

AMENDMENTS TO LB 260

Introduced by Lathrop, 12.

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Sections 1 to 9 of this act shall be known
4 and may be cited as the Nebraska Claims for Wrongful Conviction and
5 Imprisonment Act.

6 Sec. 2. The Legislature finds that innocent persons who
7 have been wrongly convicted of crimes and subsequently imprisoned
8 have been uniquely victimized, have distinct problems reentering
9 society, and have difficulty achieving legal redress due to a
10 variety of substantive and technical obstacles in the law. The
11 Legislature also finds that such persons should have an available
12 avenue of redress. In light of the particular and substantial
13 horror of being imprisoned for a crime one did not commit,
14 the Legislature intends by enactment of the Nebraska Claims for
15 Wrongful Conviction and Imprisonment Act that persons who can
16 demonstrate that they were wrongfully convicted shall have a claim
17 against the state as provided in the act.

18 Sec. 3. In order to recover under the Nebraska Claims for
19 Wrongful Conviction and Imprisonment Act, the claimant shall prove
20 each of the following by clear and convincing evidence:

21 (1) That he or she was convicted of one or more felony
22 crimes and subsequently sentenced to a term of imprisonment for
23 such felony crime or crimes and has served all or any part of the

1 sentence;

2 (2) With respect to the crime or crimes under subdivision
3 (1) of this section, that the Board of Pardons has pardoned the
4 claimant, that a court has vacated the conviction of the claimant,
5 or that the conviction was reversed and remanded for a new trial
6 and no subsequent conviction was obtained;

7 (3) That he or she was innocent of the crime or crimes
8 under subdivision (1) of this section; and

9 (4) That he or she did not commit or suborn perjury,
10 fabricate evidence, or otherwise make a false statement to cause
11 or bring about such conviction or the conviction of another, with
12 respect to the crime or crimes under subdivision (1) of this
13 section, except that a guilty plea, a confession, or an admission,
14 coerced by law enforcement and later found to be false, does not
15 constitute bringing about his or her own conviction of such crime
16 or crimes.

17 Sec. 4. (1) A claimant under the Nebraska Claims for
18 Wrongful Conviction and Imprisonment Act shall recover damages
19 found to proximately result from the wrongful conviction and that
20 have been proved based upon a preponderance of the evidence.

21 (2) The following costs shall not offset damages:

22 (a) Costs of imprisonment; and

23 (b) Value of any care or education provided to the
24 claimant while he or she was imprisoned.

25 (3) No damages shall be payable to the claimant for any
26 period of time during which he or she was concurrently imprisoned
27 for any unrelated criminal offense.

1 (4) In no case shall damages awarded under the act exceed
2 five hundred thousand dollars per claimant per occurrence.

3 (5) A claimant's cause of action under the act shall not
4 be assignable and shall not survive the claimant's death.

5 Sec. 5. If the court finds that any property of the
6 claimant was subjected to a lien to recover costs of defense
7 services rendered by the state to defend the claimant in connection
8 with the criminal case that resulted in his or her wrongful
9 conviction, the court shall extinguish the lien.

10 Sec. 6. (1) Any person may petition the district court
11 in which the erroneous felony conviction occurred for an order to
12 expunge all records pertaining to the erroneous felony conviction.
13 The petition shall be accompanied by a certified copy of the
14 judgment or settlement with the state under the Nebraska Claims
15 for Wrongful Conviction and Imprisonment Act. The petitioner shall
16 serve a copy of the petition on the county attorney of the county
17 in which the erroneous felony conviction occurred.

18 (2) If the county attorney files no objection to the
19 petition, the court may grant the petition. If the county attorney
20 files an objection to the petition, the court shall conduct a
21 hearing on the matter.

22 (3) (a) If a court determines that the petition is
23 warranted and orders the expunction of all records pertaining
24 to the petitioner's erroneous felony conviction, the court shall
25 notify the Nebraska State Patrol and any other law enforcement
26 agency to expunge all records pertaining to the petitioner's
27 erroneous felony conviction.

1 (b) If a court determines that the petition is warranted
2 and orders the expunction of all records pertaining to the
3 petitioner's erroneous felony conviction, a law enforcement agency
4 may gain access to such person's expunged records only upon a court
5 order granted for good cause showing that access to the expunged
6 records is required for the performance of official duties of the
7 agency.

8 (4) The Nebraska State Patrol, any other law enforcement
9 agency involved, and the court shall provide written notice of the
10 expunction by certified mail to the petitioner.

11 (5) A person who obtains a court order to expunge all
12 records pertaining to such person's erroneous felony conviction may
13 lawfully answer and swear under oath that an arrest, prosecution,
14 or conviction pertaining to the erroneous conviction never
15 occurred.

16 (6) Any party may appeal a final order granting or
17 denying the expunction of records pertaining to the erroneous
18 felony conviction.

19 Sec. 7. Nothing contained in the Nebraska Claims for
20 Wrongful Conviction and Imprisonment Act shall preclude the state
21 from providing services to the claimant upon exoneration, and
22 the reasonable value of services provided shall be treated as an
23 advance against any award or judgment under the act.

24 Sec. 8. A claim brought pursuant to the Nebraska Claims
25 for Wrongful Conviction and Imprisonment Act shall be filed under
26 the State Tort Claims Act.

27 Sec. 9. Nothing in the Nebraska Claims for Wrongful

1 Conviction and Imprisonment Act shall limit the claimant from
2 making any other claim available against any other party or based
3 upon any other theory of recovery, except that a claimant who
4 recovers a claim under the act shall not have any other claim
5 against the state based upon any other theory of recovery or law.

6 Sec. 10. Section 81-8,210, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

9 (1) State agency includes all departments, agencies,
10 boards, bureaus, and commissions of the State of Nebraska and
11 corporations the primary function of which is to act as, and
12 while acting as, instrumentalities or agencies of the State of
13 Nebraska but shall not include corporations that are essentially
14 private corporations or entities created pursuant to the Interlocal
15 Cooperation Act or the Joint Public Agency Act. State agency does
16 not include any contractor with the State of Nebraska;

17 (2) State Claims Board means the board created by section
18 81-8,220;

19 (3) Employee of the state means any one or more officers
20 or employees of the state or any state agency and shall include
21 duly appointed members of boards or commissions when they are
22 acting in their official capacity. State employee does not include
23 any employee of an entity created pursuant to the Interlocal
24 Cooperation Act or the Joint Public Agency Act or any contractor
25 with the State of Nebraska;

26 (4) Tort claim means any claim against the State of
27 Nebraska for money only on account of damage to or loss of property

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

13 (5) Award means any amount determined by the Risk Manager
14 or State Claims Board to be payable to a claimant under section
15 81-8,211 or the amount of any compromise or settlement under
16 section 81-8,218; and

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

19 Sec. 11. Section 81-8,227, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 81-8,227 (1) Except as provided in subsection (2) of this
22 section, every ~~Every~~ tort claim permitted under the State Tort
23 Claims Act shall be forever barred unless within two years after
24 such claim accrued the claim is made in writing to the Risk Manager
25 in the manner provided by such act. The time to begin suit under
26 such act shall be extended for a period of six months from the date
27 of mailing of notice to the claimant by the Risk Manager or State

1 Claims Board as to the final disposition of the claim or from the
2 date of withdrawal of the claim under section 81-8,213 if the time
3 to begin suit would otherwise expire before the end of such period.

4 (2) The date of a qualifying pardon from the Board of
5 Pardons, a final order by a court vacating a conviction, or a
6 conviction that was reversed and remanded for a new trial and
7 no subsequent conviction was obtained, whichever is later, shall
8 be the date the claimant's claim shall accrue under the Nebraska
9 Claims for Wrongful Conviction and Imprisonment Act for purposes
10 of complying with the notice and filing requirements of the State
11 Tort Claims Act. The Nebraska Claims for Wrongful Conviction and
12 Imprisonment Act applies to a claimant who would have had a claim
13 if the act had been in effect before the effective date of this
14 act or who has a claim on or after such date. If a claimant had
15 a qualifying pardon from the Board of Pardons, a final order by a
16 court vacating a conviction, or a conviction that was reversed and
17 remanded for a new trial and no subsequent conviction was obtained,
18 before the effective date of this act, the claimant's claim shall
19 accrue under the Nebraska Claims for Wrongful Conviction and
20 Imprisonment Act on the effective date of this act for purposes of
21 complying with the notice and filing requirements of the State Tort
22 Claims Act.

23 ~~(2)~~ (3) If a claim is made or filed under any other law
24 of this state and a determination is made by a state agency or
25 court that the State Tort Claims Act provides the exclusive remedy
26 for the claim, the time to make a claim and begin suit under such
27 act shall be extended for a period of six months from the date of

1 the court order making such determination or the date of mailing
2 of notice to the claimant of such determination by a state agency
3 if the time to make the claim and to begin suit under such act
4 would otherwise expire before the end of such period. The time to
5 begin a suit under such act may be further extended as provided in
6 subsection (1) of this section.

7 ~~(3)~~ (4) If a claim is brought under the Nebraska
8 Hospital-Medical Liability Act, the filing of a request for review
9 under section 44-2840 shall extend the time to begin suit under
10 the State Tort Claims Act an additional ninety days following the
11 issuance of the opinion by the medical review panel if the time to
12 begin suit under the State Tort Claims Act would otherwise expire
13 before the end of such ninety-day period.

14 ~~(4)~~ (5) This section and section 25-213 shall constitute
15 the only statutes of limitations applicable to the State Tort
16 Claims Act.

17 Sec. 12. Original sections 81-8,210 and 81-8,227, Reissue
18 Revised Statutes of Nebraska, are repealed.

19 2. On page 1, strike beginning with "civil" in line
20 1 through line 2 and insert "claims against the state; to
21 amend sections 81-8,210 and 81-8,227, Reissue Revised Statutes
22 of Nebraska; to adopt the Nebraska Claims for Wrongful Conviction
23 and Imprisonment Act; to change provisions relating to tort claims
24 under the State Tort Claims Act; and to repeal the original
25 sections."