

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 729

Introduced by Wayne, 13.

Read first time January 03, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to tort claims; to amend sections 13-910 and
- 2 81-8,219, Revised Statutes Supplement, 2017; to change the Political
- 3 Subdivisions Tort Claims Act and the State Tort Claims Act with
- 4 respect to liability for misrepresentation or deceit; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-910, Revised Statutes Supplement, 2017, 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) Any claim arising out of assault, battery, false arrest, false
8 imprisonment, malicious prosecution, abuse of process, libel, slander,
9 ~~misrepresentation, deceit,~~ or interference with contract rights;

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

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

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

29 (11) Any claim arising out of the plan or design for the
30 construction of or an improvement to any highway as defined in such
31 section or bridge, either in original construction or any improvement

1 thereto, if the plan or design is approved in advance of the construction
2 or improvement by the governing body of the political subdivision or some
3 other body or employee exercising discretionary authority to give such
4 approval;

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

17 (13)(a) Any claim relating to recreational activities for which no
18 fee is charged (i) resulting from the inherent risk of the recreational
19 activity, (ii) arising out of a spot or localized defect of the premises
20 unless the spot or localized defect is not corrected by the political
21 subdivision leasing, owning, or in control of the premises within a
22 reasonable time after actual or constructive notice of the spot or
23 localized defect, or (iii) arising out of the design of a skatepark or
24 bicycle motocross park constructed for purposes of skateboarding, inline
25 skating, bicycling, or scootering that was constructed or reconstructed,
26 reasonably and in good faith, in accordance with generally recognized
27 engineering or safety standards or design theories in existence at the
28 time of the construction or reconstruction. For purposes of this
29 subdivision, a political subdivision shall be charged with constructive
30 notice only when the failure to discover the spot or localized defect of
31 the premises is the result of gross negligence.

1 (b) For purposes of this subdivision:

2 (i) Recreational activities include, but are not limited to, whether
3 as a participant or spectator: Hunting, fishing, swimming, boating,
4 camping, picnicking, hiking, walking, running, horseback riding, use of
5 trails, nature study, waterskiing, winter sports, use of playground
6 equipment, biking, roller blading, skateboarding, golfing, athletic
7 contests; visiting, viewing, or enjoying entertainment events, festivals,
8 or historical, archaeological, scenic, or scientific sites; and similar
9 leisure activities;

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

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

14 (iv) Fee means a fee to participate in or be a spectator at a
15 recreational activity. A fee shall include payment by the claimant to any
16 person or organization other than the political subdivision only to the
17 extent the political subdivision retains control over the premises or the
18 activity. A fee shall not include payment of a fee or charge for parking
19 or vehicle entry.

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

24 Sec. 2. Section 81-8,219, Revised Statutes Supplement, 2017, is
25 amended to read:

26 81-8,219 The State Tort Claims Act shall not apply to:

27 (1) Any claim based upon an act or omission of an employee of the
28 state, exercising due care, in the execution of a statute, rule, or
29 regulation, whether or not such statute, rule, or regulation is valid, or
30 based upon the exercise or performance or the failure to exercise or
31 perform a discretionary function or duty on the part of a state agency or

1 an employee of the state, whether or not the discretion is abused;

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

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

8 (4) Any claim arising out of assault, battery, false imprisonment,
9 false arrest, malicious prosecution, abuse of process, libel, slander,
10 ~~misrepresentation, deceit,~~ or interference with contract rights;

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

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

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

27 (8) Any claim based upon the issuance, denial, suspension, or
28 revocation of or failure or refusal to issue, deny, suspend, or revoke
29 any permit, license, certificate, or order. Such claim shall also not be
30 filed against a state employee acting within the scope of his or her
31 office. Nothing in this subdivision shall be construed to limit the

1 state's liability for any claim based upon the negligent execution by a
2 state employee in the issuance of a certificate of title under the Motor
3 Vehicle Certificate of Title Act and the State Boat Act except when such
4 title is issued upon an application filed electronically by an approved
5 licensed dealer participating in the electronic dealer services system
6 pursuant to section 60-1507;

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

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

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

30 (12) Any claim arising out of the alleged insufficiency or want of
31 repair of any highway as defined in such section, bridge, or other public

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

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

22 (b) For purposes of this subdivision:

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

31 (ii) Inherent risk of recreational activities means those risks that

1 are characteristic of, intrinsic to, or an integral part of the activity;

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

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

9 (c) This subdivision, and not subdivision (7) of this section, shall
10 apply to any claim arising from the inspection or failure to make an
11 inspection or negligent inspection of premises owned or leased by the
12 state and used for recreational activities; or

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

16 Sec. 3. Original sections 13-910 and 81-8,219, Revised Statutes
17 Supplement, 2017, are repealed.