

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 260

FINAL READING

Introduced by Rogert, 16; McGill, 26.

Read first time January 14, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to claims against the state; to amend sections
2 29-3506, 81-8,210, and 81-8,227, Reissue Revised Statutes
3 of Nebraska; to adopt the Nebraska Claims for Wrongful
4 Conviction and Imprisonment Act; to redefine criminal
5 history record information; to change provisions relating
6 to tort claims under the State Tort Claims Act; and to
7 repeal the original sections.

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

1 Section 1. Sections 1 to 8 of this act shall be known
2 and may be cited as the Nebraska Claims for Wrongful Conviction and
3 Imprisonment Act.

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

16 Sec. 3. In order to recover under the Nebraska Claims for
17 Wrongful Conviction and Imprisonment Act, the claimant shall prove
18 each of the following by clear and convincing evidence:

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

23 (2) With respect to the crime or crimes under subdivision
24 (1) of this section, that the Board of Pardons has pardoned the
25 claimant, that a court has vacated the conviction of the claimant,

1 or that the conviction was reversed and remanded for a new trial
2 and no subsequent conviction was obtained;

3 (3) That he or she was innocent of the crime or crimes
4 under subdivision (1) of this section; and

5 (4) That he or she did not commit or suborn perjury,
6 fabricate evidence, or otherwise make a false statement to cause
7 or bring about such conviction or the conviction of another, with
8 respect to the crime or crimes under subdivision (1) of this
9 section, except that a guilty plea, a confession, or an admission,
10 coerced by law enforcement and later found to be false, does not
11 constitute bringing about his or her own conviction of such crime
12 or crimes.

13 Sec. 4. (1) A claimant under the Nebraska Claims for
14 Wrongful Conviction and Imprisonment Act shall recover damages
15 found to proximately result from the wrongful conviction and that
16 have been proved based upon a preponderance of the evidence.

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

18 (a) Costs of imprisonment; and

19 (b) Value of any care or education provided to the
20 claimant while he or she was imprisoned.

21 (3) No damages shall be payable to the claimant for any
22 period of time during which he or she was concurrently imprisoned
23 for any unrelated criminal offense.

24 (4) In no case shall damages awarded under the act exceed
25 five hundred thousand dollars per claimant per occurrence.

1 (5) A claimant's cause of action under the act shall not
2 be assignable and shall not survive the claimant's death.

3 Sec. 5. If the court finds that any property of the
4 claimant was subjected to a lien to recover costs of defense
5 services rendered by the state to defend the claimant in connection
6 with the criminal case that resulted in his or her wrongful
7 conviction, the court shall extinguish the lien.

8 Sec. 6. Nothing contained in the Nebraska Claims for
9 Wrongful Conviction and Imprisonment Act shall preclude the state
10 from providing services to the claimant upon exoneration, and
11 the reasonable value of services provided shall be treated as an
12 advance against any award or judgment under the act.

13 Sec. 7. A claim brought pursuant to the Nebraska Claims
14 for Wrongful Conviction and Imprisonment Act shall be filed under
15 the State Tort Claims Act.

16 Sec. 8. Nothing in the Nebraska Claims for Wrongful
17 Conviction and Imprisonment Act shall limit the claimant from
18 making any other claim available against any other party or based
19 upon any other theory of recovery, except that a claimant who
20 recovers a claim under the act shall not have any other claim
21 against the state based upon any other theory of recovery or law.

22 Sec. 9. Section 29-3506, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-3506 Criminal history record information shall mean
25 information collected by criminal justice agencies on individuals

1 consisting of identifiable descriptions and notations of issuance
2 of arrest warrants, arrests, detentions, indictments, charges by
3 information, and other formal criminal charges, and any disposition
4 arising from such arrests, charges, sentencing, correctional
5 supervision, and release. Criminal history record information shall
6 include any judgment against or settlement with the state as a
7 result of a wrongful conviction pursuant to the Nebraska Claims
8 for Wrongful Conviction and Imprisonment Act. Criminal history
9 record information shall not include intelligence or investigative
10 information.

11 Sec. 10. Section 81-8,210, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-8,210 For purposes of the State Tort Claims Act:

14 (1) State agency includes all departments, agencies,
15 boards, bureaus, and commissions of the State of Nebraska and
16 corporations the primary function of which is to act as, and
17 while acting as, instrumentalities or agencies of the State of
18 Nebraska but shall not include corporations that are essentially
19 private corporations or entities created pursuant to the Interlocal
20 Cooperation Act or the Joint Public Agency Act. State agency does
21 not include any contractor with the State of Nebraska;

22 (2) State Claims Board means the board created by section
23 81-8,220;

24 (3) Employee of the state means any one or more officers
25 or employees of the state or any state agency and shall include

1 duly appointed members of boards or commissions when they are
2 acting in their official capacity. State employee does not include
3 any employee of an entity created pursuant to the Interlocal
4 Cooperation Act or the Joint Public Agency Act or any contractor
5 with the State of Nebraska;

6 (4) Tort claim means any claim against the State of
7 Nebraska for money only on account of damage to or loss of property
8 or on account of personal injury or death caused by the negligent
9 or wrongful act or omission of any employee of the state, while
10 acting within the scope of his or her office or employment, under
11 circumstances in which the state, if a private person, would be
12 liable to the claimant for such damage, loss, injury, or death but
13 does not include any claim accruing before January 1, 1970, ~~and~~ any
14 claim against an employee of the state for money only on account
15 of damage to or loss of property or on account of personal injury
16 or death caused by the negligent or wrongful act or omission of
17 the employee while acting within the scope of his or her employment
18 occurring on or after August 25, 1989, and any claim allowed under
19 the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

20 (5) Award means any amount determined by the Risk Manager
21 or State Claims Board to be payable to a claimant under section
22 81-8,211 or the amount of any compromise or settlement under
23 section 81-8,218; and

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

1 Sec. 11. Section 81-8,227, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,227 (1) Except as provided in subsection (2) of this
4 section, every ~~Every~~ tort claim permitted under the State Tort
5 Claims Act shall be forever barred unless within two years after
6 such claim accrued the claim is made in writing to the Risk Manager
7 in the manner provided by such act. The time to begin suit under
8 such act shall be extended for a period of six months from the date
9 of mailing of notice to the claimant by the Risk Manager or State
10 Claims Board as to the final disposition of the claim or from the
11 date of withdrawal of the claim under section 81-8,213 if the time
12 to begin suit would otherwise expire before the end of such period.

13 (2) The date of a qualifying pardon from the Board of
14 Pardons, a final order by a court vacating a conviction, or a
15 conviction that was reversed and remanded for a new trial and
16 no subsequent conviction was obtained, whichever is later, shall
17 be the date the claimant's claim shall accrue under the Nebraska
18 Claims for Wrongful Conviction and Imprisonment Act for purposes
19 of complying with the notice and filing requirements of the State
20 Tort Claims Act. The Nebraska Claims for Wrongful Conviction and
21 Imprisonment Act applies to a claimant who would have had a claim
22 if the act had been in effect before the effective date of this
23 act or who has a claim on or after such date. If a claimant had
24 a qualifying pardon from the Board of Pardons, a final order by a
25 court vacating a conviction, or a conviction that was reversed and

1 remanded for a new trial and no subsequent conviction was obtained,
2 before the effective date of this act, the claimant's claim shall
3 accrue under the Nebraska Claims for Wrongful Conviction and
4 Imprisonment Act on the effective date of this act for purposes of
5 complying with the notice and filing requirements of the State Tort
6 Claims Act.

7 ~~(2)~~ (3) If a claim is made or filed under any other law
8 of this state and a determination is made by a state agency or
9 court that the State Tort Claims Act provides the exclusive remedy
10 for the claim, the time to make a claim and begin suit under such
11 act shall be extended for a period of six months from the date of
12 the court order making such determination or the date of mailing
13 of notice to the claimant of such determination by a state agency
14 if the time to make the claim and to begin suit under such act
15 would otherwise expire before the end of such period. The time to
16 begin a suit under such act may be further extended as provided in
17 subsection (1) of this section.

18 ~~(3)~~ (4) If a claim is brought under the Nebraska
19 Hospital-Medical Liability Act, the filing of a request for review
20 under section 44-2840 shall extend the time to begin suit under
21 the State Tort Claims Act an additional ninety days following the
22 issuance of the opinion by the medical review panel if the time to
23 begin suit under the State Tort Claims Act would otherwise expire
24 before the end of such ninety-day period.

25 ~~(4)~~ (5) This section and section 25-213 shall constitute

LB 260

LB 260

1 the only statutes of limitations applicable to the State Tort
2 Claims Act.

3 Sec. 12. Original sections 29-3506, 81-8,210, and
4 81-8,227, Reissue Revised Statutes of Nebraska, are repealed.