

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 167

Introduced by Geist, 25.

Read first time January 08, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to fundamental rights; to amend sections
2 13-901 and 81-8,235, Reissue Revised Statutes of Nebraska; to
3 protect religious services as prescribed; to define terms; to
4 authorize tort claims under the Political Subdivisions Tort Claims
5 Act and the State Tort Claims Act; to harmonize provisions; to
6 provide severability; and to repeal the original sections.

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

1 Section 1. For purposes of sections 1 to 6 of this act:

2 (1) Government means:

3 (a) The state or a political subdivision of this state;

4 (b) Any agency of this state or of a political subdivision of this
5 state, including a department, bureau, board, commission, council, court,
6 or public institution of higher education;

7 (c) Any person acting under color of state law; and

8 (d) Any private person suing under or attempting to enforce a law,
9 rule, or regulation adopted by this state or a political subdivision of
10 this state;

11 (2) Religious organization means:

12 (a) A house of worship, including, but not limited to, a church,
13 synagogue, shrine, mosque, or temple;

14 (b) A religious group, corporation, association, educational
15 institution, ministry, order, society, or similar entity, regardless of
16 whether it is integrated or affiliated with a church or other house of
17 worship; or

18 (c) An officer, owner, employee, manager, religious leader, clergy,
19 or minister of a religious organization;

20 (3) Religious services means a meeting, gathering, or assembly of
21 two or more persons organized by a religious organization for the purpose
22 of worship, teaching, training, providing educational services,
23 conducting religious rituals, or other activities that are deemed
24 necessary by the religious organization for the exercise of religion; and

25 (4) State of emergency means a public health crisis, natural
26 disaster, or other event that triggers the use of emergency powers by the
27 government as proclaimed by the Governor pursuant to section 81-829.40.

28 Sec. 2. (1) The government shall permit a religious organization to
29 continue operating and engage in religious services during a state of
30 emergency, and no public official shall prohibit religious organizations
31 from operating in this state or in a geographic area of this state during

1 a state of emergency as proclaimed by the Governor pursuant to section
2 81-829.40.

3 (2) Nothing in sections 1 to 6 of this act shall prohibit the
4 government from requiring religious organizations to comply with neutral
5 health, safety, or occupancy requirements issued by the state or federal
6 government that are applicable to all organizations and businesses.
7 Government shall not enforce any health, safety, or occupancy requirement
8 that imposes a substantial burden on a religious service unless the
9 government demonstrates that applying the burden to the religious service
10 in this particular instance is essential to further a compelling state
11 interest and is the least restrictive means of furthering that compelling
12 state interest.

13 Sec. 3. A religious organization may assert a violation of sections
14 1 to 6 of this act as a claim against the government or as a defense in
15 any judicial or administrative proceeding without regard to whether the
16 proceeding is brought by or in the name of the government, any private
17 person, or any other party.

18 Sec. 4. Any religious organization that successfully asserts a
19 claim or defense under sections 1 to 6 of this act may recover:

20 (1) Declaratory relief;

21 (2) Injunctive relief to prevent or remedy a violation of sections 1
22 to 6 of this act or the effects of such a violation;

23 (3) Compensatory damages for pecuniary and nonpecuniary losses;

24 (4) Reasonable attorney's fees and costs; and

25 (5) Any other appropriate relief, except only declaratory relief and
26 injunctive relief shall be available against a private person not acting
27 under color of state law upon a successful assertion of a defense under
28 sections 1 to 6 of this act.

29 Sec. 5. Sovereign, governmental, and qualified immunities to suit
30 and from liability are waived and abolished under the Political
31 Subdivisions Tort Claims Act and the State Tort Claims Act to the extent

1 of liability created by sections 1 to 6 of this act, and a religious
2 organization may sue the government, except state courts, for damages as
3 allowed by the Political Subdivisions Tort Claims Act and the State Tort
4 Claims Act.

5 Sec. 6. (1) Sections 1 to 6 of this act shall be construed in favor
6 of a broad protection of the free exercise of religion.

7 (2) The protection of the free exercise of religion afforded by
8 sections 1 to 6 of this act is in addition to the protection provided
9 under federal law, state law, the Constitution of the United States, and
10 the Constitution of Nebraska.

11 (3) Nothing in sections 1 to 6 of this act shall be construed to
12 preempt or repeal any state or local law that is equally or more
13 protective of free exercise of religion. Nothing in sections 1 to 6 of
14 this act shall be construed to narrow the meaning or application of any
15 state or local law protecting free exercise of religion.

16 (4) Sections 1 to 6 of this act apply to, and in cases of conflict
17 supersede, each statute of the state that impinges upon the free exercise
18 of religion protected by sections 1 to 6 of this act, unless a
19 conflicting statute is expressly made exempt from the application of
20 sections 1 to 6 of this act. Sections 1 to 6 of this act also apply to,
21 and in cases of conflict supersede, any ordinance, rule, regulation,
22 order, opinion, decision, practice, or other exercise of the state
23 government's authority that impinges upon the free exercise of religion
24 protected by sections 1 to 6 of this act.

25 Sec. 7. Section 13-901, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 13-901 Sections 13-901 to 13-928 and section 8 of this act shall be
28 known and may be cited as the Political Subdivisions Tort Claims Act.

29 Sec. 8. The Political Subdivisions Tort Claims Act shall apply to
30 claims under sections 1 to 6 of this act.

31 Sec. 9. Section 81-8,235, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-8,235 Sections 81-8,209 to 81-8,235 and section 10 of this act
3 shall be known and may be cited as the State Tort Claims Act.

4 Sec. 10. The State Tort Claims Act shall apply to claims under
5 sections 1 to 6 of this act.

6 Sec. 11. If any section in this act or any part of any section is
7 declared invalid or unconstitutional, the declaration shall not affect
8 the validity or constitutionality of the remaining portions.

9 Sec. 12. Original sections 13-901 and 81-8,235, Reissue Revised
10 Statutes of Nebraska, are repealed.