

*Amend per 51994 De Pass  
3/1 (p. 605)*

*Reprinted 3/19*

**FILED JAN 25 1984**

SENATE FILE **2098**

BY DELUHERY

Passed Senate, Date 3-16-84 (p. 877) Passed House, Date 3-28-84 (p. 1386)  
Vote: Ayes 32 Nays 4 Vote: Ayes 86 Nays 9  
Approved 5/14/84

## A BILL FOR

- 1 An Act relating to the liability for torts committed by
- 2 offenders assigned to perform unpaid community service.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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### SENATE FILE 2098 FISCAL NOTE

#### REQUESTED BY SENATOR GENTLEMAN

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 2098 pursuant to Joint Rule 17.

Senate File 2098 provides that the liability, if any, for a tortious act committed by an offender, adult or juvenile, during the performance of unpaid community services is with the state. The bill also provides that a person performing unpaid community services is not an employee of the governmental unit by excluding such a person from the definition of "employee" under the worker's compensation chapter.

**FISCAL IMPACT:** It is estimated that more than 1,000 offenders, mostly those convicted of lesser offenses, will be ordered by the court to perform community service during the 1985 fiscal year. However, there is no basis on which to project the number of offenders who may commit a tortious act. The fiscal impact or state expenditures cannot be determined because the amount of liability the state will assume cannot be accurately estimated.

(3670S, 84-203E, HML)

Source: Department of Corrections  
Comptroller's Office  
Statistical Analysis Center

RECEIVED BY THE SECRETARY OF THE SENATE, MARCH 14, 1984

FILED:  
MARCH 16, 1984

BY DENNIS C. PROUTY, DIRECTOR  
LEGISLATIVE FISCAL BUREAU

5257 amended

5199\* 1 Section 1. Section 85.61, subsection 3, Code Supplement  
2 1983, is amended by adding the following new lettered  
3 paragraph:

4 NEW LETTERED PARAGRAPH. d. A person who is performing  
5 unpaid community service under section 907.13 or a work assign-  
6 ment of value to the state or to the public under chapter  
7 232.

8 Sec. 2. NEW SECTION. 232.13 LIABILITY FOR PUBLIC WORK  
9 ASSIGNMENTS. The state of Iowa is liable, according to and  
10 under chapter 25A, for a tortious act committed by a child  
11 given a work assignment of value to the state or to the public  
12 under this chapter.

13 Sec. 3. Section 907.13, Code 1983, is amended by adding  
14 the following new subsection:

15 NEW SUBSECTION. 5. The state of Iowa is liable, according  
16 to and under chapter 25A, for a tortious act committed by  
17 a defendant while performing unpaid community service.

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18 EXPLANATION

19 This bill provides that the liability, if any, for a  
20 tortious act committed by an offender, adult or juvenile,  
21 during the performance of unpaid community service is with  
22 the state.

23 This bill also provides that a person performing unpaid  
24 community service is not an employee of the governmental unit  
25 by excluding such a person from the definition of "employee"  
26 under the workers' compensation chapter.

27 This bill takes effect July 1 following its enactment.

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S-5257

1 Amend Senate File 2098 as follows:

2 1. Page 1, by striking everything after the  
3 enacting clause and inserting in lieu thereof the  
4 following:

5 "Section 1. NEW SECTION. 232.13 LIABILITY--  
6 PUBLIC WORK ASSIGNMENTS. The state of Iowa, a unit  
7 of local government, or an official or employee of  
8 the state or a local government acting in an official  
9 capacity, is not liable for a tortious act by or  
10 sustained by a child given a work assignment of value  
11 to the state or to the public under this chapter,  
12 except for willful misconduct or recklessness on the  
13 part of the governmental unit, official, or employee.  
14 A nonprofit corporation organized under chapter 504  
15 or 504A or a member or employee of the corporation,  
16 participating in a child's public work assignment  
17 and acting in good faith, is not liable for a tortious  
18 act by or sustained by the child, except for willful  
19 misconduct or recklessness on the part of the  
20 organization or member. As used in this section,  
21 "a unit of local government" means a city, county,  
22 township, school district, or soil conservation  
23 district or similar unit of government.

24 A child given a work assignment of value to the  
25 state or to the public is not an employee of the  
26 governmental unit or nonprofit corporation for any  
27 purpose.

28 Sec. 2. Section 907.13, Code 1983, is amended  
29 by adding the following new subsection:

30 NEW SUBSECTION. 5. The state of Iowa, a unit  
31 of local government, or an official or employee of  
32 the state or a local government acting in an official  
33 capacity, is not liable for a tortious act by or  
34 sustained by the defendant, except for willful miscon-  
35 duct or recklessness on the part of the governmental  
36 unit, official, or employee. A nonprofit corporation  
37 organized under chapter 504 or 504A or a member or  
38 employee of the corporation, participating in a  
39 defendant's community service plan and acting in good  
40 faith, is not liable for a tortious act by or sustained  
41 by the defendant, except for willful misconduct or  
42 recklessness on the part of the organization or member.  
43 As used in this section, "a unit of local government"  
44 means a city, county, township, school district, soil  
45 conservation district, or similar unit of government.

46 A defendant assigned to perform unpaid community  
47 service is not an employee of the governmental unit  
48 or nonprofit corporation for any purpose.

49 Sec. 3. Section 25A.4, unnumbered paragraph 3,  
50 Code 1983, is amended to read as follows:

S-5257

PAGE 2

1 The immunity of the state from suit and liability  
2 is waived to the extent provided in this chapter and  
3 those claims exempted under sections 232.13 and 907.13.

4 Sec. 4. Section 85.61, subsection 3, Code  
5 Supplement 1983, is amended by adding the following  
6 new lettered paragraph:

7 NEW LETTERED PARAGRAPH. d. A person who is  
 8 performing unpaid community service under section  
 9 907.13 or a work assignment of value to the state  
 10 or to the public under chapter 232.  
 11 Sec. 5. Section 613A.2, unnumbered paragraph 1,  
 12 Code 1983, is amended to read as follows:  
 13 Except as otherwise provided in this chapter and  
 14 those claims exempt under sections 232.13 and 907.13,  
 15 every municipality is subject to liability for its  
 16 torts and those of its officers and employees, acting  
 17 within the scope of their employment or duties, whether  
 18 arising out of a governmental or proprietary function."

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S-5257 FILED BY JULIA GENTLEMAN  
 MARCH 6, 1984  
*Loos 3/16 (p. 876)*

SENATE FILE 2098

S-5194

1 Amend Senate File 2098 as follows:  
 2 1. Page 1, line 17, by inserting after the word  
 3 "service" the words and figure "under this section  
 4 or section 910.2".

S-5194 FILED BY PATRICK J. DELUHERY  
 MARCH 1, 1984  
*Adopted 3/16 (p. 876)*

SENATE FILE 2098

S-5199

1 Amend Senate File 2098 as follows:  
 2 1. Page 1, by striking lines 1 through 7.  
 3 2. By renumbering to conform to this amendment.

S-5199 FILED BY COMMITTEE ON JUDICIARY  
 MARCH 1, 1984 DONALD V. DOYLE, CHAIR  
*Adopted 3/16 (p. 876)*

SENATE FILE 2098

S-5421

1 Amend Senate File 2098 as follows:  
 2 1. Page 1, by inserting after line 17 the following:  
 3 "Sec. 4. Section 25A.14, subsection 9, Code  
 4 Supplement 1983, is amended by striking the sub-  
 5 section.  
 6 Sec. 5. Section 613A.4, subsection 8, Code Supple-  
 7 ment 1983, is amended by striking the subsection."

S-5421 FILED BY TOM MANN JR.  
 MARCH 16, 1984  
 RULED OUT OF ORDER *(p. 876)*

SENATE FILE 2098

S-5430

1 Amend the amendment S-5257 to Senate File 2098 as  
 2 follows:  
 3 1. Page 2, by inserting after line 18 the follow-  
 4 ing:  
 5 "Sec. 6. Section 25A.14, subsection 9, Code Supple-  
 6 ment 1983, is amended by striking the subsection.  
 7 Sec. 7. Section 613A.4, subsection 8, Code Supple-  
 8 ment 1983, is amended by striking the subsection."

S-5430 FILED & WITHDRAWN BY TOM MANN JR.  
 MARCH 16, 1984 *(p. 876)*

Amend per 5805's D. Pac 3/23 (p. 1246)

BY DELUHERY

(AS AMENDED AND PASSED BY THE SENATE MARCH 16, 1984)

Passed Senate, Date 4-10-84 (p. 1416) Passed House, Date 3-28-84 (p. 1386)
Vote: Ayes 46 Nays 0 Vote: Ayes 86 Nays 9
Approved May 14, 1984

A BILL FOR

1 An Act relating to the liability for torts committed by
2 offenders assigned to perform unpaid community service.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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\_\_\_\_\_ = New Language
by the Senate

\* = Language Stricken
by the Senate

5805  
amended  
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\* 1 Section 1. NEW SECTION. 232.13 LIABILITY FOR PUBLIC  
2 WORK ASSIGNMENTS. The state of Iowa is liable, according  
3 to and under chapter 25A, for a tortious act committed by  
4 a child given a work assignment of value to the state or to  
5 the public under this chapter.

6 Sec. 2. Section 907.13, Code 1983, is amended by adding  
7 the following new subsection:

8 NEW SUBSECTION. 5. The state of Iowa is liable, according  
9 to and under chapter 25A, for a tortious act committed by  
10 a defendant while performing unpaid community service under  
11 this section or section 910.2.

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S-5697

1 Amend Senate File 2098 as amended, passed, and  
2 reprinted by the Senate as follows:

3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:  
5 "Section 1. Section 85.59, Code Supplement 1983,  
6 is amended by adding the following new unnumbered  
7 paragraph:

8 NEW UNNUMBERED PARAGRAPH. For purposes of this  
9 section, the term "inmate" excludes a person who is  
10 performing unpaid community service under section  
11 907.13 or a work assignment of value or to the public  
12 under chapter 232.

13 Sec. 2. NEW SECTION. 232.13 LIABILITY FOR PUBLIC  
14 WORK ASSIGNMENTS. The state of Iowa is liable,  
15 according to and under chapter 25A, for a tortious  
16 act committed by a child given a work assignment of  
17 value to the state or the public under this chapter.

18 Sec. 3. Section 907.13, Code 1983, is amended  
19 by adding the following new subsections:

20 NEW SUBSECTION. 5. The state of Iowa is  
21 exclusively liable, according to and under chapter  
22 25A, for a tortious act committed by a defendant while  
23 performing unpaid community service.

24 NEW SUBSECTION. 6. The state of Iowa is  
25 exclusively liable for and shall pay any compensation  
26 becoming due any person under section 85.59."

27 2. Title page by striking lines 1 and 2 and  
28 inserting in lieu thereof the following: "An Act  
29 relating to unpaid community service by specifying  
30 that the state assumes liability for injuries to  
31 offenders performing unpaid community service and  
32 for the torts committed by offenders performing unpaid  
33 community service."

S-5697 FILED  
MARCH 30, 1984

RECEIVED FROM THE HOUSE

*Senate concurred 4/10 (p. 14/16)*

SENATE FILE 2098

H-5805

1 Amend Senate File 2098 as amended, passed, and  
2 reprinted by the Senate as follows:

3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:  
5 "Section 1. Section 85.59, Code Supplement 1983,  
6 is amended by adding the following new unnumbered  
7 paragraph:

8 NEW UNNUMBERED PARAGRAPH. For purposes of this  
9 section, the term "inmate" excludes a person who is  
10 performing unpaid community service under section  
11 907.13 or a work assignment of value or to the public  
12 under chapter 232.

13 Sec. 2. NEW SECTION. 232.13 LIABILITY FOR PUBLIC  
14 WORK ASSIGNMENTS. The state of Iowa is liable,  
15 according to and under chapter 25A, for a tortious  
16 act committed by a child given a work assignment of  
17 value to the state or the public under this chapter.

18 Sec. 3. Section 907.13, Code 1983, is amended  
19 by adding the following new subsections:

20 NEW SUBSECTION. 5. The state of Iowa is  
21 exclusively liable, according to and under chapter  
22 25A, for a tortious act committed by a defendant while  
23 performing unpaid community service.

24 NEW SUBSECTION. 6. The state of Iowa is  
25 exclusively liable for and shall pay any compensation  
26 becoming due any person under section 85.59."

BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

H-5805 FILED MARCH 23, 1984

*Adopted 3/28 (p. 1386)*

SENATE FILE 2098

H-5905

1 Amend Senate File 2098 as follows:

2 1. Title page by striking lines 1 and 2 and insert-  
3 ing in lieu thereof the following: "An Act relating to  
4 unpaid community service by specifying that the state  
5 assumes liability for injuries to offenders performing  
6 unpaid community service and for the torts committed  
7 by offenders performing unpaid community service."

H-5905 FILED MARCH 28, 1984 BY ROSENBERG of Story

ADOPTED BY UNANIMOUS CONSENT

*(p. 1384)*

SENATE FILE 2098 as amended and passed by the House

Amendment H-5805

FISCAL NOTE

REQUESTED BY REPRESENTATIVE MCKEAN

In compliance with a written request received March 27, 1984, there is hereby submitted a Fiscal Note for AMENDMENT H-5805 TO SENATE FILE 2098 AS AMENDED AND PASSED BY THE SENATE pursuant to Joint Rule 17. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the General Assembly upon request.

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Amendment H-5805 to Senate File 2098, as amended and passed by the Senate, strikes everything after the enacting clause and the amendment clarifies that the term "inmate" excludes a person who is performing unpaid community service as a condition of probation. The amendment provides that the state is liable for a tortious act committed by a child during the performance of a work assignment of value to the state or the public. The state is exclusively liable for a tortious act committed by a defendant while performing unpaid community service.

Fiscal Impact: The amendment makes the clarification that the term "inmate" excludes a person who is performing unpaid community service as a condition of probation. Inmates are subject to limitations in workers compensation coverage. Excluding unpaid community service workers from the definition of inmates in the worker's compensation significantly broadens the state's potential liability for tortious acts committed by a person performing unpaid community service.

It is estimated that more than 1,000 offenders, mostly those convicted of lesser offenses, will be ordered by the court to perform unpaid community service during the 1985 fiscal year. However, there is no basis on which to project the number of offenders who may commit a tortious act. The potential liability assumed by the state could result in significant dollar expenditures by the state, but an accurate dollar estimate cannot be determined.

(2098.001, 84-298F, HML)

Sources: Attorney General, Department of Corrections, Statistical Analysis Center, Comptroller's Office

FILED MARCH 28, 1984

BY DENNIS PROUTY, FISCAL DIRECTOR

NEW SUBSECTION. 6. The state of Iowa is exclusively liable for and shall pay any compensation becoming due any person under section 85.59.

SENATE FILE 2098

AN ACT

RELATING TO UNPAID COMMUNITY SERVICE BY SPECIFYING THAT THE STATE ASSUMES LIABILITY FOR INJURIES TO OFFENDERS PERFORMING UNPAID COMMUNITY SERVICE AND FOR THE TORTS COMMITTED BY OFFENDERS PERFORMING UNPAID COMMUNITY SERVICE.

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

Section 1. Section 85.59, Code Supplement 1983, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this section, the term "inmate" excludes a person who is performing unpaid community service under section 907.13 or a work assignment of value or to the public under chapter 232.

Sec. 2. NEW SECTION. 232.13 LIABILITY FOR PUBLIC WORK ASSIGNMENTS. The state of Iowa is liable, according to and under chapter 25A, for a tortious act committed by a child given a work assignment of value to the state or the public under this chapter.

Sec. 3. Section 907.13, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 5. The state of Iowa is exclusively liable, according to and under chapter 25A, for a tortious act committed by a defendant while performing unpaid community service.

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ROBERT T. ANDERSON  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2098, Seventieth General Assembly.

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K. MARIE THAYER  
Secretary of the Senate

Approved 5/4, 1984

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TERRY E. BRANSTAD  
Governor