

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 656

Introduced by Baker, 30.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to claims against the state; to amend sections
2 29-3506, 29-4601, 29-4602, 29-4603, 29-4604, 29-4605, 29-4606,
3 29-4607, 29-4608, 81-8,210, and 81-8,227, Reissue Revised Statutes
4 of Nebraska; to rename the Nebraska Claims for Wrongful Conviction
5 and Imprisonment Act; to provide for claims against the state by
6 persons wrongfully incarcerated; to change provisions relating to
7 the effect of recovery on a claim under such act; to provide a
8 procedure to seek reimbursement from the State Claims Board for
9 certain judgments against political subdivisions as prescribed; to
10 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 29-3506, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3506 Criminal history record information shall mean information
4 collected by criminal justice agencies on individuals consisting of
5 identifiable descriptions and notations of issuance of arrest warrants,
6 arrests, detentions, indictments, charges by information, and other
7 formal criminal charges, and any disposition arising from such arrests,
8 charges, sentencing, correctional supervision, and release. Criminal
9 history record information shall include any judgment against or
10 settlement with the state as a result of a wrongful conviction pursuant
11 to the Nebraska Claims for Wrongful Conviction or Incarceration ~~and~~
12 ~~Imprisonment~~ Act. Criminal history record information shall not include
13 intelligence or investigative information.

14 Sec. 2. Section 29-4601, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-4601 Sections 29-4601 to 29-4608 and section 10 of this act shall
17 be known and may be cited as the Nebraska Claims for Wrongful Conviction
18 or Incarceration ~~and Imprisonment~~ Act.

19 Sec. 3. Section 29-4602, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-4602 The Legislature finds that innocent persons who have been
22 ~~wrongly~~ wrongfully incarcerated or convicted of crimes and subsequently
23 imprisoned have been uniquely victimized, have distinct problems
24 reentering society, and have difficulty achieving legal redress due to a
25 variety of substantive and technical obstacles in the law. The
26 Legislature also finds that such persons should have an available avenue
27 of redress. In light of the particular and substantial horror of being
28 incarcerated or imprisoned for a crime one did not commit, the
29 Legislature intends by enactment of the Nebraska Claims for Wrongful
30 Conviction or Incarceration ~~and Imprisonment~~ Act that persons who can
31 demonstrate that they were wrongfully convicted or wrongfully

1 incarcerated shall have a claim against the state as provided in the act.

2 Sec. 4. Section 29-4603, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-4603 In order to recover under the Nebraska Claims for Wrongful
5 Conviction or Incarceration and ~~Imprisonment~~ Act, the claimant shall
6 prove each of the following by clear and convincing evidence:

7 (1) That he or she was incarcerated for or convicted of one or more
8 felony crimes and subsequently sentenced to a term of imprisonment for
9 such felony crime or crimes and has been lawfully released from
10 confinement ~~served all or any part of the sentence~~;

11 (2) With respect to a conviction ~~the crime or crimes~~ under
12 subdivision (1) of this section, that the Board of Pardons has pardoned
13 the claimant, that a court has vacated the conviction of the claimant, or
14 that the conviction was reversed and remanded for a new trial and no
15 subsequent conviction was obtained;

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

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

25 Sec. 5. Section 29-4604, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 29-4604 (1) A claimant under the Nebraska Claims for Wrongful
28 Conviction or Incarceration and ~~Imprisonment~~ Act shall recover damages
29 found to proximately result from the wrongful conviction or wrongful
30 incarceration and that have been proved based upon a preponderance of the
31 evidence.

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

2 (a) Costs of incarceration ~~imprisonment~~; and

3 (b) Value of any care or education provided to the claimant while he
4 or she was incarcerated ~~imprisoned~~.

5 (3) No damages shall be payable to the claimant for any period of
6 time during which he or she was concurrently incarcerated ~~imprisoned~~ for
7 any unrelated criminal offense.

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

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

12 Sec. 6. Section 29-4605, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-4605 If the court finds that any property of the claimant was
15 subjected to a lien to recover costs of defense services rendered by the
16 state to defend the claimant in connection with the criminal case that
17 resulted in his or her wrongful conviction or wrongful incarceration, the
18 court shall extinguish the lien.

19 Sec. 7. Section 29-4606, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-4606 Nothing contained in the Nebraska Claims for Wrongful
22 Conviction or Incarceration ~~and Imprisonment~~ Act shall preclude the state
23 from providing services to the claimant upon exoneration, and the
24 reasonable value of services provided shall be treated as an advance
25 against any award or judgment under the act.

26 Sec. 8. Section 29-4607, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 29-4607 A claim brought pursuant to the Nebraska Claims for Wrongful
29 Conviction or Incarceration ~~and Imprisonment~~ Act shall be filed under the
30 State Tort Claims Act.

31 Sec. 9. Section 29-4608, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 29-4608 Nothing in the Nebraska Claims for Wrongful Conviction or
3 Incarceration and Imprisonment Act shall limit the claimant from making
4 any other claim available against any other party or based upon any other
5 theory of recovery, ~~except that a claimant who recovers a claim under the~~
6 ~~act shall not have any other claim against the state based upon any other~~
7 ~~theory of recovery or law.~~

8 Sec. 10. (1) For purposes of this section, successful claimant
9 means a person who:

10 (a) Had a claim against a political subdivision arising from his or
11 her wrongful incarceration or conviction, which claim was precluded by
12 the provisions of the State Tort Claims Act or the Political Subdivisions
13 Tort Claims Act; and

14 (b) Obtained a final judgment against such political subdivision
15 from a federal court under 42 U.S.C. 1983 or 1985 for a violation of his
16 or her rights protected by the Constitution of the United States and
17 arising out of such wrongful incarceration or conviction.

18 (2) A successful claimant and the political subdivision against
19 which such claimant obtained a final judgment described in subsection (1)
20 of this section may, jointly or individually, file a claim with the State
21 Claims Board for full payment of any such judgment, or any part of such
22 judgment, which exceeds the available financial resources and revenue of
23 the political subdivision required for its ordinary purposes. A claim
24 under this subsection shall be filed within two years of the final
25 judgment described in subsection (1) of this section and shall be
26 governed by the State Miscellaneous Claims Act.

27 Sec. 11. Section 81-8,210, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 81-8,210 For purposes of the State Tort Claims Act:

30 (1) State agency includes all departments, agencies, boards,
31 bureaus, and commissions of the State of Nebraska and corporations the

1 primary function of which is to act as, and while acting as,
2 instrumentalities or agencies of the State of Nebraska but shall not
3 include corporations that are essentially private corporations or
4 entities created pursuant to the Interlocal Cooperation Act or the Joint
5 Public Agency Act. State agency does not include any contractor with the
6 State of Nebraska;

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

8 (3) Employee of the state means any one or more officers or
9 employees of the state or any state agency and shall include duly
10 appointed members of boards or commissions when they are acting in their
11 official capacity. State employee does not include any employee of an
12 entity created pursuant to the Interlocal Cooperation Act or the Joint
13 Public Agency Act or any contractor with the State of Nebraska;

14 (4) Tort claim means any claim against the State of Nebraska for
15 money only on account of damage to or loss of property or on account of
16 personal injury or death caused by the negligent or wrongful act or
17 omission of any employee of the state, while acting within the scope of
18 his or her office or employment, under circumstances in which the state,
19 if a private person, would be liable to the claimant for such damage,
20 loss, injury, or death but does not include any claim accruing before
21 January 1, 1970, any claim against an employee of the state for money
22 only on account of damage to or loss of property or on account of
23 personal injury or death caused by the negligent or wrongful act or
24 omission of the employee while acting within the scope of his or her
25 employment occurring on or after August 25, 1989, and any claim allowed
26 under the Nebraska Claims for Wrongful Conviction or Incarceration and
27 ~~Imprisonment~~ Act;

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

31 (6) Risk Manager means the Risk Manager appointed under section

1 81-8,239.01.

2 Sec. 12. Section 81-8,227, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 81-8,227 (1) Except as provided in subsection (2) of this section,
5 every tort claim permitted under the State Tort Claims Act shall be
6 forever barred unless within two years after such claim accrued the claim
7 is made in writing to the Risk Manager in the manner provided by such
8 act. The time to begin suit under such act shall be extended for a period
9 of six months from the date of mailing of notice to the claimant by the
10 Risk Manager or State Claims Board as to the final disposition of the
11 claim or from the date of withdrawal of the claim under section 81-8,213
12 if the time to begin suit would otherwise expire before the end of such
13 period.

14 (2) The date of a qualifying release from incarceration, a
15 qualifying pardon from the Board of Pardons, a final order by a court
16 vacating a conviction, or a conviction that was reversed and remanded for
17 a new trial and no subsequent conviction was obtained, whichever is
18 later, shall be the date the claimant's claim shall accrue under the
19 Nebraska Claims for Wrongful Conviction ~~or Incarceration and Imprisonment~~
20 Act for purposes of complying with the notice and filing requirements of
21 the State Tort Claims Act. The Nebraska Claims for Wrongful Conviction or
22 ~~Incarceration and Imprisonment~~ Act applies to a claimant who would have
23 had a claim if the act had been in effect before August 30, 2009, or who
24 has a claim on or after such date. If a claimant had a qualifying pardon
25 from the Board of Pardons, a final order by a court vacating a
26 conviction, or a conviction that was reversed and remanded for a new
27 trial and no subsequent conviction was obtained, before August 30, 2009,
28 the claimant's claim shall accrue under the Nebraska Claims for Wrongful
29 Conviction or Incarceration and Imprisonment Act on August 30, 2009, for
30 purposes of complying with the notice and filing requirements of the
31 State Tort Claims Act.

1 (3) If a claim is made or filed under any other law of this state
2 and a determination is made by a state agency or court that the State
3 Tort Claims Act provides the exclusive remedy for the claim, the time to
4 make a claim and begin suit under such act shall be extended for a period
5 of six months from the date of the court order making such determination
6 or the date of mailing of notice to the claimant of such determination by
7 a state agency if the time to make the claim and to begin suit under such
8 act would otherwise expire before the end of such period. The time to
9 begin a suit under such act may be further extended as provided in
10 subsection (1) of this section.

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

18 (5) This section and section 25-213 shall constitute the only
19 statutes of limitations applicable to the State Tort Claims Act.

20 Sec. 13. Original sections 29-3506, 29-4601, 29-4602, 29-4603,
21 29-4604, 29-4605, 29-4606, 29-4607, 29-4608, 81-8,210, and 81-8,227,
22 Reissue Revised Statutes of Nebraska, are repealed.