

AMENDMENTS TO LB25

(Amendments to Standing Committee amendments, AM440)

Introduced by Wayne, 13.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new
3 sections:

4 Section 1. Section 13-910, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 13-910 The Political Subdivisions Tort Claims Act and sections
7 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

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

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

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

25 (4) Any claim based upon the issuance, denial, suspension, or
26 revocation of or failure or refusal to issue, deny, suspend, or revoke

1 any permit, license, certificate, or order. Nothing in this subdivision
2 shall be construed to limit a political subdivision's liability for any
3 claim based upon the negligent execution by an employee of the political
4 subdivision in the issuance of a certificate of title under the Motor
5 Vehicle Certificate of Title Act and the State Boat Act except when such
6 title is issued upon an application filed electronically by an approved
7 licensed dealer participating in the electronic dealer services system
8 pursuant to section 60-1507;

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

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

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

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

21 (b) When the harm caused by an intentional tort is a proximate
22 result of the failure of a political subdivision or an employee of the
23 political subdivision to exercise reasonable care to either:

24 (i) Control a person over whom it has taken charge; or

25 (ii) Protect a person who is in the political subdivision's care,
26 custody, or control from harm caused by a non-employee actor;

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

29 (9) Any claim arising out of the malfunction, destruction, or
30 unauthorized removal of any traffic or road sign, signal, or warning
31 device unless it is not corrected by the political subdivision

1 responsible within a reasonable time after actual or constructive notice
2 of such malfunction, destruction, or removal. Nothing in this subdivision
3 shall give rise to liability arising from an act or omission of any
4 political subdivision in placing or removing any traffic or road signs,
5 signals, or warning devices when such placement or removal is the result
6 of a discretionary act of the political subdivision;

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

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

22 (12) Any claim arising out of the alleged insufficiency or want of
23 repair of any highway as defined in such section, bridge, or other public
24 thoroughfare. Insufficiency or want of repair shall be construed to refer
25 to the general or overall condition and shall not refer to a spot or
26 localized defect. A political subdivision shall be deemed to waive its
27 immunity for a claim due to a spot or localized defect only if (a) the
28 political subdivision has had actual or constructive notice of the defect
29 within a reasonable time to allow repair prior to the incident giving
30 rise to the claim or (b) the claim arose during the time specified in a
31 notice provided by the political subdivision pursuant to subsection (3)

1 of section 39-1359 and the state or political subdivision had actual or
2 constructive notice; or

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

18 (b) For purposes of this subdivision:

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

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

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

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

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

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

10 Sec. 2. Section 81-8,219, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 81-8,219 The State Tort Claims Act shall not apply to:

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

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

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

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

29 (a) Under the Healthy Pregnancies for Incarcerated Women Act; or

30 (b) When the harm caused by an intentional tort is a proximate
31 result of the failure of a state agency or an employee of a state agency

1 to exercise reasonable care to either:

2 (i) Control a person over whom it has taken charge; or

3 (ii) Protect a person who is in the state agency's care, custody, or
4 control from harm caused by a non-employee actor;

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

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

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

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

28 (9) Any claim based upon the issuance, denial, suspension, or
29 revocation of or failure or refusal to issue, deny, suspend, or revoke
30 any permit, license, certificate, or order. Such claim shall also not be
31 filed against a state employee acting within the scope of his or her

1 office. Nothing in this subdivision shall be construed to limit the
2 state's liability for any claim based upon the negligent execution by a
3 state employee in the issuance of a certificate of title under the Motor
4 Vehicle Certificate of Title Act and the State Boat Act except when such
5 title is issued upon an application filed electronically by an approved
6 licensed dealer participating in the electronic dealer services system
7 pursuant to section 60-1507;

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

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

24 (12) Any claim arising out of the plan or design for the
25 construction of or an improvement to any highway as defined in such
26 section or bridge, either in original construction or any improvement
27 thereto, if the plan or design is approved in advance of the construction
28 or improvement by the governing body of the governmental entity or some
29 other body or employee exercising discretionary authority to give such
30 approval;

31 (13) Any claim arising out of the alleged insufficiency or want of

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

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

23 (b) For purposes of this subdivision:

24 (i) Recreational activities include, but are not limited to, whether
25 as a participant or spectator: Hunting, fishing, swimming, boating,
26 camping, picnicking, hiking, walking, running, horseback riding, use of
27 trails, nature study, waterskiing, winter sports, use of playground
28 equipment, biking, roller blading, skateboarding, golfing, athletic
29 contests; visiting, viewing, or enjoying entertainment events, festivals,
30 or historical, archaeological, scenic, or scientific sites; and similar
31 leisure activities;

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

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

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

10 (c) This subdivision, and not subdivision (8) of this section, shall
11 apply to any claim arising from the inspection or failure to make an
12 inspection or negligent inspection of premises owned or leased by the
13 state and used for recreational activities; or

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

17 Sec. 3. Original section 13-910, Reissue Revised Statutes of
18 Nebraska, and section 81-8,219, Revised Statutes Cumulative Supplement,
19 2022, are repealed.