

MAR 2 1983

Place On Calendar

HOUSE FILE 359

BY COMMITTEE ON LOCAL GOVERNMENT

*Substituted for S. 7 300 3/22/83
(Formerly Study Bill 107)*

Passed House, Date 3-7-83 (p 631) Passed Senate, Date 4-14-83 (p 1271)

Vote: Ayes 96 Nays 0 Vote: Ayes 30 Nays 11

Approved February 2, 1984 (p 255)

Motion to reconsider 4/18 (p 1301) 4/22 4/21/83

A BILL FOR

- 1 An Act relating to the duties and liabilities of persons
- 2 with respect to public places located within cities.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE AMENDMENT TO HOUSE FILE 359

H-3827

- 1 Amend House File 359 as passed by the House as
- 2 follows:
- 3 1. Page 1, line 16, by inserting after the word
- 4 "for" the words "only out of pocket".

H-3827 FILED APRIL 21, 1983

RECEIVED FROM THE SENATE

House refused to concur 5/11 (p 2016)
Senate insisted 5/11/83 (p 1670)

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Conference Committee Appointed 5/12/83

Representatives O'Hare (Chair), Burke, Connors, Menden, Swearingen (p 2118)
Senators Gallagher (Chair) Walker, Holden, Griles, Oriskany (p 1715)

Second Conference Committee Appointed

Representatives O'Hare (Chair) Burke, Beal, Branley, & Rankin 5/14/83 (p 2206)
Senators Hutchinson (Chair) Walker (2nd Year), Colton, Kelderman. Veron H. of 1/12/84 (p 12)

Passed per Conference Committee Report

House 1-16-84 (p 84)
78-19

Senate 1-23-84 (p 197)
33-14

1 Section 1. Section 364.12, subsection 2, Code 1983, is
2 amended to read as follows:

3 2. A city ~~is responsible for the care, supervision, and~~
4 ~~control of~~ shall keep all public grounds, streets, sidewalks,
5 alleys, bridges, culverts, overpasses, underpasses, grade
6 crossing separations and approaches, ~~except those lawfully~~
7 ~~required to be maintained by a railway company, and the city~~
8 ~~shall keep all~~ public ways, squares, and commons open, in
9 repair, and free from nuisance, with the following exceptions:

10 a. Public ways and grounds may be temporarily closed by
11 resolution. Following notice as provided in section 362.3,
12 ~~such~~ public ways and grounds may be vacated by ordinance.

13 b. The abutting property owner is responsible for the
14 ~~prompt removal of snow, ice, and accumulations~~ the natural
15 accumulations of snow and ice from the sidewalks within a
16 reasonable amount of time and may be liable for damages caused
17 by the failure of the abutting property owner to use reasonable
18 care in the removal of the snow or ice. All legal or equitable
19 defenses are available to the abutting property owner in an
20 action brought pursuant to this paragraph. The city's general
21 duty under this subsection does not include a duty to remove
22 natural accumulations of snow or ice from the sidewalks.
23 However, when the city is the abutting property owner it has
24 the specific duty of the abutting property owner set forth
25 in this paragraph.

26 c. The abutting property owner may be required by ordinance
27 to maintain all property outside the lot and property lines
28 and inside the curb lines upon the public streets, except
29 that the property owner shall not be required to remove
30 diseased trees or dead wood on the publicly owned property
31 or right of way.

32 d. A city may serve notice on the abutting property owner,
33 by certified mail to the property owner as shown by the records
34 of the county auditor, requiring ~~him~~ the abutting property
35 owner to repair, replace, or reconstruct sidewalks.

1 e. If the abutting property owner does not perform an
2 action required under this subsection within a reasonable
3 time, a city may perform the required action and assess the
4 costs against the abutting property for collection in the
5 same manner as a property tax. This power does not relieve
6 the abutting property owner of liability imposed under
7 paragraph b.

8 f. A city has no duty under this subsection with respect
9 to property that is required by law to be maintained by a
10 railway company.

11 EXPLANATION

12 This bill provides that within a city the abutting property
13 owner is responsible for the prompt removal of the natural
14 accumulations of snow and ice from the sidewalks. The abutting
15 property owner may be liable for damages caused by the failure
16 to use reasonable care in the removal of snow or ice. The
17 city's general duty to keep public areas clear and free of
18 nuisance does not include a duty to remove natural
19 accumulations of snow and ice. However, when the city is
20 the abutting property owner the city has the same obligation
21 as other abutting property owners.

22 The bill becomes effective July 1 following enactment.

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REPORT OF THE SECOND CONFERENCE COMMITTEE ON HOUSE FILE 359

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the second conference committee appointed to resolve the differences between the Senate and the House of Representatives on House File 359, a bill for an Act relating to the duties and liabilities of persons with respect to public places located within cities, respectfully make the following report:

1. That the Senate recedes from its amendment, S-3564, to House File 359, as passed by the House.
2. That House File 359, as passed by the House, is amended as follows:

1. Page 1, line 18, by inserting after the word "ice." the following: "If damages are to be awarded under this action against the abutting property owner, the claimant has the burden of proving the amount of the damages. To authorize recovery of more than a nominal amount, facts must exist and be shown by the evidence which afford a reasonable basis for measuring the amount of the claimant's actual damages, and the amount of actual damages shall not be determined by speculation, conjecture, or surmise."

ON THE PART OF THE SENATE:
SENATOR C. W. "BILL" HUTCHINS, CHAIR
SENATOR ALVIN MILLER
SENATOR ARNE WALDSTEIN
SENATOR RICHARD VANDE HOEF

FILED JANUARY 12, 1984

Senate adopted 1/23 (p 196)

ON THE PART OF THE HOUSE:
REPRESENTATIVE JAMES D. O'KANE, CHAIR
REPRESENTATIVE FLORENCE BUHR
REPRESENTATIVE DORIS PEICK
REPRESENTATIVE ROBERT GRANDIA
REPRESENTATIVE BOB RENKEN

House adopted 1/16 (p 84)

REPORT OF THE CONFERENCE COMMITTEE

ON HOUSE FILE 359

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and the House of Representatives on House File 359, a bill for an Act relating to the duties and liabilities of persons with respect to public places located within cities respectfully make the following report:

1. The members of the conference committee are unable to reach agreement.

ON THE PART OF THE HOUSE:

JAMES O'KANE, Chairperson
FLORENCE BUHR
JOHN CONNORS
EORGE SWEARINGEN

FILED MAY 14, 1983

ON THE PART OF THE SENATE

JAMES GALLAGHER, Chairperson
JAMES BRILES
EDGAR HOLDEN
BERL PRIEBE
JAMES WELLS

HOUSE FILE 359

S-3564

- 1 Amend House File 359 as passed by the House as
2 follows:
3 1. Page 1, line 16, by inserting after the word
4 "for" the words "only out of pocket".

S-3564 FILED & ADOPTED
APRIL 14, 1983 (p. 1271)

BY EDGAR H. HOLDEN

HOUSE FILE 359

S-3565

- 1 Amend House File 359 as passed by the House, as
2 follows:
3 1. Page 1, by striking lines 3 through 9 and
4 inserting in lieu thereof the following:
5 "2. A city is responsible for the care,
6 supervision, and control of public grounds, streets,
7 sidewalks, alleys, bridges, culverts, overpasses,
8 underpasses, grade crossing separations and approaches,
9 ~~except these lawfully required to be maintained by~~
10 ~~a railway company, and the city shall keep all~~ public
11 ways, squares, and commons open, in repair, and free
12 from nuisance, with the following exceptions:"
13 2. Page 1, by striking lines 14 through 20 and
14 inserting in lieu thereof the words "prompt removal
15 of the natural accumulation of snow, and ice, and
16 ~~accumulations~~ from the sidewalks. The city's general".
17 3. Page 1, line 25, by inserting after the word
18 "paragraph." the words "However, a city shall not
19 be liable for damages caused by the natural
20 accumulation of snow and ice, nor shall it be liable
21 for damages resulting from the removal of the natural
22 accumulation of snow and ice by the abutting property
23 owner."
24 4. Page 2, by striking lines 5 through 7 and
25 inserting in lieu thereof the words "same manner as
26 a property tax."

S-3565 FILED & LOST
APRIL 14, 1983 (p. 1270)

BY EDGAR H. HOLDEN

HOUSE FILE 359

S-3219

- 1 Amend House File 359 as passed by the House as follows:
2 1. Page 2, line 6, by striking the word "imposed"
3 and inserting in lieu thereof the words "for which he
4 or she may be liable".

S-3219 FILED
MARCH 9, 1983

BY EDGAR H. HOLDEN

File 4/14/83 (1271)

HOUSE FILE 359

S-3230

- 1 Amend House File 359 as passed by the House as
2 follows:
3 1. Page 1, by striking lines 16 through 20 and
4 inserting in lieu thereof the words "reasonable amount
5 of time. The city's general".
6 2. Page 1, line 25, by inserting after the word
7 "paragraph." the words "However, a city shall not be
8 liable for damages caused by the natural accumulation
9 of snow and ice, nor shall it be liable for damages
10 resulting from the removal of the natural accumulation
11 of snow and ice by the abutting property owner."
12 3. Page 2, by striking lines 5 through 7 and in-
13 serting in lieu thereof the words "same manner as a
14 property tax."

S-3230 FILED
MARCH 15, 1983

BY EDGAR H. HOLDEN

File 4/14/83 (1272)

SENATE 7
MARCH 10, 1983

HOUSE FILE 359

S-3216

1 Amend House File 359 as passed by the House as
2 follows:
3 1. Page 1, by striking lines 16 through 20 and
4 inserting in lieu thereof the words "reasonable amount
5 of time. The city's general".
6 2. Page 2, by striking lines 5 through 7 and
7 inserting in lieu thereof the words "same manner as
8 a property tax."
9 3. Page 2, by inserting after line 10 the
10 following:
11 "Neither the city nor the abutting property
12 owner may be held liable for damages caused by the
13 natural accumulations of snow or ice on the sidewalks
14 of this state."

S-3216 FILED
MARCH 9, 1983

BY EDGAR H. HOLDEN

House 4/14/1983 (1270)

HOUSE FILE 359

S-3217

1 Amend House File 359 as passed by the House as
2 follows:
3 1. Page 1, line 20, by inserting after the word
4 "paragraph." the following: "In the alternative,
5 the abutting property owner may request in writing
6 that the city remove the sidewalk. The city must
7 remove the sidewalk, if requested to do so by the
8 abutting property owner."

S-3217 FILED
MARCH 9, 1983

BY EDGAR H. HOLDEN

House 4/14/1983 (1270)

HOUSE FILE 359

S-3218

1 Amend House File 359 as passed by the House as
2 follows:
3 1. Page 1, line 18, by inserting after the words
4 "removal of the" the words "natural accumulations
5 of".
6 2. Page 2, line 7, by inserting after the words
7 "paragraph b." the following: "However, a city acting
8 under this paragraph may be liable for damages caused
9 by the failure to use reasonable care in the removal
10 of the natural accumulations of snow and ice."

S-3218 FILED
MARCH 9, 1983

BY EDGAR H. HOLDEN

House 4/14/1983 (1270)

HOUSE FILE 359

AN ACT

RELATING TO THE DUTIES AND LIABILITIES OF PERSONS WITH RESPECT TO PUBLIC PLACES LOCATED WITHIN CITIES

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

Section 1. Section 364.17, subsection 2, Code 1954, is amended to read as follows:

2. A city ~~is responsible for the care, supervision, and control of~~ shall keep all public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, ~~except those lawfully required to be maintained by a railway company, and the city shall keep all~~ public ways, squares, and commons open, in repair, and free from nuisance, with the following exceptions:

a. Public ways and grounds may be temporarily closed by resolution. Following notice as provided in section 362.3, such public ways and grounds may be vacated by ordinance

b. The abutting property owner is responsible for the prompt removal of snow ~~and accumulations~~ and accumulations the natural accumulations of snow and ice from the sidewalks within a reasonable amount of time and may be liable for damages caused by the failure of the abutting property owner to use reasonable care in the removal of the snow or ice. If damages are to be awarded under this section against the abutting property owner, the claimant has the burden of proving the amount of the damages. To authorize recovery of more than a nominal amount, facts must exist and be shown by the evidence which afford a reasonable basis for measuring the amount of the claimant's actual damages, and the amount of actual damages shall not be determined by speculation, conjecture, or surmise. All legal or equitable defenses are available to the abutting property owner in an action brought pursuant to this paragraph. The city's general duty under this subsection does not include a duty to remove natural accumulations of snow or ice from the sidewalks. However, when the city is the abutting property owner, it has the specific duty of the abutting property owner set forth in this paragraph.

c. The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right of way.

d. A city may serve notice on the abutting property owner, by certified mail to the property owner as shown by the records of the county auditor, requiring ~~the~~ the abutting property owner to repair, replace, or reconstruct sidewalks.

e. If the abutting property owner does not perform an action required under this subsection within a reasonable time, a city may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax. This power does not relieve

H.F. 359

the abutting property owner of liability imposed under paragraph b.

f. A city has no duty under this subsection with respect to property that is required by law to be maintained by a railway company.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 359, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved Feb 2, 1984

TERRY E. BRANSTAD
Governor