

**Senate File 2107 - Introduced**

SENATE FILE 2107

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**A BILL FOR**

1 An Act relating to restitution for claims arising from state  
2 employees committing unfair or discriminatory employment  
3 practices.

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

1 Section 1. Section 669.21, subsection 2, Code 2018, is  
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *c.* The duty to indemnify and hold harmless  
4 shall not apply if the employee is accused of committing an  
5 unfair or discriminatory employment practice in violation of  
6 state or federal law. If the employee is accused of committing  
7 an unfair or discriminatory employment practice in violation of  
8 state or federal law and the accusation results in an award by  
9 a court, the duty to compensate the plaintiff shall apply, but  
10 the state shall seek restitution from the employee.

11 Sec. 2. Section 669.22, Code 2018, is amended to read as  
12 follows:

13 **669.22 Actions in federal court.**

14 1. The state shall defend any employee, and shall indemnify  
15 and hold harmless an employee of the state in any action  
16 commenced in federal court under 42 U.S.C. §1983 against the  
17 employee for acts of the employee while acting in the scope  
18 of employment. The duty to indemnify and hold harmless shall  
19 not apply and the state shall be entitled to restitution  
20 from an employee if the employee fails to cooperate in the  
21 investigation or defense of the claim or demand, or if, in  
22 an action commenced by the state against the employee, it is  
23 determined that the conduct of the employee upon which the  
24 claim or demand was based constituted a willful and wanton act  
25 or omission or malfeasance in office.

26 2. The duty to indemnify and hold harmless shall not  
27 apply if the employee is accused of committing an unfair or  
28 discriminatory employment practice in violation of federal  
29 law. If the employee is accused of committing an unfair or  
30 discriminatory employment practice in violation of federal law  
31 and the accusation results in an award by a court, the duty to  
32 compensate the plaintiff shall apply, but the state shall seek  
33 restitution from the employee.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1           the explanation's substance by the members of the general assembly.

2       Under current law, the state has waived sovereign immunity  
3 for certain tort claims, which are defined as monetary,  
4 pursuant to the Iowa tort claims Act, Code chapter 669. Under  
5 current law, if a state employee is acting within the scope of  
6 the employee's office or employment, the state will defend and  
7 will indemnify and hold harmless the employee or substitute  
8 as the defendant in place of the state employee. Thus under  
9 current law, unless the employee is acting outside the scope  
10 of the employee's office or employment, the employee is not  
11 personally liable for torts.

12       In accordance with the Iowa civil rights Act, Code chapter  
13 216, and federal law, it is unlawful for state employees to  
14 engage in unfair or discriminatory employment practices.  
15 Under the bill, the state will defend, but will not indemnify  
16 and hold harmless a defendant state employee if the claims  
17 arise out of the employee committing unfair or discriminatory  
18 employment practices in violation of state or federal law.  
19 Under the bill, if a state employee is accused of employment  
20 discrimination and it results in an award by a court, the  
21 state would pay the award but then would be required to  
22 seek restitution from the offending state employee. The  
23 result would allow the plaintiff to receive an award from  
24 the state but would require the state to recover as much of  
25 a court-ordered award as possible from the offending state  
26 employee.