

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1276**

Introduced by McKinney, 11.

Read first time January 20, 2022

Committee:

- 1 A BILL FOR AN ACT relating to civil actions; to amend sections 13-902,  
2 13-903, 13-920, 81-8,209, 81-8,210, and 81-8,229, Reissue Revised  
3 Statutes of Nebraska; to provide for civil actions against law  
4 enforcement officers who commit misconduct and exempt such actions  
5 from the Political Subdivisions Tort Claims Act and the State Tort  
6 Claims Act; to provide for a civil penalty; to define a term; to  
7 harmonize provisions; and to repeal the original sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) For purposes of this section:

2           (a) Actionable violation means conduct by a law enforcement officer:

3           (i) That constitutes serious misconduct as defined in section  
4 81-1401;

5           (ii) For which the law enforcement officer's certification has been  
6 or could be suspended or revoked under subdivision (6) of section  
7 81-1403; or

8           (iii) That involves knowingly aiding or abetting conduct described  
9 in subdivision (1)(a)(i) or (ii) of this section; or

10          (iv) That involves a threat to engage in conduct described in  
11 subdivision (1)(a)(i), (ii), or (iii) of this section;

12          (b) Government employee means any elected or appointed official or  
13 any person employed by a department or agency of this state or a  
14 political subdivision;

15          (c) Law enforcement officer has the same meaning as in section  
16 84-1401; and

17          (d) Misdemeanor crime of domestic violence has the same meaning as  
18 in section 28-1206.

19          (2) A person, other than a government employee, aggrieved by an  
20 actionable violation may bring a civil action against the law enforcement  
21 officer responsible for such violation and obtain appropriate relief,  
22 including:

23          (a) Such preliminary and other equitable or declaratory relief as  
24 may be appropriate; and

25          (b) Reasonable attorney's fees and other litigation costs reasonably  
26 incurred.

27          (3)(a) In a civil action under this section, in addition to the  
28 relief provided in subsection (2) of this section, if the court finds  
29 that a law enforcement officer has committed an actionable violation, the  
30 court may assess a civil penalty of not more than ten thousand dollars  
31 for each violation.

1       (b) The court shall remit penalties collected under this subsection  
2 to the State Treasurer for distribution in accordance with Article VII,  
3 section 5, of the Constitution of Nebraska.

4       (4) A civil action brought pursuant to this section must be brought  
5 within four years after the date the plaintiff discovered or reasonably  
6 should have discovered the actionable violation.

7       (5) The remedy provided in this section is cumulative to any other  
8 remedies a person may have.

9       (6) An action brought under this section is not subject to the  
10 Political Subdivisions Tort Claims Act or the State Tort Claims Act.

11       Sec. 2. Section 13-902, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13       13-902 The Legislature hereby declares that no political subdivision  
14 of the State of Nebraska shall be liable for the torts of its officers,  
15 agents, or employees, and that no suit shall be maintained against such  
16 political subdivision or its officers, agents, or employees on any tort  
17 claim except to the extent, and only to the extent, provided by the  
18 Political Subdivisions Tort Claims Act and section 1 of this act. The  
19 Legislature further declares that it is its intent and purpose through  
20 this enactment to provide uniform procedures for the bringing of tort  
21 claims against all political subdivisions, whether engaging in  
22 governmental or proprietary functions, and that the procedures provided  
23 by the act shall be used to the exclusion of all others.

24       Sec. 3. Section 13-903, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26       13-903 For purposes of the Political Subdivisions Tort Claims Act  
27 and sections 16-727, 16-728, 23-175, 39-809, and 79-610, unless the  
28 context otherwise requires:

29       (1) Political subdivision shall include villages, cities of all  
30 classes, counties, school districts, learning communities, public power  
31 districts, and all other units of local government, including entities

1 created pursuant to the Interlocal Cooperation Act or Joint Public Agency  
2 Act. Political subdivision shall not be construed to include any  
3 contractor with a political subdivision;

4 (2) Governing body shall mean the village board of a village, the  
5 city council of a city, the board of commissioners or board of  
6 supervisors of a county, the board of directors of a public power  
7 district, the governing board or other governing body of an entity  
8 created pursuant to the Interlocal Cooperation Act or Joint Public Agency  
9 Act, and any duly elected or appointed body holding the power and  
10 authority to determine the appropriations and expenditures of any other  
11 unit of local government;

12 (3) Employee of a political subdivision shall mean any one or more  
13 officers or employees of the political subdivision or any agency of the  
14 subdivision and shall include members of the governing body, duly  
15 appointed members of boards or commissions when they are acting in their  
16 official capacity, volunteer firefighters, and volunteer rescue squad  
17 personnel. Employee shall not be construed to include any contractor with  
18 a political subdivision; and

19 (4) Tort claim shall mean any claim against a political subdivision  
20 for money only on account of damage to or loss of property or on account  
21 of personal injury or death, caused by the negligent or wrongful act or  
22 omission of any employee of the political subdivision, while acting  
23 within the scope of his or her office or employment, under circumstances  
24 in which the political subdivision, if a private person, would be liable  
25 to the claimant for such damage, loss, injury, or death but shall not  
26 include any claim accruing before January 1, 1970 or an action under  
27 section 1 of this act.

28 Sec. 4. Section 13-920, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 13-920 (1) No suit shall be commenced against any employee of a  
31 political subdivision for money on account of damage to or loss of

1 property or personal injury to or the death of any person caused by any  
2 negligent or wrongful act or omission of the employee while acting in the  
3 scope of his or her office or employment occurring after May 13, 1987,  
4 unless a claim has been submitted in writing to the governing body of the  
5 political subdivision within one year after such claim accrued in  
6 accordance with section 13-905.

7 (2) No suit shall be permitted on a claim filed pursuant to this  
8 section unless the governing body of the political subdivision has made  
9 final disposition of the claim, except that if the governing body does  
10 not make final disposition of the claim within six months after the claim  
11 is filed, the claimant may, by notice in writing, withdraw the claim from  
12 consideration of the governing body and begin suit.

13 (3) Except as provided in section 13-919, any suit commenced on any  
14 claim filed pursuant to this section shall be forever barred unless begun  
15 within two years after the claim accrued. The time to begin suit under  
16 this section shall be extended for a period of six months (a) from the  
17 date of mailing of notice to the claimant by the governing body as to the  
18 final disposition of the claim or (b) from the date of withdrawal of the  
19 claim from the governing body under this section, if the time to begin  
20 suit would otherwise expire before the end of such period.

21 (4) This section does not apply to an action under section 1 of this  
22 act.

23 Sec. 5. Section 81-8,209, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 81-8,209 The State of Nebraska shall not be liable for the torts of  
26 its officers, agents, or employees, and no suit shall be maintained  
27 against the state, any state agency, or any employee of the state on any  
28 tort claim except to the extent, and only to the extent, provided by the  
29 State Tort Claims Act and section 1 of this act. The Legislature further  
30 declares that it is its intent and purpose through such act to provide  
31 uniform procedures for the bringing of tort claims against the state or

1 an employee of the state and that the procedures provided by such act  
2 shall be used to the exclusion of all others.

3 Sec. 6. Section 81-8,210, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 81-8,210 For purposes of the State Tort Claims Act:

6 (1) State agency includes all departments, agencies, boards,  
7 bureaus, and commissions of the State of Nebraska and corporations the  
8 primary function of which is to act as, and while acting as,  
9 instrumentalities or agencies of the State of Nebraska but shall not  
10 include corporations that are essentially private corporations or  
11 entities created pursuant to the Interlocal Cooperation Act or the Joint  
12 Public Agency Act. State agency does not include any contractor with the  
13 State of Nebraska;

14 (2) State Claims Board means the board created by section 81-8,220;

15 (3) Employee of the state means any one or more officers or  
16 employees of the state or any state agency and shall include duly  
17 appointed members of boards or commissions when they are acting in their  
18 official capacity. State employee does not include any employee of an  
19 entity created pursuant to the Interlocal Cooperation Act or the Joint  
20 Public Agency Act or any contractor with the State of Nebraska;

21 (4) Tort claim means any claim against the State of Nebraska for  
22 money only on account of damage to or loss of property or on account of  
23 personal injury or death caused by the negligent or wrongful act or  
24 omission of any employee of the state, while acting within the scope of  
25 his or her office or employment, under circumstances in which the state,  
26 if a private person, would be liable to the claimant for such damage,  
27 loss, injury, or death but does not include any claim accruing before  
28 January 1, 1970, any claim against an employee of the state for money  
29 only on account of damage to or loss of property or on account of  
30 personal injury or death caused by the negligent or wrongful act or  
31 omission of the employee while acting within the scope of his or her

1 employment occurring on or after August 25, 1989, ~~and~~ any claim allowed  
2 under the Nebraska Claims for Wrongful Conviction and Imprisonment Act or  
3 an action under section 1 of this act;

4 (5) Award means any amount determined by the Risk Manager or State  
5 Claims Board to be payable to a claimant under section 81-8,211 or the  
6 amount of any compromise or settlement under section 81-8,218; and

7 (6) Risk Manager means the Risk Manager appointed under section  
8 81-8,239.01.

9 Sec. 7. Section 81-8,229, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 81-8,229 From and after December 25, 1969, the authority of any  
12 state agency to sue or be sued in its own name shall not be construed to  
13 authorize suits against such state agency on tort claims except as  
14 authorized in the State Tort Claims Act. The remedies provided by such  
15 act for tort claims and suits against the state and employees of the  
16 state shall be exclusive, except as otherwise provided in section 1 of  
17 this act.

18 Sec. 8. Original sections 13-902, 13-903, 13-920, 81-8,209,  
19 81-8,210, and 81-8,229, Reissue Revised Statutes of Nebraska, are  
20 repealed.