

AMENDMENTS TO LB25

(Amendments to Standing Committee amendments, AM440)

Introduced by Wayne, 13.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new
3 sections:

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

6 13-910 The Political Subdivisions Tort Claims Act and sections
7 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

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

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

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

25 (4) Any claim based upon the issuance, denial, suspension, or
26 revocation of or failure or refusal to issue, deny, suspend, or revoke

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

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

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

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

20 (a) Under the Healthy Pregnancies for Incarcerated Women Act; or

21 (b) When the harm caused by child abuse or sexual assault of a child
22 is a proximate result of the failure of a political subdivision or an
23 employee of the political subdivision to exercise reasonable care to
24 either:

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

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

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

30 (9) Any claim arising out of the malfunction, destruction, or
31 unauthorized removal of any traffic or road sign, signal, or warning

1 device unless it is not corrected by the political subdivision
2 responsible within a reasonable time after actual or constructive notice
3 of such malfunction, destruction, or removal. Nothing in this subdivision
4 shall give rise to liability arising from an act or omission of any
5 political subdivision in placing or removing any traffic or road signs,
6 signals, or warning devices when such placement or removal is the result
7 of a discretionary act of the political subdivision;

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

16 (11) Any claim arising out of the plan or design for the
17 construction of or an improvement to any highway as defined in such
18 section or bridge, either in original construction or any improvement
19 thereto, if the plan or design is approved in advance of the construction
20 or improvement by the governing body of the political subdivision or some
21 other body or employee exercising discretionary authority to give such
22 approval;

23 (12) Any claim arising out of the alleged insufficiency or want of
24 repair of any highway as defined in such section, bridge, or other public
25 thoroughfare. Insufficiency or want of repair shall be construed to refer
26 to the general or overall condition and shall not refer to a spot or
27 localized defect. A political subdivision shall be deemed to waive its
28 immunity for a claim due to a spot or localized defect only if (a) the
29 political subdivision has had actual or constructive notice of the defect
30 within a reasonable time to allow repair prior to the incident giving
31 rise to the claim or (b) the claim arose during the time specified in a

1 notice provided by the political subdivision pursuant to subsection (3)
2 of section 39-1359 and the state or political subdivision had actual or
3 constructive notice; or

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

19 (b) For purposes of this subdivision:

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

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

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

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

7 (c) This subdivision, and not subdivision (3) of this section, shall
8 apply to any claim arising from the inspection or failure to make an
9 inspection or negligent inspection of premises owned or leased by the
10 political subdivision and used for recreational activities.

11 Sec. 2. Original section 13-910, Reissue Revised Statutes of
12 Nebraska, is repealed.