

House Study Bill 620 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to application of the state tort claims Act to
2 providers of health care services required under the federal
3 Emergency Medical Treatment and Active Labor Act.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 669.2, subsection 4, Code Supplement
2 2011, is amended by adding the following new paragraph:

3 NEW PARAGRAPH. *c.* (1) "*Employee of the state*" also
4 includes a physician licensed pursuant to chapter 148 who is
5 not otherwise defined as an employee of the state under this
6 subsection and who provides emergency medical services in a
7 participating hospital.

8 (2) For the purposes of this paragraph "*c*":

9 (a) "*Emergency medical services*" means all screenings,
10 examinations, and evaluations by a physician, hospital, or
11 other person or entity acting pursuant to obligations imposed
12 under the federal Emergency Medical Treatment and Active Labor
13 Act, 42 U.S.C. § 1355DD et seq., to determine whether an
14 emergency medical condition exists, and the care, treatment,
15 surgery, or other medical services provided to relieve or
16 eliminate the emergency medical condition, including all
17 medical services to eliminate the likelihood that the emergency
18 medical condition will deteriorate or recur without further
19 medical attention within a reasonable period of time.

20 (b) "*Participating hospital*" means participating hospital as
21 defined in 42 U.S.C. § 1395DD(e)(2).

22 Sec. 2. Section 669.4, Code 2011, is amended to read as
23 follows:

24 **669.4 District court to hold hearings.**

25 1. The district court of the state of Iowa for the district
26 in which the plaintiff is resident or in which the act or
27 omission complained of occurred, or where the act or omission
28 occurred outside of Iowa and the plaintiff is a nonresident,
29 the Polk county district court has exclusive jurisdiction to
30 hear, determine, and render judgment on any suit or claim as
31 defined in this chapter. However, the laws and rules of civil
32 procedure of this state on change of place of trial apply to
33 such suits.

34 2. a. The state shall be liable in respect to such claims
35 to the same claimants, in the same manner, and to the same

1 extent as a private individual under like circumstances, except
2 that the state shall not be liable for interest prior to
3 judgment or for punitive damages. Costs shall be allowed in
4 all courts to the successful claimant to the same extent as if
5 the state were a private litigant.

6 b. Notwithstanding any provision to the contrary, including
7 section 669.21, with respect to a claim relating to an
8 employee of the state described in section 669.2, subsection 4,
9 paragraph "c", such employee of the state shall indemnify the
10 state for any judgments, settlement costs, or other liabilities
11 incurred in any claim or judgment under this chapter up to
12 one hundred thousand dollars. Such an employee of the state
13 who fails to indemnify the state after reasonable notice and
14 written demand to do so is subject to license discipline
15 pursuant to section 148.7.

16 3. The immunity of the state from suit and liability is
17 waived to the extent provided in this chapter.

18 4. A suit is commenced under this chapter by serving the
19 attorney general or the attorney general's duly authorized
20 delegate in charge of the tort claims division by service of an
21 original notice. The state shall have thirty days within which
22 to enter its general or special appearance.

23 EXPLANATION

24 This bill provides for inclusion as an employee of the
25 state under the state tort claims Act (Code chapter 669)
26 a physician who provides emergency medical services in a
27 participating hospital. The bill also provides definitions,
28 including "emergency medical services" as those services
29 provided pursuant to obligations imposed under the federal
30 Emergency Medical Treatment and Active Labor Act (EMTALA) and a
31 "participating hospital" as a hospital that is subject to the
32 requirements of EMTALA.

33 As an employee of the state under Code chapter 669, however,
34 an emergency health care provider who is a physician would be
35 required to indemnify the state for any judgments, settlement

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1 costs, or other liabilities incurred in any claim or judgment
2 under the Code chapter up to \$100,000. A physician who fails
3 to indemnify the state after reasonable notice and written
4 demand to do so is subject to license discipline.