

February 28, 1969

SENATE FILE 376

Passed on File

See Senate Journal 4-30, Page 5-6

By COMMITTEE ON SOCIAL SERVICES

Passed Senate, Date.....*4-25-69*..... Passed House, Date*5-12-69*.....

Vote: Ayes*24*..... Nays*6*..... Vote: Ayes*97*..... Nays*0*.....

Approved

*Passed Senate as amended by House
and further amended
by Senate 5-22; 41-0*

*Passed House as amended
by Senate 5/22; 101-0*

A BILL FOR

1 An Act relating to claims and actions under the Iowa Tort Claims

2 Act.

3 *Re It Enacted by the General Assembly of the State of Iowa:*

4 Section 1. Section twenty-five A point two (25A.2), sub-
5 section three (3), Code 1966, is hereby amended by adding there-
6 to the following:

7 "Professional personnel, including medical doctors and
8 dentists, who render services to patients and inmates of state
9 institutions under the jurisdiction of the department of social
10 services are to be considered employees of the state, whether
11 such personnel are employed on a full-time basis or render such
12 services on a part-time basis on a fee schedule or arrangement."

13 Sec. 2. Section twenty-five A point two (25A.2), subsection
14 five (5), Code 1966, is hereby amended by striking the re-
15 mainder of such subsection after the word "death" in line
16 ten (10) and inserting in lieu thereof a period.

17 Sec. 3. Section twenty-five A point four (25A.4), Code
18 1966, is hereby amended as follows:

19 1. By inserting in line five (5) before the word "sitting"
20 the following:

21 "or where the act or omission occurred outside of Iowa and
22 the plaintiff is a nonresident, the Polk county district court,".

23 2. By adding thereto the following paragraph:

24 "A suit is commenced under this chapter by serving the
25 attorney general or his duly authorized delegate in charge

1 of the tort claims division by service of an original
2 notice. The state shall have thirty days within which to enter
3 its general or special appearance."

4 Sec. 4. Section twenty-five A point thirteen (25A.13), Code
5 1966, is hereby amended as follows:

6 1. By inserting in line one (1) after the word "claim"
7 the words "and suit".

8 2. By striking from lines four (4) and five (5) the words
9 "or prior to July 1, 1967, whichever is later,".

10 3. By striking from lines seven (7) and eight (8) the
11 words "and a suit is begun under this chapter".

EXPLANATION OF SENATE FILE 376

Section 1 of this bill defines certain professional personnel rendering services to patients and inmates at various institutions as "employees" for purposes of the Iowa Tort Claims Act. The amendment is believed necessary by the Department of Social Services in that inmates of the State Penitentiary have commenced or threatened to commence malpractice suits against medical doctors who were furnishing services at the State Penitentiary part-time on the basis of a fee schedule or arrangement. As the result of such actions or threats to commence malpractice suits, the insurance carriers representing these doctors gave strong indications of the possibility of cancelling the malpractice insurance. Accordingly, this has made it extremely difficult to obtain medical services at the State Penitentiary.

The amendment found in section 2 does two things: One, by deleting the words "in accordance with the law of the place where the act or omission occurred," it makes it clear that actions commenced under chapter 25A are to be governed by the statutory and common law of Iowa. This deleted language was seemingly inadvertently copied verbatim from the Federal Tort Claims Act where such a provision makes good sense, in view of the Federal rule that normally a Federal District Court in deciding a case will look to the law of the state in which that court is sitting. Secondly, the proposed amendment also deleted the last sentence of section 25A.2 (5) which is no longer necessary in view of the statute of limitations set forth in section 25A.13.

The amendment set forth in section 3 does two things: One, section 25A.4 presently precludes a potential nonresident plaintiff from bringing a suit under chapter 25A where the act or omission complained of occurs outside the State of Iowa. There is no rational basis for this preclusion and the Polk County District Court seems the most logical district, venue-wise, for such actions. Secondly, chapter 25A makes no provisions as to how a suit is commenced against the state and there is nothing else in the Code or the Iowa Rules of Civil Procedure applicable thereto.

The amendment set forth in section 4 deletes unnecessary and confusing language.

FISCAL NOTE

Date prepared February 28, 1969

Requested by Senator Kosek.

Prepared in regard to a bill for an act relating to claims and actions under the Iowa Tort Claims Act.

Following is the fiscal effect in dollars of the legislative proposal as required by Rule 47: No estimate available.

Note: According to the Attorney General's office, there has never been a claim paid by any insurance company to an inmate of Anamosa or Fort Madison for a malpractice suit against a doctor.

GERRY D. RANKIN
Legislative Fiscal Director

- 1 Amend Senate File 376, page one (1), line seven (7),
 - 2 by adding after the word "surgeons" the following:
 - 3 ", osteopathic physicians".
- Senate concurred and amended 5-22*

- 1 Amend Senate File 376 as follows:
- 2 1. By adding after the word "doctors" in line
- 3 7 on page 1 the following: ", osteopathic physicians
- 4 and surgeons".

Filed - *Adopted 4-25*
April 10, 1969

By O'MALLEY and COLEMAN

- 1 Amend the House amendment to Senate File 376
- 2 by inserting in line 3 after the word "physicians"
- 3 the word ", optometrists".

Filed - *Adopted 5-22*
May 19, 1969

By LODWICK

- 1 Amend Senate File 376, page one (1), line seven (7),
- 2 by adding after the word "surgeons" the following:
- 3 ", osteopaths".

Filed - *Withdrawn 5-12*
May 6, 1969

HILL of Marshall

- 1 Amend Senate File 376, page one (1), line seven (7),
- 2 by adding after the word "surgeons" the following:
- 3 ", osteopathic physicians".

Filed - *Adopted 5-12*
May 8, 1969

HILL of Marshall

SENATE AMENDMENT TO HOUSE AMENDMENT
TO SENATE FILE 376

- 1 Amend the House amendment to Senate File 376 by inserting in
- 2 line 3 after the word "physicians" the following: ", optometrists".

Received - *House concurred 5/23*
May 22, 1969