

E AND R AMENDMENTS TO LB 260

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

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 clear and convincing 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; and

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.

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

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

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

22 (c) Lost wages and lost earning capacity;

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

26 (e) The reasonable costs of necessary vocational
27 rehabilitation to restore the claimant's earning capacity to a

1 level equivalent to his or her earning capacity immediately prior
2 to the wrongful conviction; and

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

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

6 (a) Costs of imprisonment; and

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

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

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

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

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

1 as part of its official records and shall be admissible in any
2 proceeding filed by a claimant under the act.

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

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

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

25 (4) If a court determines that the petition is warranted
26 and orders the expunction of all records pertaining to the
27 petitioner's erroneous felony conviction, the court shall notify

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

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

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

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

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

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

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

27 Sec. 12. Section 81-8,210, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-8,210 For purposes of the State Tort Claims Act:

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

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

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

20 (4) Tort claim means any claim against the State of
21 Nebraska for money only on account of damage to or loss of property
22 or on account of personal injury or death caused by the negligent
23 or wrongful act or omission of any employee of the state, while
24 acting within the scope of his or her office or employment, under
25 circumstances in which the state, if a private person, would be
26 liable to the claimant for such damage, loss, injury, or death but
27 does not include any claim accruing before January 1, 1970, and any

1 claim against an employee of the state for money only on account
2 of damage to or loss of property or on account of personal injury
3 or death caused by the negligent or wrongful act or omission of
4 the employee while acting within the scope of his or her employment
5 occurring on or after August 25, 1989, and any claim allowed under
6 the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

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

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

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

15 81-8,227 (1) Except as provided in subsection (2) of this
16 section, every ~~Every~~ tort claim permitted under the State Tort
17 Claims Act shall be forever barred unless within two years after
18 such claim accrued the claim is made in writing to the Risk Manager
19 in the manner provided by such act. The time to begin suit under
20 such act shall be extended for a period of six months from the date
21 of mailing of notice to the claimant by the Risk Manager or State
22 Claims Board as to the final disposition of the claim or from the
23 date of withdrawal of the claim under section 81-8,213 if the time
24 to begin suit would otherwise expire before the end of such period.

25 (2) (a) The date of a qualifying pardon from the Board of
26 Pardons or a vacation of a conviction by a court shall be the date
27 the claimant's claim shall accrue under the Nebraska Claims for

1 Wrongful Conviction and Imprisonment Act for purposes of complying
2 with the notice and filing requirements of the State Tort Claims
3 Act.

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

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

17 (d) Notwithstanding any other provision of law, failure
18 to file any applicable notice of claim shall not bar filing of
19 a claim under the Nebraska Claims for Wrongful Conviction and
20 Imprisonment 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.

17 2. On page 1, strike beginning with "civil" in line
18 1 through line 2 and insert "claims against the state; to
19 amend sections 81-8,210 and 81-8,227, Reissue Revised Statutes
20 of Nebraska; to adopt the Nebraska Claims for Wrongful Conviction
21 and Imprisonment Act; to change provisions relating to tort claims
22 under the State Tort Claims Act; and to repeal the original
23 sections.".