

## LEGISLATIVE BILL 729

Approved by the Governor April 23, 2018

Introduced by Wayne, 13; Watermeier, 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) (11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the

governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval;

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

~~(14)(a)~~ ~~(13)(a)~~ Any claim relating to recreational activities on property leased, owned, or controlled by the state for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, the state shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

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

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

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

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

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

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

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