

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 236

Introduced by Conrad, 46.

Read first time January 14, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Political Subdivisions Tort Claims Act;
- 2 to amend section 13-910, Reissue Revised Statutes of Nebraska; to
- 3 allow tort claims involving child abuse or sexual assault of a child
- 4 under the act; to harmonize provisions; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 13-910, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-910 The Political Subdivisions Tort Claims Act and sections
4 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

5 (1) Any claim based upon an act or omission of an employee of a
6 political subdivision, exercising due care, in the execution of a
7 statute, ordinance, or officially adopted resolution, rule, or
8 regulation, whether or not such statute, ordinance, resolution, rule, or
9 regulation is valid;

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

14 (3) Any claim based upon the failure to make an inspection or making
15 an inadequate or negligent inspection of any property other than property
16 owned by or leased to such political subdivision to determine whether the
17 property complies with or violates any statute, ordinance, rule, or
18 regulation or contains a hazard to public health or safety unless the
19 political subdivision had reasonable notice of such hazard or the failure
20 to inspect or inadequate or negligent inspection constitutes a reckless
21 disregard for public health or safety;

22 (4) Any claim based upon the issuance, denial, suspension, or
23 revocation of or failure or refusal to issue, deny, suspend, or revoke
24 any permit, license, certificate, or order. Nothing in this subdivision
25 shall be construed to limit a political subdivision's liability for any
26 claim based upon the negligent execution by an employee of the political
27 subdivision in the issuance of a certificate of title under the Motor
28 Vehicle Certificate of Title Act and the State Boat Act except when such
29 title is issued upon an application filed electronically by an approved
30 licensed dealer participating in the electronic dealer services system
31 pursuant to section 60-1507;

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

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

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

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

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

18 (i) Control a person over whom it has taken charge; or

19 (ii) Protect a person who is in the political subdivision's care,
20 custody, or control from harm caused by a non-employee actor;

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

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

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

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

16 (12) Any claim arising out of the alleged insufficiency or want of
17 repair of any highway as defined in such section, bridge, or other public
18 thoroughfare. Insufficiency or want of repair shall be construed to refer
19 to the general or overall condition and shall not refer to a spot or
20 localized defect. A political subdivision shall be deemed to waive its
21 immunity for a claim due to a spot or localized defect only if (a) the
22 political subdivision has had actual or constructive notice of the defect
23 within a reasonable time to allow repair prior to the incident giving
24 rise to the claim or (b) the claim arose during the time specified in a
25 notice provided by the political subdivision pursuant to subsection (3)
26 of section 39-1359 and the state or political subdivision had actual or
27 constructive notice; or

28 (13)(a) Any claim relating to recreational activities for which no
29 fee is charged (i) resulting from the inherent risk of the recreational
30 activity, (ii) arising out of a spot or localized defect of the premises
31 unless the spot or localized defect is not corrected by the political

1 subdivision leasing, owning, or in control of the premises within a
2 reasonable time after actual or constructive notice of the spot or
3 localized defect, or (iii) arising out of the design of a skatepark or
4 bicycle motocross park constructed for purposes of skateboarding, inline
5 skating, 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, a political subdivision shall be charged with constructive
10 notice only when the failure to discover the spot or localized defect of
11 the premises 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 political subdivision only to the
28 extent the political subdivision retains control over the premises or the
29 activity. A fee shall not include payment of a fee or charge for parking
30 or vehicle entry.

31 (c) This subdivision, and not subdivision (3) of this section, shall

1 apply to any claim arising from the inspection or failure to make an
2 inspection or negligent inspection of premises owned or leased by the
3 political subdivision and used for recreational activities.

4 **Sec. 2.** Original section 13-910, Reissue Revised Statutes of
5 Nebraska, is repealed.