

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 326

Introduced by Slama, 1.

Read first time January 13, 2021

Committee:

1 A BILL FOR AN ACT relating to tort claims; to amend sections 13-911,
2 29-211, and 81-8,215.01, Reissue Revised Statutes of Nebraska, and
3 sections 13-910 and 81-8,219, Revised Statutes Cumulative
4 Supplement, 2020; to provide immunity for first responders operating
5 motor vehicles as prescribed; to provide immunity for claims arising
6 from vehicular pursuits as prescribed; to provide for policies and
7 training on vehicular pursuits; to define terms; to provide duties
8 for the Nebraska Commission on Law Enforcement and Criminal Justice
9 and the Nebraska Police Standards Advisory Council; to harmonize
10 provisions; and to repeal the original sections.

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

1 Section 1. Section 13-910, Revised Statutes Cumulative Supplement,
2 2020, is 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 assault, battery, false arrest, false
8 imprisonment, malicious prosecution, abuse of process, libel, slander,
9 misrepresentation, deceit, or interference with contract rights, except
10 that this subdivision does not apply to a claim under the Healthy
11 Pregnancies for Incarcerated Women Act;

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

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

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

31 (11) Any claim arising out of the plan or design for the

1 construction of or an improvement to any highway as defined in such
2 section or bridge, either in original construction or any improvement
3 thereto, if the plan or design is approved in advance of the construction
4 or improvement by the governing body of the political subdivision or some
5 other body or employee exercising discretionary authority to give such
6 approval;

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

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

1 notice only when the failure to discover the spot or localized defect of
2 the premises is the result of gross negligence.

3 (b) For purposes of this subdivision:

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

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

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

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

22 (c) This subdivision, and not subdivision (3) of this section, shall
23 apply to any claim arising from the inspection or failure to make an
24 inspection or negligent inspection of premises owned or leased by the
25 political subdivision and used for recreational activities; -

26 (14) Any claim against an employee of a political subdivision
27 arising out of the following conduct occurring within the course and
28 scope of the employee's employment by the political subdivision:

29 (a) Except as otherwise provided in subdivision (c) of this
30 subdivision, the operation of an emergency vehicle while responding to an
31 emergency call;

1 (b) Engaging in a vehicular pursuit as defined in section 13-911; or
2 (c) The operation of an emergency vehicle by a firefighter when
3 responding to a fire alarm or emergency call, but not upon returning from
4 such alarm or call; or

5 (15) Any claim arising from the collision of a motor vehicle being
6 operated by a person fleeing a vehicular pursuit as defined in section
7 13-911 if:

8 (a) The law enforcement agency employing the law enforcement officer
9 involved in the vehicular pursuit has adopted and implemented a policy on
10 vehicular pursuits and provided training on vehicular pursuits; and

11 (b) Such policy and training meet the minimum requirements of
12 sections 4 to 8 of this act.

13 Sec. 2. Section 13-911, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 13-911 (1) Except as provided in subdivision (15) of section 13-910,
16 in ~~in~~ a case of death, injury, or property damage to any innocent third
17 party proximately caused by the action of a law enforcement officer
18 employed by a political subdivision during vehicular pursuit, damages
19 shall be paid to such third party by the political subdivision employing
20 the officer.

21 (2) Upon payment by a political subdivision of those damages
22 sustained by an innocent third party, whether upon voluntary settlement
23 or in satisfaction of a judgment, the political subdivision shall be
24 entitled to reimbursement of the amount of damages paid by the political
25 subdivision from each and all of the following sources:

26 (a) The driver of the fleeing vehicle;

27 (b) Any organization, including a sole proprietorship, partnership,
28 limited liability company, or corporation, liable for the conduct of the
29 driver of the fleeing vehicle;

30 (c) Every insurer or self-insurance surety of either the driver of
31 the fleeing vehicle or any organization, including a sole proprietorship,

1 partnership, limited liability company, or corporation, liable for the
2 conduct of the driver of the fleeing vehicle, except that no such insurer
3 or self-insurance surety shall be required to pay in excess of the
4 liability limit of its applicable policies or bonds;

5 (d) Any uninsured or underinsured motorist insurer or self-insurance
6 surety legally liable to the innocent third party, except that the sum
7 recoverable from such insurer or self-insurance surety shall not exceed
8 the highest limit of liability determined in accord with the Uninsured
9 and Underinsured Motorist Insurance Coverage Act;

10 (e) The state employing law enforcement officers whose actions
11 contributed to the proximate cause of death, injury, or property damage
12 sustained by the innocent third party, except that the liability of the
13 state shall not exceed the damages sustained by the innocent third party
14 apportioned equally among all political subdivisions employing law
15 enforcement officers whose actions contributed to the proximate cause of
16 the death, injury, or property damage sustained by the innocent third
17 party and the state; and

18 (f) Any political subdivision employing law enforcement officers
19 whose actions contributed to the proximate cause of death, injury, or
20 property damage sustained by the innocent third party, except that the
21 liability of the political subdivision shall not exceed the lesser of (i)
22 its maximum statutory liability pursuant to the Political Subdivisions
23 Tort Claims Act or (ii) damages sustained by the innocent third party
24 apportioned equally among all political subdivisions and the state
25 employing law enforcement officers whose actions contributed to the
26 proximate cause of the death, injury, or property damage sustained by the
27 innocent third party.

28 (3) This section shall not relieve any public or private source
29 required statutorily or contractually to pay benefits for disability or
30 loss of earned income or medical expenses of the duty to pay such
31 benefits when due. No such source of payment shall have any right of

1 subrogation or contribution against the political subdivision.

2 (4) This section shall be considered part of the Political
3 Subdivisions Tort Claims Act and all provisions of the act apply.

4 (5) For purposes of this section, vehicular pursuit means an active
5 attempt by a law enforcement officer operating a motor vehicle to
6 apprehend one or more occupants of another motor vehicle, when the driver
7 of the fleeing vehicle is or should be aware of such attempt and is
8 resisting apprehension by maintaining or increasing his or her speed,
9 ignoring the officer, or attempting to elude the officer while driving at
10 speeds in excess of those reasonable and proper under the conditions.

11 Sec. 3. Section 29-211, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 29-211 (1) Except as provided in subsection (2) of this section,
14 each ~~Each~~ law enforcement agency within the State of Nebraska shall adopt
15 and implement a written policy regarding the pursuit of motor vehicles.
16 Such policy shall contain at least the following elements:

17 (a) Standards which describe when a pursuit may be initiated, taking
18 into consideration the nature and severity of the offense involved;

19 (b) Standards which describe when a pursuit is to be discontinued,
20 giving special attention to (i) the degree of danger presented to the
21 general public and the pursuing officer and (ii) the probability of later
22 apprehension of the subject based upon his or her identification;

23 (c) Procedures governing the operation of pursuits including, but
24 not limited to, the number and types of vehicles which may be used, the
25 method of operation of such vehicles, and the exercise of supervision
26 during pursuits;

27 (d) Procedures governing pursuits which include other law
28 enforcement agencies or which extend into the jurisdiction of other law
29 enforcement agencies; and

30 (e) A system of mandatory continued planning and review of training
31 of personnel appropriate and consistent with the policies and

1 jurisdiction of the law enforcement agency regarding the proper handling
2 of pursuits, including, at a minimum, an annual review of the policy with
3 each sworn law enforcement officer and dispatcher.

4 (2) A law enforcement agency that has adopted and implemented a
5 written policy that meets the minimum requirements of section 4 of this
6 act shall be deemed to have satisfied subsection (1) of this section.

7 (3) ~~(2)~~ It shall be the responsibility of each law enforcement
8 agency within the State of Nebraska to ensure that all law enforcement
9 officers who commence employment with such law enforcement agency receive
10 specialized training in pursuit driving at the Nebraska Law Enforcement
11 Training Center or at an equivalent training program approved by the
12 Nebraska Police Standards Advisory Council.

13 Sec. 4. (1) A law enforcement agency may, but is not required to,
14 adopt and implement a policy on vehicular pursuits and provide training
15 on vehicular pursuits pursuant to sections 4 to 8 of this act. If a law
16 enforcement agency adopts and implements a policy and provides training
17 that meets the minimum requirements of sections 4 to 8 of this act, then
18 there shall be immunity as provided for in subdivision (15) of section
19 13-911 or subdivision (17) of section 81-8,219.

20 (2) The requirements of sections 4 to 8 of this act represent
21 minimum policy standards and do not limit an agency from adopting
22 additional policy requirements. Nothing in sections 4 to 8 of this act
23 precludes the adoption of a policy that limits or restricts vehicular
24 pursuits.

25 (3) For purposes of sections 4 to 8 of this act, vehicular pursuit
26 or pursuit has the same meaning as in sections 13-911 and 81-8,215.01.

27 Sec. 5. (1) A policy on vehicular pursuits shall be in writing.

28 (2) A policy on vehicular pursuits shall contain a requirement that
29 each officer of the law enforcement agency certify in writing that such
30 officer has received, read, and understands the policy. The failure of an
31 individual officer to sign such a certification shall not disqualify the

1 policy from meeting the requirements of this section or provide a basis
2 for imposing liability on such officer or agency.

3 (3) A policy on vehicular pursuits shall contain the following
4 elements:

5 (a) Standards which describe when a pursuit may be initiated. The
6 policy shall define a vehicular pursuit, consistent with sections 13-911
7 and 81-8,215.01, articulate the reasons for which a pursuit is
8 authorized, and identify the issues that should be considered in reaching
9 the decision to pursue. The policy shall address the importance of
10 protecting the public and balancing the nature and severity of the
11 offense involved and the apparent need for immediate capture against the
12 risks to the public, law enforcement officers, and the occupants of a
13 fleeing vehicle;

14 (b) Standards which set forth the total number of law enforcement
15 vehicles authorized to participate in a pursuit and the number of law
16 enforcement units and supervisors who may be involved in a pursuit,
17 describe the responsibility of each authorized unit and the role of each
18 officer and supervisor, and specify if and when additional units are
19 authorized to participate;

20 (c) Standards for communication procedures to be followed during a
21 pursuit, including pursuit coordination and control procedures and
22 assignment of communications responsibility by unit and law enforcement
23 agency;

24 (d) Standards for the role of supervisors in managing and
25 controlling a pursuit. Supervisory responsibilities shall include
26 management and control of a pursuit, assessment of risk factors
27 associated with a pursuit, and when to terminate a pursuit;

28 (e) Standards regarding driving tactics and the circumstances under
29 which the tactics may be appropriate;

30 (f) Standards regarding authorized pursuit intervention tactics and
31 under what circumstances such tactics may be used. Pursuit intervention

1 tactics include, but are not limited to, blocking, ramming, boxing, and
2 roadblock procedures. The policy shall specify under what circumstances
3 and conditions each approved tactic may be used;

4 (g) Factors to be considered by an officer or a supervisor in
5 determining speeds throughout a pursuit, including, but not limited to,
6 the safety of the public, officers, and the occupants of the fleeing
7 vehicle;

8 (h) The role of air support, when available, including coordination
9 of activities on the ground, reporting on the status of a pursuit, and
10 providing information to evaluate whether or not to continue the pursuit;

11 (i) Standards which describe when to discontinue a pursuit. Factors
12 to be considered shall include, but not be limited to:

13 (i) Ongoing evaluation of risk to the public, officers, and the
14 occupants of the fleeing vehicle;

15 (ii) The protection of the public, given the nature and severity of
16 the offense involved and the apparent need for immediate capture, as well
17 as the probability of later apprehension of the subject of the pursuit;

18 (iii) Vehicular or pedestrian traffic safety and volume;

19 (iv) Weather conditions;

20 (v) Traffic conditions;

21 (vi) Speeds; and

22 (vii) Availability of air support;

23 (j) Procedures for apprehending the fleeing suspect once the
24 vehicular pursuit has ceased;

25 (k) Procedures governing pursuits which include other law
26 enforcement agencies or which extend into the jurisdiction of other law
27 enforcement agencies. Such procedures shall include, but not be limited
28 to:

29 (i) Supervisory control and management of a pursuit that enters
30 another jurisdiction;

31 (ii) Communication and notification among the agencies involved;

- 1 (iii) Involvement in another jurisdiction's pursuit; and
2 (iv) Roles and responsibilities of units and coordination,
3 management, and control at the termination of an interjurisdictional
4 pursuit; and
5 (1) Standards and procedures for post-pursuit analysis, review, and
6 feedback.

7 Sec. 6. Training for law enforcement officers regarding vehicular
8 pursuits shall:

- 9 (1) Be given on an annual basis to each officer whose duties may
10 involve a vehicular pursuit;
11 (2) Cover, at a minimum, the elements discussed in section 5 of this
12 act; and
13 (3) Be conducted by the Nebraska Law Enforcement Training Center or
14 by a training program approved by the Nebraska Police Standards Advisory
15 Council.

16 Sec. 7. The Nebraska Commission on Law Enforcement and Criminal
17 Justice may develop and distribute a suggested model vehicular pursuit
18 policy for use by law enforcement agencies, but the commission shall not
19 mandate the adoption of the model policy.

20 Sec. 8. On or before January 1, 2022, the Nebraska Police Standards
21 Advisory Council shall:

- 22 (1) Develop a training program to be conducted by the Nebraska Law
23 Enforcement Training Center regarding vehicular pursuits that covers, at
24 a minimum, the elements discussed in section 5 of this act; and
25 (2) Develop standards and procedures for approving vehicular pursuit
26 training programs conducted by other entities.

27 Sec. 9. Section 81-8,215.01, Reissue Revised Statutes of Nebraska,
28 is amended to read:

29 81-8,215.01 (1) Except as provided in subdivision (17) of section
30 81-8,219, in ~~IA~~ case of death, injury, or property damage to any innocent
31 third party proximately caused by the action of a law enforcement officer

1 employed by the state during vehicular pursuit, damages shall be paid to
2 such third party by the state employing the officer.

3 (2) Upon payment by the state of those damages sustained by an
4 innocent third party, whether upon voluntary settlement or in
5 satisfaction of a judgment, the state shall be entitled to reimbursement
6 of the amount of damages paid by the state from each and all of the
7 following sources:

8 (a) The driver of the fleeing vehicle;

9 (b) Any organization, including a sole proprietorship, partnership,
10 limited liability company, or corporation, liable for the conduct of the
11 driver of the fleeing vehicle;

12 (c) Every insurer or self-insurance surety of either the driver of
13 the fleeing vehicle or any organization, including a sole proprietorship,
14 partnership, limited liability company, or corporation, liable for the
15 conduct of the driver of the fleeing vehicle, except that no such insurer
16 or self-insurance surety shall be required to pay in excess of the
17 liability limit of its applicable policies or bonds;

18 (d) Any uninsured or underinsured motorist insurer or self-insurance
19 surety legally liable to the innocent third party, except that the sum
20 recoverable from such insurer or self-insurance surety shall not exceed
21 the highest limit of liability determined in accord with the Uninsured
22 and Underinsured Motorist Insurance Coverage Act; and

23 (e) Any political subdivision employing law enforcement officers
24 whose actions contributed to the proximate cause of death, injury, or
25 property damage sustained by the innocent third party, except that the
26 liability of any such political subdivision shall not exceed the lesser
27 of (i) its maximum statutory liability pursuant to the Political
28 Subdivisions Tort Claims Act or (ii) the damages sustained by the
29 innocent third party apportioned equally among the state and all
30 political subdivisions employing law enforcement officers whose actions
31 contributed to the proximate cause of the death, injury, or property

1 damage sustained by the innocent third party.

2 (3) This section shall not relieve any public or private source
3 required statutorily or contractually to pay benefits for disability or
4 loss of earned income or medical expenses of the duty to pay such
5 benefits when due. No such source of payment shall have any right of
6 subrogation or contribution against the state.

7 (4) This section shall be considered part of the State Tort Claims
8 Act and all provisions of the act apply.

9 (5) For purposes of this section, vehicular pursuit means an active
10 attempt by a law enforcement officer operating a motor vehicle to
11 apprehend one or more occupants of another motor vehicle when the driver
12 of the fleeing vehicle is or should be aware of such attempt and is
13 resisting apprehension by maintaining or increasing his or her speed,
14 ignoring the officer, or attempting to elude the officer while driving at
15 speeds in excess of those reasonable and proper under the conditions.

16 Sec. 10. Section 81-8,219, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 81-8,219 The State Tort Claims Act shall not apply to:

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

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

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

31 (4) Any claim arising out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander, or
2 interference with contract rights, except that this subdivision does not
3 apply to a claim under the Healthy Pregnancies for Incarcerated Women
4 Act;

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

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

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

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

28 (9) Any claim based upon the issuance, denial, suspension, or
29 revocation of or failure or refusal to issue, deny, suspend, or revoke
30 any permit, license, certificate, or order. Such claim shall also not be
31 filed against a state employee acting within the scope of his or her

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

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

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

24 (12) 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 governmental entity or some
29 other body or employee exercising discretionary authority to give such
30 approval;

31 (13) 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. The state shall be deemed to waive its immunity for a
5 claim due to a spot or localized defect only if the state has had actual
6 or constructive notice of the defect within a reasonable time to allow
7 repair prior to the incident giving rise to the claim;

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

23 (b) For purposes of this subdivision:

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

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

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

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

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

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

17 (16) Any claim against a law enforcement officer employed by the
18 state arising out of a vehicular pursuit as defined in section
19 81-8,215.01 that occurred within the course and scope of the employee's
20 employment; or

21 (17) Any claim arising from the collision of a motor vehicle being
22 operated by a person fleeing a vehicular pursuit as defined in section
23 81-8,215.01 if:

24 (a) The law enforcement agency employing the law enforcement officer
25 involved in the vehicular pursuit has adopted and implemented a policy on
26 vehicular pursuits and provided training on vehicular pursuits; and

27 (b) Such policy and training meet the minimum requirements of
28 sections 4 to 8 of this act.

29 Sec. 11. Original sections 13-911, 29-211, and 81-8,215.01, Reissue
30 Revised Statutes of Nebraska, and sections 13-910 and 81-8,219, Revised
31 Statutes Cumulative Supplement, 2020, are repealed.