

AMENDMENTS TO LB729

Introduced by Judiciary.

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 mental and  
25 behavioral health history, educational history, and medical history,  
26 including any history as a victim or perpetrator of sexual abuse in cases  
27 of adoption or placement;

1           (6) ~~(5)~~ Any claim by an employee of the state which is covered by  
2 the Nebraska Workers' Compensation Act;

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

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

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

28           (10) ~~(9)~~ Any claim arising out of the malfunction, destruction, or  
29 unauthorized removal of any traffic or road sign, signal, or warning  
30 device unless it is not corrected by the governmental entity responsible  
31 within a reasonable time after actual or constructive notice of such

1 malfunction, destruction, or removal. Nothing in this subdivision shall  
2 give rise to liability arising from an act or omission of any  
3 governmental entity in placing or removing any traffic or road signs,  
4 signals, or warning devices when such placement or removal is the result  
5 of a discretionary act of the governmental entity;

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

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

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

28 (14)(a) ~~(13)(a)~~ Any claim relating to recreational activities on  
29 property leased, owned, or controlled by the state for which no fee is  
30 charged (i) resulting from the inherent risk of the recreational  
31 activity, (ii) arising out of a spot or localized defect of the premises

1 unless the spot or localized defect is not corrected within a reasonable  
2 time after actual or constructive notice of the spot or localized defect,  
3 or (iii) arising out of the design of a skatepark or bicycle motocross  
4 park constructed for purposes of skateboarding, inline skating,  
5 bicycling, or scootering that was constructed or reconstructed,  
6 reasonably and in good faith, in accordance with generally recognized  
7 engineering or safety standards or design theories in existence at the  
8 time of the construction or reconstruction. For purposes of this  
9 subdivision, the state shall be charged with constructive notice only  
10 when the failure to discover the spot or localized defect of the premises  
11 is the result of gross negligence.

12 (b) For purposes of this subdivision:

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

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

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

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

30 (c) This subdivision, and not subdivision (8) ~~(7)~~ of this section,  
31 shall apply to any claim arising from the inspection or failure to make

1 an inspection or negligent inspection of premises owned or leased by the  
2 state and used for recreational activities; or  
3 (15) ~~(14)~~ Any claim arising as a result of a special event during a  
4 period of time specified in a notice provided by a political subdivision  
5 pursuant to subsection (3) of section 39-1359.

6 Sec. 2. Original section 81-8,219, Revised Statutes Supplement,  
7 2017, is repealed.