

APR 23 1975

HOUSE FILE 799

Place On Calendar

Se. House File 799 *6/9, Pass 6/12*
State Government
Glenn, Chairman
Gluba
Andersen

BY COMMITTEE ON STATE GOVERNMENT

Passed House, Date 6-2-75 (2069) Passed Senate, Date 6-9-75 (2192)

Vote: Ayes 85 Nays 0 Vote: Ayes 45 Nays 0

Approved 6-30

Repassed House for Senate amendment
6-19-75 (2693)
94-0

A BILL FOR

1 An Act relating to liability protection for state employees.

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

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 Section 1. Section twenty-five A point two (25A.2),
2 subsection three (3), Code 1975, is amended to read as follows:

3 3. "Employee of the state" includes any one or more
4 officers, agents, or employees of the state or any state
5 agency, including members of the general assembly, and persons
6 acting on behalf of the state or any state agency in any
7 official capacity, temporarily or permanently in the service
8 of the state of Iowa, whether with or without compensation.
9 Professional personnel, including medical doctors, osteopathic
10 physicians and surgeons, osteopathic physicians, optometrists
11 and dentists, who render services to patients and inmates
12 of state institutions under the jurisdiction of the department
13 of social services are to be considered employees of the
14 state, whether such personnel are employed on a full-time
15 basis or render such services on a part-time basis on a fee
16 schedule or arrangement, but shall not include any contractor
17 doing business with the state.

18 Sec. 2. Section twenty-five A point two (25A.2), subsection
19 five (5), Code 1975, is amended by striking the section and
20 inserting in lieu thereof the following:

- 21 5. "Claim" means:
- 22 a. Any claim against the state of Iowa for money only,
23 on account of damage to or loss of property or on account
24 of personal injury or death, caused by the negligent or
25 wrongful act or omission of any employee of the state while
26 acting within the scope of his office or employment, under
27 circumstances where the state, if a private person, would
28 be liable to the claimant for such damage, loss, injury, or
29 death.
 - 30 b. Any claim against an employee of the state for money
31 only, on account of damage to or loss of property or on account
32 of personal injury or death, caused by the negligent or
33 wrongful act or omission, except an act of malfeasance in
34 office or willful or wanton neglect of duty, of any employee
35 of the state while acting within the scope of his office or

1 employment.

2 Sec. 3. Section twenty-five A point four (25A.4), Code
3 1975, is amended by adding the following new paragraph:

4 NEW PARAGRAPH. If suit is commenced against an employee
5 of the state pursuant to the provisions of this chapter, an
6 original notice shall be served upon the employee in addition
7 to the requirements of this section. The employee of the
8 state shall have the same period to enter a general or special
9 appearance as the state.

10 Sec. 4. Section twenty-five A point eight (25A.8), Code
11 1975, is amended to read as follows:

12 25A.8 JUDGMENT AS BAR. The final judgment in any suit
13 under this chapter shall constitute a complete bar to any
14 action by the claimant, by reason of the same subject matter,
15 against the state or the employee of the state whose act or
16 omission gave rise to the claim. However, this section shall
17 not apply if the court rules that the claim is not permitted
18 under this chapter.

19 Sec. 5. Section twenty-five A point thirteen (25A.13),
20 unnumbered paragraph one (1), Code 1975, is amended to read
21 as follows:

22 Every claim and suit ~~against-the-state~~ permitted under
23 this chapter shall be forever barred, unless within two years
24 after such claim accrued, the claim is made in writing to
25 the state appeal board under this chapter. The time to begin
26 a suit under this chapter shall be extended for a period of
27 six months from the date of mailing of notice to the claimant
28 by the state appeal board as to the final disposition of the
29 claim or from the date of withdrawal of the claim from the
30 state appeal board under section 25A.5, if the time to begin
31 suit would otherwise expire before the end of such period.

32 Sec. 6. Section twenty-five A point fourteen (25A.14),
33 unnumbered paragraph one (1), Code 1975, is amended to read
34 as follows:

35 The provisions of this chapter shall not apply with respect

1 to any claim against the state, to:

2 Sec. 7. Chapter twenty-five A (25A), Code 1975, is amended
3 by adding the following new section:

4 NEW SECTION. OFFICERS AND EMPLOYEES DEFENDED. The state
5 shall defend any of its officers, employees and agents, whether
6 elected or appointed and, except in cases of malfeasance in
7 office, willful and unauthorized injury to persons or property,
8 or willful or wanton neglect of duty, shall save harmless
9 and indemnify such officers, employees and agents against
10 any tort claim or demand, whether groundless or otherwise,
11 arising out of an alleged act or omission occurring within
12 the scope of their employment or duties.

13 EXPLANATION

14 This bill provides that officers, agents, or employees
15 of the state will be defended and held harmless against claims
16 arising from acts performed acting in the course of their
17 employment.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

H-3954

Amend House File 799 as follows:

- 1 Page 1, line 29, by inserting after the word
- 2 "death" the following:
- 3 ", and shall include actions arising under
- 4 Title 42, United States Code, section 1983".
- 5

H-3954 FILED - *Adopted 6/2 (2068)*
MAY 27, 1975

BY BITTLE of Polk
MONROE of Des Moines

House File 799

H-4000

1 Amend House File 799 as follows:

- 2 1. Page 3, line 5, by striking the words:
- 3 "of its officers, employees and agents"
- 4 and inserting in lieu thereof the following:
- 5 "employee of the state".
- 6 2. Page 3, line 9, by striking the words:
- 7 "officers, employees and agents" and
- 8 inserting in lieu thereof the following:
- 9 "employees of the state".

H-4000 FILED - *Adopted 6/2 (2068)*
MAY 30, 1975

BY BITTLE of Polk
MONROE of Des Moines
SVOBODA of Iowa

Senate Amendment to House File 799

H-4347

1 Amend House File 799 as amended and passed by the
2 House as follows:

- 3 1. Page 1, by striking lines 29 and 29a and
- 4 inserting in lieu thereof the word "death."
- 5 2. Page 1, line 34, by striking the words "or
- 6 wanton neglect of duty" and inserting in lieu thereof
- 7 the words "and wanton conduct".
- 8 3. Page 3, line 3, by striking the word "section"
- 9 and inserting in lieu thereof the word "sections".
- 10 4. Page 3, line 8, by striking the words "or
- 11 wanton neglect of duty" and inserting in lieu thereof
- 12 the words "and wanton conduct".
- 13 5. Page 3, by inserting after line 12 the
- 14 following:
15 "NEW SECTION. The state shall defend, indemnify
16 and hold harmless an employee of the state in any
17 action commenced in federal court under section one
18 thousand nine hundred eighty-three (1983), Title
19 forty-two (42), United States Code, against the
20 employee for acts of the employee while acting in
21 the scope of employment. If the acts or omissions
22 of the employee, upon which the action is based, are
23 within the exceptions to claim as defined in section
24 twenty-five A point two (25A.2), subsection five (5),
25 paragraph b, of the Code, the state shall not indemnify
26 or hold harmless the employee."
- 27 6. Renumber sections and correct internal
28 references in conformance with this section.

H-4347 FILED, RECEIVED FROM SENATE
JUNE 19, 1975 HOUSE CONCURS (2092)

S-4208

1 Amend House File 799 as amended and passed by the
2 House as follows:
3 1. Page 1, by striking lines 29 and 29a and insert-
4 ing in lieu thereof the word "death."
5 2. Page 1, line 34, by striking the words "neglect
6 of duty" and inserting in lieu thereof the word
7 "conduct".
8 3. Page 3, line 3, by striking the word "section"
9 and inserting in lieu thereof the word "sections".
10 4. Page 3, by inserting after line 12 the following:
11 NEW SECTION. The state shall indemnify an employee
12 of the state in any action commenced in federal court
13 under section one thousand nine hundred eighty-three
14 (1983), Title forty-two (42), United States Code,
15 against the employee. If the acts or omissions of the
16 employee, upon which the action is based, are within the
17 exceptions to claim as defined in section twenty-five A
18 point two (25A.2), subsection five (5), paragraph b, of
19 the Code, the state shall not indemnify the employee.
20 5. Renumber sections and correct internal references
21 in conformance with this section.

S-4208 FILED - *Withdrawn 6/19(2/91)* BY GENE W. GLENN
JUNE 13, 1975

S-4218

1 Amend House File 799, as amended and passed by
2 the House, page 3, by inserting after line 12, the
3 following new section:
4 "Sec. . Chapter twenty-five A (25A), Code 1975,
5 is amended by adding the following new section:
6 NEW SECTION. A judgment award or settlement within
7 the scope of this chapter shall not exceed:
8 1. For an injury to one person in any single
9 accident or occurrence the sum of one hundred thousand
10 dollars.
11 2. For an injury to two or more persons in any
12 single accident or occurrence, the sum of three hundred
13 thousand dollars; except that in such instance, a
14 person may not recover in excess of one hundred
15 thousand dollars."

S-4218 FILED - *Last 6/19(2/92)*
JUNE 13, 1975

BY ELIZABETH SHAW
WM. P. WINKELMAN
WARREN E. CURTIS

1 Amend House File 799 as amended and passed by the
2 House as follows:

3 1. Page 1, by striking lines 29 and 29a and
4 inserting in lieu thereof the word "death."

5 2. Page 1, line 34, by striking the words "or
6 wanton neglect of duty" and inserting in lieu thereof
7 the words "and wanton conduct".

8 3. Page 3, line 3, by striking the word "section"
9 and inserting in lieu thereof the word "sections".

10 4. Page 3, line 8, by striking the words "or
11 wanton neglect of duty" and inserting in lieu thereof
12 the words "and wanton conduct".

13 5. Page 3, by inserting after line 12 the
14 following:

15 "NEW SECTION. The state shall defend, indemnify
16 and hold harmless an employee of the state in any
17 action commenced in federal court under section one
18 thousand nine hundred eighty-three (1983), Title
19 forty-two (42), United States Code, against the
20 employee for acts of the employee while acting in
21 the scope of employment. If the acts or omissions
22 of the employee, upon which the action is based, are
23 within the exceptions to claim as defined in section
24 twenty-five A point two (25A.2), subsection five (5),
25 paragraph b, of the Code, the state shall not indemnify
26 or hold harmless the employee."

27 6. Renumber sections and correct internal
28 references in conformance with this section.

HOUSE FILE 799

AN ACT

RELATING TO LIABILITY PROTECTION FOR STATE EMPLOYEES.

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

Section 1. Section twenty-five A point two (25A.2), subsection three (3), Code 1975, is amended to read as follows:

3. "Employee of the state" includes any one or more officers, agents, or employees of the state or any state agency, including members of the general assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation. Professional personnel, including medical doctors, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of social services are to be considered employees of the state, whether such personnel are employed on a full-time basis or render such services on a part-time basis on a fee schedule or arrangement, but shall not include any contractor doing business with the state.

Sec. 2. Section twenty-five A point two (25A.2), subsection five (5), Code 1975, is amended by striking the section and inserting in lieu thereof the following:

5. "Claim" means:

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

b. Any claim against an employee of the state for money

only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission, except an act of malfeasance in office or willful and wanton conduct, of any employee of the state while acting within the scope of his office or employment.

Sec. 3. Section twenty-five A point four (25A.4), Code 1975, is amended by adding the following new paragraph:

NEW PARAGRAPH. If suit is commenced against an employee of the state pursuant to the provisions of this chapter, an original notice shall be served upon the employee in addition to the requirements of this section. The employee of the state shall have the same period to enter a general or special appearance as the state.

Sec. 4. Section twenty-five A point eight (25A.8), Code 1975, is amended to read as follows:

25A.8 JUDGMENT AS BAR. The final judgment in any suit under this chapter shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the state or the employee of the state whose act or omission gave rise to the claim. However, this section shall not apply if the court rules that the claim is not permitted under this chapter.

Sec. 5. Section twenty-five A point thirteen (25A.13), unnumbered paragraph one (1), Code 1975, is amended to read as follows:

Every claim and suit ~~against-the-state~~ permitted under this chapter shall be forever barred, unless within two years after such claim accrued, the claim is made in writing to the state appeal board under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the state appeal board as to the final disposition of the claim or from the date of withdrawal of the claim from the state appeal board under section 25A.5, if the time to begin suit would otherwise expire before the end of such period.

Sec. 6. Section twenty-five A point fourteen (25A.14),

unnumbered paragraph one (1), Code 1975, is amended to read as follows:

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

Sec. 7. Chapter twenty-five A (25A), Code 1975, is amended by adding the following new sections:

NEW SECTION. OFFICERS AND EMPLOYEES DEFENDED. The state shall defend any employee of the state, whether elected or appointed and, except in cases of malfeasance in office, willful and unauthorized injury to persons or property, or willful and wanton conduct, shall save harmless and indemnify such employees of the state against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties.

NEW SECTION. The state shall defend, indemnify and hold harmless an employee of the state in any action commenced in federal court under section one thousand nine hundred eighty-three (1983), Title forty-two (42), United States Code, against the employee for acts of the employee while acting in the scope of employment. If the acts or omissions of the employee, upon which the action is based, are within the exceptions to claim as defined in section twenty-five A point two (25A.2), subsection five (5), paragraph b, of the Code, the state shall not indemnify or hold harmless the employee.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 799, Sixty-sixth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved 4/30, 1975

ROBERT D. RAY
Governor