

Reprinted 4/19

FILED MAR 2 1984

SENATE FILE 2271

BY COMMITTEE ON JUDICIARY

Approved 3/2 (p. 639)

Passed Senate, Date 3-19-84 (p. 913) Passed House, Date _____

Vote: Ayes 44 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

2 Motion to reconsider (p. 914) w/d 3/20 (p. 927)

A BILL FOR

5239 1 An Act relating to the department of public safety by
 2 providing for representation of members in criminal
 3 actions and the designation of department members
 4 as department administrative hearing officers.

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

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S. 2271

5367 5239
 1 Section 1. NEW SECTION. 80.1A DEFINITIONS. As used
 2 in this chapter, unless the context otherwise requires:
 3 1. "Department" means the department of public safety.
 4 2. "Commissioner" means the commissioner of the department.
 5 3. "Member" or "member of the department" means any person
 6 granted peace officer status by the commissioner pursuant
 7 to section 80.9, but does not include railway special agents
 8 appointed pursuant to section 80.7.

5361
 9 Sec. 2. Section 80.9, subsection 3, Code 1983, is amended
 10 to read as follows:

11 3. They may administer oaths, acknowledge signatures,
 12 and take voluntary testimony pursuant to their duties as
 13 provided by law and may act as administrative hearing of-
 14 ficers when so designated by the commissioner in hearings
 15 involving the department. However, administrative hearing
 16 officers pursuant to this subsection are not subject to section
 17 17A.11, subsection 2.

5441
 18 Sec. 3. Section 80.9, Code 1983, is amended by adding
 19 the following new subsection:

20 NEW SUBSECTION. 5. If any member is charged with a
 21 criminal offense which is related to the member's official
 22 duties with the department, the department shall provide the
 23 member with defense counsel consistent with the member's legal
 24 rights as a defendant.

25 EXPLANATION

26 Section 1 defines the terms "department", "commissioner",
 27 and "member" for purposes of the chapter.

28 Section 2 authorizes members of the department, designated
 29 by the commissioner, to serve as administrative hearing
 30 officers in hearings involving the department, but provides
 31 that they are not subject to the Iowa merit system of personnel
 32 administration.

33 Section 3 states that the department will represent or
 34 obtain counsel for any of its members charged with a criminal
 35 offense arising from their employment duties.

36 This bill takes effect July 1 following its enactment.

1 Amend Senate File 2271 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 25A.2, subsection 5, paragraph
5 b, Code Supplement 1983, is amended to read as follows:

6 b. Any claim against an employee of the state
7 for money only, on account of damage to or loss of
8 property or on account of personal injury or death,
9 caused by the negligent or wrongful act or omission,
10 except an act of malfeasance in office ~~or-willful~~
11 ~~and-wanton-conduct~~, of any employee of the state while
12 acting within the scope of ~~his~~ the employee's office
13 or employment.

14 Sec. 2. Section 25A.21, Code 1983, is amended
15 by striking the section and inserting in lieu thereof
16 the following:

17 25A.21 EMPLOYEES DEFENDED AND INDEMNIFIED. The
18 state shall defend any employee, and shall indemnify
19 and hold harmless an employee against any claim as
20 defined in section 25A.2, subsection 5, paragraph
21 b, including claims arising under the constitution,
22 statutes or rules of the United States or of any
23 state. However, the duty to indemnify and hold
24 harmless shall not apply to awards for punitive
25 damages. The duty to indemnify and hold harmless
26 shall not apply and the state shall be entitled to
27 restitution from an employee if, in an action commenced
28 by the state against the employee, it is determined
29 that the conduct of the employee upon which a tort
30 claim or demand was based constituted a willful and
31 wanton act or omission or malfeasance in office.

32 Sec. 3. Section 25A.22, Code 1983, is amended
33 by striking the section and inserting in lieu thereof
34 the following:

35 25A.22 EMPLOYEES. Employees of the state are
36 not personally liable for any claim which is exempted
37 under section 25A.14, except those claims within
38 subsection 4, claims for punitive damages, and actions
39 permitted by section 85.20. An employee of the state
40 is not liable for punitive damages unless actual
41 malice is pleaded and proven."

42 2. Title page, by striking line 1 and inserting
43 in lieu thereof the following: "An Act relating to
44 the criminal and civil liability of state employees
45 by modifying the definition of "claim" under the state
46 tort claims Act, modifying the requirements of
47 representation of, indemnification for, and restitution
48 from state employees,".

49 3. Title page, line 2, by inserting after the
50 word "of" the words "department of public safety".

PAGE 2

1 4. Title page, line 3, by inserting after the
2 word "and" the words "providing for".

5. By renumbering to conform to this amendment.

S-5239 FILED
MARCH 5, 1984

BY JOE WELSH

*Adopted 3/12 (p. 768)
Motion to reconsider (p. 781) Overruled 3/19 (p. 912)
Adopted as amended by 5439 3/19 (p. 913)*

SENATE FILE 2271

S-5368

- 1 Amend Senate amendment, S-5239, to Senate File
- 2 2271 as follows:
- 3 1. Page 1, line 40, by striking the word "actual"
- 4 and inserting in lieu thereof the words "willful and
- 5 wanton misconduct".
- 6 2. Page 1, line 41, by striking the word "malice".

S-5368 FILED

BY MILO COLTON

MARCH 13, 1984

TOM MANN, JR.

Adopted 3/19 (p. 912)

motion to reconsider previous (p. 912)

Placed out of order (p. 913)

SENATE FILE 2271

S-5367

- 1 Amend Senate File 2271 as follows:
- 2 1. Page 1, by striking lines 1 through 17.
- 3 2. By renumbering to conform to this amendment.

S-5367 FILED

BY MILO COLTON

MARCH 13, 1984

LEE HOLT

Adopted 3/19 (p. 913)

SENATE FILE 2271

S-5441

- 1 Amend Senate File 2271 as follows:
- 2 1. Page 1, by striking lines 18 through 24.

S-5441 FILED & LOST

BY C. JOSEPH COLEMAN

MARCH 19, 1984

Lost 3/19 (p. 913)

SENATE FILE 2271

5439

1 Amend' Senate amendment S-5239 to Senate File 2271
2 as follows:

3 1. Page 1, line 9, by striking the word "omission,"
4 and inserting in lieu thereof the word "omission".

5 2. Page 1, by striking line 10 and inserting in
6 lieu thereof the following: "~~except-an-act-of~~
7 ~~malfeasance-in-office-or-willful~~".

8 3. Page 1, by striking lines 32 through 35, and
9 inserting in lieu thereof the following:

10 "Sec. 3. Section 25A.22, Code 1983, is amended
11 to read as follows:

12 25A.22 ACTIONS IN FEDERAL COURT. The state shall
13 defend, any employee, and shall indemnify and hold
14 harmless an employee of the state in any action
15 commenced in federal court under section 1983, Title
16 42, United States Code, against the employee for acts
17 of the employee while acting in the scope of
18 employment. ~~if-the-acts-or-omissions-of-the-employee,~~
19 ~~upon-which-the-action-is-based,-are-within-the~~
20 ~~exceptions-to-claim-as-defined-in-section-25A-2,~~
21 ~~subsection-5,-paragraph-"b",-the-state-shall-not~~
22 ~~indemnify-or-hold-harmless-the-employee.~~ However,
23 the duty to indemnify and hold harmless shall not
24 apply to awards of punitive damages. The duty to
25 indemnify and hold harmless shall not apply and the
26 state shall be entitled to restitution from an employee
27 if, in an action commenced by the state against the
28 employee, it is determined that the conduct of the
29 employee upon which the claim or demand was based
30 constituted a willful and wanton act or omission or
31 malfeasance in office.

32 Sec. 4. NEW SECTION. EMPLOYEES. Employees of
33 the state are".

34 4. Page 1, by striking lines 39 through 41 and
35 inserting in lieu thereof the following: "permitted
36 by section 85.20. An employee of the state is liable
37 for punitive damages only for illegal conduct committed
38 or continued with a willful disregard of another's
39 rights or for actual malice when such conduct is
40 pleaded or proven."

41 5. By renumbering as necessary.

S-5439 FILED
MARCH 19, 1984
ADOPTED (p. 913)

BY JOE WELSH

2/10, Reconsidered (913)

* 1 Section 1. Section 25A.2, subsection 5, paragraph b, Code
2 Supplement 1983, is amended to read as follows:
3 b. Any claim against an employee of the state for money
4 only, on account of damage to or loss of property or on account
5 of personal injury or death, caused by the negligent or
6 wrongful act or omission, ~~except an act of malfeasance in~~
7 ~~office or willful and wanton conduct,~~ of any employee of the
8 state while acting within the scope of ~~his~~ the employee's
9 office or employment.

10 Sec. 2. Section 25A.21, Code 1983, is amended by striking
11 the section and inserting in lieu thereof the following:

6/24 12 25A.21 EMPLOYEES DEFENDED AND INDEMNIFIED. The state
13 shall defend any employee, and shall indemnify and hold
14 harmless an employee against any claim as defined in section
15 25A.2, subsection 5, paragraph b, including claims arising
16 under the constitution, statutes or rules of the United States
17 or of any state. However, the duty to indemnify and hold
18 harmless shall not apply to awards for punitive damages.
19 The duty to indemnify and hold harmless shall not apply and
20 the state shall be entitled to restitution from an employee
21 if, in an action commenced by the state against the employee,
22 it is determined that the conduct of the employee upon which
23 a tort claim or demand was based constituted a willful and
24 wanton act or omission or malfeasance in office.

25 Sec. 3. Section 25A.22, Code 1983, is amended to read
26 as follows:

27 25A.22 ACTIONS IN FEDERAL COURT. The state shall defend,
28 any employee, and shall indemnify and hold harmless an employee
29 of the state in any action commenced in federal court under
30 section 1983, Title 42, United States Code, against the
31 employee for acts of the employee while acting in the scope
32 of employment. ~~If the acts or omissions of the employee,~~
33 ~~upon which the action is based, are within the exceptions~~
34 ~~to claim as defined in section 25A.2, subsection 5, paragraph~~
35 ~~"b", the state shall not indemnify or hold harmless the~~

1 employee. However, the duty to indemnify and hold harmless
2 shall not apply to awards of punitive damages. The duty to
3 indemnify and hold harmless shall not apply and the state
4 shall be entitled to restitution from an employee if, in an
5 action commenced by the state against the employee, it is
6 determined that the conduct of the employee upon which the
7 claim or demand was based constituted a willful and wanton
8 act or omission or malfeasance in office.

9 Sec. 4. NEW SECTION. EMPLOYEES. Employees of the state
10 are not personally liable for any claim which is exempted
6124 11 under section 25A.14, except those claims within subsection
12 4, claims for punitive damages, and actions permitted by
13 section 85.20. An employee of the state is liable for punitive
14 damages only for illegal conduct committed or continued with
15 a willful disregard of another's rights or for actual malice
16 when such conduct is pleaded or proven.

5853 17 Sec. 5. Section 80.9, Code 1983, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 5. If any member is charged with a
20 criminal offense which is related to the member's official
21 duties with the department, the department shall provide the
22 member with defense counsel consistent with the member's legal
23 rights as a defendant.

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H-5852

1 Amend Senate File 2271 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 2, by striking lines 17 through 23, and
4 inserting in lieu thereof the following:

5 "Sec. 5. Chapter 80, Code 1983, is amended by
6 adding the following new section:

7 NEW SECTION. REIMBURSEMENT OF DEFENSE COSTS.

8 If a peace officer employed in any division of the
9 department is charged with the alleged commission
10 of public offense, based on acts or omissions within
11 the scope of the officer's lawful duty or authority,
12 and the charge is dismissed or the officer is acquitted
13 of the charge, the presiding magistrate or judge shall
14 enter judgment awarding reimbursement to the office
15 for any costs incurred in defending against the charge,
16 including but not limited to a reasonable attorney
17 fee, if the court finds the existence of any of the
18 following grounds:

19 1. The charge was without probable cause.

20 2. The charge was filed for malicious purposes.

21 3. The charge was unwarranted in consideration

22 of all of the circumstances and matters of law

23 attending the the alleged offense.

24 The officer may apply for review of a failure or

25 refusal to rule or an adverse ruling as to the

26 existence of any of the above grounds. The application

27 shall be to a district judge if the officer is seeking

28 review of the act of a magistrate or district associate

29 judge and it shall be to a different district judge

30 if review is sought of an act of a district judge.

31 If the charge was filed by a private citizen, the

32 judgment for reimbursement shall be entered against

33 that person. If the charge was not filed by a private

34 citizen, the judgment shall be entered against the

35 political subdivision or state law enforcement agency

36 whose officer, official, or agent filed the charge."

37 2. Page 2, line 16, by striking the word "or"

38 and inserting in lieu thereof the word "and".

BY JAY of Appanoose
HALVORSON of Clayton
COREY of Louisa
HARBOR of Mills
PARKER of Jasper

H-5852 FILED MARCH 26, 1984

*Adopted as amended by 5952
3/29 (p. 1463)*

SENATE FILE 2271

H-5951

- 1 Amend Senate File 2271 as follows:
- 2 1. Title page, line 6, by inserting after the word
- 3 "members" the following: "and reimbursement of defense
- 4 costs for peace officers".

H-5951 FILED MARCH 29, 1984 BY JAY of Appanoose
ADOPTED BY UNANIMOUS CONSENT (p. 1463)

SENATE FILE 2271

H-5952

- 1 Amend amendment H-5852 to Senate File 2271 as
- 2 follows:
- 3 1. Page 1, line 14, by striking the word "office"
- 4 and inserting in lieu thereof the word "officer".

H-5952 FILED MARCH 29, 1984 BY HALVORSON of Clayton
ADOPTED BY UNANIMOUS CONSENT

(p. 1463)

SENATE FILE 2271

H-6124

- 1 Amend Senate File 2271 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, by striking lines 17 and 18, and
- 4 inserting in lieu thereof the words "or of any state."
- 5 2. Page 2, by striking lines 1 and 2, and inserting
- 6 in lieu thereof the words "employee- The duty to".
- 7 3. Page 2, by striking lines 11 through 16, and
- 8 inserting in lieu thereof the words and figure "under
- 9 section 25A.14."

H-6124 FILED APRIL 5, 1984 BY JAY of Appanoose

Adopted 4/17 (p. 2057)

SENATE AMENDMENT TO
HOUSE AMENDMENT TO SENATE FILE 2271

H-6498

- 1 Amend the House amendment S-5953 to Senate File
- 2 2271 as amended, passed and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, by striking lines 38 through 43.

H-6498 FILED APRIL 19, 1984 RECEIVED FROM THE SENATE

*House refused to concur 4/19
Senate insisted 4/19 (p. 1673)
House concurred 4/20 (p. 2488)*

HOUSE AMENDMENT TO SENATE FILE 2271

5953

S
amended
all

Amend Senate File 2271 as amended, passed and
reprinted by the Senate, as follows:
1. Page 1, by striking lines 17 and 18, and
inserting in lieu thereof the words "or of any state."
2. Page 2, by striking lines 1 and 2, and inserting
in lieu thereof the words "employee. The duty to".
3. Page 2, by striking lines 11 through 16, and
inserting in lieu thereof the words and figure "under
section 25A.14."
4. Page 2, by striking lines 17 through 23, and
inserting in lieu thereof the following:
"Sec. 5. Chapter 80, Code 1983, is amended by
adding the following new section:
NEW SECTION. REIMBURSEMENT OF DEFENSE COSTS.
If a peace officer employed in any division of the
department is charged with the alleged commission
of public offense, based on acts or omissions within
the scope of the officer's lawful duty or authority,
and the charge is dismissed or the officer is acquitted
of the charge, the presiding magistrate or judge shall
enter judgment awarding reimbursement to the officer
for any costs incurred in defending against the charge,
including but not limited to a reasonable attorney
fee, if the court finds the existence of any of the
following grounds:
1. The charge was without probable cause.
2. The charge was filed for malicious purposes.
3. The charge was unwarranted in consideration
of all of the circumstances and matters of law
attending the the alleged offense.
The officer may apply for review of a failure or
refusal to rule or an adverse ruling as to the
existence of any of the above grounds. The application
shall be to a district judge if the officer is seeking
review of the act of a magistrate or district associate
judge and it shall be to a different district judge
if review is sought of an act of a district judge.
If the charge was filed by a private citizen, the
judgment for reimbursement shall be entered against
that person. If the charge was not filed by a private
citizen, the judgment shall be entered against the
political subdivision or state law enforcement agency
whose officer, official, or agent filed the charge."
5. Page 2, line 16, by striking the word "or"
and inserting in lieu thereof the word "and".
6. Title page, line 6, by inserting after the
word "members" the following: "and reimbursement
of defense costs for peace officers".

5962

S-5953 FILED
APRIL 17, 1984

RECEIVED FROM THE HOUSE

*Senate amended (5962) & refused to concur 4/18 (y. 1617)
Reconvened, adopted & concurred 4/19 (y. 1678)*

SENATE FILE 2271

S-5957

- 1 Amend the House amendment S-5953 to Senate File
- 2 2271 as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, by striking lines 3 through 48.

S-5957 FILED
APRIL 17, 1984
WITHDRAWN (1605)

BY TOM MANN JR.

SENATE FILE 2271

S-5962

- 1 Amend the House amendment S-5953 to Senate File
- 2 2271 as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, by striking lines 38 through 43.

S-5962 FILED
APRIL 17, 1984
Adopted 4/18 (p. 1617)

BY TOM MANN JR.

SENATE FILE 2271

S-5966

- 1 Amend the House amendment S-5953 to House File
- 2 2271 as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, line 24, by striking the word "any"
- 5 and inserting in lieu thereof the word "all".

S-5966 FILED & WITHDRAWN
APRIL 18, 1984 *(p. 1617)*

BY TOM MANN JR.

SENATE FILE 2271

S-5980

- 1 Amend the House amendment S-5953 to Senate File
- 2 2271 as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, by striking lines 10 through 37.
- 5 2. Page 1, by striking lines 44 through 48.

S-5980 FILED
APRIL 18, 1984
Withdrawn 4/19 (p. 1666)

BY TOM MANN JR.
LEE HOLT

SENATE FILE 2271

S-5992

- 1 Amend the House amendment S-5953 to Senate File
- 2 2271 as amended, passed, and reprinted by the Senate
- 3 as follows:
- 4 1. Page 1, by striking lines 7 through 9.
- 5 2. Page 1, by striking lines 10 through 37 and
- 6 inserting in lieu thereof the following:
- 7 "4. Page 2, by striking lines 17 through 23."
- 8 2. Page 1, by striking lines 44 through 48.

S-5992 FILED
APRIL 18, 1984
Lost 4/19 (1698)

BY TOM MANN JR.

SENATE FILE 2271

AN ACT

RELATING TO THE CRIMINAL AND CIVIL LIABILITY OF STATE EMPLOYEES BY MODIFYING THE DEFINITION OF "CLAIM" UNDER THE STATE TORT CLAIMS ACT, MODIFYING THE REQUIREMENTS OF REPRESENTATION OF, INDEMNIFICATION FOR, AND RESTITUTION FROM STATE EMPLOYEES, PROVIDING FOR REPRESENTATION OF DEPARTMENT OF PUBLIC SAFETY MEMBERS AND REIMBURSEMENT OF DEFENSE COSTS FOR PEACE OFFICERS IN CRIMINAL ACTIONS AND PROVIDING FOR THE DESIGNATION OF DEPARTMENT MEMBERS AS DEPARTMENT ADMINISTRATIVE HEARING OFFICERS.

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

Section 1. Section 25A.2, subsection 5, paragraph b, Code Supplement 1983, is amended to read as follows:

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 the employee's office or employment.

Sec. 2. Section 25A.21, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

25A.21 EMPLOYEES DEFENDED AND INDEMNIFIED. The state shall defend any employee, and shall indemnify and hold harmless an employee against any claim as defined in section 25A.2, subsection 5, paragraph b, including claims arising under the constitution, statutes or rules of the United States or of any state. The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which a tort claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

Sec. 3. Section 25A.22, Code 1983, is amended to read as follows:

25A.22 ACTIONS IN FEDERAL COURT. The state shall defend, any employee, and shall indemnify and hold harmless an employee of the state in any action commenced in federal court under section 1983, Title 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 25A.2, subsection 5, paragraph "b", the state shall not indemnify or hold harmless the employee.~~ The duty to indemnify and hold harmless shall not apply and the state shall be entitled to restitution from an employee if, in an action commenced by the state against the employee, it is determined that the conduct of the employee upon which the claim or demand was based constituted a willful and wanton act or omission or malfeasance in office.

Sec. 4. NEW SECTION. EMPLOYEES. Employees of the state are not personally liable for any claim which is exempted under section 25A.14.

Sec. 5. Chapter 80, Code 1983, is amended by adding the following new section:

NEW SECTION. REIMBURSEMENT OF DEFENSE COSTS. If a peace officer employed in any division of the department is charged with the alleged commission of public offense, based on acts or omissions within the scope of the officer's lawful duty or authority, and the charge is dismissed or the officer is acquitted of the charge, the presiding magistrate or judge shall enter judgment awarding reimbursement to the officer for any costs incurred in defending against the charge, including but not limited to a reasonable attorney fee, if the court finds the existence of any of the following grounds:

1. The charge was without probable cause.
2. The charge was filed for malicious purposes.
3. The charge was unwarranted in consideration of all of the circumstances and matters of law attending the alleged offense.

The officer may apply for review of a failure or refusal to rule or an adverse ruling as to the existence of any of the above grounds. The application shall be to a district judge if the officer is seeking review of the act of a magistrate or district associate judge and it shall be to a different district judge if review is sought of an act of a district judge.

CHARLES P. MILLER
President Pro Tempore of the
Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2271, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 17, 1984

TERRY E. BRANSTAD
Governor