

AMENDMENTS TO LB729

Introduced by Wayne, 13.

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

3           Section 1. Section 81-8,219, Revised Statutes Supplement, 2017, is  
4 amended to read:

5           81-8,219 The State Tort Claims Act shall not apply to:

6           (1) Any claim based upon an act or omission of an employee of the  
7 state, exercising due care, in the execution of a statute, rule, or  
8 regulation, whether or not such statute, rule, or regulation is valid, or  
9 based upon the exercise or performance or the failure to exercise or  
10 perform a discretionary function or duty on the part of a state agency or  
11 an employee of the state, whether or not the discretion is abused;

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

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

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

21           (5) Any claim arising out of misrepresentation or deceit, except  
22 that the State Tort Claims Act shall apply to a claim arising out of  
23 misrepresentation or deceit by the Department of Health and Human  
24 Services in failing to warn, notify, or inform of a ward's history as a  
25 victim or perpetrator of sexual abuse in cases of adoption or placement;

26           (6) ~~(5)~~ Any claim by an employee of the state which is covered by  
27 the Nebraska Workers' Compensation Act;

1           (7) ~~(6)~~ Any claim based on activities of the Nebraska National Guard  
2 when such claim is cognizable under the Federal Tort Claims Act, 28  
3 U.S.C. 2674, or the federal National Guard Tort Claims Act ~~of the United~~  
4 ~~States~~, 32 U.S.C. 715, or when such claim accrues as a result of active  
5 federal service or state service at the call of the Governor for quelling  
6 riots and civil disturbances;

7           (8) ~~(7)~~ Any claim based upon the failure to make an inspection or  
8 making an inadequate or negligent inspection of any property other than  
9 property owned by or leased to the state to determine whether the  
10 property complies with or violates any statute, ordinance, rule, or  
11 regulation or contains a hazard to public health or safety unless the  
12 state had reasonable notice of such hazard or the failure to inspect or  
13 inadequate or negligent inspection constitutes a reckless disregard for  
14 public health or safety;

15           (9) ~~(8)~~ Any claim based upon the issuance, denial, suspension, or  
16 revocation of or failure or refusal to issue, deny, suspend, or revoke  
17 any permit, license, certificate, or order. Such claim shall also not be  
18 filed against a state employee acting within the scope of his or her  
19 office. Nothing in this subdivision shall be construed to limit the  
20 state's liability for any claim based upon the negligent execution by a  
21 state employee in the issuance of a certificate of title under the Motor  
22 Vehicle Certificate of Title Act and the State Boat Act except when such  
23 title is issued upon an application filed electronically by an approved  
24 licensed dealer participating in the electronic dealer services system  
25 pursuant to section 60-1507;

26           (10) ~~(9)~~ Any claim arising out of the malfunction, destruction, or  
27 unauthorized removal of any traffic or road sign, signal, or warning  
28 device unless it is not corrected by the governmental entity responsible  
29 within a reasonable time after actual or constructive notice of such  
30 malfunction, destruction, or removal. Nothing in this subdivision shall  
31 give rise to liability arising from an act or omission of any

1 governmental entity in placing or removing any traffic or road signs,  
2 signals, or warning devices when such placement or removal is the result  
3 of a discretionary act of the governmental entity;

4 (11) ~~(10)~~ Any claim arising out of snow or ice conditions or other  
5 temporary conditions caused by nature on any highway as defined in  
6 section 60-624, bridge, public thoroughfare, or other state-owned public  
7 place due to weather conditions. Nothing in this subdivision shall be  
8 construed to limit the state's liability for any claim arising out of the  
9 operation of a motor vehicle by an employee of the state while acting  
10 within the course and scope of his or her employment by the state;

11 (12) ~~(11)~~ Any claim arising out of the plan or design for the  
12 construction of or an improvement to any highway as defined in such  
13 section or bridge, either in original construction or any improvement  
14 thereto, if the plan or design is approved in advance of the construction  
15 or improvement by the governing body of the governmental entity or some  
16 other body or employee exercising discretionary authority to give such  
17 approval;

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

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

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

10 (b) For purposes of this subdivision:

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

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

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

23 (iv) Fee means a fee to participate in or be a spectator at a  
24 recreational activity. A fee shall include payment by the claimant to any  
25 person or organization other than the state only to the extent the state  
26 retains control over the premises or the activity. A fee shall not  
27 include payment of a fee or charge for parking or vehicle entry.

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

1            (15) ~~(14)~~ Any claim arising as a result of a special event during a  
2 period of time specified in a notice provided by a political subdivision  
3 pursuant to subsection (3) of section 39-1359.

4            Sec. 2. Original section 81-8,219, Revised Statutes Supplement,  
5 2017, is repealed.