the Code, knowledge by the injured party of the existence
4 of the alleged obstruction, disrepair, defect, accumulation,
5 or nuisance prior to the occurrence of the injury shall con-
6 stitute a defense to the action.

1 Sec. 4. The liability imposed by section two (2) of this

2 Act shall have no application to any claim enumerated in this
3 section. As to any such claim, a municipality shall be liable
4 only to the extent liability may be imposed by the express
5 statute dealing with such claims and, in the absence of such
6 express statute, the municipality shall be immune from lia-
7 bility.

8 1. Any claim by an employee of the municipality which is
9 covered by the Iowa workmen's compensation law.

10 2. Any claim in connection with the assessment or collec-
11 tion of taxes.

12 3. Any claim based upon an act or omission of an officer
13 or employee, exercising due care, in the execution of a statute,
14 ordinance, or officially adopted resolution, rule, or regulation
15 of a governing body.

16 4. Any claim against a municipality as to which the muni-
17 cipality is immune from liability by the provisions of any
18 other statute or where the action based upon such claim has been
19 barred or abated by operation of statute or rule of civil pro-
20 cedure.

21 The remedy against the municipality provided by section two
22 (2) of this Act for injury or loss of property or personal in-
23 jury or death resulting from any act or omission of an officer
24 or employee in the execution of a statute or ordinance, or
25 officially adopted resolution, rule or regulation of a govern-
26 ing body while acting in the scope of his office or employment
27 shall hereafter be exclusive of any other civil action or pro-
28 ceeding by reason of the same subject matter against the of-
29 ficer or employee whose act or omission gave rise to the claim,
30 or his estate.

1 Sec. 5. Every person who claims damages from any municipal-
2 ity for or on account of any loss or injury within the scope
3 of section two (2) of this Act shall commence an action there-
4 for within three (3) months, unless said person shall cause to
5 be presented to the governing body of the municipality within

6 sixty (60) days after the alleged loss or injury a written
7 notice stating the time, place, and circumstances thereof and
8 the amount of compensation or other relief demanded. Failure
9 to state the amount of compensation or other relief demanded
10 shall not invalidate the notice; but in such case, the claimant
11 shall furnish full information regarding the nature and extent
12 of the injuries and damages within fifteen (15) days after
13 demand by the municipality. No action therefor shall be main-
14 tained unless such notice has been given and unless the action
15 is commenced within two (2) years after such notice. The time
16 for giving such notice shall include a reasonable length of time,
17 not to exceed ninety (90) days, during which the person injured
18 is incapacitated by his injury from giving such notice.

1 Sec. 6. When the claim is one for death by wrongful act or
2 omission, the notice may be presented by the personal repre-
3 sentative, surviving spouse, or next of kin, or the consular
4 officer of the foreign country of which the deceased was a
5 citizen, within one (1) year after the alleged injury resulting
6 in such death; but if the person for whose death the claim is
7 made has presented a notice that would have been sufficient had
8 he lived, an action for wrongful death may be brought without
9 additional notice.

1 Sec. 7. The governing body of any municipality may purchase
2 a policy of liability insurance insuring against all or any
3 part of liability which might be incurred by such municipality
4 or its officers, employees and agents under the provisions of
5 section two (2) of this Act and may similarly purchase insurance
6 covering torts specified in section four (4) of this Act. The
7 premium costs of such insurance may be levied in excess of any
8 millage tax limitation imposed by statute. Any independent or
9 autonomous board or commission in the municipality having
10 authority to disburse funds for a particular municipal function
11 without approval of the governing body may similarly procure
12 liability insurance within the field of its operation. The

13 procurement of such insurance constitutes a waiver of the
14 defense of governmental immunity as to those exceptions listed
15 in section four (4) of this Act but shall have no further
16 effect on the liability of the municipality beyond the scope
17 of this Act.

1 Sec. 8. The governing body may defend any of its officers
2 and employees, whether elected or appointed and, except in
3 cases of malfeasance in office or willful or wanton neglect of
4 duty, may save harmless and indemnify such officers and
5 employees against any tort claim or demand, whether groundless
6 or otherwise, arising out of an alleged act or omission
7 occurring in the performance of duty. Any independent or
8 autonomous board or commission of a municipality having auth-
9 ority to disburse funds for a particular municipal function
10 without approval of the governing body may similarly defend,
11 save harmless and indemnify its officers and employees against
12 such tort claims or demands. This section is intended to con-
13 fer power in addition to that conferred by section three hun-
14 dred sixty-eight A point one (368A.1) of the Code, and that
15 conferred by sections three hundred twenty-one point four hun-
16 dred ninety-five (321.495) through three hundred twenty-one
17 point four hundred ninety-seven (321.497) of the Code.

1 Sec. 9. The governing body of any municipality may compro-
2 mise, adjust and settle tort claims, as provided in chapter
3 four hundred four (404) of the Code, against the municipality
4 for damages under sections two (2) or eight (8) of this Act and
5 may appropriate money for the payment of amounts agreed upon.

1 Sec. 10. When a final judgment is entered against or a
2 settlement is made by a municipality for a claim within the
3 scope of sections two (2) or eight (8) of this Act, payment
4 shall be made and the same remedies shall apply in the case of
5 nonpayment as in the case of other judgments against the mu-
6 nicipality. If said judgment or settlement is unpaid at the
7 time of the adoption of the annual budget, it shall budget an

8 amount sufficient to pay the judgment or settlement together
 9 with interest accruing thereon to the expected date of payment.
 10 Such tax may be levied in excess of any millage limitation
 11 imposed by statute.

1 Sec. 11. This Act shall have no application to any occur-
 2 rence or injury claim or action arising prior to its effective
 3 date.

1 Sec. 12. Section six hundred fourteen point one (614.1),
 2 Code 1966, is hereby amended by striking therefrom subsection
 3 one (1).

1 Amend Senate File 710 as follows:

- 2 1. Amend section one (1) by deleting the words "or town."
 3 from line three (3) and inserting the words "town, county, town-
 4 ship, school district, and any other unit of local government."
 5 2. Further amend section one (1) by adding at the end of
 6 line four (4) thereof the following: "county board of super-
 7 board of township trustees, local school board," visors,
 8 3. Amend section seven (7) by adding after the word "Act" in
 9 line fifteen (15) the words "to the extent stated in such policy".
 10 4. Amend section eight (8) by deleting the word "may" from
 11 four (4) and inserting in lieu thereof the word "shall". line
 12 5. Amend section seven (7) by striking from lines six (6),
 13 (7), and eight (8) the words "The premium costs of such insur- seven
 14 levied in excess of any millage tax limitation imposed by statute." ance may be

Filed *adopted as amended 6-16*
 May 4, 1967

By GOVERNMENTAL SUBDIVISIONS
 COMMITTEE

1 Amend Senate File 710 by adding at the end of line
 2 seventeen (17) of section seven (7) thereof the following:
 3 "The existence of any insurance which covers in whole
 4 or in part any judgment or award which may be rendered in
 5 favor of the plaintiff, or lack of any such insurance, shall
 6 not be material in the trial of any action brought against
 7 the governing body of any municipality, or their officers,
 8 employees or agents."

Filed *adopted as amended 6-16*
 June 12, 1967

By RILEY

1 Amend the Riley amendment to Senate File 710 by adding fol-
2 lowing the word "agents" in line eight (8) thereof, the following:
3 "and any reference to such insurance, or lack of same, shall be
4 ground for a mistrial".

Filed - Adopted 6-16
June 13, 1967

By RILEY

1 Amend Senate File 710 as follows:
2 1. Amend the title by striking the words "cities and towns"
3 and inserting in lieu thereof the words "governmental subdivisions".
4 2. Amend section one (1) by inserting after the word "in"
5 in line eight (8) the words "wrongful death or".
6 Further amend section one (1) by inserting after the word
7 "or" in line nine (9) the words "injury to".
8 3. By striking section three (3) in its entirety and inserting
9 in lieu thereof the following:
10 "In any action subject to the provisions of this Act or
11 section three hundred eighty-nine point twelve (389.12) of the
12 Code, an affirmative showing that the injured party had actual
13 knowledge of the existence of the alleged obstruction, disrepair,
14 defect, accumulation, or nuisance at the time of the occurrence of
15 the injury, and a further showing that an alternate safe route was
16 available and known to the injured party, shall constitute a
17 defense to the action."
18 4. Amend section five (5) by inserting after the word "any"
19 in line two (2) the word "wrongful death,".
20 Further amend section five (5) by inserting after the word
21 "alleged" in line six (6) the word "wrongful death,".
22 Further amend section five (5) by striking in line ten (10)
23 the words "but in such case" and inserting in lieu thereof the
24 word "providing".
25 5. Amend section eight (8) by striking in line one (1) the
26 word "may" and inserting in lieu thereof the word "shall".
27 Further amend section eight (8) by striking in line ten (10)
28 the word "may" and inserting in lieu thereof the word "shall".
29 Further amend section eight (8) by striking in line fourteen
30 (14) the words ", and that" and inserting in lieu thereof a period
31 (.), and by striking all of lines fifteen (15), sixteen (16) and
32 seventeen (17).
33 6. Amend section nine (9) by striking from lines two (2)
34 and three (3) the words ", as provided in chapter four hundred four
35 (404) of the Code,".
36 Further amend section nine (9) by adding after the word
37 "municipality" in line three (3) the words ", its officers, employees
38 and agents,".
39 7. Amend section twelve (12) by deleting the period (.) at
40 the end thereof and inserting the following:
41 ", and by striking therefrom subsection four (4) and inserting
42 in lieu thereof the following: 'Those against a sheriff or other
43 public officer for the non-payment of money collected on execution
44 within three (3) years of collection.'"
45 8. By adding thereto the following new section:
46 "Sections three hundred twenty-one point four hundred ninety-
47 five (321.495), three hundred twenty-one point four hundred ninety-
48 six (321.496), and three hundred twenty-one point four hundred
49 ninety-seven (321.497) of the Code are hereby repealed."

Filed - Adopted 6-16
June 15, 1967

By SHIRLEY and GAUDINEER

- 1 Amend Senate File 710 by adding at the end of line seven-
- 2 teen (17) of section seven (7) thereof the following: "No
- 3 attempt shall be made in the trial of any action brought
- 4 against the governing body of any municipality, or their
- 5 officers, employees and agents to suggest the existence of
- 6 any insurance which covers in whole or in part any judgment
- 7 or award which may be rendered in favor of the plaintiff."

Filed
May 17, 1967

By SHIRLEY. *Senate*

- 1 Amend Senate File 710 by adding thereto the
- 2 following new section:
- 3 This Act, being deemed of immediate importance,
- 4 shall be in full force and effect on January 1, 1968,
- 5 after its passage and publication in The Clinton Herald,
- 6 a newspaper published at Clinton, Iowa and in The
- 7 Cedar Rapids Gazette, a newspaper published at
- 8 Cedar Rapids, Iowa.

Filed and concurred
July 1, 1967

HOUSE AMENDMENT *Senate*

- 1 Amend the Governmental Subdivisions Committee amendment
- 2 filed May 4, 1967, to Senate File 710 by striking section
- 3 five (5) in its entirety.

Filed - *adopted 6-16*
June 15, 1967

Senate
By ELY, WALSH, NEU, FROMMELT,
JEPSEN, and LAMBORN

- 1 Pelton of Clinton offered the following amendment
- 2 and moved its adoption:
- 3 Amend Senate File 710 by adding thereto the
- 4 following new section:
- 5 This Act, being deemed of immediate importance,
- 6 shall be in full force and effect on January 1, 1968,
- 7 after its passage and publication in The Clinton Herald,
- 8 a newspaper published at Clinton, Iowa and in The
- 9 Cedar Rapids Gazette, a newspaper published at
- 10 Cedar Rapids, Iowa.

Filed and adopted
July 1, 1967

Senate concurred 7-1-67.

PELTON of Clinton.

- 1 Amend Senate File 710 by adding thereto the following new
- 2 section:
- 3 "The provisions of this Act shall become effective January
- 4 1, 1968."

Filed - *Last*
June 30, 1967

PELTON of Clinton.