

**CHAPTER 1259**  
**LIABILITIES OF STATE EMPLOYEES**  
*S.F. 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.

Approved May 17, 1984

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## CHAPTER 1260

### FISH AND GAME LICENSES AND PERMITS

*H.F. 406*

**AN ACT** relating to the issuing of licenses and permits for the purpose of taking wild mammals, fish, birds, amphibians, and reptiles.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 109.38, subsection 2, Code 1983, is amended to read as follows:

2. If following an investigation the commission finds that the number of hunters licensed to take deer or wild turkey should be limited or further regulated, the commission shall conduct a drawing to determine which applicants shall receive a license. Applications for licenses shall be received and accepted during a ~~thirty-day~~ forty-five day period established by the commission. At the end of such period the drawing shall be conducted. If the quota has not been filled, licenses shall then be issued in the order in which such applications are received and shall continue to be issued until such quota has been met or until a date fifteen days prior to the opening day of the season, whichever first occurs. If an applicant receives a deer license which is more restrictive than licenses issued to others for the same period and place, the applicant shall receive a certificate with his or her license entitling the applicant to priority in the drawing for the less restrictive deer licenses the following year. The certificate must accompany that person's application the following year, or the applicant will not receive this