

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 564

FINAL READING

Introduced by Friend, 10; Adams, 24; Fulton, 29; Gay, 14; Pankonin, 2; Mines, 18; Dubas, 34; Erdman, 47; Louden, 49; Pirsch, 4; Lathrop, 12

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tort claims; to amend sections 13-901  
2 and 81-8,235, Reissue Revised Statutes of Nebraska, and  
3 sections 13-910 and 81-8,219, Revised Statutes Cumulative  
4 Supplement, 2006; to change the Political Subdivisions  
5 Tort Claims Act and the State Tort Claims Act with  
6 respect to liability for recreational activities; to  
7 define terms; to provide for applicability; to require  
8 the posting of signs as prescribed; to repeal the  
9 original sections; and to declare an emergency.

10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 13-901, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           13-901 Sections 13-901 to 13-926 and section 3 of this  
4 act shall be known and may be cited as the Political Subdivisions  
5 Tort Claims Act.

6           Sec. 2. Section 13-910, Revised Statutes Cumulative  
7 Supplement, 2006, is amended to read:

8           13-910 The Political Subdivisions Tort Claims Act and  
9 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply  
10 to:

11           (1) Any claim based upon an act or omission of an  
12 employee of a political subdivision, exercising due care, in  
13 the execution of a statute, ordinance, or officially adopted  
14 resolution, rule, or regulation, whether or not such statute,  
15 ordinance, resolution, rule, or regulation is valid;

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

20           (3) Any claim based upon the failure to make an  
21 inspection or making an inadequate or negligent inspection of  
22 any property other than property owned by or leased to such  
23 political subdivision to determine whether the property complies  
24 with or violates any statute, ordinance, rule, or regulation or  
25 contains a hazard to public health or safety unless the political

1 subdivision had reasonable notice of such hazard or the failure  
2 to inspect or inadequate or negligent inspection constitutes a  
3 reckless disregard for public health or safety;

4 (4) Any claim based upon the issuance, denial,  
5 suspension, or revocation of or failure or refusal to issue,  
6 deny, suspend, or revoke any permit, license, certificate, or  
7 order. Nothing in this subdivision shall be construed to limit  
8 a political subdivision's liability for any claim based upon the  
9 negligent execution by an employee of the political subdivision  
10 in the issuance of a certificate of title under the Motor Vehicle  
11 Certificate of Title Act and the State Boat Act;

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

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

18 (7) Any claim arising out of assault, battery, false  
19 arrest, false imprisonment, malicious prosecution, abuse of  
20 process, libel, slander, misrepresentation, deceit, or interference  
21 with contract rights;

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

24 (9) Any claim arising out of the malfunction,  
25 destruction, or unauthorized removal of any traffic or road sign,

1 signal, or warning device unless it is not corrected by the  
2 political subdivision responsible within a reasonable time after  
3 actual or constructive notice of such malfunction, destruction, or  
4 removal. Nothing in this subdivision shall give rise to liability  
5 arising from an act or omission of any political subdivision  
6 in placing or removing any traffic or road signs, signals, or  
7 warning devices when such placement or removal is the result of a  
8 discretionary act of the political subdivision;

9 (10) Any claim arising out of snow or ice conditions  
10 or other temporary conditions caused by nature on any highway as  
11 defined in section 60-624, bridge, public thoroughfare, or other  
12 public place due to weather conditions. Nothing in this subdivision  
13 shall be construed to limit a political subdivision's liability  
14 for any claim arising out of the operation of a motor vehicle  
15 by an employee of the political subdivision while acting within  
16 the course and scope of his or her employment by the political  
17 subdivision;

18 (11) Any claim arising out of the plan or design for  
19 the construction of or an improvement to any highway as defined  
20 in such section or bridge, either in original construction or any  
21 improvement thereto, if the plan or design is approved in advance  
22 of the construction or improvement by the governing body of the  
23 political subdivision or some other body or employee exercising  
24 discretionary authority to give such approval; ~~ex~~

25 (12) Any claim arising out of the alleged insufficiency

1 or want of repair of any highway as defined in such section,  
2 bridge, or other public thoroughfare. Insufficiency or want of  
3 repair shall be construed to refer to the general or overall  
4 condition and shall not refer to a spot or localized defect. A  
5 political subdivision shall be deemed to waive its immunity for  
6 a claim due to a spot or localized defect only if the political  
7 subdivision has had actual or constructive notice of the defect  
8 within a reasonable time to allow repair prior to the incident  
9 giving rise to the claim; or -

10 (13) (a) Any claim relating to recreational activities for  
11 which no fee is charged (i) resulting from the inherent risk of  
12 the recreational activity, (ii) arising out of a spot or localized  
13 defect of the premises unless the spot or localized defect is  
14 not corrected by the political subdivision leasing, owning, or  
15 in control of the premises within a reasonable time after actual  
16 or constructive notice of the spot or localized defect, or (iii)  
17 arising out of the design of a skatepark or bicycle motocross  
18 park constructed for purposes of skateboarding, inline skating,  
19 bicycling, or scootering that was constructed or reconstructed,  
20 reasonably and in good faith, in accordance with generally  
21 recognized engineering or safety standards or design theories  
22 in existence at the time of the construction or reconstruction.  
23 For purposes of this subdivision, a political subdivision shall be  
24 charged with constructive notice only when the failure to discover  
25 the spot or localized defect of the premises is the result of gross

1 negligence.

2 (b) For purposes of this subdivision:

3 (i) Recreational activities include, but are not limited  
4 to, whether as a participant or spectator: Hunting, fishing,  
5 swimming, boating, camping, picnicking, hiking, walking, running,  
6 horseback riding, use of trails, nature study, waterskiing, winter  
7 sports, use of playground equipment, biking, roller blading,  
8 skateboarding, golfing, athletic contests; visiting, viewing,  
9 or enjoying entertainment events, festivals, or historical,  
10 archaeological, scenic, or scientific sites; and similar leisure  
11 activities;

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

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

18 (iv) Fee means a fee to participate in or be a spectator  
19 at a recreational activity. A fee shall include payment by the  
20 claimant to any person or organization other than the political  
21 subdivision only to the extent the political subdivision retains  
22 control over the premises or the activity. A fee shall not include  
23 payment of a fee or charge for parking or vehicle entry.

24 (c) This subdivision, and not subdivision (3) of this  
25 section, shall apply to any claim arising from the inspection

1 or failure to make an inspection or negligent inspection of  
2 premises owned or leased by the political subdivision and used for  
3 recreational activities.

4           Sec. 3. (1) A political subdivision shall post and  
5 maintain a sign at each skatepark and bicycle motocross park  
6 sponsored by the political subdivision containing the following  
7 warning notice: Under Nebraska law, a political subdivision is  
8 not liable for an injury to or the death of a participant in  
9 recreational activities resulting from the inherent risks of the  
10 recreational activities pursuant to section 13-910.

11           (2) The absence of a sign shall not give rise to  
12 liability on the part of the political subdivision.

13           Sec. 4. Section 81-8,219, Revised Statutes Cumulative  
14 Supplement, 2006, is amended to read:

15           81-8,219 The State Tort Claims Act shall not apply to:

16           (1) Any claim based upon an act or omission of an  
17 employee of the state, exercising due care, in the execution of a  
18 statute, rule, or regulation, whether or not such statute, rule, or  
19 regulation is valid, or based upon the exercise or performance or  
20 the failure to exercise or perform a discretionary function or duty  
21 on the part of a state agency or an employee of the state, whether  
22 or not the discretion is abused;

23           (2) Any claim arising with respect to the assessment or  
24 collection of any tax or fee, or the detention of any goods or  
25 merchandise by any law enforcement officer;

1           (3) Any claim for damages caused by the imposition or  
2 establishment of a quarantine by the state whether such quarantine  
3 relates to persons or property;

4           (4) Any claim arising out of assault, battery, false  
5 imprisonment, false arrest, malicious prosecution, abuse of  
6 process, libel, slander, misrepresentation, deceit, or interference  
7 with contract rights;

8           (5) Any claim by an employee of the state which is  
9 covered by the Nebraska Workers' Compensation Act;

10          (6) Any claim based on activities of the Nebraska  
11 National Guard when such claim is cognizable under the Federal  
12 Tort Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims  
13 Act of the United States, 32 U.S.C. 715, or when such claim accrues  
14 as a result of active federal service or state service at the call  
15 of the Governor for quelling riots and civil disturbances;

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

25          (8) Any claim based upon the issuance, denial,

1 suspension, or revocation of or failure or refusal to issue, deny,  
2 suspend, or revoke any permit, license, certificate, or order.  
3 Such claim shall also not be filed against a state employee  
4 acting within the scope of his or her office. Nothing in this  
5 subdivision shall be construed to limit the state's liability for  
6 any claim based upon the negligent execution by a state employee  
7 in the issuance of a certificate of title under the Motor Vehicle  
8 Certificate of Title Act and the State Boat Act;

9 (9) Any claim arising out of the malfunction,  
10 destruction, or unauthorized removal of any traffic or road sign,  
11 signal, or warning device unless it is not corrected by the  
12 governmental entity responsible within a reasonable time after  
13 actual or constructive notice of such malfunction, destruction, or  
14 removal. Nothing in this subdivision shall give rise to liability  
15 arising from an act or omission of any governmental entity  
16 in placing or removing any traffic or road signs, signals, or  
17 warning devices when such placement or removal is the result of a  
18 discretionary act of the governmental entity;

19 (10) Any claim arising out of snow or ice conditions  
20 or other temporary conditions caused by nature on any highway as  
21 defined in section 60-624, bridge, public thoroughfare, or other  
22 state-owned public place due to weather conditions. Nothing in this  
23 subdivision shall be construed to limit the state's liability for  
24 any claim arising out of the operation of a motor vehicle by an  
25 employee of the state while acting within the course and scope of

1 his or her employment by the state;

2 (11) Any claim arising out of the plan or design for  
3 the construction of or an improvement to any highway as defined  
4 in such section or bridge, either in original construction or  
5 any improvement thereto, if the plan or design is approved in  
6 advance of the construction or improvement by the governing body of  
7 the governmental entity or some other body or employee exercising  
8 discretionary authority to give such approval; ~~or~~

9 (12) Any claim arising out of the alleged insufficiency  
10 or want of repair of any highway as defined in such section,  
11 bridge, or other public thoroughfare. Insufficiency or want of  
12 repair shall be construed to refer to the general or overall  
13 condition and shall not refer to a spot or localized defect. The  
14 state shall be deemed to waive its immunity for a claim due to  
15 a spot or localized defect only if the state has had actual or  
16 constructive notice of the defect within a reasonable time to allow  
17 repair prior to the incident giving rise to the claim; or.

18 (13)(a) Any claim relating to recreational activities on  
19 property leased, owned, or controlled by the state for which no fee  
20 is charged (i) resulting from the inherent risk of the recreational  
21 activity, (ii) arising out of a spot or localized defect of the  
22 premises unless the spot or localized defect is not corrected  
23 within a reasonable time after actual or constructive notice of  
24 the spot or localized defect, or (iii) arising out of the design  
25 of a skatepark or bicycle motocross park constructed for purposes

1 of skateboarding, inline skating, bicycling, or scootering that  
2 was constructed or reconstructed, reasonably and in good faith,  
3 in accordance with generally recognized engineering or safety  
4 standards or design theories in existence at the time of the  
5 construction or reconstruction. For purposes of this subdivision,  
6 the state shall be charged with constructive notice only when the  
7 failure to discover the spot or localized defect of the premises is  
8 the result of gross negligence.

9 (b) For purposes of this subdivision:

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

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

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

25 (iv) Fee means a fee to participate in or be a spectator

1 at a recreational activity. A fee shall include payment by the  
2 claimant to any person or organization other than the state only  
3 to the extent the state retains control over the premises or the  
4 activity. A fee shall not include payment of a fee or charge for  
5 parking or vehicle entry.

6 (c) This subdivision, and not subdivision (7) of this  
7 section, shall apply to any claim arising from the inspection or  
8 failure to make an inspection or negligent inspection of premises  
9 owned or leased by the state and used for recreational activities.

10 Sec. 5. (1) The state shall post and maintain a sign at  
11 each skatepark and bicycle motocross park sponsored by the state  
12 containing the following warning notice: Under Nebraska law, the  
13 state is not liable for an injury to or the death of a participant  
14 in recreational activities resulting from the inherent risks of the  
15 recreational activities pursuant to section 81-8,219.

16 (2) The absence of a sign shall not give rise to  
17 liability on the part of the state.

18 Sec. 6. Section 81-8,235, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 81-8,235 Sections 81-8,209 to 81-8,235 and section 5 of  
21 this act shall be known and may be cited as the State Tort Claims  
22 Act.

23 Sec. 7. Original sections 13-901 and 81-8,235, Reissue  
24 Revised Statutes of Nebraska, and sections 13-910 and 81-8,219,  
25 Revised Statutes Cumulative Supplement, 2006, are repealed.

LB 564

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1                   Sec. 8. Since an emergency exists, this act takes effect  
2 when passed and approved according to law.