

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1192**

Introduced by Conrad, 46.

Read first time January 12, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to tort claims; to amend section 13-910,  
2 Reissue Revised Statutes of Nebraska, and section 81-8,219, Revised  
3 Statutes Cumulative Supplement, 2022; to change provisions relating  
4 to tort claims for certain intentional torts under the Political  
5 Subdivisions Tort Claims Act and the State Tort Claims Act; to  
6 define terms; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-910, Reissue Revised Statutes of Nebraska, is  
2 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)(a) (7) Any claim arising out of the following acts: Assault  
8 assault, battery, false arrest, false imprisonment, malicious  
9 prosecution, abuse of process, libel, slander, misrepresentation, deceit,  
10 or interference with contract rights. This , ~~except that this~~ subdivision  
11 does not apply to a claim;

12 (i) Under ~~under~~ the Healthy Pregnancies for Incarcerated Women Act;

13 (ii) Arising from the death or serious bodily injury of a child in  
14 the custody, care, or control of any political subdivision; or

15 (iii) Arising from the death or serious bodily injury of a prisoner  
16 or detainee in a detention facility.

17 (b) For purposes of this subdivision (7):

18 (i) Detainee has the same meaning as in section 47-1003;

19 (ii) Detention facility has the same meaning as in section 47-1003;

20 (iii) Prisoner has the same meaning as in section 47-1003; and

21 (iv) Serious bodily injury has the same meaning as in section  
22 28-109;

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

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

1 signals, or warning devices when such placement or removal is the result  
2 of a discretionary act of the political subdivision;

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

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

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

30 (13)(a) Any claim relating to recreational activities for which no  
31 fee is charged (i) resulting from the inherent risk of the recreational

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

14 (b) For purposes of this subdivision:

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

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

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

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

1 or vehicle entry.

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

6 Sec. 2. Section 81-8,219, Revised Statutes Cumulative Supplement,  
7 2022, is amended to read:

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

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

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

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

21 (4)(a) (4) Any claim arising out of the following acts: Assault  
22 assault, battery, false imprisonment, false arrest, malicious  
23 prosecution, abuse of process, libel, slander, or interference with  
24 contract rights. This ,—except that this subdivision does not apply to a  
25 claim:

26 (i) Under under the Healthy Pregnancies for Incarcerated Women Act;

27 (ii) Arising from the death or serious bodily injury of a child in  
28 the custody, care, or control of any state agency; or

29 (iii) Arising from the death or serious bodily injury of a prisoner  
30 or detainee in a detention facility.

31 (b) For purposes of this subdivision (4):

- 1        (i) Detainee has the same meaning as in section 47-1003;  
2        (ii) Detention facility has the same meaning as in section 47-1003;  
3        (iii) Prisoner has the same meaning as in section 47-1003; and  
4        (iv) Serious bodily injury has the same meaning as in section  
5        28-109;

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

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

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

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

29        (9) Any claim based upon the issuance, denial, suspension, or  
30 revocation of or failure or refusal to issue, deny, suspend, or revoke  
31 any permit, license, certificate, or order. Such claim shall also not be

1 filed against a state employee acting within the scope of his or her  
2 office. Nothing in this subdivision shall be construed to limit the  
3 state's liability for any claim based upon the negligent execution by a  
4 state employee 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 (10) Any claim arising out of the malfunction, destruction, or  
10 unauthorized removal of any traffic or road sign, signal, or warning  
11 device unless it is not corrected by the governmental entity responsible  
12 within a reasonable time after actual or constructive notice of such  
13 malfunction, destruction, or removal. Nothing in this subdivision shall  
14 give rise to liability arising from an act or omission of any  
15 governmental entity in placing or removing any traffic or road signs,  
16 signals, or warning devices when such placement or removal is the result  
17 of a discretionary act of the governmental entity;

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

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



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

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

24           (b) For purposes of this subdivision:

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

1 leisure activities;

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

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

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

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

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

18 Sec. 3. Original section 13-910, Reissue Revised Statutes of  
19 Nebraska, and section 81-8,219, Revised Statutes Cumulative Supplement,  
20 2022, are repealed.