

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 474

Introduced by Dorn, 30.

Read first time January 18, 2019

Committee:

1 A BILL FOR AN ACT relating to claims against the state; to amend sections
2 29-3506, 29-4601, 29-4602, 29-4603, 29-4604, 29-4605, 29-4606,
3 29-4607, 29-4608, 81-8,210, and 81-8,227, Reissue Revised Statutes
4 of Nebraska; to rename the Nebraska Claims for Wrongful Conviction
5 and Imprisonment Act; to provide for claims against the state by
6 persons wrongfully incarcerated; to change provisions relating to
7 the effect of recovery on a claim under such act; to provide a
8 procedure to seek reimbursement from the State Claims Board for
9 certain judgments against political subdivisions as prescribed; to
10 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 29-3506, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3506 Criminal history record information shall mean information
4 collected by criminal justice agencies on individuals consisting of
5 identifiable descriptions and notations of issuance of arrest warrants,
6 arrests, detentions, indictments, charges by information, and other
7 formal criminal charges, and any disposition arising from such arrests,
8 charges, sentencing, correctional supervision, and release. Criminal
9 history record information shall include any judgment against or
10 settlement with the state as a result of a wrongful conviction pursuant
11 to the Nebraska Claims for Wrongful Conviction or Incarceration ~~and~~
12 ~~Imprisonment~~ Act. Criminal history record information shall not include
13 intelligence or investigative information.

14 Sec. 2. Section 29-4601, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-4601 Sections 29-4601 to 29-4608 and section 10 of this act shall
17 be known and may be cited as the Nebraska Claims for Wrongful Conviction
18 or Incarceration ~~and Imprisonment~~ Act.

19 Sec. 3. Section 29-4602, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-4602 The Legislature finds that innocent persons who have been
22 wrongfully incarcerated or wrongfully ~~wrongly~~ convicted of crimes and
23 subsequently imprisoned have been uniquely victimized, have distinct
24 problems reentering society, and have difficulty achieving legal redress
25 due to a variety of substantive and technical obstacles in the law. The
26 Legislature also finds that such persons should have an available avenue
27 of redress. In light of the particular and substantial horror of being
28 wrongfully incarcerated or wrongfully convicted ~~imprisoned~~ for a crime
29 one did not commit, the Legislature intends by enactment of the Nebraska
30 Claims for Wrongful Conviction or Incarceration ~~and Imprisonment~~ Act that
31 persons who can demonstrate that they were wrongfully incarcerated or

1 wrongfully convicted shall have a claim against the state as provided in
2 the act.

3 Sec. 4. Section 29-4603, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 29-4603 In order to recover under the Nebraska Claims for Wrongful
6 Conviction or Incarceration and ~~Imprisonment~~ Act, the claimant shall
7 prove each of the following by clear and convincing evidence:

8 (1) That he or she was incarcerated for or convicted of one or more
9 felony crimes and subsequently sentenced to a term of imprisonment for
10 such felony crime or crimes and has been lawfully released from
11 confinement ~~served all or any part of the sentence~~;

12 (2) With respect to a conviction ~~the crime or crimes~~ under
13 subdivision (1) of this section, that the Board of Pardons has pardoned
14 the claimant, that a court has vacated the conviction of the claimant, or
15 that the conviction was reversed and remanded for a new trial and no
16 subsequent conviction was obtained;

17 (3) That he or she was innocent of the crime or crimes under
18 subdivision (1) of this section; and

19 (4) That he or she did not commit or suborn perjury, fabricate
20 evidence, or otherwise make a false statement to cause or bring about
21 such conviction or the conviction of another, with respect to the crime
22 or crimes under subdivision (1) of this section, except that a guilty
23 plea, a confession, or an admission, coerced by law enforcement and later
24 found to be false, does not constitute bringing about his or her own
25 conviction of such crime or crimes.

26 Sec. 5. Section 29-4604, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 29-4604 (1) A claimant under the Nebraska Claims for Wrongful
29 Conviction or Incarceration and ~~Imprisonment~~ Act shall recover damages
30 found to proximately result from the wrongful conviction or wrongful
31 incarceration and that have been proved based upon a preponderance of the

1 evidence.

2 (2) The following costs shall not offset damages:

3 (a) Costs of incarceration ~~imprisonment~~; and

4 (b) Value of any care or education provided to the claimant while he
5 or she was incarcerated ~~imprisoned~~.

6 (3) No damages shall be payable to the claimant for any period of
7 time during which he or she was concurrently incarcerated ~~imprisoned~~ for
8 any unrelated criminal offense.

9 (4) In no case shall damages awarded under the act exceed five
10 hundred thousand dollars per claimant per occurrence.

11 ~~(5) A claimant's cause of action under the act shall not be~~
12 ~~assignable and shall not survive the claimant's death.~~

13 Sec. 6. Section 29-4605, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 29-4605 If the court finds that any property of the claimant was
16 subjected to a lien to recover costs of defense services rendered by the
17 state to defend the claimant in connection with the criminal case that
18 resulted in his or her wrongful conviction or wrongful incarceration, the
19 court shall extinguish the lien.

20 Sec. 7. Section 29-4606, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 29-4606 Nothing contained in the Nebraska Claims for Wrongful
23 Conviction or Incarceration ~~and Imprisonment~~ Act shall preclude the state
24 from providing services to the claimant upon exoneration, and the
25 reasonable value of services provided shall be treated as an advance
26 against any award or judgment under the act.

27 Sec. 8. Section 29-4607, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 29-4607 A claim brought pursuant to the Nebraska Claims for Wrongful
30 Conviction or Incarceration ~~and Imprisonment~~ Act shall be filed under the
31 State Tort Claims Act.

1 Sec. 9. Section 29-4608, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-4608 Nothing in the Nebraska Claims for Wrongful Conviction or
4 Incarceration and Imprisonment Act shall limit the claimant from making
5 any other claim available against any other party or based upon any other
6 theory of recovery, ~~except that a claimant who recovers a claim under the~~
7 ~~act shall not have any other claim against the state based upon any other~~
8 ~~theory of recovery or law.~~

9 Sec. 10. (1) For purposes of this section, successful claimant
10 means a person who:

11 (a) Had a claim against a political subdivision arising from his or
12 her wrongful incarceration or wrongful conviction, which claim was
13 precluded by the provisions of the State Tort Claims Act or the Political
14 Subdivisions Tort Claims Act; and

15 (b) Obtained a final judgment against such political subdivision
16 from a federal court under 42 U.S.C. 1983 or 1985 for a violation of his
17 or her rights protected by the Constitution of the United States and
18 arising out of such wrongful incarceration or wrongful conviction.

19 (2) A successful claimant and the political subdivision against
20 which such claimant obtained a final judgment described in subsection (1)
21 of this section may, jointly or individually, file a claim with the State
22 Claims Board for full payment of any such judgment, or any part of such
23 judgment, which exceeds the available financial resources and revenue of
24 the political subdivision required for its ordinary purposes. A claim
25 under this subsection shall be filed within two years of the final
26 judgment described in subsection (1) of this section and shall be
27 governed by the State Miscellaneous Claims Act.

28 Sec. 11. Section 81-8,210, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 81-8,210 For purposes of the State Tort Claims Act:

31 (1) State agency includes all departments, agencies, boards,

1 bureaus, and commissions of the State of Nebraska and corporations the
2 primary function of which is to act as, and while acting as,
3 instrumentalities or agencies of the State of Nebraska but shall not
4 include corporations that are essentially private corporations or
5 entities created pursuant to the Interlocal Cooperation Act or the Joint
6 Public Agency Act. State agency does not include any contractor with the
7 State of Nebraska;

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

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

15 (4) Tort claim means any claim against the State of Nebraska for
16 money only on account of damage to or loss of property or on account of
17 personal injury or death caused by the negligent or wrongful act or
18 omission of any employee of the state, while acting within the scope of
19 his or her office or employment, under circumstances in which the state,
20 if a private person, would be liable to the claimant for such damage,
21 loss, injury, or death but does not include any claim accruing before
22 January 1, 1970, any claim against an employee of the state for money
23 only on account of damage to or loss of property or on account of
24 personal injury or death caused by the negligent or wrongful act or
25 omission of the employee while acting within the scope of his or her
26 employment occurring on or after August 25, 1989, and any claim allowed
27 under the Nebraska Claims for Wrongful Conviction or Incarceration and
28 ~~Imprisonment~~ Act;

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

1 (6) Risk Manager means the Risk Manager appointed under section
2 81-8,239.01.

3 Sec. 12. Section 81-8,227, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 81-8,227 (1) Except as provided in subsection (2) of this section,
6 every tort claim permitted under the State Tort Claims Act shall be
7 forever barred unless within two years after such claim accrued the claim
8 is made in writing to the Risk Manager in the manner provided by such
9 act. The time to begin suit under such act shall be extended for a period
10 of six months from the date of mailing of notice to the claimant by the
11 Risk Manager or State Claims Board as to the final disposition of the
12 claim or from the date of withdrawal of the claim under section 81-8,213
13 if the time to begin suit would otherwise expire before the end of such
14 period.

15 (2) The date of a qualifying release from incarceration, a
16 qualifying pardon from the Board of Pardons, a final order by a court
17 vacating a conviction, or a conviction that was reversed and remanded for
18 a new trial and no subsequent conviction was obtained, whichever is
19 later, shall be the date the claimant's claim shall accrue under the
20 Nebraska Claims for Wrongful Conviction ~~or Incarceration and Imprisonment~~
21 Act for purposes of complying with the notice and filing requirements of
22 the State Tort Claims Act. The Nebraska Claims for Wrongful Conviction or
23 Incarceration and Imprisonment Act applies to a claimant who would have
24 had a claim if the act had been in effect before August 30, 2009, or who
25 has a claim on or after such date. If a claimant had a qualifying release
26 from incarceration, a qualifying pardon from the Board of Pardons, a
27 final order by a court vacating a conviction, or a conviction that was
28 reversed and remanded for a new trial and no subsequent conviction was
29 obtained, before August 30, 2009, the claimant's claim shall accrue under
30 the Nebraska Claims for Wrongful Conviction or Incarceration and
31 Imprisonment Act on August 30, 2009, for purposes of complying with the

1 notice and filing requirements of the State Tort Claims Act.

2 (3) If a claim is made or filed under any other law of this state
3 and a determination is made by a state agency or court that the State
4 Tort Claims Act provides the exclusive remedy for the claim, the time to
5 make a claim and begin suit under such act shall be extended for a period
6 of six months from the date of the court order making such determination
7 or the date of mailing of notice to the claimant of such determination by
8 a state agency if the time to make the claim and to begin suit under such
9 act would otherwise expire before the end of such period. The time to
10 begin a suit under such act may be further extended as provided in
11 subsection (1) of this section.

12 (4) If a claim is brought under the Nebraska Hospital-Medical
13 Liability Act, the filing of a request for review under section 44-2840
14 shall extend the time to begin suit under the State Tort Claims Act an
15 additional ninety days following the issuance of the opinion by the
16 medical review panel if the time to begin suit under the State Tort
17 Claims Act would otherwise expire before the end of such ninety-day
18 period.

19 (5) This section and section 25-213 shall constitute the only
20 statutes of limitations applicable to the State Tort Claims Act.

21 Sec. 13. Original sections 29-3506, 29-4601, 29-4602, 29-4603,
22 29-4604, 29-4605, 29-4606, 29-4607, 29-4608, 81-8,210, and 81-8,227,
23 Reissue Revised Statutes of Nebraska, are repealed.