

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 729

FINAL READING

Introduced by Wayne, 13; Watermeier, 1.

Read first time January 03, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the State Tort Claims Act; to amend section
2 81-8,219, Revised Statutes Supplement, 2017; to allow certain tort
3 claims for misrepresentation or deceit by the Department of Health
4 and Human Services; to harmonize provisions; and to repeal the
5 original section.

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

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

3 81-8,219 The State Tort Claims Act shall not apply to:

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

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

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

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

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

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

28 (7) (6) Any claim based on activities of the Nebraska National Guard
29 when such claim is cognizable under the Federal Tort Claims Act, 28
30 U.S.C. 2674, or the federal National Guard ~~Tort~~ Claims Act ~~of the United~~
31 ~~States~~, 32 U.S.C. 715, or when such claim accrues as a result of active

1 federal service or state service at the call of the Governor for quelling
2 riots and civil disturbances;

3 (8) ~~(7)~~ Any claim based upon the failure to make an inspection or
4 making an inadequate or negligent inspection of any property other than
5 property owned by or leased to the state to determine whether the
6 property complies with or violates any statute, ordinance, rule, or
7 regulation or contains a hazard to public health or safety unless the
8 state had reasonable notice of such hazard or the failure to inspect or
9 inadequate or negligent inspection constitutes a reckless disregard for
10 public health or safety;

11 (9) ~~(8)~~ Any claim based upon the issuance, denial, suspension, or
12 revocation of or failure or refusal to issue, deny, suspend, or revoke
13 any permit, license, certificate, or order. Such claim shall also not be
14 filed against a state employee acting within the scope of his or her
15 office. Nothing in this subdivision shall be construed to limit the
16 state's liability for any claim based upon the negligent execution by a
17 state employee in the issuance of a certificate of title under the Motor
18 Vehicle Certificate of Title Act and the State Boat Act except when such
19 title is issued upon an application filed electronically by an approved
20 licensed dealer participating in the electronic dealer services system
21 pursuant to section 60-1507;

22 (10) ~~(9)~~ Any claim arising out of the malfunction, destruction, or
23 unauthorized removal of any traffic or road sign, signal, or warning
24 device unless it is not corrected by the governmental entity responsible
25 within a reasonable time after actual or constructive notice of such
26 malfunction, destruction, or removal. Nothing in this subdivision shall
27 give rise to liability arising from an act or omission of any
28 governmental entity in placing or removing any traffic or road signs,
29 signals, or warning devices when such placement or removal is the result
30 of a discretionary act of the governmental entity;

31 (11) ~~(10)~~ Any claim arising out of snow or ice conditions or other

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

7 (12) ~~(11)~~ Any claim arising out of the plan or design for the
8 construction of or an improvement to any highway as defined in such
9 section or bridge, either in original construction or any improvement
10 thereto, if the plan or design is approved in advance of the construction
11 or improvement by the governing body of the governmental entity or some
12 other body or employee exercising discretionary authority to give such
13 approval;

14 (13) ~~(12)~~ Any claim arising out of the alleged insufficiency or want
15 of repair of any highway as defined in such section, bridge, or other
16 public thoroughfare. Insufficiency or want of repair shall be construed
17 to refer to the general or overall condition and shall not refer to a
18 spot or localized defect. The state shall be deemed to waive its immunity
19 for a claim due to a spot or localized defect only if the state has had
20 actual or constructive notice of the defect within a reasonable time to
21 allow repair prior to the incident giving rise to the claim;

22 (14)(a) ~~(13)(a)~~ Any claim relating to recreational activities on
23 property leased, owned, or controlled by the state for which no fee is
24 charged (i) resulting from the inherent risk of the recreational
25 activity, (ii) arising out of a spot or localized defect of the premises
26 unless the spot or localized defect is not corrected within a reasonable
27 time after actual or constructive notice of the spot or localized defect,
28 or (iii) arising out of the design of a skatepark or bicycle motocross
29 park constructed for purposes of skateboarding, inline skating,
30 bicycling, or scootering that was constructed or reconstructed,
31 reasonably and in good faith, in accordance with generally recognized

1 engineering or safety standards or design theories in existence at the
2 time of the construction or reconstruction. For purposes of this
3 subdivision, the state shall be charged with constructive notice only
4 when the failure to discover the spot or localized defect of the premises
5 is the result of gross negligence.

6 (b) For purposes of this subdivision:

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

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

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

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

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

28 (15) ~~(14)~~ Any claim arising as a result of a special event during a
29 period of time specified in a notice provided by a political subdivision
30 pursuant to subsection (3) of section 39-1359.

31 Sec. 2. Original section 81-8,219, Revised Statutes Supplement,

1 2017, is repealed.