

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 25**

FINAL READING

Introduced by Wayne, 13.

Read first time January 05, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Political Subdivisions Tort Claims Act;
- 2 to amend section 13-910, Reissue Revised Statutes of Nebraska; to
- 3 allow tort claims involving child abuse or sexual assault of a child
- 4 under the act; to harmonize provisions; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-910, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 13-910 The Political Subdivisions Tort Claims Act and sections  
4 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

5 (1) Any claim based upon an act or omission of an employee of a  
6 political subdivision, exercising due care, in the execution of a  
7 statute, ordinance, or officially adopted resolution, rule, or  
8 regulation, whether or not such statute, ordinance, resolution, rule, or  
9 regulation is valid;

10 (2) Any claim based upon the exercise or performance of or the  
11 failure to exercise or perform a discretionary function or duty on the  
12 part of the political subdivision or an employee of the political  
13 subdivision, whether or not the discretion is abused;

14 (3) Any claim based upon the failure to make an inspection or making  
15 an inadequate or negligent inspection of any property other than property  
16 owned by or leased to such political subdivision to determine whether the  
17 property complies with or violates any statute, ordinance, rule, or  
18 regulation or contains a hazard to public health or safety unless the  
19 political subdivision had reasonable notice of such hazard or the failure  
20 to inspect or inadequate or negligent inspection constitutes a reckless  
21 disregard for public health or safety;

22 (4) Any claim based upon the issuance, denial, suspension, or  
23 revocation of or failure or refusal to issue, deny, suspend, or revoke  
24 any permit, license, certificate, or order. Nothing in this subdivision  
25 shall be construed to limit a political subdivision's liability for any  
26 claim based upon the negligent execution by an employee of the political  
27 subdivision in the issuance of a certificate of title under the Motor  
28 Vehicle Certificate of Title Act and the State Boat Act except when such  
29 title is issued upon an application filed electronically by an approved  
30 licensed dealer participating in the electronic dealer services system  
31 pursuant to section 60-1507;

1 (5) Any claim arising with respect to the assessment or collection  
2 of any tax or fee or the detention of any goods or merchandise by any law  
3 enforcement officer;

4 (6) Any claim caused by the imposition or establishment of a  
5 quarantine by the state or a political subdivision, whether such  
6 quarantine relates to persons or property;

7 (7) Any claim arising out of the following acts: Assault ~~assault~~,  
8 battery, false arrest, false imprisonment, malicious prosecution, abuse  
9 of process, libel, slander, misrepresentation, deceit, or interference  
10 with contract rights. This ~~, except that this~~ subdivision does not apply  
11 to a claim; ~~under~~

12 (a) Under the Healthy Pregnancies for Incarcerated Women Act; or

13 (b) When the harm caused by child abuse or sexual assault of a child  
14 is a proximate result of the failure of a political subdivision or an  
15 employee of the political subdivision to exercise reasonable care to  
16 either:

17 (i) Control a person over whom it has taken charge; or

18 (ii) Protect a person who is in the political subdivision's care,  
19 custody, or control from harm caused by a non-employee actor;

20 (8) Any claim by an employee of the political subdivision which is  
21 covered by the Nebraska Workers' Compensation Act;

22 (9) Any claim arising out of the malfunction, destruction, or  
23 unauthorized removal of any traffic or road sign, signal, or warning  
24 device unless it is not corrected by the political subdivision  
25 responsible within a reasonable time after actual or constructive notice  
26 of such malfunction, destruction, or removal. Nothing in this subdivision  
27 shall give rise to liability arising from an act or omission of any  
28 political subdivision in placing or removing any traffic or road signs,  
29 signals, or warning devices when such placement or removal is the result  
30 of a discretionary act of the political subdivision;

31 (10) Any claim arising out of snow or ice conditions or other

1 temporary conditions caused by nature on any highway as defined in  
2 section 60-624, bridge, public thoroughfare, or other public place due to  
3 weather conditions. Nothing in this subdivision shall be construed to  
4 limit a political subdivision's liability for any claim arising out of  
5 the operation of a motor vehicle by an employee of the political  
6 subdivision while acting within the course and scope of his or her  
7 employment by the political subdivision;

8 (11) Any claim arising out of the plan or design for the  
9 construction of or an improvement to any highway as defined in such  
10 section or bridge, either in original construction or any improvement  
11 thereto, if the plan or design is approved in advance of the construction  
12 or improvement by the governing body of the political subdivision or some  
13 other body or employee exercising discretionary authority to give such  
14 approval;

15 (12) Any claim arising out of the alleged insufficiency or want of  
16 repair of any highway as defined in such section, bridge, or other public  
17 thoroughfare. Insufficiency or want of repair shall be construed to refer  
18 to the general or overall condition and shall not refer to a spot or  
19 localized defect. A political subdivision shall be deemed to waive its  
20 immunity for a claim due to a spot or localized defect only if (a) the  
21 political subdivision has had actual or constructive notice of the defect  
22 within a reasonable time to allow repair prior to the incident giving  
23 rise to the claim or (b) the claim arose during the time specified in a  
24 notice provided by the political subdivision pursuant to subsection (3)  
25 of section 39-1359 and the state or political subdivision had actual or  
26 constructive notice; or

27 (13)(a) Any claim relating to recreational activities for which no  
28 fee is charged (i) resulting from the inherent risk of the recreational  
29 activity, (ii) arising out of a spot or localized defect of the premises  
30 unless the spot or localized defect is not corrected by the political  
31 subdivision leasing, owning, or in control of the premises within a

1 reasonable time after actual or constructive notice of the spot or  
2 localized defect, or (iii) arising out of the design of a skatepark or  
3 bicycle motocross park constructed for purposes of skateboarding, inline  
4 skating, bicycling, or scootering that was constructed or reconstructed,  
5 reasonably and in good faith, in accordance with generally recognized  
6 engineering or safety standards or design theories in existence at the  
7 time of the construction or reconstruction. For purposes of this  
8 subdivision, a political subdivision shall be charged with constructive  
9 notice only when the failure to discover the spot or localized defect of  
10 the premises is the result of gross negligence.

11 (b) For purposes of this subdivision:

12 (i) Recreational activities include, but are not limited to, whether  
13 as a participant or spectator: Hunting, fishing, swimming, boating,  
14 camping, picnicking, hiking, walking, running, horseback riding, use of  
15 trails, nature study, waterskiing, winter sports, use of playground  
16 equipment, biking, roller blading, skateboarding, golfing, athletic  
17 contests; visiting, viewing, or enjoying entertainment events, festivals,  
18 or historical, archaeological, scenic, or scientific sites; and similar  
19 leisure activities;

20 (ii) Inherent risk of recreational activities means those risks that  
21 are characteristic of, intrinsic to, or an integral part of the activity;

22 (iii) Gross negligence means the absence of even slight care in the  
23 performance of a duty involving an unreasonable risk of harm; and

24 (iv) Fee means a fee to participate in or be a spectator at a  
25 recreational activity. A fee shall include payment by the claimant to any  
26 person or organization other than the political subdivision only to the  
27 extent the political subdivision retains control over the premises or the  
28 activity. A fee shall not include payment of a fee or charge for parking  
29 or vehicle entry.

30 (c) This subdivision, and not subdivision (3) of this section, shall  
31 apply to any claim arising from the inspection or failure to make an

1 inspection or negligent inspection of premises owned or leased by the  
2 political subdivision and used for recreational activities.

3       Sec. 2.    Original section 13-910, Reissue Revised Statutes of  
4 Nebraska, is repealed.