

E AND R AMENDMENTS TO LB 564

Introduced by Enrollment and Review Committee: McGill, 26,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 13-910, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 13-910 The Political Subdivisions Tort Claims Act and
6 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply
7 to:

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

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

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

1 to inspect or inadequate or negligent inspection constitutes a
2 reckless disregard for public health or safety;

3 (4) Any claim based upon the issuance, denial,
4 suspension, or revocation of or failure or refusal to issue,
5 deny, suspend, or revoke any permit, license, certificate, or
6 order. Nothing in this subdivision shall be construed to limit
7 a political subdivision's liability for any claim based upon the
8 negligent execution by an employee of the political subdivision
9 in the issuance of a certificate of title under the Motor Vehicle
10 Certificate of Title Act and the State Boat Act;

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

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

17 (7) Any claim arising out of assault, battery, false
18 arrest, false imprisonment, malicious prosecution, abuse of
19 process, libel, slander, misrepresentation, deceit, or interference
20 with contract rights;

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

23 (9) Any claim arising out of the malfunction,
24 destruction, or unauthorized removal of any traffic or road sign,
25 signal, or warning device unless it is not corrected by the
26 political subdivision responsible within a reasonable time after
27 actual or constructive notice of such malfunction, destruction, or

1 removal. Nothing in this subdivision shall give rise to liability
2 arising from an act or omission of any political subdivision
3 in placing or removing any traffic or road signs, signals, or
4 warning devices when such placement or removal is the result of a
5 discretionary act of the political subdivision;

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

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

22 (12) Any claim arising out of the alleged insufficiency
23 or want of repair of any highway as defined in such section,
24 bridge, or other public thoroughfare. Insufficiency or want of
25 repair shall be construed to refer to the general or overall
26 condition and shall not refer to a spot or localized defect. A
27 political subdivision shall be deemed to waive its immunity for

1 a claim due to a spot or localized defect only if the political
2 subdivision has had actual or constructive notice of the defect
3 within a reasonable time to allow repair prior to the incident
4 giving rise to the claim; or -

5 (13) (a) Any claim relating to recreational activities for
6 which no fee is charged (i) resulting from the inherent risk of
7 the recreational activity, (ii) arising out of a spot or localized
8 defect of the premises unless the spot or localized defect is
9 not corrected by the political subdivision leasing, owning, or
10 in control of the premises within a reasonable time after actual
11 or constructive notice of the spot or localized defect, or (iii)
12 arising out of the design of a skatepark or bicycle motocross
13 park constructed for purposes of skateboarding, inline skating,
14 bicycling, or scootering that was constructed or reconstructed,
15 reasonably and in good faith, in accordance with generally
16 recognized engineering or safety standards or design theories
17 in existence at the time of the construction or reconstruction.
18 For purposes of this subdivision, a political subdivision shall be
19 charged with constructive notice only when the failure to discover
20 the 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
24 to, whether as a participant or spectator: Hunting, fishing,
25 swimming, boating, camping, picnicking, hiking, walking, running,
26 horseback riding, use of trails, nature study, waterskiing, winter
27 sports, use of playground equipment, biking, roller blading,

1 skateboarding, golfing, athletic contests; visiting, viewing,
2 or enjoying entertainment events, festivals, or historical,
3 archaeological, scenic, or scientific sites; and similar leisure
4 activities;

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

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

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

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

22 Sec. 2. Section 81-8,219, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 81-8,219 The State Tort Claims Act shall not apply to:

25 (1) Any claim based upon an act or omission of an
26 employee of the state, exercising due care, in the execution of a
27 statute, rule, or regulation, whether or not such statute, rule, or

1 regulation is valid, or based upon the exercise or performance or
2 the failure to exercise or perform a discretionary function or duty
3 on the part of a state agency or an employee of the state, whether
4 or not the discretion is abused;

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

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

11 (4) Any claim arising out of assault, battery, false
12 imprisonment, false arrest, malicious prosecution, abuse of
13 process, libel, slander, misrepresentation, deceit, or interference
14 with contract rights;

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

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

23 (7) Any claim based upon the failure to make an
24 inspection or making an inadequate or negligent inspection of
25 any property other than property owned by or leased to the state
26 to determine whether the property complies with or violates any
27 statute, ordinance, rule, or regulation or contains a hazard to

1 public health or safety unless the state had reasonable notice of
2 such hazard or the failure to inspect or inadequate or negligent
3 inspection constitutes a reckless disregard for public health or
4 safety;

5 (8) Any claim based upon the issuance, denial,
6 suspension, or revocation of or failure or refusal to issue, deny,
7 suspend, or revoke any permit, license, certificate, or order.
8 Such claim shall also not be filed against a state employee
9 acting within the scope of his or her office. Nothing in this
10 subdivision shall be construed to limit the state's liability for
11 any claim based upon the negligent execution by a state employee
12 in the issuance of a certificate of title under the Motor Vehicle
13 Certificate of Title Act and the State Boat Act;

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

24 (10) Any claim arising out of snow or ice conditions
25 or other temporary conditions caused by nature on any highway as
26 defined in section 60-624, bridge, public thoroughfare, or other
27 state-owned public place due to weather conditions. Nothing in this

1 subdivision shall be construed to limit the state's liability for
2 any claim arising out of the operation of a motor vehicle by an
3 employee of the state while acting within the course and scope of
4 his or her employment by the state;

5 (11) Any claim arising out of the plan or design for
6 the construction of or an improvement to any highway as defined
7 in such section or bridge, either in original construction or
8 any improvement thereto, if the plan or design is approved in
9 advance of the construction or improvement by the governing body of
10 the governmental entity or some other body or employee exercising
11 discretionary authority to give such approval; ~~or~~

12 (12) Any claim arising out of the alleged insufficiency
13 or want of repair of any highway as defined in such section,
14 bridge, or other public thoroughfare. Insufficiency or want of
15 repair shall be construed to refer to the general or overall
16 condition and shall not refer to a spot or localized defect. The
17 state shall be deemed to waive its immunity for a claim due to
18 a spot or localized defect only if the state has had actual or
19 constructive notice of the defect within a reasonable time to allow
20 repair prior to the incident giving rise to the claim; or -

21 (13) (a) Any claim relating to recreational activities on
22 property leased, owned, or controlled by the state for which no fee
23 is charged (i) resulting from the inherent risk of the recreational
24 activity, (ii) arising out of a spot or localized defect of the
25 premises unless the spot or localized defect is not corrected
26 within a reasonable time after actual or constructive notice of
27 the spot or localized defect, or (iii) arising out of the design

1 of a skatepark or bicycle motocross park constructed for purposes
2 of skateboarding, inline skating, bicycling, or scootering that
3 was constructed or reconstructed, reasonably and in good faith,
4 in accordance with generally recognized engineering or safety
5 standards or design theories in existence at the time of the
6 construction or reconstruction. For purposes of this subdivision,
7 the state shall be charged with constructive notice only when the
8 failure to discover the spot or localized defect of the premises is
9 the result of gross negligence.

10 (b) For purposes of this subdivision:

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

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

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

26 (iv) Fee means a fee to participate in or be a spectator
27 at a recreational activity. A fee shall include payment by the

1 claimant to any person or organization other than the state only
2 to the extent the state retains control over the premises or the
3 activity. A fee shall not include payment of a fee or charge for
4 parking or vehicle entry.

5 (c) This subdivision, and not subdivision (7) of this
6 section, shall apply to any claim arising from the inspection or
7 failure to make an inspection or negligent inspection of premises
8 owned or leased by the state and used for recreational activities.

9 Sec. 3. Original sections 13-910 and 81-8,219, Revised
10 Statutes Cumulative Supplement, 2006, are repealed.

11 Sec. 4. Since an emergency exists, this act takes effect
12 when passed and approved according to law.

13 2. On page 1, strike beginning with "recreational" in
14 line 1 through line 7 and insert "tort claims; to amend sections
15 13-910 and 81-8,219, Revised Statutes Cumulative Supplement, 2006;
16 to change the Political Subdivisions Tort Claims Act and the
17 State Tort Claims Act with respect to liability for recreational
18 activities; to define terms; to provide for applicability; to
19 repeal the original sections; and to declare an emergency."