

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 339

Introduced by Business and Labor Committee: Cornett, 45,
Chairperson; Lathrop, 12; Rogert, 16; Wallman, 30;
White, 8;

Read first time January 11, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to claims against the state; to amend
2 sections 25-213, 81-8,210, 81-8,212, 81-8,213, 81-8,228,
3 81-8,294, 81-8,300, and 81-8,305, Reissue Revised
4 Statutes of Nebraska, and sections 81-8,211 and 81-8,224,
5 Revised Statutes Cumulative Supplement, 2006; to change
6 provisions relating to the Risk Manager, the State Claims
7 Board, and claim procedures; to harmonize provisions; and
8 to repeal the original sections.

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

1 Section 1. Section 25-213, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-213 Except as provided in sections 76-288 to 76-298,
4 if a person entitled to bring any action mentioned in ~~this chapter,~~
5 Chapter 25, the Political Subdivisions Tort Claims Act, the
6 Nebraska Hospital-Medical Liability Act, the State Contract Claims
7 Act, ~~or~~ the State Tort Claims Act, or the State Miscellaneous
8 Claims Act, except for a penalty or forfeiture, for the recovery
9 of the title or possession of lands, tenements, or hereditaments,
10 or for the foreclosure of mortgages thereon, is, at the time
11 the cause of action accrued, within the age of twenty years, a
12 person with a mental disorder, or imprisoned, every such person
13 shall be entitled to bring such action within the respective times
14 limited by this chapter after such disability is removed. For
15 the recovery of the title or possession of lands, tenements, or
16 hereditaments or for the foreclosure of mortgages thereon, every
17 such person shall be entitled to bring such action within twenty
18 years from the accrual thereof but in no case longer than ten years
19 after the termination of such disability. Absence from the state,
20 death, or other disability shall not operate to extend the period
21 within which actions in rem are to be commenced by and against a
22 nonresident or his or her representative.

23 Sec. 2. Section 81-8,210, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-8,210 For purposes of the State Tort Claims Act,

1 unless the context otherwise requires:

2 (1) State agency ~~shall include~~ includes all departments,
3 agencies, boards, bureaus, and commissions of the State of Nebraska
4 and corporations the primary function of which is to act as,
5 and while acting as, instrumentalities or agencies of the State
6 of Nebraska but ~~shall~~ does not include corporations that are
7 essentially private corporations or entities created pursuant to
8 the Interlocal Cooperation Act or the Joint Public Agency Act.
9 State agency shall not be construed to include any contractor with
10 the State of Nebraska;

11 (2) State Claims Board ~~shall mean~~ means the board created
12 by section 81-8,220;

13 (3) Employee of the state ~~shall mean~~ means any one
14 or more officers or employees of the state or any state agency
15 and ~~shall include~~ includes duly appointed members of boards or
16 commissions when they are acting in their official capacity. State
17 employee shall not be construed to include any employee of an
18 entity created pursuant to the Interlocal Cooperation Act or the
19 Joint Public Agency Act or any contractor with the State of
20 Nebraska;

21 (4) Tort claim ~~shall mean~~ means any claim against the
22 State of Nebraska for money only on account of damage to or loss of
23 property or on account of personal injury or death caused by the
24 negligent or wrongful act or omission of any employee of the state,
25 while acting within the scope of his or her office or employment,

1 under circumstances in which the state, if a private person, would
2 be liable to the claimant for such damage, loss, injury, or death
3 but ~~shall~~ does not include any claim accruing before January 1,
4 1970, and any claim against an employee of the state for money
5 only on account of damage to or loss of property or on account of
6 personal injury or death caused by the negligent or wrongful act or
7 omission of the employee while acting within the scope of his or
8 her employment occurring on or after August 25, 1989; ~~and~~

9 (5) Award ~~shall mean~~ means any amount determined by the
10 State Claims Board to be payable to a claimant under section
11 81-8,211 or the amount of any compromise or settlement under
12 section 81-8,218; and -

13 (6) Risk Manager means the Risk Manager appointed under
14 section 81-8,239.01.

15 Sec. 3. Section 81-8,211, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 81-8,211 Authority is hereby conferred upon the Risk
18 Manager and the State Claims Board, acting on behalf of the State
19 of Nebraska, to consider, ascertain, adjust, compromise, settle,
20 determine, and allow any tort claim. Any claimant dissatisfied
21 with a decision of the Risk Manager may make application for
22 review of the decision by the State Claims Board by filing an
23 application for review with the Risk Manager within sixty days
24 after receipt of notice of the Risk Manager's decision. If any
25 tort claim is compromised, settled, or allowed in an amount of

1 more than five thousand dollars the approval of the State Claims
2 Board is required. If any tort claim is compromised, settled, or
3 allowed in an amount of more than ~~five~~ ten thousand dollars, the
4 unanimous approval of all members of the State Claims Board shall
5 be required. If any tort claim is compromised, settled, or allowed
6 in an amount of more than twenty-five thousand dollars, the claim
7 shall also be submitted for approval by the district court for
8 Lancaster County. When approval of the district court is required,
9 the Attorney General shall make application for such approval and
10 shall file with the application a complete record of the action
11 of the State Claims Board on such claim. The claimant may join
12 in such application, and if the claimant does so, the court may
13 proceed to act on the application without further notice to either
14 party. If the claimant does not join in the application, the court
15 shall require actual notice to all parties before acting on the
16 application. The court may deny the application for any legal and
17 sufficient reason or may direct the State Claims Board to conduct
18 further hearings on any material issues. The fees of the clerk
19 of the district court for filing, docketing, and indexing such
20 application shall be five dollars.

21 Sec. 4. Section 81-8,212, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 81-8,212 All tort claims shall be filed with the Risk
24 Manager in the manner prescribed by the State Claims Board. The
25 Risk Manager shall immediately advise the Attorney General of the

1 filing of any claim. It shall be the duty of the Attorney General
2 to cause a complete investigation to be made of all such claims and
3 serve as a legal advisor to the Risk Manager and the State Claims
4 Board on all such claims. In any suit brought under the State Tort
5 Claims Act, service of process shall be made in the manner provided
6 for service of a summons in section 25-510.02.

7 Sec. 5. Section 81-8,213, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-8,213 No suit shall be permitted under the State Tort
10 Claims Act unless the Risk Manager or the State Claims Board has
11 made final disposition of the claim, except that if the ~~board~~ Risk
12 Manager or the State Claims Board does not make final disposition
13 of a claim within six months after the claim is ~~made in writing~~
14 ~~to the board,~~ filed with the Risk Manager as provided in section
15 81-8,212, the claimant may, by notice in writing, withdraw the
16 claim from consideration of ~~the board~~ the Risk Manager or the State
17 Claims Board and begin suit under such act.

18 Sec. 6. Section 81-8,224, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 81-8,224 (1) Any award to a claimant and any judgment
21 in favor of a claimant under the State Tort Claims Act shall
22 be certified by the Risk Manager or the State Claims Board to
23 the Director of Administrative Services who shall promptly issue
24 a warrant for payment of such award or judgment out of the Tort
25 Claims Fund or State Insurance Fund, as appropriate, if sufficient

1 money is available in the fund, except that no portion in excess
2 of fifty thousand dollars of any award or judgment shall be paid
3 until such award or judgment has been reviewed by the Legislature
4 and specific appropriation made therefor. All awards and judgments
5 which arise out of the same facts and circumstances shall be
6 aggregated for the purpose of determining whether such awards
7 and judgments shall be reviewed by the Legislature and specific
8 appropriation made therefor.

9 (2) Any award, judgment, or associated costs on a
10 claim which is covered by liability insurance or by group
11 self-insurance, the amount of which falls within the applicable
12 policy's self-insured retention, shall be paid from the State
13 Insurance Fund.

14 (3) Delivery of any warrant in satisfaction of an award
15 or judgment shall be made only upon receipt of a written release by
16 the claimant in a form approved by the State Claims Board.

17 Sec. 7. Section 81-8,228, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-8,228 The court rendering a judgment for the claimant
20 under the State Tort Claims Act, the Risk Manager or the State
21 Claims Board making an award under section 81-8,211, or the
22 Attorney General settling a claim under section 81-8,218 shall
23 determine and allow reasonable attorney's fees and expenses, to be
24 paid out of but not in addition to the amount of judgment or award
25 recovered, to the attorneys representing the claimant.

1 Sec. 8. Section 81-8,294, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,294 Sections 81-8,294 to 81-8,301 and section 11 of
4 this act shall be known and may be cited as the State Miscellaneous
5 Claims Act.

6 Sec. 9. Section 81-8,300, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-8,300 After investigation, the Risk Manager or the
9 State Claims Board shall either approve, approve with conditions
10 or limitations, or disapprove of each claim or request and append
11 to the claim or request a concise statement of the facts brought
12 out in such investigation upon which its approval or disapproval
13 is based. If any claim is approved in an amount of more than
14 five thousand dollars, the approval of the State Claims Board
15 is required. Such claim or request, together with the original
16 papers supporting it and the appended statement, shall be filed
17 with the Risk Manager in the manner prescribed by the State Claims
18 Board. The Risk Manager shall promptly notify each claimant of
19 the decision by the Risk Manager or the State Claims Board ~~on his~~
20 ~~or her claim~~ by regular mail. The notification shall include (1)
21 the decision of the Risk Manager or the State Claims Board, (2)
22 a statement that a claimant dissatisfied with the decision of the
23 Risk Manager may have his or her claim reviewed by the State Claims
24 Board or a statement that a dissatisfied claimant dissatisfied with
25 the decision of the State Claims Board may have his or her claim

1 reviewed by the Legislature upon application, (3) the procedure for
2 making an application for review, and (4) the time limit for making
3 such application.

4 If the claimant is dissatisfied with the decision of
5 the Risk Manager, he or she may file an application for review
6 by the State Claims Board. If the claimant is dissatisfied with
7 the decision⁷ of the State Claims Board, he or she may file
8 an application for review by the Legislature. The application
9 for review shall be filed with the Risk Manager in the manner
10 prescribed by the State Claims Board. The application for review
11 shall be filed within sixty days after the date of the decision by
12 the State Claims Board on the claim, which is being reviewed.

13 Each claim which has been approved or for which an
14 application for review with the Legislature has been filed and each
15 request referred to in section 81-8,297 shall be delivered by the
16 Risk Manager to the chairperson of the Business and Labor Committee
17 of the Legislature at the next regular session of the Legislature
18 convening after the date of the decision of the board. The Risk
19 Manager may direct the payment by the state agency involved of any
20 claim not in excess of ~~two~~ five thousand dollars if such payment
21 is agreed to by the head of the agency involved. The State Claims
22 Board may direct payment by the state agency involved of any claim
23 not in excess of ~~ten~~ fifty thousand dollars if such payment is
24 agreed to by the head of the agency involved and the agency has
25 sufficient funds to pay the claim. If claims approved by the Risk

1 Manager or State Claims Board arise out of the same facts and
2 circumstances, they shall be aggregated. If the Risk Manager or
3 State Claims Board does not direct the payment of a claim as set
4 forth in this section or the claim exceeds the dollar limitations
5 set forth in this section, the claim shall be reviewed by the
6 Legislature and an appropriation made therefor if appropriate. The
7 Risk Manager shall report all claims and judgments paid under the
8 State Miscellaneous Claims Act to the Clerk of the Legislature
9 and the Chairperson of the Business and Labor Committee of the
10 Legislature. The report shall include the name of the claimant, a
11 statement of the amount claimed and paid, and a brief description
12 of the claim including the agency and program or activity under
13 which the claim arose. Any member of the Legislature may receive a
14 copy of the report by making a request to the Risk Manager.

15 Sec. 10. Section 81-8,305, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 81-8,305 (1) If agreed to by the claimant and the
18 contracting agency, the State Claims Board shall have the authority
19 to consider, ascertain, adjust, compromise, settle, determine,
20 or allow any contract claim. Upon receipt of a contract claim,
21 the Risk Manager shall immediately notify the claimant and the
22 contracting agency of the option of having the dispute submitted to
23 the State Claims Board.

24 (2) If the claimant and the contracting agency agree
25 to submit the dispute to the State Claims Board as provided in

1 subsection (1) of this section, the board shall resolve such
2 dispute in the manner provided under the State Miscellaneous Claims
3 Act. For claims submitted to the board under this subsection, the
4 contracting agency shall provide the board with all documents and
5 information relating to the claim which the contracting agency
6 obtained during its investigation.

7 (3) If either the claimant or the contracting agency
8 notifies the Risk Manager in writing that the claimant or the
9 contracting agency objects in writing to submission of the dispute
10 to the State Claims Board within ninety days ~~of~~ after mailing of
11 the notice required in subsection (1) of this section, the board
12 shall have no further jurisdiction over the claim and the claimant
13 may initiate an action in the district court of Lancaster County.
14 The action in the district court of Lancaster County must be filed
15 with the district court within one year after the date the Risk
16 Manager receives the written notification of objection or the claim
17 shall be forever barred.

18 Sec. 11. Except (1) as provided in section 25-213, (2)
19 for claims described in subdivision (4) of section 81-8,297, and
20 (3) for claims relating to expiration of state warrants, every
21 miscellaneous claim permitted under the State Miscellaneous Claims
22 Act shall be forever barred unless the claim is filed with the Risk
23 Manager within two years after the time the claim accrued.

24 Sec. 12. Original sections 25-213, 81-8,210, 81-8,212,
25 81-8,213, 81-8,228, 81-8,294, 81-8,300, and 81-8,305, Reissue

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- 1 Revised Statutes of Nebraska, and sections 81-8,211 and 81-8,224,
- 2 Revised Statutes Cumulative Supplement, 2006, are repealed.