

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 456

Introduced by Brewer, 43; Erdman, 47.

Read first time January 13, 2023

Committee: Natural Resources

1 A BILL FOR AN ACT relating to game animals; to amend sections 25-21,201,
2 37-301, 37-401, 37-402, 37-411, 37-559, and 84-205, Reissue Revised
3 Statutes of Nebraska, and sections 37-504, 37-613, and 81-8,219,
4 Revised Statutes Cumulative Supplement, 2022; to provide for claims
5 for monetary compensation for damage caused by elk or mountain
6 lions; to authorize the control of elk or mountain lion populations
7 by counties as prescribed; to change provisions relating to the
8 jurisdiction of district courts, applicability of the Game Law and
9 the State Tort Claims Act as prescribed, and the duties of the
10 Attorney General; to harmonize provisions; and to repeal the
11 original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section, commission means the
2 Game and Parks Commission.

3 (2) Any person whose property has been damaged by wild or feral elk
4 or mountain lions shall receive monetary compensation from the state.
5 Such monetary compensation shall be equal to the cost to replace the
6 damaged property, and such person shall be made whole for damages
7 sustained.

8 (3) To be eligible for monetary compensation for the damages
9 described in this section, the person whose property has been damaged or
10 an agent of such person shall notify the commission of the damage on a
11 form prescribed by the commission. Such notice shall be provided to a
12 conservation officer or to a member of the commission, and such officer
13 or member shall provide a receipt to the person requesting monetary
14 compensation specifying the date by which the person requesting monetary
15 compensation shall provide a notarized claim for such monetary
16 compensation. Such notice shall be provided not later than fifteen days
17 after such person was made aware of the damage.

18 (4) Within sixty days after notifying the commission, the person
19 requesting monetary compensation for the damages described in this
20 section shall deliver a notarized claim for such monetary compensation to
21 a conservation officer or to a member of the commission. The notarized
22 claim shall specify the damage and the amount of monetary compensation
23 requested.

24 (5) The commission shall investigate each claim made under this
25 section and consider the claims based upon a description of the damage.
26 After conducting its investigation and within sixty days after receiving
27 the notarized claim for monetary compensation, the commission may pay the
28 entire amount claimed, pay a portion of the amount claimed, or reject the
29 claim. If the commission does not within the sixty-day period pay the
30 entire amount claimed, pay a portion of the amount claimed, or reject the
31 claim, the commission shall pay the entire amount claimed.

1 (6)(a) A person requesting monetary compensation may appeal the
2 decision of the commission if the commission chooses to only pay a
3 portion of the amount claimed or to reject the claim. Such appeal shall
4 be delivered to the commission within thirty days after such person
5 receives the decision of the commission. The appeal shall be in writing
6 and call for arbitration.

7 (b) Within fifteen days after the commission receives the call for
8 arbitration, the person and the commission shall each appoint an
9 arbitrator and notify each other of the appointment. Within twenty days
10 after their appointment, the two arbitrators shall appoint a third
11 arbitrator. If the third arbitrator is not appointed within the time
12 prescribed, the judge of the district court of the county where the
13 damage occurred shall appoint the third arbitrator upon the application
14 of either arbitrator.

15 (c) In order to be eligible to be selected as an arbitrator under
16 this section, a person shall reside in the county where the damage
17 occurred and be capable of making a reasoned and unbiased decision based
18 on the evidence presented during arbitration.

19 (d) At least twenty days before arbitration, the arbitrators shall
20 provide notice to the person requesting monetary compensation and the
21 commission of the time when and location where the parties will be heard
22 and the claim investigated and decided by the arbitrators. A written copy
23 of the decision of the arbitrators shall be served upon each party.
24 Either party may apply to the district court for the county where the
25 damage occurred for vacation, a correction, or a modification of a
26 decision of the arbitrators within thirty days after receipt of the
27 decision. The district court shall only vacate, correct, or modify a
28 decision of the arbitrators if the district court finds the decision of
29 the arbitrators to be clearly erroneous.

30 (e) Arbitration expenses shall be paid as follows within thirty days
31 after the parties receive notice of the decision of the arbitrators:

1 (i) By the person requesting monetary compensation if the amount
2 awarded in arbitration is not greater than the amount originally
3 authorized by the commission; or

4 (ii) By the commission if the amount awarded in arbitration is
5 greater than the amount originally authorized by the commission.

6 (7) The commission may adopt and promulgate rules and regulations to
7 carry out this section.

8 Sec. 2. (1) Any county may hire a wildlife services agent to
9 control wild or feral elk and mountain lion populations within the county
10 if a portion of the cost of such wildlife services agent is funded with
11 money provided from the United States Department of Agriculture, any
12 other federal agency, or a federal program.

13 (2) A wildlife services agent hired pursuant to this section may, in
14 an official capacity as a wildlife services agent, take any action
15 necessary to control wild or feral elk and mountain lion populations
16 within the county that hired such wildlife services agent if such wild or
17 feral elk or mountain lion populations are causing significant damage
18 within such county.

19 Sec. 3. Section 25-21,201, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 25-21,201 The several district courts of the judicial districts of
22 the state shall have jurisdiction to hear and determine:

23 (1) All ~~all~~ claims or petitions for relief that may be presented to
24 the Legislature and which may be by any law or by any rule or resolution
25 of the Legislature referred to such courts for adjudication; ~~τ~~

26 (2) All ~~all~~ setoffs, counterclaims, and claims for damages,
27 liquidated or unliquidated, on the part of the state against any person
28 making a claim against the state or against the person in whose favor
29 such claim arose; ~~τ~~

30 (3) All ~~all~~ cases in which the State of Nebraska has a lien or any
31 other interest, apparent or real, upon or in any real estate in the state

1 and in which any party may desire to have the lien or interest of the
2 state fixed and determined or foreclosed and cut off, and permission is
3 hereby given to any party to join the state as a party in any such
4 actions or proceedings in such courts involving real estate in or upon
5 which the state has, appears to have, or claims any interest or lien; ~~7~~
6 ~~and~~

7 (4) All ~~all~~ cases in which the State of Nebraska or the Board of
8 Educational Lands and Funds of the State of Nebraska is the owner of or
9 has or claims any interest in any bonds or other obligations of any
10 drainage district, irrigation district, municipal corporation, other
11 political or governmental subdivision of the State of Nebraska and in
12 which any party may desire to have the ownership of or interest in such
13 bonds or other obligations determined, the validity thereof adjudicated,
14 or any rights and liabilities arising therefrom fixed and determined, and
15 permission is hereby given to any party to join the State of Nebraska as
16 a party in any such actions or proceedings in such courts involving the
17 ownership or interest of the state or the Board of Educational Lands and
18 Funds in such bonds or other obligations; and ~~7~~

19 (5) Pursuant to section 1 of this act, the appointment of
20 arbitrators and the vacation, correction, or modification of arbitration
21 decisions.

22 Sec. 4. Section 37-301, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 37-301 Except as otherwise provided in sections 37-302 to 37-313,
25 37-315, 37-317, 37-330, 37-425, and 37-608 and section 2 of this act, the
26 commission shall have sole charge of state parks, game and fish,
27 recreation grounds, and all things pertaining thereto. All funds rendered
28 available by law, including funds already collected for such purposes,
29 may be used by the commission in administering and developing such
30 resources.

31 Sec. 5. Section 37-401, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 37-401 (1) For the purpose of supplying revenue for the
3 propagation, importation, distribution, protection, and conservation of
4 the wildlife of this state, including all wild animals, birds, fish, and
5 all things pertaining thereto, every person sixteen years of age or older
6 who hunts for game animals or game birds or takes bullfrogs or any other
7 species defined as game or who takes fish and every person sixteen years
8 of age or older who engages in fur harvesting shall first pay a fee
9 established by the commission pursuant to section 37-327 and obtain a
10 permit.

11 (2) This section shall not apply to any person specified in except
12 persons exempt from this requirement pursuant to section 37-402.

13 (3) Any person who violates violating this section shall be guilty
14 of a Class II misdemeanor and shall be fined at least forty dollars.

15 Sec. 6. Section 37-402, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 37-402 The following persons are exempt from the requirements of
18 section 37-401:

19 (1) The owner or such owner's ~~his or her~~ invitee who takes fish in
20 any body of water (a) which is entirely upon privately owned land, (b)
21 which is entirely privately stocked, (c) which does not connect by inflow
22 or outflow with other water outside such land, and (d) which is not
23 operated on a commercial basis for profit; ~~and~~

24 (2) Any paraplegic who takes fish in such paraplegic's ~~his or her~~
25 privately owned body of water if ~~he or she does not operate~~ such body of
26 water is not operated on a commercial basis for profit; ~~and~~ -

27 (3) Any wildlife services agent hired pursuant to section 2 of this
28 act when the wildlife services agent is acting in an official capacity as
29 a wildlife services agent.

30 Sec. 7. Section 37-411, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 37-411 (1) Unless issued a permit as required in the Game Law, it
2 shall be unlawful:

3 (a) For any resident of Nebraska who is sixteen years of age or
4 older or any nonresident of Nebraska to engage in fur harvesting or
5 possess any fur-bearing animal or raw fur. Nonresident fur-harvesting
6 permits may be issued only to residents of states which issue similar
7 permits to residents of Nebraska;

8 (b) For any resident of Nebraska who is sixteen years of age or
9 older or any nonresident of Nebraska to hunt or possess any kind of game
10 birds, game animals, or crows;

11 (c) For any person who is sixteen years of age or older to hunt or
12 possess any migratory waterfowl without a federal migratory bird hunting
13 stamp and a Nebraska migratory waterfowl stamp as required under the Game
14 Law and rules and regulations of the commission; or

15 (d) For any person who is sixteen years of age or older to take any
16 kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from
17 the waters of this state or possess the same except as provided in
18 section 37-402. All nonresident anglers under sixteen years of age shall
19 be accompanied by a person who has a valid fishing permit.

20 (2) It shall be unlawful for a nonresident to hunt or possess any
21 kind of game birds or game animals, to take any kind of fish, mussel,
22 turtle, or amphibian, or to harvest fur with a resident permit illegally
23 obtained.

24 (3) It shall be unlawful for anyone to do or attempt to do any other
25 thing for which a permit is required by the Game Law without first
26 obtaining such permit and paying the fee required.

27 (4) Any nonresident who hunts or possesses ~~has in his or her~~
28 ~~possession~~ any wild mammal or wild bird shall first have a nonresident
29 hunting permit as required under the Game Law and rules and regulations
30 of the commission.

31 (5) Any nonresident who takes or possesses ~~has in his or her~~

1 ~~possession~~ any wild turtle, mussel, or amphibian shall first have a
2 nonresident fishing permit as required under the Game Law and rules and
3 regulations of the commission.

4 (6) Except as provided in this section and sections 37-407 and
5 37-418, it shall be unlawful for any nonresident to trap or attempt to
6 trap or to harvest fur or attempt to harvest fur from any wild mammal.

7 (7)(a) Any person who violates ~~violating~~ this section shall be
8 guilty of a Class II misdemeanor and, upon conviction, shall be fined at
9 least fifty dollars for failure to hold the appropriate stamp under
10 subdivision (1)(c) of this section, at least one hundred dollars for
11 failure to hold a fishing permit, at least one hundred fifty dollars for
12 failure to hold a small game, fur-harvesting, paddlefish, or deer permit,
13 at least two hundred fifty dollars for failure to hold an antelope
14 permit, at least five hundred dollars for failure to hold an elk permit,
15 and at least one thousand dollars for failure to hold a mountain sheep
16 permit.

17 (b) If the offense is failure to hold a hunting, fishing, fur-
18 harvesting, deer, turkey, or antelope permit as required, unless issuance
19 of the required permit is restricted so that permits are not available,
20 the court shall require the offender to purchase the required permit and
21 exhibit proof of such purchase to the court.

22 (8) This section shall not apply to any wildlife services agent
23 hired pursuant to section 2 of this act when the wildlife services agent
24 is acting in an official capacity as a wildlife services agent.

25 Sec. 8. Section 37-504, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 37-504 (1) Any person who at any time, except during an open season
28 ordered by the commission as authorized in the Game Law, unlawfully
29 hunts, traps, or has in such person's ~~his or her~~ possession:

30 (a) Any deer, antelope, swan, or wild turkey shall be guilty of a
31 Class III misdemeanor and, upon conviction, shall be fined at least five

1 hundred dollars for each violation; or

2 (b) Any elk shall be guilty of a Class II misdemeanor and, upon
3 conviction, shall be fined at least one thousand dollars for each
4 violation.

5 (2) Any person who at any time, except during an open season ordered
6 by the commission as authorized in the Game Law, unlawfully hunts, traps,
7 or has in such person's ~~his or her~~ possession any mountain sheep shall be
8 guilty of a Class I misdemeanor and shall be fined at least one thousand
9 dollars upon conviction.

10 (3) Any person who at any time, except during an open season ordered
11 by the commission as authorized in the Game Law, unlawfully hunts, traps,
12 or has in such person's ~~his or her~~ possession any quail, pheasant,
13 partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill
14 crane, or waterfowl shall be guilty of a Class III misdemeanor and shall
15 be fined at least five hundred dollars upon conviction.

16 (4) Any person who unlawfully takes any game or unlawfully has in
17 such person's ~~his or her~~ possession any such game shall be guilty of a
18 Class III misdemeanor and, except as otherwise provided in this section
19 and section 37-501, shall be fined at least fifty dollars for each animal
20 unlawfully taken or unlawfully possessed up to the maximum fine
21 authorized by law upon conviction.

22 (5) Any person who, in violation of the Game Law, takes any mourning
23 dove that is not flying shall be guilty of a Class V misdemeanor.

24 (6) Any person who, in violation of the Game Law, has in such
25 person's ~~his or her~~ possession any protected bird, or destroys or takes
26 the eggs or nest of any such bird, shall be guilty of a Class V
27 misdemeanor.

28 (7) The provisions of this section shall not render it unlawful for
29 anyone operating a captive wildlife facility or an aquaculture facility,
30 pursuant to the laws of this state, to at any time kill game or fish
31 actually raised thereon or lawfully placed thereon by such person.

1 (8) A person holding a special permit pursuant to the Game Law for
2 the taking of any game or any birds not included in the definition of
3 game shall not be liable under this section while acting under the
4 authority of such permit.

5 (9) This section shall not apply to any wildlife services agent
6 hired pursuant to section 2 of this act when the wildlife services agent
7 is acting in an official capacity as a wildlife services agent.

8 Sec. 9. Section 37-559, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 37-559 (1) Any farmer or rancher owning or operating a farm or ranch
11 may destroy or have destroyed any predator preying on livestock or
12 poultry or causing other agricultural depredation on land owned or
13 controlled by such person ~~him or her~~ without a permit issued by the
14 commission. For purposes of this subsection, predator means a badger,
15 bobcat, coyote, gray fox, long-tailed weasel, mink, opossum, raccoon, red
16 fox, or skunk.

17 (2) Any farmer or rancher owning or operating a farm or ranch, such
18 person's ~~or his or her~~ agent, or a wildlife services agent hired pursuant
19 to section 2 of this act may kill a mountain lion immediately without
20 prior notice to or permission from the commission if such person ~~he or~~
21 ~~she~~ encounters a mountain lion and the mountain lion is in the process of
22 stalking, killing, or consuming livestock on the farmer's or rancher's
23 property. The farmer or rancher or such person's ~~his or her~~ agent shall
24 be responsible for immediately notifying the commission and arranging
25 with the commission to transfer the mountain lion to the commission.

26 (3) Any person shall be entitled to act in self defense or defense
27 ~~of defend himself or herself~~ or another person without penalty if, in the
28 presence of such person, a mountain lion stalks, attacks, or shows
29 unprovoked aggression toward such person or another person.

30 (4) This section shall not be construed to allow a farmer or rancher
31 or such person's ~~his or her~~ agent to destroy or have destroyed species

1 which are protected by the Nongame and Endangered Species Conservation
2 Act or rules and regulations adopted and promulgated under the act, the
3 federal Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et
4 seq., the federal Fish and Wildlife Coordination Act, as amended, 16
5 U.S.C. 661 et seq., the federal Bald and Golden Eagle Protection Act, as
6 amended, 16 U.S.C. 668 et seq., the federal Migratory Bird Treaty Act, as
7 amended, 16 U.S.C. 703 et seq., or federal regulations under such federal
8 acts.

9 Sec. 10. Section 37-613, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 37-613 (1) Any person who sells, purchases, takes, or possesses
12 contrary to the Game Law any wildlife shall be liable to the State of
13 Nebraska for the damages caused thereby. Such damages shall be:

14 (a) Twenty-five thousand dollars for each mountain sheep;

15 (b) Ten thousand dollars for each elk with a minimum of twelve total
16 points and three thousand dollars for any other elk;

17 (c) Ten thousand dollars for each whitetail deer with a minimum of
18 eight total points and an inside spread between beams of at least sixteen
19 inches, two thousand dollars for any other antlered whitetail deer, and
20 five hundred dollars for each antlerless whitetail deer and whitetail doe
21 deer;

22 (d) Ten thousand dollars for each mule deer with a minimum of eight
23 total points and an inside spread between beams of at least twenty-two
24 inches and two thousand dollars for any other mule deer;

25 (e) Five thousand dollars for each antelope with the shortest horn
26 measuring a minimum of fourteen inches in length and one thousand dollars
27 for any other antelope;

28 (f) One thousand five hundred dollars for each bear or moose or each
29 individual animal of any threatened or endangered species of wildlife not
30 otherwise listed in this subsection;

31 (g) Five thousand dollars for each mountain lion, lynx, bobcat,

1 river otter, or raw pelt thereof;

2 (h) Twenty-five dollars for each raccoon, opossum, skunk, or raw
3 pelt thereof;

4 (i) Five thousand dollars for each eagle;

5 (j) Five hundred dollars for each wild turkey;

6 (k) Twenty-five dollars for each dove;

7 (l) Seventy-five dollars for each other game bird, other game
8 animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife
9 in need of conservation as designated by the commission pursuant to
10 section 37-805, not otherwise listed in this subsection;

11 (m) Fifty dollars for each wild bird not otherwise listed in this
12 subsection;

13 (n) Seven hundred fifty dollars for each swan or paddlefish;

14 (o) Two hundred dollars for each master angler fish measuring more
15 than twelve inches in length;

16 (p) Fifty dollars for each game fish measuring more than twelve
17 inches in length not otherwise listed in this subsection;

18 (q) Twenty-five dollars for each other game fish; and

19 (r) Fifty dollars for any other species of game not otherwise listed
20 in this subsection.

21 (2) The commission shall adopt and promulgate rules and regulations
22 to provide for a list of master angler fish which are subject to this
23 section and to prescribe guidelines for measurements and point
24 determinations as required by this section. The commission may adopt a
25 scoring system which is uniformly recognized for this purpose.

26 (3) Such damages may be collected by the commission by civil action.
27 In every case of conviction for any of such offenses, the court or
28 magistrate before whom such conviction is obtained shall further enter
29 judgment in favor of the State of Nebraska and against the defendant for
30 liquidated damages in the amount set forth in this section and collect
31 such damages by execution or otherwise. Failure to obtain conviction on a

1 criminal charge shall not bar a separate civil action for such liquidated
2 damages. Damages collected pursuant to this section shall be remitted to
3 the secretary of the commission who shall remit them to the State
4 Treasurer for credit to the State Game Fund.

5 (4) This section shall not apply to any wildlife services agent
6 hired pursuant to section 2 of this act when the wildlife services agent
7 is acting in an official capacity as a wildlife services agent.

8 Sec. 11. Section 81-8,219, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 81-8,219 The State Tort Claims Act shall not apply to:

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

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

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

23 (4) Any claim arising out of assault, battery, false imprisonment,
24 false arrest, malicious prosecution, abuse of process, libel, slander, or
25 interference with contract rights, except that this subdivision does not
26 apply to a claim under the Healthy Pregnancies for Incarcerated Women
27 Act;

28 (5) Any claim arising out of misrepresentation or deceit, except
29 that, in cases of adoption or placement, the State Tort Claims Act shall
30 apply to a claim arising out of misrepresentation or deceit by the
31 Department of Health and Human Services in failing to warn, notify, or

1 inform of a ward's mental and behavioral health history, educational
2 history, and medical history, including any history as a victim or
3 perpetrator of sexual abuse;

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

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

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

20 (9) Any claim based upon the issuance, denial, suspension, or
21 revocation of or failure or refusal to issue, deny, suspend, or revoke
22 any permit, license, certificate, or order. Such claim shall also not be
23 filed against a state employee acting within the scope of his or her
24 office. Nothing in this subdivision shall be construed to limit the
25 state's liability for any claim based upon the negligent execution by a
26 state employee in the issuance of a certificate of title under the Motor
27 Vehicle Certificate of Title Act and the State Boat Act except when such
28 title is issued upon an application filed electronically by an approved
29 licensed dealer participating in the electronic dealer services system
30 pursuant to section 60-1507;

31 (10) Any claim arising out of the malfunction, destruction, or

1 unauthorized removal of any traffic or road sign, signal, or warning
2 device unless it is not corrected by the governmental entity responsible
3 within a reasonable time after actual or constructive notice of such
4 malfunction, destruction, or removal. Nothing in this subdivision shall
5 give rise to liability arising from an act or omission of any
6 governmental entity in placing or removing any traffic or road signs,
7 signals, or warning devices when such placement or removal is the result
8 of a discretionary act of the governmental entity;

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

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

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

31 (14)(a) Any claim relating to recreational activities on property

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

15 (b) For purposes of this subdivision:

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

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

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

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

1 include payment of a fee or charge for parking or vehicle entry.

2 (c) This subdivision, and not subdivision (8) 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 state and used for recreational activities; ~~or~~

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

9 (16) Any claim arising pursuant to section 1 of this act.

10 Sec. 12. Section 84-205, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 84-205 The duties of the Attorney General shall be:

13 (1) Unless otherwise provided by statute, to ~~To~~ appear and defend
14 actions and claims against the state;

15 (2) To investigate, commence, and prosecute any and all actions
16 resulting from violations of sections 32-1401 to 32-1417;

17 (3) To consult with and advise the county attorneys, when requested
18 by them, in all criminal matters and in matters relating to the public
19 revenue. He or she shall have authority to require aid and assistance of
20 the county attorney in all matters pertaining to the duties of the
21 Attorney General in the county of such county attorney and may, in any
22 case brought to the Court of Appeals or Supreme Court from any county,
23 demand and receive the assistance of the county attorney from whose
24 county such case is brought;

25 (4) To give, when required, without fee, his or her opinion in
26 writing upon all questions of law submitted to him or her by the
27 Governor, head of any executive department, Secretary of State, State
28 Treasurer, Auditor of Public Accounts, Board of Educational Lands and
29 Funds, State Department of Education, Public Service Commission, or
30 Legislature;

31 (5) At the request of the Governor, head of any executive

1 department, Secretary of State, State Treasurer, Auditor of Public
2 Accounts, Board of Educational Lands and Funds, State Department of
3 Education, or Public Service Commission, to prosecute any official bond
4 or any contract in which the state is interested which is deposited with
5 any of them and to prosecute or defend for the state all civil or
6 criminal actions and proceedings relating to any matter connected with
7 any of such officers' departments if, after investigation, he or she is
8 convinced there is sufficient legal merit to justify the proceeding. Such
9 officers shall not pay or contract to pay from the funds of the state any
10 money for special attorneys or counselors-at-law unless the employment of
11 such special counsel is made upon the written authorization of the
12 Governor or the Attorney General;

13 (6) To enforce the proper application of money appropriated by the
14 Legislature to the various funds of the state and prosecute breaches of
15 trust in the administration of such funds;

16 (7) To prepare, when requested by the Governor, Secretary of State,
17 State Treasurer, or Auditor of Public Accounts or any other executive
18 department, proper drafts for contracts, forms, or other writings which
19 may be wanted for the use of the state and report to the Legislature,
20 whenever requested, upon any business pertaining to the duties of his or
21 her office. The report submitted to the Legislature shall be submitted
22 electronically;

23 (8) To pay all money received, belonging to the people of the state,
24 immediately upon receipt thereof, into the state treasury;

25 (9) To keep a record in proper books provided for that purpose at
26 the expense of the state, a register of all actions and demands
27 prosecuted or defended by him or her in behalf of the state and all
28 proceedings had in relation thereto, and deliver the same to his or her
29 successor in office;

30 (10) To appear for the state and prosecute and defend all civil or
31 criminal actions and proceedings in the Court of Appeals or Supreme Court

1 in which the state is interested or a party. When requested by the
2 Governor or the Legislature, the Attorney General shall appear for the
3 state and prosecute or defend any action or conduct any investigation in
4 which the state is interested or a party before any court, officer,
5 board, tribunal, or commission;

6 (11) To prepare and promulgate model rules of procedure appropriate
7 for use by as many agencies as possible. The Attorney General shall add
8 to, amend, or revise the model rules as necessary for the proper guidance
9 of agencies;

10 (12) To include within the budget of the office sufficient funding
11 to assure oversight and representation of the State of Nebraska for
12 district court appeals of administrative license revocation proceedings
13 under section 60-498.04; and

14 (13) To create a Child Protection Division to be staffed by at least
15 three assistant attorneys general who each have five or more years of
16 experience in the prosecution or defense of felonies or misdemeanors,
17 including two years in the prosecution or defense of crimes against
18 children. Upon the written request of a county attorney, the division
19 shall provide consultation and advise and assist in the preparation of
20 the trial of any case involving a crime against a child, including, but
21 not limited to, the following offenses:

22 (a) Murder as defined in sections 28-303 and 28-304;

23 (b) Manslaughter as defined in section 28-305;

24 (c) Kidnapping as defined in section 28-313;

25 (d) False imprisonment as defined in sections 28-314 and 28-315;

26 (e) Child abuse as defined in section 28-707;

27 (f) Pandering as defined in section 28-802;

28 (g) Debauching a minor as defined in section 28-805; and

29 (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

30 Any offense listed in subdivisions (a) through (h) of this
31 subdivision shall include all inchoate offenses pursuant to the Nebraska

1 Criminal Code and compounding a felony pursuant to section 28-301. Such
2 crimes shall not include matters involving dependent and neglected
3 children, infraction violations, custody, parenting time, visitation, or
4 other access matters, or child support. If the county attorney declines
5 in writing to prosecute a case involving a crime against a child because
6 of an ethical consideration, including the presence or appearance of a
7 conflict of interest, or for any other reason, the division shall, upon
8 the receipt of a written request of the county attorney, the Department
9 of Health and Human Services, the minor child, the parents of the minor
10 child, or any other interested party, investigate the matter and either
11 decline to prosecute the matter or initiate the appropriate criminal
12 proceedings in a court of proper jurisdiction.

13 For purposes of this subdivision, child or children shall mean an
14 individual or individuals sixteen years of age or younger.

15 Sec. 13. Original sections 25-21,201, 37-301, 37-401, 37-402,
16 37-411, 37-559, and 84-205, Reissue Revised Statutes of Nebraska, and
17 sections 37-504, 37-613, and 81-8,219, Revised Statutes Cumulative
18 Supplement, 2022, are repealed.