

Senate File 455 - Introduced

SENATE FILE 455

BY CELSI

A BILL FOR

1 An Act relating to restitution for claims arising from state
2 employees committing unfair or discriminatory employment
3 practices, including personal liability insurance
4 requirements.

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

1 Section 1. NEW SECTION. **7E.9 Personal liability insurance**
2 **requirements.**

3 Each head of a department and each director or administrator
4 of an independent agency shall, as a condition of their
5 appointment or selection for that position, obtain personal
6 liability insurance, in such amount as determined by the office
7 of the attorney general, to insure against any claim that
8 the person committed an unfair or discriminatory employment
9 practice in violation of state or federal law.

10 Sec. 2. Section 669.21, subsection 2, Code 2019, is amended
11 by adding the following new paragraph:

12 NEW PARAGRAPH. *c.* The duty to indemnify and hold harmless
13 shall not apply if the employee is accused of committing an
14 unfair or discriminatory employment practice in violation of
15 state or federal law. If the employee is accused of committing
16 an unfair or discriminatory employment practice in violation of
17 state or federal law and the accusation results in an award by
18 a court, the duty to compensate the plaintiff shall apply, but
19 the state shall seek restitution from the employee.

20 Sec. 3. Section 669.22, Code 2019, is amended to read as
21 follows:

22 **669.22 Actions in federal court.**

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

35 2. The duty to indemnify and hold harmless shall not

1 apply if the employee is accused of committing an unfair or
2 discriminatory employment practice in violation of federal
3 law. If the employee is accused of committing an unfair or
4 discriminatory employment practice in violation of federal law
5 and the accusation results in an award by a court, the duty to
6 compensate the plaintiff shall apply, but the state shall seek
7 restitution from the employee.

8

EXPLANATION

9

The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11

Under current law, the state has waived sovereign immunity
12 for certain tort claims, which are defined as monetary,
13 pursuant to the Iowa tort claims Act, Code chapter 669. Under
14 current law, if a state employee is acting within the scope of
15 the employee's office or employment, the state will defend and
16 will indemnify and hold harmless the employee or substitute
17 as the defendant in place of the state employee. Thus under
18 current law, unless the employee is acting outside the scope
19 of the employee's office or employment, the employee is not
20 personally liable for torts.

21

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

1 In addition, new Code section 7E.9 requires each department
2 head and director or administrator of an independent agency
3 to obtain personal liability insurance to insure against any
4 claim that the person committed an unfair or discriminatory
5 employment practice in violation of law.