

Judiciary
Delahery, Chair
Holt
Dickehan

*Amend per 3251
to Pass 3/14/83 (p. 847)*

FILED
MAR 17 1983

SENATE FILE 370

BY COMMITTEE ON LOCAL GOVERNMENT
Approved 2/7 (p. 658)

Passed Senate, Date 4-5-83 (p. 1105) Passed House, Date 5-6-83 (P. 1877)
Vote: Ayes 38 Nays 8 Vote: Ayes 91 Nays 3
Approved May 19, 1983

A BILL FOR

- 1 An Act relating to awards for punitive damages against
- 2 officers and employees of governmental subdivisions.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 370

S-3196

- 1 Amend Senate File 370 as follows:
- 2 1. Page 1, by striking lines 25 through 34.

S-3196 FILED BY TOM MANN, JR.
 MARCH 8, 1983 JOE BROWN
(Passed out of order 3/21/83 (p. 868)) MILO COLTON

SENATE FILE 370

S-3251

- 1 Amend Senate File 370 as follows:
- 2 1. Page 1, line 34, by striking the words "or
- 3 "recklessness" and inserting in lieu thereof the words
- 4 "or recklessness willful, wanton and reckless
- 5 misconduct".

S-3251 FILED BY COMMITTEE ON JUDICIARY
 MARCH 18, 1983 DONALD V. DOYLE, CHAIR
Adopted 3/21/83 (p. 868)

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1 Section 1. Section 613A.8, unnumbered paragraph 1, Code
2 1983, is amended to read as follows:

3 The governing body shall defend ~~any-of~~ its officers and
4 employees, whether elected or appointed and shall save harmless
5 and indemnify ~~such~~ the officers and employees against any
6 tort claim or demand, whether groundless or otherwise, arising
7 out of an alleged act or omission occurring within the scope
8 of their employment or duties. However, the duty to save
9 harmless and indemnify ~~shall~~ does not apply to awards for
10 punitive damages. The exception for punitive damages does
11 not prohibit a governing body from purchasing insurance to
12 protect its officers and employees from punitive damages.
13 The duty to save harmless and indemnify ~~shall~~ does not apply
14 and the municipality ~~shall-be~~ is entitled to restitution by
15 an officer or employee if, in an action commenced by the
16 municipality against the officer or employee, it is determined
17 that the conduct of the officer or employee upon which the
18 tort claim or demand was based constituted a willful and
19 wanton act or omission. Any independent or autonomous board
20 or commission of a municipality having authority to disburse
21 funds for a particular municipal function without approval
22 of the governing body shall similarly defend, save harmless
23 and indemnify its officers and employees against ~~such~~ tort
24 claims or demands.

25 Sec. 2. Section 613A.12, Code 1983, is amended to read
26 as follows:

27 613A.12 OFFICERS AND EMPLOYEES--PERSONAL LIABILITY. All
28 officers and employees of municipalities are not personally
29 liable for any claim which is exempted under section 613A.4,
30 except a claim for punitive damages, and actions permitted
31 under section 85.20. An officer or employee of a municipality
32 is not liable for punitive damages as a result of acts in
33 the performance of a law enforcement or emergency duty, unless
34 actual malice ~~or-recklessness~~ is proven.

35

EXPLANATION

1 This bill specifically allows a governmental subdivision
2 to purchase liability insurance to protect its officers and
3 employees from punitive damages in a tort action. It also
4 strikes recklessness as a basis for assessing punitive damages
5 against an officer or employee of a governmental subdivision
6 for acts occurring in the performance of law enforcement
7 or emergency duties. The bill takes effect July 1 following
8 enactment.

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The Local Govt. 4/6/83 Do Pass 4/7/83

SENATE FILE 370
BY COMMITTEE ON LOCAL GOVERNMENT

(AS AMENDED AND PASSED BY THE SENATE APRIL 5, 1983)

Passed Senate, Date 4-5-83 (p.1105) Passed House, Date 5-6-83 (p.1877)

Vote: Ayes 38 Nays 8 Vote: Ayes 91 Nays 3

Approved May 19, 1983

A BILL FOR

5922
5777

1 An Act relating to awards for punitive damages against
2 officers and employees of governmental subdivisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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_____ = New language by the Senate

1 Section 1. Section 613A.8, unnumbered paragraph 1, Code
2 1983, is amended to read as follows:

3 The governing body shall defend ~~any-of~~ its officers and
4 employees, whether elected or appointed and shall save harmless
5 and indemnify ~~such~~ the officers and employees against any
6 tort claim or demand, whether groundless or otherwise, arising
7 out of an alleged act or omission occurring within the scope
8 of their employment or duties. However, the duty to save
9 harmless and indemnify ~~shall~~ does not apply to awards for
10 punitive damages. The exception for punitive damages does
11 not prohibit a governing body from purchasing insurance to
12 protect its officers and employees from punitive damages.
13 The duty to save harmless and indemnify ~~shall~~ does not apply
14 and the municipality ~~shall-be~~ is entitled to restitution by
15 an officer or employee if, in an action commenced by the
16 municipality against the officer or employee, it is determined
17 that the conduct of the officer or employee upon which the
18 tort claim or demand was based constituted a willful and
19 wanton act or omission. Any independent or autonomous board
20 or commission of a municipality having authority to disburse
21 funds for a particular municipal function without approval
22 of the governing body shall similarly defend, save harmless
23 and indemnify its officers and employees against ~~such~~ tort
24 claims or demands.

25 Sec. 2. Section 613A.12, Code 1983, is amended to read
26 as follows:

27 613A.12 OFFICERS AND EMPLOYEES--PERSONAL LIABILITY. All
28 officers and employees of municipalities are not personally
29 liable for any claim which is exempted under section 613A.4,
30 except a claim for punitive damages, and actions permitted
31 under section 85.20. An officer or employee of a municipality
32 is not liable for punitive damages as a result of acts in
33 the performance of a law enforcement or emergency duty, unless
34 actual malice or recklessness willful, wanton and reckless
35 misconduct is proven.

SENATE FILE 370

H-3962

Amend Senate File 370 as amended, passed, and re-
printed by the Senate as follows:

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

"Section 1. LEGISLATIVE INTENT. It is the intent
of sections 2 and 3 of this legislation, in response
to Butler v. State of Iowa, filed February 23, 1983,
to define those cases in which a state or municipality,
by its highway or road construction or reconstruction
policy, may be liable for negligent acts or omissions,
and it is not the intent of this legislation to affect
those rights, claims, or defenses which exist in the
law and which are in areas of litigation other than
highway or road construction or reconstruction. The
rule of statutory construction that the express mention
of one thing implies the exclusion of the other does
not apply to this Act.

Sec. 2. Section 25A.14, Code 1983, is amended
by adding the following new subsection:

NEW SUBSECTION. 8. Any claim based upon or arising
out of negligent design or specifications, negligent
adoption of design or specifications, or negligent
adoption of a policy of street or road maintenance
for a road, street, highway, bridge, culvert, overpass,
road sign, drainage system or any other aspect of
a street or road that was initially constructed or
reconstructed in accordance with a professionally
recognized engineering or safety standard, criteria,
or design theory in existence at the time of the
initial construction or reconstruction. It shall
be a complete defense for the state to any such claim
or cause of action if it is established that any one
of the then existing generally recognized standards
or criteria was met. No claim under this chapter
shall be allowed for failure to upgrade any aspect
of existing highways, streets or roads to new design
standards. Sealcoating, asphaltting, patching,
resurfacing, ditching, draining, repairing, graveling,
rocking, blading, and maintaining an existing street,
road, or highway shall not constitute reconstruction.

This subsection shall not apply to claims based
upon failure to follow the then recognized standard.

Sec. 3. Section 613A.4, Code 1983, is amended
by adding the following new subsection:

NEW SUBSECTION. Any claim based upon or arising
out of negligent design or specifications, negligent
adoption of design or specifications, or negligent
adoption of a policy of street or road maintenance
for a road, street, highway, bridge, culvert, overpass,
road sign, drainage system or any other aspect of

1 a street or road that was initially constructed or
2 reconstructed in accordance with a professionally
3 recognized engineering or safety standard, criteria,
4 or design theory in existence at the time of the
5 initial construction or reconstruction. It shall
6 be a complete defense for a municipality to any such
7 claim or cause of action if it is established that
8 any one of the then existing generally recognized
9 standards or criteria was met. No claim under this
10 chapter shall be allowed for failure to upgrade any
11 aspect of existing highways, streets or roads to new
12 design standards. Sealcoating, asphaltting, patch-
13 ing, resurfacing, ditching, draining, repairing,
14 graveling, rocking, blading, and maintaining an
15 existing street, road, or highway shall not constitute
16 reconstruction.

17 This subsection shall not apply to claims based
18 upon failure to follow the recognized standard.

19 Sec. 4. Section 613A.4, subsection 3, Code 1983,
20 is amended to read as follows:

21 3. Any claim based upon an act or omission of
22 an officer or employee of the municipality, exercising
23 due care, in the execution of a statute, ordinance,
24 or regulation whether the statute, ordinance or
25 regulation is valid, or based upon the exercise or
26 performance or the failure to exercise or perform
27 a discretionary function or duty on the part of the
28 municipality or an officer or employee of the
29 municipality, whether or not the discretion is abused."

30 2. Page 1, by inserting after line 35, the
31 following:

32 "Sec. 7. NEW SECTION. COMPARATIVE NEGLIGENCE-
33 -EFFECTS.

34 1. If a claim alleges negligence as the basis
35 for the recovery of damages for injury or death of
36 a person or harm to property, negligence that is
37 chargeable to the claimant diminishes proportionately
38 the amount to be awarded to the claimant as compen-
39 satory damages for loss to which the claimant's
40 negligence contributed.

41 2. In the trial of a claim involving the negligence
42 of two or more persons, including claimants,
43 defendants, third-party defendants, persons who have
44 been released under section 9 of this Act, and persons
45 who are not parties to the action, the court, unless
46 otherwise agreed by all the parties to the action,
47 shall instruct the jury to answer special
48 interrogatories, or if there is no jury the court
49 shall make findings of both of the following:

50 a. The amount of damages the claimant would be

1 entitled to recover if negligence chargeable to the
2 claimant is disregarded.

3 b. The percentage of the total negligence allocated
4 to each claimant, defendant, third-party defendant,
5 person who has been released from liability under
6 section 9 of this Act, and person who is determined
7 to have been negligent but who is not a party to the
8 action. For purposes of this paragraph, the court
9 shall disregard the rule of joint and several liability
10 of defendants, but the court may determine that two
11 or more persons are to be treated as one negligent
12 person.

13 3. In determining the percentages of negligence,
14 the trier of fact shall consider both the nature of
15 the conduct of each negligent party and the extent
16 of the causal relation between negligent conduct and
17 the loss for which damages are claimed.

18 4. If the claim is tried to a jury, the court
19 shall not give instructions or permit evidence or
20 argument with respect to the effects of the answers
21 to be returned to the interrogatories submitted under
22 subsection 2.

23 5. The court shall determine the amount of damages
24 payable to each claimant by each other party, if any,
25 in accordance with the findings of the court or jury
26 and the provisions of sections 7 through 9 of this
27 Act.

28 6. The liability of a party, if any, is limited
29 to that percentage of the damages as found under
30 subsection 2, paragraph a, that is equal to the
31 percentage of negligence chargeable to the party as
32 found under subsection 2, paragraph b. The rule of
33 joint and several liability of defendants does not
34 apply, if a plaintiff is found to bear any comparative
35 negligence.

36 Sec. 8. NEW SECTION. OFFSETTING CLAIMS. A claim
37 and counterclaim shall not be set off against each
38 other, except by agreement of both parties. However,
39 if upon motion of either party the court finds that
40 the obligation of either party is likely to be
41 uncollectible the court may order that both parties
42 make payment to the court for distribution. The court
43 shall distribute the funds received, and shall declare
44 obligations discharged as if the payment to the court
45 by either party had been a payment to the other party
46 and as if the distribution of the funds back to the
47 party making payment had been a payment to that party
48 by the other party.

49 Sec. 9. NEW SECTION. EFFECT OF RELEASE. A
50 release, covenant not to sue, or similar agreement

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Page Four

1 entered into by a claimant and a person who is or
2 may be liable to the claimant for damages discharges
3 the person from liability to the claimant. The agree-
4 ment does not discharge other persons that are or
5 may be liable unless the agreement so provides, but
6 the agreement does reduce the amount of damages that
7 are recoverable from other persons who are or may
8 be liable to the extent of amounts paid to the claimant
9 in contemplation of the agreement.

10 Sec. 10. The supreme court shall submit to the
11 general assembly during the 1984 session in the manner
12 provided in section 684.19 changes in the rules of
13 procedure for courts which are necessitated by the
14 enactment of this Act.

15 Sec. 11. Section 619.17, Code 1983, is repealed.
16 This section shall not be construed to reinstate a
17 rule requiring a claimant to plead and prove freedom
18 from contributory negligence.

19 Sec. 12. This Act takes effect July 1, 1983, and
20 applies to all cases tried or retried on or after
21 that date.

22 Sec. 13. The legislative council is directed to
23 establish a joint subcommittee of the senate committee
24 on judiciary, the house committee on judiciary and
25 law enforcement, and the senate and house committees
26 on commerce, to be composed of seven members of the
27 house and seven members of the senate, to study the
28 matter of comparative negligence, comparative fault,
29 contributory negligence, and the effect of the final
30 judicial disposition of Butler v. State of Iowa as
31 they apply to the broad spectrum of tort law in Iowa,
32 during the interim between the seventieth general
33 assembly's first and second session. This joint
34 subcommittee shall be authorized to meet for not less
35 than five days."

36 3. Title page, by striking lines 1 and 2 and
37 inserting in lieu thereof the following: "An Act
38 relating to tort actions by providing immunity to
39 state and local government employees and officials
40 for certain acts and omissions, relating to punitive
41 damages, and establishing comparative negligence as
42 the basis for liability in relation to claims arising
43 from injury to or death of a person or harm to
44 property."

45 4. By renumbering as necessary.

H-3962 FILED APRIL 29, 1983

BY SCHROEDER of Pottawattamie
BRANSTAD of Winnebago
LAGESCHULTE of Bremer
MAULSBY of Calhoun
RENKEN of Grundy
SCHNEKLOTH of Scott
COREY of Louisa

WELDEN of Hardin
TOFTE of Winneshiek
GRANDIA of Marion
TORRENCE of Muscatine
VAN CAMP of Scott
BENNETT of Ida
HALVORSON of Clayton

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Page Five

RENSINK of Sioux
PELETT of Cass
HANDORF of Marshall
COOPER of Lucas
ANDERSON of Audubon
HARBOR of Mills
DE GROOT of Lyon
VAN GERPEN of Black Hawk
ROYER of Page
CLARK of Cerro Gordo
BAXTER of Des Moines
SWEARINGEN of Keokuk
HERMANN of Scott
DIEMER of Black Hawk
CARPENTER of Polk
FOGARTY of Palo Alto
OLLIE of Clinton
KNAPP of Dubuque
MUHLBAUER of Crawford
PEICK of Linn
SHERZAN of Polk
OXLEY of Linn
COCHRAN of Webster
PONCY of Wapello
~~HUGHES of Union~~ 5/2/83
GRONINGA of Cerro Gordo

HOFFMANN-BRIGHT of Muscatine
DAGGETT of Taylor
MILLER of Woodbury
CHIODO of Polk
FEY of Scott
SWARTZ of Marshall
OSTERBERG of Linn
STUELAND of Clinton
GRUHN of Dickinson
BLANSHAN of Greene
SPEAR of Lee
BLACK of Jasper
SKOW of Guthrie
COPENHAVER of Buchanan
RENAUD of Polk
CONNOLLY of Dubuque
JOCHUM of Dubuque
LLOYD-JONES of Johnson
MULLINS of Kossuth
WOODS of Polk
VAN MAANEN of Mahaska
MENKE of O'Brien
TABOR of Jackson
KOENIGS of Mitchell
SULLIVAN of Van Buren
PAULIN of Plymouth

H-3962 FILED APRIL 29, 1983
2/18 5/6/83 (p. 1876)

SENATE FILE 370

H-3840

- 1 Amend Senate File 370 as amended, passed and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, by striking lines 10 through 12 and
- 4 inserting in lieu thereof the following: "punitive
- 5 damages."

H-3840 FILED APRIL 21, 1983

BY HUMMEL of Benton

Loss 5/8 (p. 1877)

H-3977

1 Amend Senate File 370 as amended, passed, and re-
2 printed by the Senate as follows:

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

5 "Section 1. LEGISLATIVE INTENT. It is the intent
6 of sections 2 and 3 of this legislation, in response
7 to Butler v. State of Iowa, filed February 23, 1983,
8 to define those cases in which a state or municipality,
9 by its highway or road construction or reconstruction
10 policy, may be liable for negligent acts or omissions,
11 and it is not the intent of this legislation to affect
12 those rights, claims, or defenses which exist in the
13 law and which are in areas of litigation other than
14 highway or road construction or reconstruction. The
15 rule of statutory construction that the express mention
16 of one thing implies the exclusion of the other does
17 not apply to this Act.

18 Sec. 2. Section 25A.14, Code 1983, is amended
19 by adding the following new subsection:

20 NEW SUBSECTION. 8. Any claim based upon or arising
21 out of negligent design or specifications, negligent
22 adoption of design or specifications, or negligent
23 adoption of a policy of street or road maintenance
24 for a road, street, highway, bridge, culvert, overpass,
25 road sign, drainage system or any other aspect of
26 a street or road that was initially constructed or
27 reconstructed in accordance with a professionally
28 recognized engineering or safety standard, criteria,
29 or design theory in existence at the time of the
30 initial construction or reconstruction. It shall
31 be a complete defense for the state to any such claim
32 or cause of action if it is established that any one
33 of the then existing generally recognized standards
34 or criteria was met. No claim under this chapter
35 shall be allowed for failure to upgrade any aspect
36 of existing highways, streets or roads to new design
37 standards. Sealcoating, asphaltting, patching,
38 resurfacing, ditching, draining, repairing, graveling,
39 rocking, blading, and maintaining an existing street,
40 road, or highway shall not constitute reconstruction.

41 This subsection shall not apply to claims based
42 upon failure to follow the then recognized standard.

43 Sec. 3. Section 613A.4, Code 1983, is amended
44 by adding the following new subsection:

45 NEW SUBSECTION. Any claim based upon or arising
46 out of negligent design or specifications, negligent
47 adoption of design or specifications, or negligent
48 adoption of a policy of street or road maintenance
49 for a road, street, highway, bridge, culvert, overpass,
50 road sign, drainage system or any other aspect of

1 a street or road that was initially constructed or
2 reconstructed in accordance with a professionally
3 recognized engineering or safety standard, criteria,
4 or design theory in existence at the time of the
5 initial construction or reconstruction. It shall
6 be a complete defense for a municipality to any such
7 claim or cause of action if it is established that
8 any one of the then existing generally recognized
9 standards or criteria was met. No claim under this
10 chapter shall be allowed for failure to upgrade any
11 aspect of existing highways, streets or roads to new
12 design standards. Sealcoating, asphaltting, patch-
13 ing, resurfacing, ditching, draining, repairing,
14 graveling, rocking, blading, and maintaining an
15 existing street, road, or highway shall not constitute
16 reconstruction.

17 This subsection shall not apply to claims based
18 upon failure to follow the recognized standard.

19 Sec. 4. Section 613A.4, subsection 3, Code 1983,
20 is amended to read as follows:

21 3. Any claim based upon an act or omission of
22 an officer or employee of the municipality, exercising
23 due care, in the execution of a statute, ordinance,
24 or regulation whether the statute, ordinance or
25 regulation is valid, or based upon the exercise or
26 performance or the failure to exercise or perform
27 a discretionary function or duty on the part of the
28 municipality or an officer or employee of the
29 municipality, whether or not the discretion is abused."

30 2. Page 1, by inserting after line 35, the
31 following:

32 "Sec. 7. This Act takes effect July 1, 1983, and
33 applies to all cases tried or retried on or after
34 that date.

35 Sec. 8. The legislative council is directed to
36 establish a joint subcommittee of the senate committee
37 on judiciary, the house committee on judiciary and
38 law enforcement, and the senate and house committees
39 on commerce, to be composed of seven members of the
40 house and seven members of the senate, to study the
41 matter of comparative negligence, comparative fault,
42 contributory negligence, and the effect of the final
43 judicial disposition of Butler v. State of Iowa as
44 they apply to the broad spectrum of tort law in Iowa,
45 during the interim between the seventieth general
46 assembly's first and second session. This joint
47 subcommittee shall be authorized to meet for not less
48 than five days."

49 3. Title page, by striking lines 1 and 2 and
50 inserting in lieu thereof the following: "An Act
Page Three

1 relating to tort actions by providing immunity to
2 state and local government employees and officials
3 for certain acts and omissions, relating to punitive
4 damages, and establishing a joint subcommittee on
5 negligence for the interim."

6 4. By renumbering as necessary.

BY FOGARTY of Palo Alto
SCHROEDER of Pottawattamie

H-3980

1 Amend the House amendment H-3977, to Senate File
2 370 as amended, passed and reprinted by the Senate
3 as follows:

4 1. By striking page 1, line 5, through page 3,
5 line 5, and inserting in lieu thereof the following:

6 "Section 1. Section 25A.14, Code 1983, is amended
7 by adding the following new subsection:

8 NEW SUBSECTION. 8. Any claim based upon or arising
9 out of a claim of negligent design or specification,
10 negligent adoption of design or specification, or
11 negligent construction or reconstruction of a highway,
12 secondary road, or street as defined in section 321.1,
13 subsection 48, or a public improvement as defined
14 in section 384.37, subsection 1, or other public
15 facility that was constructed or reconstructed in
16 accordance with a generally recognized engineering
17 or safety standard, criteria, or design theory in
18 existence at the time of the construction or
19 reconstruction. A claim under this chapter shall
20 not be allowed for failure to upgrade, improve, or
21 alter any aspect of an existing highway, secondary
22 road, street, public improvement, or other public
23 facility to new, changed, or altered design standards.
24 In respect to highways and roads, sealcoating,
25 asphaltting, patching, resurfacing, ditching, draining,
26 repairing, graveling, rocking, blading, or maintaining
27 an existing highway or road does not constitute
28 reconstruction.

29 Sec. 2. Section 613A.4, Code 1983, is amended
30 by adding the following new subsection:

31 NEW SUBSECTION. Any claim based upon or arising
32 out of a claim of negligent design or specification,
33 negligent adoption of design or specification, or
34 negligent construction or reconstruction of a highway,
35 secondary road, or street as defined in section 321.1,
36 subsection 48, or a public improvement as defined
37 in section 384.37, subsection 1, or other public
38 facility that was constructed or reconstructed in
39 accordance with a generally recognized engineering
40 or safety standard, criteria, or design theory in
41 existence at the time of the construction or
42 reconstruction. A claim under this chapter shall
43 not be allowed for failure to upgrade, improve, or
44 alter any aspect of an existing highway, secondary
45 road, street, public improvement, or other public
46 facility to new, changed, or altered design standards.
47 In respect to highways and roads, sealcoating,
48 asphaltting, patching, resurfacing, ditching, draining,
49 repairing, graveling, rocking, blading, or maintaining
50 an existing highway or road does not constitute

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Page Two

1 reconstruction.

2 Sec. 3. Section 613A.4, subsection 3, Code 1983,
3 is amended to read as follows:

4 3. Any claim based upon an act or omission of
5 an officer or employee of the municipality, exercising
6 due care, in the execution of a statute, ordinance,
7 or regulation whether the statute, ordinance or
8 regulation is valid, or based upon the exercise or
9 performance or the failure to exercise or perform
10 a discretionary function or duty on the part of the
11 municipality or an officer or employee of the
12 municipality, whether or not the discretion is abused."

13 2. Page 1, by inserting after line 35 the
14 following:

15 "Sec. 6. NEW SECTION. COMPARATIVE NEGLIGENCE-
16 -EFFECTS.

17 1. If a claim alleges negligence as the basis
18 for the recovery of damages for injury or death of
19 a person or harm to property, negligence that is
20 chargeable to the claimant diminishes proportionately
21 the amount to be awarded to the claimant as compen-
22 satory damages for loss to which the claimant's
23 negligence contributed, provided that recovery by
24 the claimant for the loss is barred if the contributing
25 negligence that is chargeable to the claimant is
26 greater than the negligence that is chargeable to
27 all other persons in respect to the loss.

28 2. In the trial of a claim involving the negligence
29 of two or more persons, including claimants,
30 defendants, third-party defendants, persons who have
31 been released under section 8 of this Act, and persons
32 who are not parties to the action, the court, unless
33 otherwise agreed by all the parties to the action,
34 shall instruct the jury to answer special
35 interrogatories, or if there is no jury the court
36 shall make findings of both of the following:

37 a. The amount of damages the claimant would be
38 entitled to recover if negligence chargeable to the
39 claimant is disregarded.

40 b. The percentage of the total negligence allocated
41 to each claimant, defendant, third-party defendant,
42 person who has been released from liability under
43 section 8 of this Act, and person who is determined
44 to have been negligent but who is not a party to the
45 action. For purposes of this paragraph, the court
46 shall disregard the rule of joint and several liability
47 of defendants, but the court may determine that two
48 or more persons are to be treated as one negligent
49 person.

50 3. In determining the percentages of negligence,

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Page Three

1 the trier of fact shall consider both the nature of
2 the conduct of each negligent party and the extent
3 of the causal relation between negligent conduct and
4 the loss for which damages are claimed.

5 4. If the claim is tried to a jury, the court
6 shall not give instructions or permit evidence or
7 argument with respect to the effects of the answers
8 to be returned to the interrogatories submitted under
9 subsection 2.

10 5. The court shall determine the amount of damages
11 payable to each claimant by each other party, if any,
12 in accordance with the findings of the court or jury
13 and the provisions of sections 6 through 8 of this
14 Act.

15 6. The liability of a party, if any, is limited
16 to that percentage of the damages as found under
17 subsection 2, paragraph a, that is equal to the
18 percentage of negligence chargeable to the party as
19 found under subsection 2, paragraph b. The rule of
20 joint and several liability does not apply if plaintiff
21 is found to bear any comparative negligence.

22 Sec. 7. NEW SECTION. OFFSETTING CLAIMS. A claim
23 and counterclaim shall not be set off against each
24 other, except by agreement of both parties. However,
25 if upon motion of either party the court finds that
26 the obligation of either party is likely to be
27 uncollectible the court may order that both parties
28 make payment to the court for distribution. The court
29 shall distribute the funds received, and shall declare
30 obligations discharged as if the payment to the court
31 by either party had been a payment to the other party
32 and as if the distribution of the funds back to the
33 party making payment had been a payment to that party
34 by the other party.

35 Sec. 8. NEW SECTION. EFFECT OF RELEASE. A
36 release, covenant not to sue, or similar agreement
37 entered into by a claimant and a person who is or
38 may be liable to the claimant for damages discharges
39 the person from liability to the claimant. The agree-
40 ment does not discharge other persons that are or
41 may be liable unless the agreement so provides, but
42 the agreement does reduce the amount of damages that
43 are recoverable from other persons who are or may
44 be liable to the extent of amounts paid to the claimant
45 in contemplation of the agreement.

46 Sec. 9. The supreme court shall submit to the
47 general assembly during the 1984 session in the manner
48 provided in section 684.19 changes in the rules of
49 procedure for courts which are necessitated by the
50 enactment of this Act.

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Page Four

1 Sec. 10. Section 619.17, Code 1983, is repealed.
2 This section shall not be construed to reinstate a
3 rule requiring a claimant to plead and prove freedom
4 from contributory negligence.

5 Sec. 11. This Act takes effect July 1, 1983, and
6 applies to all cases tried or retried on or after
7 that date.

8 Sec. 12. The legislative council is directed to
9 establish a joint subcommittee of the senate committee
10 on judiciary, the house committee on judiciary and
11 law enforcement, and the senate and house committees
12 on commerce, to be composed of seven members of the
13 house and seven members of the senate, to study the
14 matter of comparative negligence, comparative fault
15 and contributory negligence as they apply to the broad
16 spectrum of tort law in Iowa, during the interim
17 between the Seventieth General Assembly's first and
18 second session. This joint subcommittee shall be
19 authorized to meet for not less than five days."

20 3. Title page, by striking lines 1 and 2 and
21 inserting in lieu thereof the following: "An Act
22 relating to tort actions by providing immunity to
23 state and local government employees and officials
24 for certain acts and omissions, relating to punitive
25 damages, and establishing comparative negligence as
26 the basis for liability in relation to claims arising
27 from injury to or death of a person or harm to
28 property."

29 4. By renumbering as necessary.

BY SCHROEDER of Pottawattamie	and by DAGGETT of Taylor
ANDERSON of Audubon	VAN MAANEN of Mahaska
BENNETT of Ida	DIEMER of Black Hawk
VAN CAMP of Scott	HALVORSON of Clayton
TOFTE of Winneshiek	HARBOR of Mills
TORRENCE of Muscatine	MENKE of O'Brien
BRANSTAD of Winnebago	STUELAND of Clinton
HOFFMANN-BRIGHT of Muscatine	GRANDIA of Marion
COREY of Louisa	VAN GERPEN of Black Hawk
SCHNEKLOTH of Scott	ROYER of Page
RENSINK of Sioux	SKOW of Guthrie
MAULSBY of Calhoun	FOGARTY of Palo Alto
PELLETT of Cass	OXLEY of Linn
LAGESCHULTE of Bremer	SWARTZ of Marshall
HANDORF of Marshall	KOENIGS of Mitchell
WELDEN of Hardin	COOPER of Lucas
DE GROOT of Lyon	HUGHES of Union, 5/5/83
SWEARINGEN of Keokuk	GRUHN of Dickinson
HERMANN of Scott	JOCHUM of Dubuque
RENKEN of Grundy	BLANSHAN of Greene
PAULIN of Plymouth	KNAPP of Dubuque

H-3980 sponsors continued, Page Five of amendment.

PONCY of Wapello
SULLIVAN of Van Buren
MUHLBAUER of Crawford
PEICK of Linn
CHIODO of Polk
BAXTER of Des Moines
CLARK of Cerro Gordo
CARPENTER of Polk
FEY of Scott

COCHRAN of Webster
SPEAR of Lee
CONNOLLY of Dubuque
MILLER of Woodbury
COPENHAVER of Buchanan
GRONINGA of Cerro Gordo
WOODS of Polk
RENAUD of Polk
TABOR of Jackson

H-3980 FILED MAY 2, 1983

H/D 5/6/83 (p. 1876)

SENATE FILE 370

H-3979

1 Amend House amendment H-3962 to Senate File 370
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 2, line 40, by inserting after the word
5 "contributed" the words ", provided that recovery
6 by the claimant for the loss is barred if the
7 contributing negligence that is chargeable to the
8 claimant is greater than the negligence that is
9 chargeable to all other persons in respect to the
10 loss".

11 2. Page 3, by striking lines 34 and 35 and
12 inserting in lieu thereof the word "apply."

H-3979 FILED MAY 2, 1983

BY SKOW of Guthrie
HALVORSON of Clayton

SENATE FILE 370

AN ACT
RELATING TO AWARDS FOR PUNITIVE DAMAGES AGAINST OFFICERS AND
EMPLOYEES OF GOVERNMENTAL SUBDIVISIONS.

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

Section 1. Section 613A.9, unnumbered paragraph 1, Code 1983, is amended to read as follows:

The governing body shall defend ~~any of~~ its officers and employees, whether elected or appointed and shall save harmless and indemnify ~~such~~ the officers and employees 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. However, the duty to save harmless and indemnify ~~shall~~ does not apply to awards for punitive damages. The exception for punitive damages does not prohibit a governing body from purchasing insurance to protect its officers and employees from punitive damages. The duty to save harmless and indemnify ~~shall~~ does not apply and the municipality ~~shall-be~~ is entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against ~~such~~ tort claims or demands.

Sec. 2. Section 613A.12, Code 1983, is amended to read as follows:

613A.12 OFFICERS AND EMPLOYEES--PERSONAL LIABILITY. All officers and employees of municipalities are not personally liable for any claim which is exempted under section 613A.4, except a claim for punitive damages, and actions permitted under section 85.20. An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a law enforcement or emergency duty, unless actual malice or ~~recklessness~~ willful, wanton and reckless misconduct is proven.

.....
ROBERT T. ANDERSON
President 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 370, Seventieth General Assembly.

.....
K. MARIE THAYER
Secretary of the Senate

Approved May 19, 1983

.....
TERRY E. BRANSTAD
Governor

S.F. 370