

Senate Study Bill 1106 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the liability of the state, counties,
2 municipalities, and employees thereof for certain torts, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

IOWA TORT CLAIMS ACT

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Section 1. Section 669.14, Code 2019, is amended by adding the following new subsection:

NEW SUBSECTION. 16. Any claim against an employee of the state arising out of an act or omission of the employee in the execution of or enforcement of any law unless the employee's act constitutes willful and wanton misconduct.

Sec. 2. NEW SECTION. **669.26 Limitation of liability.**

A person bringing a tort claim for excessive use of force, arrest without probable cause, or false arrest against the state or a peace officer of the state shall not recover compensatory damages in excess of one hundred thousand dollars for damages arising from a single incident or occurrence. This limitation does not apply to damages for medical expenses.

Sec. 3. NEW SECTION. **669.27 Arrest without probable cause — defense.**

1. A peace officer shall not be liable for a tort claim for an arrest without probable cause if arguable probable cause or probable cause existed for any charge at the time of the claimant's arrest.

2. The court shall determine whether the undisputed material facts establish arguable probable cause or probable cause for an arrest. A court's determination that arguable probable cause or probable cause existed for a claimant's arrest shall bar the claimant's claim.

3. A peace officer of the state shall be entitled to qualified immunity from suit for arrest without probable cause if the arrest was supported by arguable probable cause or probable cause based on the facts and information known or perceived by the arresting officer at the time of arrest, if the officer acted objectively reasonably, or if the arrest was supported by a warrant, unless the officer knew that the warrant was invalid.

4. The court shall construe this section liberally in favor

1 of the peace officer.

2 Sec. 4. NEW SECTION. 669.28 Arrest — exceptions.

3 1. In a tort claim where an arrest is an element of
4 the claim, or in a tort claim for false arrest or false
5 imprisonment, the following shall not constitute an arrest:

6 a. A seizure or detention of a person by a peace officer for
7 the purpose of an investigatory stop.

8 b. A seizure of a person by a peace officer, correctional
9 officer, bailiff, or a person summoned to aid by a peace
10 officer, correctional officer, or bailiff, by use of force for
11 the purpose of defending any person from a perceived threat
12 of bodily harm or death if the peace officer, correctional
13 officer, bailiff, or a person summoned to aid by a peace
14 officer, correctional officer, or bailiff reasonably believes,
15 based on the facts and information available, that the use of
16 force is reasonable in the circumstances.

17 c. The restraint of a person, including a prisoner, in
18 the custody of an officer, employee, or contractor of a law
19 enforcement or correctional agency of the federal government,
20 the state, or a municipality, including for transportation of
21 a person or prisoner pursuant to an arrest warrant or court
22 order, or as otherwise permitted by law.

23 2. In a tort claim or action for arrest without probable
24 cause, the court shall determine whether a seizure constitutes
25 an arrest as a matter of law.

26 Sec. 5. NEW SECTION. 669.29 Recklessness — burden of
27 proof.

28 1. A person bringing a tort claim against the state or an
29 employee of the state for which recklessness is an element
30 shall prove recklessness by clear and convincing evidence.

31 2. The court shall make a preliminary determination not
32 less than sixty days before trial whether sufficient admissible
33 evidence exists to present the issue of recklessness to the
34 finder of fact at trial. If the claimant fails to present
35 sufficient admissible evidence on the issue of recklessness,

1 the court shall dismiss the claim with prejudice.

2 Sec. 6. NEW SECTION. 669.30 Punitive damages —
3 limitations.

4 1. The state or employee of the state shall have the right
5 to a bifurcated trial on the issue of punitive damages in any
6 tort action where a claimant seeks punitive damages.

7 2. Punitive damages for any tort claim shall not exceed two
8 times the amount of compensatory damages awarded by the trier
9 of fact. The court shall reduce any award of punitive damages
10 in excess of two times the amount of compensatory damages.

11 DIVISION II

12 IOWA MUNICIPAL TORT CLAIMS ACT

13 Sec. 7. Section 670.2, Code 2019, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 4. An employee is not personally liable
16 for a claim arising out of an act of the employee taken in
17 execution or enforcement of any law unless the act constitutes
18 willful and wanton misconduct.

19 Sec. 8. Section 670.4, subsection 1, paragraph k, Code 2019,
20 is amended to read as follows:

21 *k.* A claim based upon or arising out of an act or omission
22 of a municipality in connection with an emergency response
23 including but not limited to acts or omissions in connection
24 with emergency response communications services. For the
25 purposes of this paragraph, "municipality" includes a nonprofit
26 corporation that delivers such emergency response services on
27 behalf of a city, county, township, or benefited fire district
28 pursuant to a written contract. The city, county, township,
29 or benefited fire district shall file the written contract and
30 any amendment, modification, or notice of termination of the
31 contract in an electronic format with the secretary of state
32 within thirty days of the effective date of the contract,
33 amendment, modification, or termination in a manner specified
34 by the secretary of state.

35 Sec. 9. Section 670.7, Code 2019, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 5. The governing body of a municipality
3 shall purchase and maintain insurance or risk pool coverage for
4 claims for punitive damages in tort actions for wrongful death,
5 excessive force, and arrest without probable cause against its
6 law enforcement and public safety officers, employees, and
7 volunteers, whether elected or appointed, arising out of an
8 alleged act or omission occurring within the scope of such a
9 person's employment or duties. The governing body may purchase
10 and maintain insurance or risk pool coverage for claims for
11 punitive damages against its law enforcement and public safety
12 officers, employees, and volunteers for other tort actions.
13 The purchase of insurance or risk pool coverage pursuant to
14 this subsection does not waive a defense of governmental
15 immunity to any claim or action brought against a law
16 enforcement or public safety officer, employee, or volunteer.

17 Sec. 10. NEW SECTION. 670.14 Notice of claims.

18 1. A person bringing a tort claim against a municipality, or
19 an officer, employee, or elected official of a municipality,
20 shall submit notice of the claim to the county attorney in
21 writing not later than one hundred eighty days after the
22 accrual of the claim.

23 2. A person bringing a tort claim against a city or an
24 officer, employee, or elected official of a city shall submit
25 notice of the claim to the city clerk in writing not later than
26 one hundred eighty days after the accrual of the claim.

27 3. A failure to submit notice consistent with this section
28 shall be grounds for dismissal with prejudice.

29 Sec. 11. NEW SECTION. 670.15 Limitation of liability.

30 A person bringing a tort claim for excessive use of force,
31 arrest without probable cause, or false arrest against a
32 municipality or a peace officer of a municipality shall
33 not recover compensatory damages in excess of one hundred
34 thousand dollars for damages arising from a single incident
35 or occurrence. This limitation does not apply to damages for

1 medical expenses.

2 Sec. 12. NEW SECTION. 670.16 Arrest without probable cause
3 — defense.

4 1. A peace officer shall not be liable for an arrest without
5 probable cause if arguable probable cause or probable cause
6 existed for any charge at the time of the claimant's arrest.

7 2. The court shall determine whether the undisputed
8 material facts establish arguable probable cause or probable
9 cause for an arrest. A district court's determination that
10 arguable probable cause or probable cause existed for a
11 claimant's arrest shall bar the claimant's claim.

12 3. The municipality and a peace officer of the municipality
13 shall be entitled to qualified immunity from suit if the arrest
14 was supported by arguable probable cause or probable cause
15 based on the facts and information known or perceived by the
16 arresting officer at the time of arrest, if the officer acted
17 objectively reasonably, or if the arrest was supported by a
18 warrant, unless the officer knew that the warrant was invalid.

19 4. The court shall construe this section liberally in favor
20 of the peace officer and the municipality.

21 Sec. 13. NEW SECTION. 670.17 Arrest — exceptions.

22 1. In a tort claim where an arrest is an element of
23 the claim, or in a tort claim for false arrest or false
24 imprisonment, the following shall not constitute an arrest:

25 a. A seizure or detention of a person by a peace officer for
26 the purpose of an investigatory stop.

27 b. A seizure of a person by a peace officer, correctional
28 officer, bailiff, or a person summoned to aid by a peace
29 officer, correctional officer, or bailiff, by use of force for
30 the purpose of defending any person from a perceived threat
31 of bodily harm or death if the peace officer, correctional
32 officer, bailiff, or a person summoned to aid by a peace
33 officer, correctional officer, or bailiff, reasonably believes,
34 based on the facts and information available, that the use of
35 force is reasonable in the circumstances.

1 c. The restraint of a person, including a prisoner, in
2 the custody of an officer, employee, or contractor of a law
3 enforcement or correctional agency of the federal government,
4 the state, or a municipality, including for transportation of
5 a person or prisoner pursuant to an arrest warrant or court
6 order, or as otherwise permitted by law.

7 2. In a tort claim or action for arrest without probable
8 cause, the court shall determine whether a seizure constitutes
9 an arrest as a matter of law.

10 Sec. 14. NEW SECTION. 670.18 **Recklessness — burden of**
11 **proof.**

12 1. A person bringing a tort claim against a municipality or
13 an officer, employee, or elected official of a municipality for
14 which recklessness is an element shall prove recklessness by
15 clear and convincing evidence.

16 2. The district court shall make a preliminary
17 determination not less than sixty days before trial whether
18 sufficient admissible evidence exists to present the issue of
19 recklessness to the finder of fact at trial. If the claimant
20 fails to present sufficient admissible evidence on the issue of
21 recklessness, the court shall dismiss the claim with prejudice.

22 Sec. 15. NEW SECTION. 670.19 **Punitive damages —**
23 **limitations.**

24 1. A municipality or an officer, employee, or elected
25 official of a municipality shall have the right to a bifurcated
26 trial in any tort action where a claimant seeks punitive
27 damages.

28 2. Punitive damages for any tort claim shall not exceed two
29 times the amount of compensatory damages awarded by the trier
30 of fact. The court shall reduce any award of punitive damages
31 in excess of two times the amount of compensatory damages.

32 DIVISION III

33 ARRESTS

34 Sec. 16. Section 804.2, Code 2019, is amended to read as
35 follows:

1 **804.2 Contents of arrest warrant.**

2 1. The warrant must be directed to any peace officer in
3 the state; give the name of the defendant, if known to the
4 magistrate; if unknown, may designate "name unknown"; and
5 must state by name or general description an offense which
6 authorizes a warrant to issue, the date of issuing it, the
7 county or city where issued, and be signed by the magistrate
8 with the magistrate's name of office.

9 2. A provision on or attached to a warrant relating to
10 the transportation of a person subject to a warrant may be
11 modified by the sheriff responsible for the transportation of
12 such a person. Such an amendment or modification shall not
13 affect the validity of the arrest warrant or form the basis
14 for any tort claim against the state or a municipality, or an
15 officer, employee, elected official, or agent of the state or a
16 municipality.

17 Sec. 17. Section 804.5, Code 2019, is amended to read as
18 follows:

19 **804.5 Arrest defined.**

20 Arrest is the taking of a person into custody when and in
21 the manner authorized by law and the initiating of a criminal
22 process against the person, including restraint of the person
23 or the person's submission to custody.

24 DIVISION IV

25 EFFECTIVE DATE AND APPLICABILITY PROVISIONS

26 Sec. 18. EFFECTIVE DATE. This Act, being deemed of
27 immediate importance, takes effect upon enactment.

28 Sec. 19. APPLICABILITY. This Act applies to all claims
29 accruing on or after the effective date of this Act.

30 EXPLANATION

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

33 This bill relates to state, municipal, and employee
34 liability for certain torts.

35 DIVISION I — IOWA TORT CLAIMS ACT. The bill provides that a

1 person cannot bring a tort arising out of an act or omission of
2 an employee of the state in the execution or enforcement of any
3 law against an employee of the state in the employee's unless
4 the employee's act constitutes willful and wanton conduct.

5 The bill limits recovery of compensatory damages for claims
6 of excessive use of force, arrest without probable cause, or
7 false arrest against the state or a peace officer of the state
8 to \$100,000 per incident or occurrence. This limitation does
9 not apply to damages for medical expenses.

10 The bill bars a claim for arrest without probable cause
11 against a peace officer of the state if probable cause or
12 arguable probable cause existed for any charge at the time of
13 the claimant's arrest. The bill requires a district court
14 to determine whether the undisputed material facts of a case
15 establish that arguable probable cause or probable cause
16 existed at the time of the claimant's arrest. An affirmative
17 finding bars the claimant's claim. The bill grants qualified
18 immunity from suit for arrest without probable cause to an
19 officer who believed there was arguable probable cause or
20 probable cause based on the information available to the
21 officer, if the officer acted objectively reasonably, or if the
22 arrest was supported by a warrant, unless the officer knew that
23 the warrant was invalid. The bill instructs district courts to
24 construe the Code section liberally in favor of peace officers.

25 The bill enumerates certain actions that do not constitute
26 arrest with respect to a tort claim that has arrest as an
27 element. These actions are: a seizure or detention for the
28 purpose of an investigatory stop; a seizure by use of force by
29 certain employees for the purpose of defending a person from a
30 perceived threat of bodily harm or death if the person using
31 force reasonably believes that the use of force is reasonable
32 in the circumstances; and the restraint of a person in custody.
33 The bill instructs district courts to determine as a matter
34 of law whether a seizure constitutes an arrest when hearing a
35 claim for arrest without probable cause.

1 The bill requires a person bringing a tort claim against the
2 state or an officer, employee, or elected official of the state
3 for which recklessness is an element to prove recklessness
4 by clear and convincing evidence. The bill also requires a
5 district court hearing such a claim to determine not less than
6 60 days before trial whether there is sufficient admissible
7 evidence to present the issue of recklessness to the finder of
8 fact at trial.

9 The bill grants to the state or an officer, employee, or
10 elected official of the state the right to a bifurcated trial
11 on the issue of punitive damages in any tort action where a
12 claimant seeks punitive damages. The bill also limits punitive
13 damages to two times the amount of compensatory damages.

14 DIVISION II — IOWA MUNICIPAL TORT CLAIMS ACT. The bill
15 provides that a person cannot bring a tort arising out of
16 an act or omission of an employee of a municipality in the
17 execution or enforcement of any law against an employee of the
18 municipality in the employee's personal capacity unless the
19 employee's act constitutes willful and wanton conduct.

20 The bill extends the immunity from tort liability, absent
21 an express statute, granted to municipalities for claims
22 based upon or arising out of an act or omission in connection
23 with emergency response services to nonprofit corporations
24 providing the same services pursuant to a written contract with
25 a city, county, township, or benefited fire district. Any such
26 contract and any modifications thereto shall be filed with the
27 secretary of state within 30 days of their effectiveness.

28 The bill requires the governing body of a municipality
29 to purchase insurance or risk pool coverage for claims for
30 punitive damages in certain cases against its employees and
31 volunteers arising out of an act or omission within the scope
32 of such a person's duties. The bill allows the governing body
33 of a municipality to purchase such insurance or coverage for
34 punitive damages in all other actions. The purchase of such
35 insurance or coverage does not waive a defense of governmental

1 immunity.

2 The bill requires a person bringing a tort claim against
3 a county or township, or an officer, employee, or elected
4 official of a county or township to submit notice of the claim
5 to the county attorney in writing not later than 180 days after
6 the claim accrues. The bill also requires a person bringing a
7 tort claim against a city or an officer, employee, or elected
8 official of a city to submit notice of the claim to the city
9 clerk in writing not later than 180 days after the claim
10 accrues.

11 The bill limits recovery of compensatory damages for claims
12 of excessive use of force, arrest without probable cause, or
13 false arrest against a municipality or a peace officer of the
14 municipality to \$100,000 per incident or occurrence. This
15 limitation does not apply to damages for medical expenses.

16 The bill bars a claim for arrest without probable cause
17 against a peace officer of a municipality if probable cause
18 or arguable probable cause existed for any charge at the time
19 of the claimant's arrest. The bill requires a district court
20 to determine whether the undisputed material facts of a case
21 establish that arguable probable cause or probable cause
22 existed at the time of the claimant's arrest. An affirmative
23 finding bars the claimant's claim. The bill grants qualified
24 immunity from suit for arrest without probable cause to an
25 officer who believed there was arguable probable cause or
26 probable cause based on the information available to the
27 officer, if the officer acted objectively reasonably, or if the
28 arrest was supported by a warrant, unless the officer knew that
29 the warrant was invalid. The bill instructs district courts to
30 construe the Code section liberally in favor of peace officers.

31 The bill enumerates certain actions that do not constitute
32 arrest with respect to a tort claim that has arrest as an
33 element. These actions are: a seizure or detention for the
34 purpose of an investigatory stop; a seizure by use of force by
35 certain employees for the purpose of defending a person from a

1 perceived threat of bodily harm or death if the person using
2 force reasonably believes that the use of force is reasonable
3 in the circumstances; and the restraint of a person in custody.
4 The bill instructs courts to determine as a matter of law
5 whether a seizure constitutes an arrest when hearing a claim
6 for arrest without probable cause.

7 The bill requires a person bringing a tort claim against
8 a municipality or an officer, employee, or elected official
9 of the state for which recklessness is an element to prove
10 recklessness by clear and convincing evidence. The bill
11 also requires a court hearing such a claim to determine not
12 less than 60 days before trial whether there is sufficient
13 admissible evidence to present the issue of recklessness to the
14 finder of fact at trial.

15 The bill grants to the state or an officer, employee, or
16 elected official of the state the right to a bifurcated trial
17 on the issue of punitive damages in any tort action where a
18 claimant seeks punitive damages. The bill also limits punitive
19 damages to two times the amount of compensatory damages.

20 DIVISION III — ARRESTS. The bill allows a sheriff
21 responsible for the transport of a person arrested pursuant to
22 a warrant to modify any designation relating to the transport
23 of that person on or attached to the warrant without affecting
24 the validity of the warrant or giving rise to a tort claim.

25 The bill changes the definition of "arrest" to require the
26 initiating of a criminal process against a person before an
27 arrest has occurred.

28 DIVISION IV — EFFECTIVE DATE AND APPLICABILITY PROVISIONS.
29 The bill is effective upon enactment and applies to all claims
30 accruing on or after the effective date of the bill.