

AMENDED IN SENATE AUGUST 28, 1995
AMENDED IN SENATE AUGUST 21, 1995
AMENDED IN ASSEMBLY APRIL 25, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1361

Introduced by Assembly Member Knowles

February 23, 1995

An act to amend Section 825 of, and to add Section 995.9 to, the Government Code, relating to public entities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1361, as amended, Knowles. Public entities: liability: litigation expense.

(1) Existing law authorizes a public entity, other than the state, as defined, to pay that part of a judgment against an employee or former employee in a tort action arising out of an act or omission within the scope of his or her employment that is for punitive or exemplary damages if the governing body of the public entity finds that certain circumstances exists, including that payment of the claim or judgment would be in the best interests of the public entity.

This bill would ~~delete~~ *revise* the ~~exemption—provided applicability of this provision~~ to the state ~~in this provision, as specified~~, and make conforming changes.

(2) Existing law governing tort liability of public entities sets forth the duty of the public entity to provide for the defense of a public employee, as specified.

This bill would provide that upon request made in writing to a public entity, the public entity may in its discretion, as specified, defend or indemnify or defend and indemnify any witness who has testified on behalf of the public entity in any criminal, civil, or administrative action, *except as specified*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 825 of the Government Code is
2 amended to read:

3 825. (a) Except as otherwise provided in this section,
4 if an employee or former employee of a public entity
5 requests the public entity to defend him or her against
6 any claim or action against him or her for an injury arising
7 out of an act or omission occurring within the scope of his
8 or her employment as an employee of the public entity
9 and the request is made in writing not less than 10 days
10 before the day of trial, and the employee or former
11 employee reasonably cooperates in good faith in the
12 defense of the claim or action, the public entity shall pay
13 any judgment based thereon or any compromise or
14 settlement of the claim or action to which the public
15 entity has agreed.

16 If the public entity conducts the defense of an
17 employee or former employee against any claim or action
18 with his or her reasonable good-faith cooperation, the
19 public entity shall pay any judgment based thereon or any
20 compromise or settlement of the claim or action to which
21 the public entity has agreed. However, where the public
22 entity conducted the defense pursuant to an agreement
23 with the employee or former employee reserving the
24 rights of the public entity not to pay the judgment,
25 compromise, or settlement until it is established that the
26 injury arose out of an act or omission occurring within the
27 scope of his or her employment as an employee of the
28 public entity, the public entity is required to pay the
29 judgment, compromise, or settlement only if it is
30 established that the injury arose out of an act or omission



1 occurring in the scope of his or her employment as an
2 employee of the public entity.

3 Nothing in this section authorizes a public entity to pay
4 that part of a claim or judgment that is for punitive or
5 exemplary damages.

6 (b) Notwithstanding subdivision (a) or any other
7 provision of law, a public entity is authorized to pay that
8 part of a judgment that is for punitive or exemplary
9 damages if the governing body of that public entity,
10 acting in its sole discretion *except in cases involving an*
11 *entity of the state government*, finds all of the following:

12 (1) The judgment is based on an act or omission of an
13 employee or former employee acting within the course
14 and scope of his or her employment as an employee of the
15 public entity.

16 (2) At the time of the act giving rise to the liability, the
17 employee or former employee acted, or failed to act, in
18 good faith, without actual malice and in the apparent best
19 interests of the public entity.

20 (3) Payment of the claim or judgment would be in the
21 best interests of the public entity.

22 As used in this subdivision with respect to an entity of
23 ~~state government, “governing body” means the~~
24 ~~appointing power of the employee or former employee,~~
25 ~~subject to the requirements of subdivision (b) of Section~~
26 ~~965.6.—~~ *state government, “a decision of the governing*
27 *body” means the approval of the Legislature for payment*
28 *of that part of a judgment that is for punitive damages or*
29 *exemplary damages, upon recommendation of the*
30 *appointing power of the employee or former employee,*
31 *based upon the finding by the Legislature and the*
32 *appointing authority of the existence of the three*
33 *conditions for payment of a punitive or exemplary*
34 *damages claim. The provisions of subdivision (a) of*
35 *Section 965.6 shall apply to the payment of any claim*
36 *pursuant to this subdivision.*

37 The discovery of the assets of a public entity and the
38 introduction of evidence of the assets of a public entity
39 shall not be permitted in an action in which it is alleged



1 that a public employee is liable for punitive or exemplary
2 damages.

3 The possibility that a public entity may pay that part of
4 a judgment that is for punitive damages shall not be
5 disclosed in any trial in which it is alleged that a public
6 employee is liable for punitive or exemplary damages,
7 and that disclosure shall be grounds for a mistrial.

8 (c) Except as provided in subdivision (d), if the
9 provisions of this section are in conflict with the
10 provisions of a memorandum of understanding reached
11 pursuant to Chapter 10 (commencing with Section 3500)
12 of Division 4 of Title 1, the memorandum of
13 understanding shall be controlling without further
14 legislative action, except that if those provisions of a
15 memorandum of understanding require the expenditure
16 of funds, the provisions shall not become effective unless
17 approved by the Legislature in the annual Budget Act.

18 (d) The subject of payment of punitive damages
19 pursuant to this section or any other provision of law shall
20 not be a subject of meet and confer under the provisions
21 of Chapter 10 (commencing with Section 3500) of
22 Division 4 of Title 1, or pursuant to any other law or
23 authority.

24 (e) Nothing in this section shall affect the provisions of
25 Section 818 prohibiting the award of punitive damages
26 against a public entity. This section shall not be construed
27 as a waiver of a public entity's immunity from liability for
28 punitive damages under Section 1981, 1983, or 1985 of
29 Title 42 of the United States Code.

30 (f) (1) Except as provided in paragraph (2), a public
31 entity shall not pay a judgment, compromise, or
32 settlement arising from a claim or action against an
33 elected official, if the claim or action is based on conduct
34 by the elected official by way of tortiously intervening or
35 attempting to intervene in, or by way of tortiously
36 influencing or attempting to influence the outcome of,
37 any judicial action or proceeding for the benefit of a
38 particular party by contacting the trial judge or any
39 commissioner, court-appointed arbitrator,
40 court-appointed mediator, or court-appointed special



1 referee assigned to the matter, or the court clerk, bailiff,
2 or marshal after an action has been filed, unless he or she
3 was counsel of record acting lawfully within the scope of
4 his or her employment on behalf of that party.
5 Notwithstanding Section 825.6, if a public entity
6 conducted the defense of an elected official against such
7 a claim or action and the elected official is found liable by
8 the trier of fact, the court shall order the elected official
9 to pay to the public entity the cost of that defense.

10 (2) If an elected official is held liable for monetary
11 damages in the action, the plaintiff shall first seek
12 recovery of the judgment against the assets of the elected
13 official. If the elected official's assets are insufficient to
14 satisfy the total judgment, as determined by the court, the
15 public entity may pay the deficiency if the public entity
16 is authorized by law to pay that judgment.

17 (3) To the extent the public entity pays any portion of
18 the judgment or is entitled to reimbursement of defense
19 costs pursuant to paragraph (1), the public entity shall
20 pursue all available creditor's remedies against the
21 elected official, including garnishment, until that party
22 has fully reimbursed the public entity.

23 (4) This subdivision shall not apply to any criminal or
24 civil enforcement action brought in the name of the
25 people of the State of California by an elected district
26 attorney, city attorney, or attorney general.

27 SEC. 2. Section 995.9 is added to the Government
28 Code, to read:

29 995.9. Notwithstanding any other provision of law,
30 upon a request made in writing to a public entity, the
31 public entity may defend or indemnify or defend and
32 indemnify any witness who has testified on behalf of the
33 public entity in any criminal, civil, or administrative
34 action. The decision of the public entity to defend or
35 indemnify or defend and indemnify such a witness shall
36 rest within the sound discretion of the public entity and
37 may be based on any relevant factors, including, but not
38 limited to, whether the provision of defense or indemnity
39 would serve the public interest. The public entity may
40 defend or indemnify or defend and indemnify the witness



1 only if it is determined by the public entity that the action
2 being brought against the witness is based directly upon
3 the conduct which the public entity requested of the
4 witness related to the witness' testimony or provision of
5 evidence. The public entity has the discretion to provide
6 a defense alone apart from indemnity, and the public
7 entity may offer to defend or indemnify or defend and
8 indemnify while reserving all rights to subsequently
9 withdraw these offers upon reasonable notice.

10 *Neither defense nor indemnification shall be provided*
11 *if the testimony giving rise to the action against the*
12 *witness was false in any material respect, or was otherwise*
13 *not given by the witness with a good faith belief in its*
14 *truth; nor shall representation or indemnification under*
15 *this section be offered or promised unless the action has*
16 *been commenced and the witness has requested the*
17 *public entity to act for the witness' benefit under this*
18 *section. The public entity shall not be liable for*
19 *indemnification of a defendant witness for punitive*
20 *damages awarded to the plaintiff in such an action. If the*
21 *plaintiff prevails in a claim for punitive damages in an*
22 *action defended at the expense of the public entity, the*
23 *defendant shall be liable to the public entity for the full*
24 *costs incurred by the public entity in providing*
25 *representation to the defendant witness.*

