

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 821

FINAL READING

Introduced by Business and Labor Committee: Cornett, 45,
Chairperson; McGill, 26; Rogert, 16; Wallman,
30.

Read first time January 10, 2008

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to claims against the state; to amend sections
2 81-8,210, 81-8,212, 81-8,213, 81-8,220, 81-8,227,
3 81-8,228, 81-8,300, and 81-8,305, Reissue Revised
4 Statutes of Nebraska, and sections 81-8,211 and 81-8,224,
5 Revised Statutes Cumulative Supplement, 2006; to change
6 provisions relating to the Risk Manager, the State Claims
7 Board, and claim procedures; to harmonize provisions; and
8 to repeal the original sections.

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

1 Section 1. Section 81-8,210, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,210 For purposes of the State Tort Claims Act:
4 ~~unless the context otherwise requires.~~

5 (1) State agency ~~shall include~~ includes all departments,
6 agencies, boards, bureaus, and commissions of the State of Nebraska
7 and corporations the primary function of which is to act as, and
8 while acting as, instrumentalities or agencies of the State of
9 Nebraska but shall not include corporations that are essentially
10 private corporations or entities created pursuant to the Interlocal
11 Cooperation Act or the Joint Public Agency Act. State agency ~~shall~~
12 ~~not be construed to~~ does not include any contractor with the State
13 of Nebraska;

14 (2) State Claims Board ~~shall mean~~ means the board created
15 by section 81-8,220;

16 (3) Employee of the state ~~shall mean~~ means any one or
17 more officers or employees of the state or any state agency and
18 shall include duly appointed members of boards or commissions when
19 they are acting in their official capacity. State employee ~~shall~~
20 ~~not be construed to~~ does not include any employee of an entity
21 created pursuant to the Interlocal Cooperation Act or the Joint
22 Public Agency Act or any contractor with the State of Nebraska;

23 (4) Tort claim ~~shall mean~~ means any claim against the
24 State of Nebraska for money only on account of damage to or loss of
25 property or on account of personal injury or death caused by the

1 negligent or wrongful act or omission of any employee of the state,
2 while acting within the scope of his or her office or employment,
3 under circumstances in which the state, if a private person, would
4 be liable to the claimant for such damage, loss, injury, or death
5 but ~~shall~~ does not include any claim accruing before January 1,
6 1970, and any claim against an employee of the state for money
7 only on account of damage to or loss of property or on account of
8 personal injury or death caused by the negligent or wrongful act or
9 omission of the employee while acting within the scope of his or
10 her employment occurring on or after August 25, 1989; ~~and~~

11 (5) Award ~~shall mean~~ means any amount determined by
12 the Risk Manager or State Claims Board to be payable to a
13 claimant under section 81-8,211 or the amount of any compromise or
14 settlement under section 81-8,218; ~~and-~~

15 (6) Risk Manager means the Risk Manager appointed under
16 section 81-8,239.01.

17 Sec. 2. Section 81-8,211, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 81-8,211 Authority is hereby conferred upon the Risk
20 Manager and State Claims Board, acting on behalf of the State
21 of Nebraska, to consider, ascertain, adjust, compromise, settle,
22 determine, and allow any tort claim. Any claimant dissatisfied
23 with a decision of the Risk Manager may make application for
24 review of the decision by the State Claims Board by filing an
25 application for review with the Risk Manager within sixty days

1 after receipt of notice of the Risk Manager's decision. If any
2 tort claim is compromised, settled, or allowed in an amount of
3 more than five thousand dollars, the approval of the State Claims
4 Board is required. If any tort claim is compromised, settled, or
5 allowed in an amount of more than ~~five~~ ten thousand dollars, the
6 unanimous approval of all members of the State Claims Board shall
7 be required. If any tort claim is compromised, settled, or allowed
8 in an amount of more than twenty-five thousand dollars, the claim
9 shall also be submitted for approval by the district court for
10 Lancaster County. When approval of the district court is required,
11 the Attorney General shall make application for such approval and
12 shall file with the application a complete record of the action
13 of the State Claims Board on such claim. The claimant may join
14 in such application, and if the claimant does so, the court may
15 proceed to act on the application without further notice to either
16 party. If the claimant does not join in the application, the court
17 shall require actual notice to all parties before acting on the
18 application. The court may deny the application for any legal and
19 sufficient reason or may direct the State Claims Board to conduct
20 further hearings on any material issues. The fees of the clerk
21 of the district court for filing, docketing, and indexing such
22 application shall be five dollars.

23 Sec. 3. Section 81-8,212, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-8,212 All tort claims shall be filed with the Risk

1 Manager in the manner prescribed by the State Claims Board. The
 2 Risk Manager shall immediately advise the Attorney General of the
 3 filing of any claim. It shall be the duty of the Attorney General
 4 to cause a complete investigation to be made of all such claims and
 5 serve as a legal advisor to the Risk Manager and State Claims Board
 6 on all such claims. In any suit brought under the State Tort Claims
 7 Act, service of process shall be made in the manner provided for
 8 service of a summons in section 25-510.02.

9 Sec. 4. Section 81-8,213, Reissue Revised Statutes of
 10 Nebraska, is amended to read:

11 81-8,213 No suit shall be permitted under the State Tort
 12 Claims Act unless the Risk Manager or State Claims Board has made
 13 final disposition of the claim, except that if the Risk Manager or
 14 board does not make final disposition of a claim within six months
 15 after the claim is made in writing ~~to~~ and filed with the Risk
 16 Manager in the manner prescribed by the board, the claimant may,
 17 by notice in writing, withdraw the claim from consideration of the
 18 Risk Manager or board and begin suit under such act.

19 Sec. 5. Section 81-8,220, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 81-8,220 The Director of Insurance, Commissioner of
 22 Labor, and Director of Administrative Services shall constitute
 23 the State Claims Board which shall be a part of the Risk Management
 24 Program created by section 81-8,239.01. The Attorney General shall
 25 be its legal advisor. With the advice and consent of the other

1 members of the board, the Director of Administrative Services ~~shall~~
2 may hire a secretary for the board. The members of the board shall
3 receive no compensation for their services except that provided
4 by law for the offices they hold, but they shall be allowed
5 necessary traveling expenses in performing their duties as provided
6 in sections 81-1174 to 81-1177.

7 Sec. 6. Section 81-8,224, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 81-8,224 (1) Any award to a claimant and any judgment
10 in favor of a claimant under the State Tort Claims Act shall be
11 certified by the Risk Manager or State Claims Board to the Director
12 of Administrative Services who shall promptly issue a warrant for
13 payment of such award or judgment out of the Tort Claims Fund
14 or State Insurance Fund, as appropriate, if sufficient money is
15 available in the fund, except that no portion in excess of fifty
16 thousand dollars of any award or judgment shall be paid until such
17 award or judgment has been reviewed by the Legislature and specific
18 appropriation made therefor. All awards and judgments which arise
19 out of the same facts and circumstances shall be aggregated for
20 the purpose of determining whether such awards and judgments shall
21 be reviewed by the Legislature and specific appropriation made
22 therefor.

23 (2) Any award, judgment, or associated costs on a
24 claim which is covered by liability insurance or by group
25 self-insurance, the amount of which falls within the applicable

1 policy's self-insured retention, shall be paid from the State
2 Insurance Fund.

3 (3) Delivery of any warrant in satisfaction of an award
4 or judgment shall be made only upon receipt of a written release by
5 the claimant in a form approved by the State Claims Board.

6 Sec. 7. Section 81-8,227, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-8,227 (1) Every tort claim permitted under the State
9 Tort Claims Act shall be forever barred unless within two years
10 after such claim accrued the claim is made in writing to the State
11 ~~Claims Board~~ Risk Manager in the manner provided by such act. The
12 time to begin suit under such act shall be extended for a period
13 of six months from the date of mailing of notice to the claimant
14 by the ~~board~~ Risk Manager or State Claims Board as to the final
15 disposition of the claim or from the date of withdrawal of the
16 claim ~~from the board~~ under section 81-8,213 if the time to begin
17 suit would otherwise expire before the end of such period.

18 (2) If a claim is made or filed under any other law of
19 this state and a determination is made by a state agency or court
20 that the State Tort Claims Act provides the exclusive remedy for
21 the claim, the time to make a claim and begin suit under such
22 act shall be extended for a period of six months from the date of
23 the court order making such determination or the date of mailing
24 of notice to the claimant of such determination by a state agency
25 if the time to make the claim and to begin suit under such act

1 would otherwise expire before the end of such period. The time to
2 begin a suit under such act may be further extended as provided in
3 subsection (1) of this section.

4 (3) If a claim is brought under the Nebraska
5 Hospital-Medical Liability Act, the filing of a request for review
6 under section 44-2840 shall extend the time to begin suit under
7 the State Tort Claims Act an additional ninety days following the
8 issuance of the opinion by the medical review panel if the time to
9 begin suit under the State Tort Claims Act would otherwise expire
10 before the end of such ninety-day period.

11 (4) This section and section 25-213 shall constitute the
12 only statutes of limitations applicable to the State Tort Claims
13 Act.

14 Sec. 8. Section 81-8,228, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-8,228 The court rendering a judgment for the claimant
17 under the State Tort Claims Act, the Risk Manager or State Claims
18 Board making an award under section 81-8,211, or the Attorney
19 General settling a claim under section 81-8,218 shall determine and
20 allow reasonable attorney's fees and expenses, to be paid out of
21 but not in addition to the amount of judgment or award recovered,
22 to the attorneys representing the claimant.

23 Sec. 9. Section 81-8,300, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-8,300 After investigation, the Risk Manager or State

1 Claims Board shall either approve, approve with conditions or
2 limitations, or disapprove of each claim or request and append to
3 the claim or request a concise statement of the facts brought out
4 in such investigation upon which its approval or disapproval is
5 based. If any claim is approved in an amount of more than five
6 thousand dollars, the approval of the board is required. Such claim
7 or request, together with the original papers supporting it and the
8 appended statement, shall be filed with the Risk Manager in the
9 manner prescribed by the State Claims Board. The Risk Manager shall
10 promptly notify each claimant of the decision by the Risk Manager
11 or State Claims Board on his or her claim by regular mail. The
12 notification shall include (1) the decision of the Risk Manager or
13 State Claims Board, (2) ~~a statement that a dissatisfied claimant~~
14 a statement that a claimant dissatisfied with the decision of the
15 Risk Manager may have his or her claim reviewed by the board
16 or a statement that a claimant dissatisfied with the decision of
17 the board may have his or her claim reviewed by the Legislature
18 upon application, (3) the procedure for making an application for
19 review, and (4) the time limit for making such application.

20 If the claimant is dissatisfied with the decision of the
21 Risk Manager, he or she may file an application for review by
22 the board. If the claimant is dissatisfied with the decision of
23 the board, he or she may file an application for review by the
24 Legislature. The application for review shall be filed with the
25 Risk Manager in the manner prescribed by the ~~State Claims Board.~~

1 board. The application for review shall be filed within sixty days
2 after the date of the decision by the State Claims Board on the
3 claim, which is being reviewed.

4 Each claim which has been approved or for which an
5 application for review with the Legislature has been filed and each
6 request referred to in section 81-8,297 shall be delivered by the
7 Risk Manager to the chairperson of the Business and Labor Committee
8 of the Legislature at the next regular session of the Legislature
9 convening after the date of the decision of the board. The Risk
10 Manager may direct the payment by the state agency involved of any
11 claim not in excess of ~~two~~ five thousand dollars if such payment
12 is agreed to by the head of the agency involved. The State Claims
13 Board may direct payment by the state agency involved of any claim
14 not in excess of ~~ten~~ fifty thousand dollars if such payment is
15 agreed to by the head of the agency involved and the agency has
16 sufficient funds to pay the claim. If claims approved by the Risk
17 Manager or State Claims Board arise out of the same facts and
18 circumstances, they shall be aggregated. If the Risk Manager or
19 State Claims Board does not direct the payment of a claim as set
20 forth in this section or the claim exceeds the dollar limitations
21 set forth in this section, the claim shall be reviewed by the
22 Legislature and an appropriation made therefor if appropriate. The
23 Risk Manager shall report all claims and judgments paid under the
24 State Miscellaneous Claims Act to the Clerk of the Legislature
25 and the Chairperson of the Business and Labor Committee of the

1 Legislature. The report shall include the name of the claimant, a
2 statement of the amount claimed and paid, and a brief description
3 of the claim including the agency and program or activity under
4 which the claim arose. Any member of the Legislature may receive a
5 copy of the report by making a request to the Risk Manager.

6 Sec. 10. Section 81-8,305, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-8,305 (1) If agreed to by the claimant and the
9 contracting agency, the State Claims Board shall have the authority
10 to consider, ascertain, adjust, compromise, settle, determine,
11 or allow any contract claim. Upon receipt of a contract claim,
12 the Risk Manager shall immediately notify the claimant and the
13 contracting agency of the option of having the dispute submitted to
14 the State Claims Board.

15 (2) If the claimant and the contracting agency agree
16 to submit the dispute to the State Claims Board as provided in
17 subsection (1) of this section, the board shall resolve such
18 dispute in the manner provided under the State Miscellaneous Claims
19 Act. For claims submitted to the board under this subsection, the
20 contracting agency shall provide the board with all documents and
21 information relating to the claim which the contracting agency
22 obtained during its investigation.

23 (3) If either the claimant or the contracting agency
24 objects in writing notifies the Risk Manager in writing within
25 ninety days after mailing of the notice required in subsection (1)

1 of this section that the claimant or the contracting agency objects
2 to the submission of the dispute to the State Claims Board, within
3 ninety days of mailing of the notice required in subsection (1) of
4 this section, the board shall have no further jurisdiction over the
5 claim and the claimant may initiate an action in the district court
6 of Lancaster County. The action in the district court of Lancaster
7 County must be filed with the district court within two years after
8 the date the Risk Manager receives the written notification of
9 objection or the claim shall be forever barred.

10 Sec. 11. Original sections 81-8,210, 81-8,212, 81-8,213,
11 81-8,220, 81-8,227, 81-8,228, 81-8,300, and 81-8,305, Reissue
12 Revised Statutes of Nebraska, and sections 81-8,211 and 81-8,224,
13 Revised Statutes Cumulative Supplement, 2006, are repealed.