

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 54

Introduced by Lathrop, 12.

Read first time January 07, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to tort claims; to amend sections 13-910 and
- 2 81-8,219, Revised Statutes Cumulative Supplement, 2020; to change
- 3 provisions relating to claims for certain intentional torts; to
- 4 harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-910, Revised Statutes Cumulative Supplement,
2 2020, is 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;

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

14 (b) Arising from such an act that is the direct result of the
15 negligent failure of a political subdivision or an employee of a
16 political subdivision to protect a person to whom the political
17 subdivision or employee owes a duty of care;

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

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

29 (10) Any claim arising out of snow or ice conditions or other
30 temporary conditions caused by nature on any highway as defined in
31 section 60-624, bridge, public thoroughfare, or other public place due to

1 weather conditions. Nothing in this subdivision shall be construed to
2 limit a political subdivision's liability for any claim arising out of
3 the operation of a motor vehicle by an employee of the political
4 subdivision while acting within the course and scope of his or her
5 employment by the political subdivision;

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

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

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

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

9 (b) For purposes of this subdivision:

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

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

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

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

28 (c) This subdivision, and not subdivision (3) of this section, shall
29 apply to any claim arising from the inspection or failure to make an
30 inspection or negligent inspection of premises owned or leased by the
31 political subdivision and used for recreational activities.

1 Sec. 2. Section 81-8,219, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 81-8,219 The State Tort Claims Act shall not apply to:

4 (1) Any claim based upon an act or omission of an employee of the
5 state, exercising due care, in the execution of a statute, rule, or
6 regulation, whether or not such statute, rule, or regulation is valid, or
7 based upon the exercise or performance or the failure to exercise or
8 perform a discretionary function or duty on the part of a state agency or
9 an employee of the state, whether or not the discretion is abused;

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

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

16 (4) Any claim arising out of the following acts: Assault ~~assault~~,
17 battery, false imprisonment, false arrest, malicious prosecution, abuse
18 of process, libel, slander, or interference with contract rights. This ~~7~~
19 ~~except that this~~ subdivision does not apply to a claim:

20 (a) Under ~~under~~ the Healthy Pregnancies for Incarcerated Women Act;
21 or

22 (b) Arising from such an act that is the direct result of the
23 negligent failure of a state agency or an employee of the state to
24 protect a person to whom the agency or employee owes a duty of care;

25 (5) Any claim arising out of misrepresentation or deceit, except
26 that, in cases of adoption or placement, the State Tort Claims Act shall
27 apply to a claim arising out of misrepresentation or deceit by the
28 Department of Health and Human Services in failing to warn, notify, or
29 inform of a ward's mental and behavioral health history, educational
30 history, and medical history, including any history as a victim or
31 perpetrator of sexual abuse;

1 (6) Any claim by an employee of the state which is covered by the
2 Nebraska Workers' Compensation Act;

3 (7) Any claim based on activities of the Nebraska National Guard
4 when such claim is cognizable under the Federal Tort Claims Act, 28
5 U.S.C. 2674, or the federal National Guard Claims Act, 32 U.S.C. 715, or
6 when such claim accrues as a result of active federal service or state
7 service at the call of the Governor for quelling riots and civil
8 disturbances;

9 (8) Any claim based upon the failure to make an inspection or making
10 an inadequate or negligent inspection of any property other than property
11 owned by or leased to the state to determine whether the property
12 complies with or violates any statute, ordinance, rule, or regulation or
13 contains a hazard to public health or safety unless the state had
14 reasonable notice of such hazard or the failure to inspect or inadequate
15 or negligent inspection constitutes a reckless disregard for public
16 health or safety;

17 (9) Any claim based upon the issuance, denial, suspension, or
18 revocation of or failure or refusal to issue, deny, suspend, or revoke
19 any permit, license, certificate, or order. Such claim shall also not be
20 filed against a state employee acting within the scope of his or her
21 office. Nothing in this subdivision shall be construed to limit the
22 state's liability for any claim based upon the negligent execution by a
23 state employee in the issuance of a certificate of title under the Motor
24 Vehicle Certificate of Title Act and the State Boat Act except when such
25 title is issued upon an application filed electronically by an approved
26 licensed dealer participating in the electronic dealer services system
27 pursuant to section 60-1507;

28 (10) Any claim arising out of the malfunction, destruction, or
29 unauthorized removal of any traffic or road sign, signal, or warning
30 device unless it is not corrected by the governmental entity responsible
31 within a reasonable time after actual or constructive notice of such

1 malfunction, destruction, or removal. Nothing in this subdivision shall
2 give rise to liability arising from an act or omission of any
3 governmental entity in placing or removing any traffic or road signs,
4 signals, or warning devices when such placement or removal is the result
5 of a discretionary act of the governmental entity;

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

13 (12) Any claim arising out of the plan or design for the
14 construction of or an improvement to any highway as defined in such
15 section or bridge, either in original construction or any improvement
16 thereto, if the plan or design is approved in advance of the construction
17 or improvement by the governing body of the governmental entity or some
18 other body or employee exercising discretionary authority to give such
19 approval;

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

28 (14)(a) Any claim relating to recreational activities on property
29 leased, owned, or controlled by the state for which no fee is charged (i)
30 resulting from the inherent risk of the recreational activity, (ii)
31 arising out of a spot or localized defect of the premises unless the spot

1 or localized defect is not corrected within a reasonable time after
2 actual or constructive notice of the spot or localized defect, or (iii)
3 arising out of the design of a skatepark or bicycle motocross park
4 constructed for purposes of skateboarding, inline skating, bicycling, or
5 scootering that was constructed or reconstructed, reasonably and in good
6 faith, in accordance with generally recognized engineering or safety
7 standards or design theories in existence at the time of the construction
8 or reconstruction. For purposes of this subdivision, the state shall be
9 charged with constructive notice only when the failure to discover the
10 spot or localized defect of the premises is the result of gross
11 negligence.

12 (b) For purposes of this subdivision:

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

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

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

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

30 (c) This subdivision, and not subdivision (8) 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 state and used for recreational activities; or

3 (15) Any claim arising as a result of a special event during a
4 period of time specified in a notice provided by a political subdivision
5 pursuant to subsection (3) of section 39-1359.

6 Sec. 3. Original sections 13-910 and 81-8,219, Revised Statutes
7 Cumulative Supplement, 2020, are repealed.