

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SPECIAL SESSION

**LEGISLATIVE BILL 57**

Introduced by Wayne, 13.

Read first time July 29, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to civil actions; to amend sections 13-910,  
2 59-1608.03, and 59-1614, Reissue Revised Statutes of Nebraska,  
3 section 81-8,219, Revised Statutes Cumulative Supplement, 2022;  
4 section 59-1608.04, Reissue Revised Statutes of Nebraska, as amended  
5 by Laws 2024, LB1413, section 41; and section 87-303.11, Reissue  
6 Revised Statutes of Nebraska, as amended by Laws 2024, LB934,  
7 section 6; to state findings; to define terms; to authorize punitive  
8 damages as prescribed; to require punitive damages to be  
9 appropriated for the use of the common schools; to allow certain  
10 tort claims involving death, child abuse, or sexual assault of a  
11 child under the Political Subdivisions Tort Claims Act and the State  
12 Tort Claims Act; to change provisions of the Consumer Protection Act  
13 and Uniform Deceptive Trade Practices Act relating to civil  
14 penalties; to provide operative dates; to harmonize provisions; and  
15 to repeal the original sections.

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

1           Section 1. The Legislature finds and declares that:

2           (1) Article VII, section 5, of the Constitution of Nebraska provides  
3 in part that all fines, penalties, and license money arising under the  
4 general laws of the state shall belong and be paid over to the counties  
5 respectively where the same may be levied or imposed;

6           (2) Article VII, section 5, of the Constitution further provides  
7 that all such fines, penalties, and license money shall be appropriated  
8 exclusively to the use and support of the common schools in the  
9 respective subdivisions where the same may accrue;

10          (3) Punitive damages are in the nature of fines or penalties;

11          (4) Punitive damages are awarded both to punish the defendant and to  
12 deter the defendant and others from similar conduct. Punitive damages are  
13 appropriate in many situations where compensatory damages would be  
14 inadequate because the defendant acted in a truly egregious fashion; and

15          (5) Additional funds available for the public schools could be used  
16 to provide property tax relief.

17          Sec. 2. For the purposes of sections 1 to 7 of this act:

18          (1) Compensatory damages means damages intended to make whole the  
19 loss of an injured party and no more. The term includes general and  
20 special damages and does not include nominal, exemplary, or punitive  
21 damages;

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

24          (3) Malice means hatred, spite, or ill-will or the doing of a  
25 wrongful act intentionally without just cause or excuse;

26          (4) Nominal damages means damages that are not designed to  
27 compensate an injured party and are less than one thousand dollars;

28          (5) Punitive damages means damages that a party in a civil action is  
29 ordered to pay (a) based on aggravating circumstances, (b) to penalize  
30 such party, or (c) to provide additional deterrence and discourage  
31 similar conduct in the future. The term does not include compensatory

1 damages or nominal damages; and

2 (6)(a) Reckless disregard means the person acted with reckless  
3 disregard of the rights, health, or safety of others and the person was  
4 either aware, or did not care, that there was a substantial and  
5 unnecessary risk that such person's conduct would cause serious harm to  
6 others.

7 (b) In order for the conduct to be with reckless disregard of  
8 another's rights, health, or safety, it must have been unreasonable under  
9 the circumstances and there must have been a high probability that the  
10 conduct would cause serious harm to others.

11 Sec. 3. (1) Subject to this section, in an action for the breach of  
12 an obligation not arising from contract, other than an insurance  
13 contract, the trier of fact may, in addition to compensatory damages,  
14 award punitive damages for the sake of example and by way of punishing  
15 the defendant.

16 (2) In determining the amount, if any, of punitive damages to award,  
17 the trier of fact shall consider the following factors:

18 (a) The seriousness of the hazard to the public arising from the  
19 defendant's misconduct;

20 (b) The profitability of the misconduct to the defendant;

21 (c) The duration of the misconduct and any concealment of it;

22 (d) The degree of the defendant's awareness of the hazard and of its  
23 excessiveness;

24 (e) The target of the conduct was financially vulnerable;

25 (f) The attitude and conduct of the defendant upon discovery of the  
26 misconduct or hazard;

27 (g) The conduct involved repeated actions or was an isolated  
28 incident;

29 (h) In the case of a defendant that is a corporation or other  
30 entity, the number and level of employees involved in causing or  
31 concealing the misconduct; and

1           (i) The financial condition of the defendant.

2           (3)(a) Category I. The trier of fact may award punitive damages  
3 subject to the limit in subdivision (3)(b) of this section if the trier  
4 of fact finds by clear and convincing evidence:

5           (i) That the defendant acted with gross negligence, fraud, or  
6 reckless disregard; or

7           (ii) If the defendant is an insurer, that the defendant recklessly  
8 disregarded its duty to deal fairly and act in good faith with its  
9 insured.

10           (b) An award of punitive damages under this subsection shall not  
11 exceed the greater of:

12           (i) One million dollars; or

13           (ii) The amount of any compensatory damages awarded.

14           (4)(a) Category II. The trier of fact may award punitive damages  
15 subject to the limit in subdivision (4)(b) of this section if the trier  
16 of fact finds by clear and convincing evidence:

17           (i) That the defendant acted intentionally and with malice toward  
18 others; or

19           (ii) If the defendant is an insurer, that the defendant  
20 intentionally and with malice breached its duty to deal fairly and act in  
21 good faith with its insured.

22           (b) An award of punitive damages under this subsection shall not  
23 exceed the greater of:

24           (i) Five million dollars;

25           (ii) Three times the amount of any compensatory damages awarded; or

26           (iii) The increased financial benefit derived by the defendant as a  
27 direct result of the conduct causing the injury to the plaintiff and  
28 other persons or entities.

29           (c) The trial court shall reduce any award for punitive damages  
30 awarded pursuant to subdivision (4)(b)(iii) of this section by the amount  
31 the court finds the defendant has previously paid as a result of all

1 punitive damage verdicts entered in any court of this state for the same  
2 conduct by the defendant.

3 (5) Category III. The trier of fact may award punitive damages  
4 without regard to any limit set forth in this section if:

5 (a) The trier of fact finds by clear and convincing evidence:

6 (i) That the defendant acted with gross negligence, fraud, or  
7 reckless disregard; or

8 (ii) If the defendant is an insurer, that the defendant recklessly  
9 disregarded its duty to deal fairly and act in good faith with its  
10 insured; and

11 (b) The trial court finds, on the record and out of the presence of  
12 the jury, that there is evidence beyond a reasonable doubt that the  
13 defendant acted intentionally and with malice and engaged in conduct  
14 threatening to human life.

15 (6) Except as provided in section 5 of this act, the determination  
16 of what amount, if any, of punitive damages to award shall be made by the  
17 trier of fact in a separate proceeding that is conducted after the trier  
18 of fact has made findings regarding any compensatory damages.

19 Sec. 4. (1) An award of punitive damages must be specifically  
20 prayed for in the pleading.

21 (2) The party requesting punitive damages shall cause a copy of such  
22 pleading to be served upon the Attorney General and the county attorney.  
23 The county attorney shall notify the school board for any school district  
24 that may receive punitive damages if any are awarded.

25 (3) Upon an award of punitive damages, the court shall notify the  
26 county attorney. The county attorney or local school board may become a  
27 party to the action solely to protect and enforce the interests of the  
28 common schools in any award of punitive damages.

29 Sec. 5. Whether to award punitive damages, and the amount of such  
30 damages, shall be determined by the trier of fact unless waived by all  
31 parties.

1           Sec. 6. Any award of punitive damages shall be remitted to the  
2 State Treasurer for distribution in accordance with Article VII, section  
3 5, of the Constitution of Nebraska.

4           Sec. 7. (1) Sections 1 to 7 of this act are cumulative with and  
5 supplemental to any other laws of this state that authorize punitive  
6 damages.

7           (2) Nothing in sections 1 to 7 of this act shall prevent a court  
8 from ordering restitution or ordering payment of attorney's fees.

9           Sec. 8. Section 13-910, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11           13-910 The Political Subdivisions Tort Claims Act and sections  
12 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

13           (1) Any claim based upon an act or omission of an employee of a  
14 political subdivision, exercising due care, in the execution of a  
15 statute, ordinance, or officially adopted resolution, rule, or  
16 regulation, whether or not such statute, ordinance, resolution, rule, or  
17 regulation is valid;

18           (2) Any claim based upon the exercise or performance of or the  
19 failure to exercise or perform a discretionary function or duty on the  
20 part of the political subdivision or an employee of the political  
21 subdivision, whether or not the discretion is abused;

22           (3) Any claim based upon the failure to make an inspection or making  
23 an inadequate or negligent inspection of any property other than property  
24 owned by or leased to such political subdivision to determine whether the  
25 property complies with or violates any statute, ordinance, rule, or  
26 regulation or contains a hazard to public health or safety unless the  
27 political subdivision had reasonable notice of such hazard or the failure  
28 to inspect or inadequate or negligent inspection constitutes a reckless  
29 disregard for public health or safety;

30           (4) Any claim based upon the issuance, denial, suspension, or  
31 revocation of or failure or refusal to issue, deny, suspend, or revoke

1 any permit, license, certificate, or order. Nothing in this subdivision  
2 shall be construed to limit a political subdivision's liability for any  
3 claim based upon the negligent execution by an employee of the political  
4 subdivision in the issuance of a certificate of title under the Motor  
5 Vehicle Certificate of Title Act and the State Boat Act except when such  
6 title is issued upon an application filed electronically by an approved  
7 licensed dealer participating in the electronic dealer services system  
8 pursuant to section 60-1507;

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

12 (6) Any claim caused by the imposition or establishment of a  
13 quarantine by the state or a political subdivision, whether such  
14 quarantine relates to persons or property;

15 (7) Any claim arising out of the following acts: Assault ~~assault,~~  
16 battery, false arrest, false imprisonment, malicious prosecution, abuse  
17 of process, libel, slander, misrepresentation, deceit, or interference  
18 with contract rights. This ~~, except that this~~ subdivision does not apply  
19 to a claim: ~~under~~

20 (a) Under the Healthy Pregnancies for Incarcerated Women Act;

21 (b) When the harm caused by child abuse or sexual assault of a child  
22 is a proximate result of the failure of a political subdivision or an  
23 employee of the political subdivision to exercise reasonable care to  
24 either:

25 (i) Control a person over whom the political subdivision has taken  
26 charge; or

27 (ii) Protect a person who is in the political subdivision's care,  
28 custody, or control from harm caused by a nonemployee actor; or

29 (c) Involving a death when the death is a proximate result of the  
30 failure of a political subdivision or an employee of the political  
31 subdivision to exercise reasonable care to either:

1        (i) Control a person over whom the political subdivision has taken  
2 charge; or

3        (ii) Protect a person who is in the political subdivision's care,  
4 custody, or control from harm caused by a nonemployee actor;

5        (8) Any claim by an employee of the political subdivision which is  
6 covered by the Nebraska Workers' Compensation Act;

7        (9) Any claim arising out of the malfunction, destruction, or  
8 unauthorized removal of any traffic or road sign, signal, or warning  
9 device unless it is not corrected by the political subdivision  
10 responsible within a reasonable time after actual or constructive notice  
11 of such malfunction, destruction, or removal. Nothing in this subdivision  
12 shall give rise to liability arising from an act or omission of any  
13 political subdivision in placing or removing any traffic or road signs,  
14 signals, or warning devices when such placement or removal is the result  
15 of a discretionary act of the political subdivision;

16        (10) Any claim arising out of snow or ice conditions or other  
17 temporary conditions caused by nature on any highway as defined in  
18 section 60-624, bridge, public thoroughfare, or other public place due to  
19 weather conditions. Nothing in this subdivision shall be construed to  
20 limit a political subdivision's liability for any claim arising out of  
21 the operation of a motor vehicle by an employee of the political  
22 subdivision while acting within the course and scope of his or her  
23 employment by the political subdivision;

24        (11) Any claim arising out of the plan or design for the  
25 construction of or an improvement to any highway as defined in such  
26 section or bridge, either in original construction or any improvement  
27 thereto, if the plan or design is approved in advance of the construction  
28 or improvement by the governing body of the political subdivision or some  
29 other body or employee exercising discretionary authority to give such  
30 approval;

31        (12) Any claim arising out of the alleged insufficiency or want of



1 repair of any highway as defined in such section, bridge, or other public  
2 thoroughfare. Insufficiency or want of repair shall be construed to refer  
3 to the general or overall condition and shall not refer to a spot or  
4 localized defect. A political subdivision shall be deemed to waive its  
5 immunity for a claim due to a spot or localized defect only if (a) the  
6 political subdivision has had actual or constructive notice of the defect  
7 within a reasonable time to allow repair prior to the incident giving  
8 rise to the claim or (b) the claim arose during the time specified in a  
9 notice provided by the political subdivision pursuant to subsection (3)  
10 of section 39-1359 and the state or political subdivision had actual or  
11 constructive notice; or

12 (13)(a) Any claim relating to recreational activities for which no  
13 fee is charged (i) resulting from the inherent risk of the recreational  
14 activity, (ii) arising out of a spot or localized defect of the premises  
15 unless the spot or localized defect is not corrected by the political  
16 subdivision leasing, owning, or in control of the premises within a  
17 reasonable time after actual or constructive notice of the spot or  
18 localized defect, or (iii) arising out of the design of a skatepark or  
19 bicycle motocross park constructed for purposes of skateboarding, inline  
20 skating, bicycling, or scootering that was constructed or reconstructed,  
21 reasonably and in good faith, in accordance with generally recognized  
22 engineering or safety standards or design theories in existence at the  
23 time of the construction or reconstruction. For purposes of this  
24 subdivision, a political subdivision shall be charged with constructive  
25 notice only when the failure to discover the spot or localized defect of  
26 the premises is the result of gross negligence.

27 (b) For purposes of this subdivision:

28 (i) Recreational activities include, but are not limited to, whether  
29 as a participant or spectator: Hunting, fishing, swimming, boating,  
30 camping, picnicking, hiking, walking, running, horseback riding, use of  
31 trails, nature study, waterskiing, winter sports, use of playground

1 equipment, biking, roller blading, skateboarding, golfing, athletic  
2 contests; visiting, viewing, or enjoying entertainment events, festivals,  
3 or historical, archaeological, scenic, or scientific sites; and similar  
4 leisure activities;

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

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

9 (iv) Fee means a fee to participate in or be a spectator at a  
10 recreational activity. A fee shall include payment by the claimant to any  
11 person or organization other than the political subdivision only to the  
12 extent the political subdivision retains control over the premises or the  
13 activity. A fee shall not include payment of a fee or charge for parking  
14 or vehicle entry.

15 (c) This subdivision, and not subdivision (3) of this section, shall  
16 apply to any claim arising from the inspection or failure to make an  
17 inspection or negligent inspection of premises owned or leased by the  
18 political subdivision and used for recreational activities.

19 Sec. 9. Section 59-1608.03, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 59-1608.03 When the Attorney General, on behalf of a state agency or  
22 political subdivision, is authorized to investigate, file suit, or  
23 otherwise take action in connection with violations under the Consumer  
24 Protection Act, any recovery of damages or costs by judgment, court  
25 decree, settlement in or out of court, or other final result shall be  
26 subject to the following:

27 (1) Upon recovery of damages or any monetary payment, except civil  
28 or criminal penalties, the costs, expenses, or billings incurred by any  
29 state agency or political subdivision in any investigation or other  
30 action arising out of a violation under the act shall be sought out in  
31 any judgment, court decree, settlement in or out of court, or other final

1 result. Any recovered costs shall be deposited by the Attorney General in  
2 the fund from which such costs were expended;

3 (2) When the Attorney General makes recovery pursuant to the act on  
4 behalf of a state agency or political subdivision of any money, funds,  
5 securities, or other things of value in the nature of civil damages or  
6 other payment, except civil or criminal penalties, whether such recovery  
7 is by way of verdict, judgment, compromise, or settlement in or out of  
8 court, or other final disposition of any case or controversy, such money,  
9 funds, securities, or other things of value shall be deposited by the  
10 Attorney General in the fund from which the funds which are being  
11 recovered were expended;

12 (3) Except as otherwise provided by law, the State Settlement Cash  
13 Fund shall consist of all recoveries received pursuant to the act,  
14 including any money, funds, securities, or other things of value in the  
15 nature of civil damages or other payment, except civil or criminal  
16 penalties, whether such recovery is by way of verdict, judgment,  
17 compromise, or settlement in or out of court, or other final disposition  
18 of any case or controversy, or any other payments received on behalf of  
19 the state by the Department of Justice and administered by the Attorney  
20 General for the benefit of the state or the general welfare of its  
21 citizens, but excluding all funds held in a trust capacity where specific  
22 benefits accrue to specific individuals, organizations, or governments;  
23 and

24 (4) Except as otherwise provided by law, the State Settlement Trust  
25 Fund shall consist of all recoveries received pursuant to the act,  
26 including any money, funds, securities, or other things of value in the  
27 nature of civil damages or other payment, except civil or criminal  
28 penalties, whether such recovery is by way of verdict, judgment,  
29 compromise, or settlement in or out of court, or other final disposition  
30 of any case or controversy, or any other payments received on behalf of  
31 the state by the Department of Justice and administered by the Attorney

1 General, but to include only those funds held in a trust capacity where  
2 specific benefits accrue to specific individuals, organizations, or  
3 governments.

4 Sec. 10. Section 59-1608.04, Reissue Revised Statutes of Nebraska,  
5 as amended by Laws 2024, LB1413, section 41, is amended to read:

6 59-1608.04 (1) The State Settlement Cash Fund is created. The fund  
7 shall be maintained by the Department of Justice and administered by the  
8 Attorney General. Except as otherwise provided by law, the fund shall  
9 consist of all recoveries received pursuant to the Consumer Protection  
10 Act, including any money, funds, securities, or other things of value in  
11 the nature of civil damages or other payment, except civil or criminal  
12 penalties, whether such recovery is by way of verdict, judgment,  
13 compromise, or settlement in or out of court, or other final disposition  
14 of any case or controversy, or any other payments received on behalf of  
15 the state by the Department of Justice and administered by the Attorney  
16 General for the benefit of the state or the general welfare of its  
17 citizens, but excluding all funds held in a trust capacity where specific  
18 benefits accrue to specific individuals, organizations, or governments.  
19 The fund may be expended for any allowable legal purposes as determined  
20 by the Attorney General. Transfers from the State Settlement Cash Fund  
21 may be made at the direction of the Legislature to the Nebraska Capital  
22 Construction Fund, the Legal Education for Public Service and Rural  
23 Practice Loan Repayment Assistance Fund, the Nebraska State Patrol Cash  
24 Fund, the Financial Literacy Cash Fund, and the General Fund. To provide  
25 necessary financial accountability and management oversight, revenue from  
26 individual settlement agreements or other separate sources credited to  
27 the State Settlement Cash Fund may be tracked and accounted for within  
28 the state accounting system through the use of separate and distinct  
29 funds, subfunds, or any other available accounting mechanism specifically  
30 approved by the Accounting Administrator for use by the Department of  
31 Justice. Any money in the fund available for investment shall be invested

1 by the state investment officer pursuant to the Nebraska Capital  
2 Expansion Act and the Nebraska State Funds Investment Act.

3 (2) The State Treasurer shall transfer two million five hundred  
4 thousand dollars from the State Settlement Cash Fund to the Nebraska  
5 Capital Construction Fund on July 1, 2013, or as soon thereafter as  
6 administratively possible.

7 (3) The State Treasurer shall transfer eight hundred seventy-six  
8 thousand nine hundred ninety-eight dollars from the State Settlement Cash  
9 Fund to the General Fund on or before June 30, 2018, on such dates and in  
10 such amounts as directed by the budget administrator of the budget  
11 division of the Department of Administrative Services.

12 (4) The State Treasurer shall transfer one million seven hundred  
13 fifty-six thousand six hundred thirty-nine dollars from the State  
14 Settlement Cash Fund to the General Fund on or before June 30, 2019, on  
15 such dates and in such amounts as directed by the budget administrator of  
16 the budget division of the Department of Administrative Services.

17 (5) The State Treasurer shall transfer one hundred twenty-five  
18 thousand dollars from the State Settlement Cash Fund to the Legal  
19 Education for Public Service and Rural Practice Loan Repayment Assistance  
20 Fund on or before April 30, 2018, on such dates and in such amounts as  
21 directed by the budget administrator of the budget division of the  
22 Department of Administrative Services.

23 (6) The State Treasurer shall transfer one hundred fifty thousand  
24 dollars from the State Settlement Cash Fund to the Legal Education for  
25 Public Service and Rural Practice Loan Repayment Assistance Fund on or  
26 before July 9, 2018, on such dates and in such amounts as directed by the  
27 budget administrator of the budget division of the Department of  
28 Administrative Services.

29 Sec. 11. Section 59-1614, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 59-1614 (1) Any person who violates section 59-1603 or 59-1604 or

1 the terms of any injunction issued as provided in the Consumer Protection  
2 Act shall forfeit and pay a civil penalty of not more than five hundred  
3 thousand dollars.

4 (2) Any person who violates section 59-1602 shall pay a civil  
5 penalty of not more than two thousand dollars for each violation, except  
6 that such penalty shall not apply to any radio or television broadcasting  
7 station which broadcasts, or to any publisher, printer, or distributor of  
8 any newspaper, magazine, billboard, or other advertising medium who  
9 publishes, prints, or distributes advertising in good faith without  
10 knowledge of its false, deceptive, or misleading character and no such  
11 good faith publication, printing, or distribution shall be considered a  
12 violation of section 59-1602.

13 (3) For the purpose of this section, the district court which issues  
14 any injunction shall retain jurisdiction, and the cause shall be  
15 continued, and in such cases the Attorney General acting in the name of  
16 the state may petition for the recovery of civil penalties.

17 (4) With respect to violations of sections 59-1603 and 59-1604, the  
18 Attorney General, acting in the name of the state, may seek recovery of  
19 such penalties in a civil action.

20 (5) Any civil penalties collected pursuant to the Consumer  
21 Protection Act shall be remitted to the State Treasurer for distribution  
22 in accordance with Article VII, section 5, of the Constitution of  
23 Nebraska.

24 Sec. 12. Section 81-8,219, Revised Statutes Cumulative Supplement,  
25 2022, is amended to read:

26 81-8,219 The State Tort Claims Act shall not apply to:

27 (1) Any claim based upon an act or omission of an employee of the  
28 state, exercising due care, in the execution of a statute, rule, or  
29 regulation, whether or not such statute, rule, or regulation is valid, or  
30 based upon the exercise or performance or the failure to exercise or  
31 perform a discretionary function or duty on the part of a state agency or

1 an employee of the state, whether or not the discretion is abused;

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

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

8 (4) Any claim arising out of the following acts: Assault ~~assault~~,  
9 battery, false imprisonment, false arrest, malicious prosecution, abuse  
10 of process, libel, slander, or interference with contract rights. This ~~7~~  
11 ~~except that this~~ subdivision does not apply to a claim;

12 (a) Under ~~under~~ the Healthy Pregnancies for Incarcerated Women Act;

13 (b) When the harm caused by child abuse or sexual assault of a child  
14 is a proximate result of the failure of a state agency or an employee of  
15 the state to exercise reasonable care to either:

16 (i) Control a person over whom the state agency has taken charge; or

17 (ii) Protect a person who is in the state agency's care, custody, or  
18 control from harm caused by a nonemployee actor; or

19 (c) Involving a death when the death is a proximate result of the  
20 failure of a state agency or an employee of the state to exercise  
21 reasonable care to either:

22 (i) Control a person over whom the state agency has taken charge; or

23 (ii) Protect a person who is in the state agency's care, custody, or  
24 control from harm caused by a nonemployee actor;

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

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

3           (7) 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 Claims Act, 32 U.S.C. 715, or  
6 when such claim accrues as a result of active federal service or state  
7 service at the call of the Governor for quelling riots and civil  
8 disturbances;

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

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

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

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

1 inspection or negligent inspection of premises owned or leased by the  
2 state and used for recreational activities; or

3 (15) 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. 13. Section 87-303.11, Reissue Revised Statutes of Nebraska, as  
7 amended by Laws 2024, LB934, section 6, is amended to read:

8 87-303.11 (1) Any person who violates section 87-302 or 87-303.01 or  
9 who willfully violates the terms of an injunction or declaratory judgment  
10 of a district court or the terms of a written assurance of voluntary  
11 compliance entered into pursuant to the Uniform Deceptive Trade Practices  
12 Act shall be subject to a civil penalty of not more than two thousand  
13 dollars for each violation. The Attorney General, acting in the name of  
14 the state, may seek recovery of such civil penalties in a civil action.

15 (2) For purposes of this section, the district court which issues  
16 any injunction shall retain jurisdiction and the cause shall be continued  
17 while the Attorney General seeks the recovery of such civil penalties.

18 (3) Any civil penalties collected under the Uniform Deceptive Trade  
19 Practices Act ~~this section~~ shall be remitted to the State Treasurer for  
20 distribution in accordance with Article VII, section 5, of the  
21 Constitution of Nebraska.

22 Sec. 14. Sections 1, 2, 3, 4, 5, 6, and 7 of this act become  
23 operative on July 1, 2025. The other sections of this act become  
24 operative on their effective date.

25 Sec. 15. Original sections 13-910, 59-1608.03, and 59-1614, Reissue  
26 Revised Statutes of Nebraska, section 81-8,219, Revised Statutes  
27 Cumulative Supplement, 2022, section 59-1608.04, Reissue Revised Statutes  
28 of Nebraska, as amended by Laws 2024, LB1413, section 41; and section  
29 87-303.11, Reissue Revised Statutes of Nebraska, as amended by Laws 2024,  
30 LB934, section 6, are repealed.