

AMENDMENTS TO LB 260

Introduced by Rogert, 16.

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

3 Section 1. Sections 1 to 11 of this act shall be known
4 and may be cited as the Nebraska Claims for Wrongful Conviction and
5 Imprisonment Act.

6 Sec. 2. The Legislature finds that innocent persons who
7 have been wrongly convicted of crimes and subsequently imprisoned
8 have been uniquely victimized, have distinct problems reentering
9 society, and have difficulty achieving legal redress due to a
10 variety of substantive and technical obstacles in the law. The
11 Legislature also finds that such persons should have an available
12 avenue of redress. In light of the particular and substantial
13 horror of being imprisoned for a crime one did not commit,
14 the Legislature intends by enactment of the Nebraska Claims for
15 Wrongful Conviction and Imprisonment Act that persons who can
16 demonstrate that they were wrongfully convicted shall have a claim
17 against the state as provided in the act.

18 Sec. 3. In order to recover under the Nebraska Claims for
19 Wrongful Conviction and Imprisonment Act, the claimant shall prove
20 each of the following by a preponderance of the evidence:

21 (1) That he or she was convicted of one or more felony
22 crimes and subsequently sentenced to a term of imprisonment for
23 such felony crime or crimes and has served all or any part of the

1 sentence;

2 (2) That the Board of Pardons has pardoned the claimant
3 or that a court has vacated the conviction of the claimant based
4 upon a finding that the claimant was innocent of the felony crimes
5 for which he or she was convicted;

6 (3) That he or she did not commit or suborn perjury,
7 fabricate evidence, or otherwise make a false statement to cause
8 or bring about his or her conviction or the conviction of another.
9 However, neither a guilty plea, nor a confession or admission
10 coerced by law enforcement and later found to be false, constitutes
11 bringing about his or her own conviction; and

12 (4) Damages under section 4 of this act.

13 Sec. 4. (1) A claimant under the Nebraska Claims
14 for Wrongful Conviction and Imprisonment Act shall recover the
15 following damages found to directly result from the wrongful
16 conviction:

17 (a) For a loss of the claimant's freedom an amount equal
18 to twenty-five thousand dollars for each year of imprisonment or
19 fifty thousand dollars for each year spent on death row;

20 (b) Physical and emotional pain and suffering experienced
21 by the claimant to date and reasonably certain to be experienced in
22 the future;

23 (c) Lost wages and lost earning capacity;

24 (d) Medical expenses incurred in the treatment of the
25 claimant's injuries to date and reasonably certain to be incurred
26 in the future;

27 (e) The reasonable costs of necessary vocational

1 rehabilitation to restore the claimant's earning capacity to a
2 level equivalent to his or her earning capacity immediately prior
3 to the wrongful conviction; and

4 (f) Costs incurred with his or her criminal defense and
5 expenses related to establishing the claimant's innocence.

6 (2) The following costs shall not offset damages:

7 (a) Costs of imprisonment; and

8 (b) Value of any care or education provided to the
9 claimant while he or she is imprisoned.

10 (3) No damages shall be payable to the claimant for those
11 periods of time during which he or she was imprisoned for any
12 unrelated criminal offense.

13 Sec. 5. Upon successful presentation of a claim under the
14 Nebraska Claims for Wrongful Conviction and Imprisonment Act, the
15 claimant shall receive an award of reasonable attorney's fees to be
16 determined by the court.

17 Sec. 6. If the court finds that any property of the
18 claimant was subjected to a lien pursuant to defense services
19 rendered by the state to defend the client in connection with the
20 criminal case that resulted in his or her wrongful conviction, the
21 court shall extinguish the lien.

22 Sec. 7. The Board of Pardons, upon the issuance of a
23 full pardon on or after the effective date of this act, shall
24 provide a copy of the Nebraska Claims for Wrongful Conviction and
25 Imprisonment Act at the time the pardon is issued to the individual
26 pardoned. The individual shall acknowledge, in writing, his or
27 her receipt of a copy of the act on a form established by the

1 board, which acknowledgement shall be retained on file by the board
2 as part of its official records and shall be admissible in any
3 proceeding filed by a claimant under the act.

4 Sec. 8. (1) Upon obtaining a postconviction exoneration
5 for actual innocence through either a pardon based on innocence
6 from an erroneous felony conviction or a judicial order vacating or
7 reversing an erroneous felony conviction, a person may petition the
8 district court in which the erroneous felony conviction occurred
9 for an order to expunge all records of the erroneous felony
10 conviction. The petition shall be accompanied by a certified
11 copy of the pardon or judicial order vacating or reversing the
12 erroneous felony conviction. The petitioner shall serve a copy of
13 the petition on the county attorney of the county in which the
14 erroneous felony conviction occurred. If the county attorney files
15 no objection to the petition, the court may grant the petition.

16 (2) If the county attorney files an objection to the
17 petitioner's request for expunging the criminal record of the
18 erroneous felony conviction, the court shall conduct a hearing on
19 the matter.

20 (3) If a court determines that the petition is warranted
21 and orders the expunction of all records pertaining to the
22 petitioner's erroneous felony conviction, a law enforcement agency
23 may gain access to such person's expunged records only with a court
24 order upon good cause showing that access to the expunged records
25 is required for the performance of official law enforcement duties.

26 (4) If a court determines that the petition is warranted
27 and orders the expunction of all records pertaining to the

1 petitioner's erroneous felony conviction, the court shall notify
2 the Nebraska State Patrol and any other law enforcement agency to
3 expunge all records pertaining to the petitioner's erroneous felony
4 conviction.

5 (5) The Nebraska State Patrol, any other law enforcement
6 agency involved, and the court shall provide written notice of the
7 expunction by certified mail to the petitioner.

8 (6) A person who obtains a court order to expunge all
9 records pertaining to such person's erroneous felony conviction may
10 lawfully answer and swear under oath that an arrest, prosecution,
11 or conviction pertaining to the erroneous conviction never
12 occurred.

13 (7) Any party may appeal a final order granting or
14 denying the expunction of records pertaining to the erroneous
15 felony conviction.

16 Sec. 9. Nothing contained in the Nebraska Claims for
17 Wrongful Conviction and Imprisonment Act shall preclude the state
18 from providing services to the claimant upon exoneration and the
19 reasonable value of services provided shall be treated as an
20 advance against any award or judgment.

21 Sec. 10. Claims brought pursuant to the Nebraska Claims
22 for Wrongful Conviction and Imprisonment Act shall be made under
23 the State Tort Claims Act.

24 Sec. 11. Nothing in the Nebraska Claims for Wrongful
25 Conviction and Imprisonment Act shall limit the claimant from
26 making any other claim available against any other party or based
27 upon any other theory of recovery.

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

12 (2) State Claims Board means the board created by section
13 81-8,220;

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

21 (4) Tort claim means any claim against the State of
22 Nebraska for money only on account of damage to or loss of property
23 or on account of personal injury or death caused by the negligent
24 or wrongful act or omission of any employee of the state, while
25 acting within the scope of his or her office or employment, under
26 circumstances in which the state, if a private person, would be
27 liable to the claimant for such damage, loss, injury, or death but

1 does not include any claim accruing before January 1, 1970, ~~and~~ any
2 claim against an employee of the state for money only on account
3 of damage to or loss of property or on account of personal injury
4 or death caused by the negligent or wrongful act or omission of
5 the employee while acting within the scope of his or her employment
6 occurring on or after August 25, 1989, and any claim allowed under
7 the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

8 (5) Award means any amount determined by the Risk Manager
9 or State Claims Board to be payable to a claimant under section
10 81-8,211 or the amount of any compromise or settlement under
11 section 81-8,218; and

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

14 Sec. 13. Section 81-8,227, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-8,227 (1) Except as provided in subsection (2) of this
17 section, every ~~Every~~ tort claim permitted under the State Tort
18 Claims Act shall be forever barred unless within two years after
19 such claim accrued the claim is made in writing to the Risk Manager
20 in the manner provided by such act. The time to begin suit under
21 such act shall be extended for a period of six months from the date
22 of mailing of notice to the claimant by the Risk Manager or State
23 Claims Board as to the final disposition of the claim or from the
24 date of withdrawal of the claim under section 81-8,213 if the time
25 to begin suit would otherwise expire before the end of such period.

26 (2) (a) The date of a qualifying pardon from the Board of
27 Pardons or a vacation of a conviction by a court shall be the date

1 the claimant's claim shall accrue under the Nebraska Claims for
2 Wrongful Conviction and Imprisonment Act for purposes of complying
3 with the notice and filing requirements of the State Tort Claims
4 Act.

5 (b) A claim for compensation brought under the Nebraska
6 Claims for Wrongful Conviction and Imprisonment Act shall be filed
7 within two years after either the grant of a pardon or the grant of
8 judicial relief. Any action by the state challenging or appealing
9 the grant of such judicial relief shall toll the two-year period.
10 Persons convicted, incarcerated, and released from custody prior to
11 the effective date of this act shall file a claim under the act
12 within three years after the effective date of this act.

13 (c) In the event a claimant granted a full pardon on
14 or after the effective date of this act shows he or she did not
15 receive a copy of the information required by this section, he or
16 she shall receive a one-year extension of the notice and statute of
17 limitations requirements of the State Tort Claims Act.

18 (d) Notwithstanding any other provision of law, failure
19 to file any applicable notice of claim shall not bar filing of a
20 claim under the act.

21 ~~(2)~~ (3) If a claim is made or filed under any other law
22 of this state and a determination is made by a state agency or
23 court that the State Tort Claims Act provides the exclusive remedy
24 for the claim, the time to make a claim and begin suit under such
25 act shall be extended for a period of six months from the date of
26 the court order making such determination or the date of mailing
27 of notice to the claimant of such determination by a state agency

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

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

12 ~~(4)~~ (5) This section and section 25-213 shall constitute
13 the only statutes of limitations applicable to the State Tort
14 Claims Act.

15 Sec. 14. Original sections 81-8,210 and 81-8,227, Reissue
16 Revised Statutes of Nebraska, are repealed.