

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 71

Introduced by Wayne, 13.

Read first time January 07, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to tort claims; to amend sections 13-901 and
2 81-8,235, Reissue Revised Statutes of Nebraska, and sections 13-910
3 and 81-8,219, Revised Statutes Cumulative Supplement, 2020; to
4 change provisions relating to claims for certain intentional torts;
5 to provide for applicability; to harmonize provisions; and to repeal
6 the original sections.

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

1 Section 1. Section 13-901, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-901 Sections 13-901 to 13-928 and section 3 of this act shall be
4 known and may be cited as the Political Subdivisions Tort Claims Act.

5 Sec. 2. Section 13-910, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 13-910 The Political Subdivisions Tort Claims Act and sections
8 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

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

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

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

26 (4) Any claim based upon the issuance, denial, suspension, or
27 revocation of or failure or refusal to issue, deny, suspend, or revoke
28 any permit, license, certificate, or order. Nothing in this subdivision
29 shall be construed to limit a political subdivision's liability for any
30 claim based upon the negligent execution by an employee of the political
31 subdivision in the issuance of a certificate of title under the Motor

1 Vehicle Certificate of Title Act and the State Boat Act except when such
2 title is issued upon an application filed electronically by an approved
3 licensed dealer participating in the electronic dealer services system
4 pursuant to section 60-1507;

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

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

11 (7) Any claim arising out of the following acts committed by an
12 employee of a political subdivision: Assault ~~assault~~, battery, false
13 arrest, false imprisonment, malicious prosecution, abuse of process,
14 libel, slander, misrepresentation, deceit, or interference with contract
15 rights. This ~~—except that this~~ subdivision does not apply to a claim;

16 (a) Under ~~under~~ the Healthy Pregnancies for Incarcerated Women Act;
17 or

18 (b) Arising from acts committed by a third party as a result of
19 negligence by a political subdivision or an employee of a political
20 subdivision;

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

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

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

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

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

28 (13)(a) Any claim relating to recreational activities for which no
29 fee is charged (i) resulting from the inherent risk of the recreational
30 activity, (ii) arising out of a spot or localized defect of the premises
31 unless the spot or localized defect is not corrected by the political

1 subdivision leasing, owning, or in control of the premises within a
2 reasonable time after actual or constructive notice of the spot or
3 localized defect, or (iii) arising out of the design of a skatepark or
4 bicycle motocross park constructed for purposes of skateboarding, inline
5 skating, bicycling, or scootering that was constructed or reconstructed,
6 reasonably and in good faith, in accordance with generally recognized
7 engineering or safety standards or design theories in existence at the
8 time of the construction or reconstruction. For purposes of this
9 subdivision, a political subdivision shall be charged with constructive
10 notice only when the failure to discover the spot or localized defect of
11 the premises is the result of gross 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 political subdivision only to the
28 extent the political subdivision retains control over the premises or the
29 activity. A fee shall not include payment of a fee or charge for parking
30 or vehicle entry.

31 (c) This subdivision, and not subdivision (3) of this section, shall

1 apply to any claim arising from the inspection or failure to make an
2 inspection or negligent inspection of premises owned or leased by the
3 political subdivision and used for recreational activities.

4 Sec. 3. (1) The changes made to subdivision (7) of section 13-910
5 by this legislative bill apply to cases pending on the effective date of
6 this act.

7 (2)(a) The changes made to subdivision (7) of section 13-910 by this
8 legislative bill apply to cases dismissed on or before the effective date
9 of this act as provided in this subsection.

10 (b) A tort claim filed under the Political Subdivisions Tort Claims
11 Act on or after January 1, 2015, which was dismissed on or before the
12 effective date of this act, may be refiled and prosecuted as if such
13 cause of action accrued on the effective date of this act if:

14 (i) In the previous cause of action, the plaintiff complied with the
15 provisions of the act and timely filed such action;

16 (ii) The cause of action was dismissed because of the provisions of
17 subdivision (7) of section 13-910, as such subdivision existed at the
18 time; and

19 (iii) As a result of the changes made to subdivision (7) of section
20 13-910 by this legislative bill, the cause of action is viable.

21 (c) A plaintiff bringing a tort claim revived by this subsection
22 must proceed as if the claim is being filed for the first time and comply
23 with all provisions of the Political Subdivisions Tort Claims Act as they
24 exist on the date the new claim is filed, including, but not limited to,
25 filing or presenting the claim as provided in section 13-905.

26 (d) The doctrines of issue preclusion and claim preclusion shall not
27 bar a tort claim revived under this subsection.

28 Sec. 4. Section 81-8,235, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 81-8,235 Sections 81-8,209 to 81-8,235 and section 6 of this act
31 shall be known and may be cited as the State Tort Claims Act.

1 Sec. 5. 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 committed by an
17 employee of the state: Assault ~~assault~~, battery, false imprisonment,
18 false arrest, malicious prosecution, abuse of process, libel, slander, or
19 interference with contract rights. This ~~, except that this~~ subdivision
20 does not apply to a claim;

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

23 (b) Arising from acts committed by a third party as a result of
24 negligence by a state agency or an employee of the state;

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 any parent, guardian, or other person directly affected by such
30 adoption or placement of a ward's mental and behavioral health history,
31 educational history, and medical history, including any history as a

1 victim or perpetrator of sexual abuse. For purposes of this subdivision,
2 placement means any out-of-home placement of a person under the age of
3 nineteen years made by a separate juvenile court or county court sitting
4 as a juvenile court;

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

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

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

21 (9) Any claim based upon the issuance, denial, suspension, or
22 revocation of or failure or refusal to issue, deny, suspend, or revoke
23 any permit, license, certificate, or order. Such claim shall also not be
24 filed against a state employee acting within the scope of his or her
25 office. Nothing in this subdivision shall be construed to limit the
26 state's liability for any claim based upon the negligent execution by a
27 state employee 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 (10) Any claim arising out of the malfunction, destruction, or
2 unauthorized removal of any traffic or road sign, signal, or warning
3 device unless it is not corrected by the governmental entity responsible
4 within a reasonable time after actual or constructive notice of such
5 malfunction, destruction, or removal. Nothing in this subdivision shall
6 give rise to liability arising from an act or omission of any
7 governmental entity in placing or removing any traffic or road signs,
8 signals, or warning devices when such placement or removal is the result
9 of a discretionary act of the governmental entity;

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

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

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

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

16 (b) For purposes of this subdivision:

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

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

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

29 (iv) Fee means a fee to participate in or be a spectator at a
30 recreational activity. A fee shall include payment by the claimant to any
31 person or organization other than the state only to the extent the state

1 retains control over the premises or the activity. A fee shall not
2 include payment of a fee or charge for parking or vehicle entry.

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

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

10 Sec. 6. (1) The changes made to subdivisions (4) and (5) of section
11 81-8,219 by this legislative bill apply to cases pending on the effective
12 date of this act.

13 (2)(a) The changes made to subdivisions (4) and (5) of section
14 81-8,219 by this legislative bill apply to cases dismissed on or before
15 the effective date of this act as provided in this subsection.

16 (b) A tort claim filed under the State Tort Claims Act on or after
17 January 1, 2015, which was dismissed on or before the effective date of
18 this act, may be refiled and prosecuted as if such cause of action
19 accrued on the effective date of this act if:

20 (i) In the previous cause of action, the plaintiff complied with the
21 provisions of the act and timely filed such action;

22 (ii) The cause of action was dismissed because of the provisions of
23 subdivision (4) or (5) of section 81-8,219, as such subdivision existed
24 at the time; and

25 (iii) As a result of the changes made to subdivision (4) or (5) of
26 section 81-8,219 by this legislative bill, the cause of action is viable.

27 (c) A plaintiff bringing a tort claim revived by this subsection
28 must proceed as if the claim is being filed for the first time and comply
29 with all provisions of the State Tort Claims Act as they exist on the
30 date the new claim is filed, including, but not limited to, filing the
31 claim with the Risk Manager as provided in section 81-8,212.

1 (d) The doctrines of issue preclusion and claim preclusion shall not
2 bar a tort claim revived under this subsection.

3 Sec. 7. Original sections 13-901 and 81-8,235, Reissue Revised
4 Statutes of Nebraska, and sections 13-910 and 81-8,219, Revised Statutes
5 Cumulative Supplement, 2020, are repealed.