

LEGISLATIVE BILL 262

Approved by the Governor February 7, 1992

Introduced by Kristensen, 37

AN ACT relating to civil procedure; to amend sections 13-902, 13-910, 25-21,185, and 39-619, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,219, Revised Statutes Supplement, 1990; to provide for the applicability of provisions; to define terms; to provide for the reduction of damages in civil actions for contributory negligence as prescribed; to provide for joint and several liability as prescribed; to provide for the discharge of liability and assumption of risk as a defense; to change the applicability of the Political Subdivisions Tort Claims Act and the State Tort Claims Act; to harmonize provisions; to repeal the original sections, and also sections 25-21,185.01 to 25-21,185.06, Revised Statutes Supplement, 1991; and to declare an emergency.

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

Section 1. Sections 1 to 6 of this act shall apply to all civil actions to which contributory negligence may be, pursuant to law, a defense that accrue on or after the effective date of this act for damages arising out of injury to or death of a person or harm to property regardless of the theory of liability. Actions accruing prior to the effective date of this act shall be governed by the laws in effect immediately prior to such date. Nothing in sections 1 to 6 of this act shall be construed to limit wrongful death claims brought pursuant to sections 30-809 and 30-810, but such claims shall be subject to sections 1 to 6 of this act.

Sec. 2. For purposes of sections 1 to 6 of this act:

(1) Claimant shall mean any person who brings or maintains an action described in section 1 of this act. If an action is brought through or on behalf of an estate, claimant shall mean the claimant's decedent. If an action is brought through or on behalf of a minor, claimant shall mean the minor;

(2) Economic damages shall mean monetary losses, including, but not limited to, medical expenses.

loss of earnings and earning capacity, funeral costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities; and

(3) Noneconomic damages shall mean subjective, nonmonetary losses, including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation, but shall not include economic damages.

Sec. 3. Any contributory negligence chargeable to the claimant shall diminish proportionately the amount awarded as damages for an injury attributable to the claimant's contributory negligence but shall not bar recovery, except that if the contributory negligence of the claimant is equal to or greater than the total negligence of all persons against whom recovery is sought, the claimant shall be totally barred from recovery. The jury shall be instructed on the effects of the allocation of negligence.

Sec. 4. In an action involving more than one defendant when two or more defendants as part of a common enterprise or plan act in concert and cause harm, the liability of each such defendant for economic and noneconomic damages shall be joint and several.

In any other action involving more than one defendant, the liability of each defendant for economic damages shall be joint and several and the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant's percentage of negligence, and a separate judgment shall be rendered against that defendant for that amount.

Sec. 5. (1) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable shall discharge that person from all liability to the claimant but shall not discharge any other persons liable upon the same claim unless it so provides. The claim of the claimant against other persons shall be reduced by the amount of the released person's share of the obligation as determined by the trier of fact.

(2) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable shall preclude that person from being made a party or,

if an action is pending, shall be a basis for that person's dismissal, but the person's negligence, if any, shall be considered in accordance with section 3 of this act.

Sec. 6. Assumption of risk is an affirmative defense. Assumption of risk shall mean that (1) the person knew of and understood the specific danger, (2) the person voluntarily exposed himself or herself to the danger, and (3) the person's injury or death or the harm to property occurred as a result of his or her exposure to the danger.

Sec. 7. That section 13-902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

13-902. The Legislature hereby declares that no political subdivision of the State of Nebraska shall be liable for the torts of its officers, agents, or employees, and that no suit shall be maintained against such political subdivision or its officers, agents, or employees on any tort claim except to the extent, and only to the extent, provided by ~~sections 13-901 to 13-926, 16-727, 16-728, 23-175, 39-809, and 79-489~~ the Political Subdivisions Tort Claims Act. The Legislature further declares that it is its intent and purpose through this enactment to provide uniform procedures for the bringing of tort claims against all political subdivisions, whether engaging in governmental or proprietary functions, and that the procedures provided by ~~sections 13-901 to 13-926, 16-727, 16-728, 23-175, 39-809, and 79-489~~ the act shall be used to the exclusion of all others.

Sec. 8. That section 13-910, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

13-910. Sections 13-901 to 13-926, The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-489 shall not apply to:

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

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

(3) 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 such political subdivision 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 political subdivision 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;

(4) 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;

(5) Any claim arising in 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;

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

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

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

(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 political subdivision 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 political subdivision 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 political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 39-602, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's

liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in section 39-602, 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 political subdivision or some other body or employee exercising discretionary authority to give such approval; or

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in section 39-602, 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. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the political subdivision 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.

Sec. 9. That section 25-21,185, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-21,185. In all actions accruing before the effective date of this act brought to recover damages for injuries to a person or to his property caused by the negligence or act or omission giving rise to strict liability in tort of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence or act or omission giving rise to strict liability in tort of the defendant was gross in comparison, but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages in proportion to the amount of contributory negligence attributable to the plaintiff, and all questions of negligence or act or omission giving rise to strict liability in tort and contributory negligence shall be for the jury.

Sec. 10. That section 39-619, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-619. (1) No person shall, without lawful

authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic-control device or any railroad sign or signal or any part thereof.

(2) Any person who moves, alters, damages, or destroys warning devices placed upon roads which the Department of Roads or any local authority or its representative has closed in whole or in part for the protection of the public or for the protection of the highway from damage during construction, improvement, or maintenance operation, and thereby causes injury or death to any person or damage to any property, equipment, or material thereon shall be liable, subject to the provisions of section 25-21,185 and sections 1 to 6 of this act, for the full or allocated amount of such death, injury, or damage, and such amount may be recovered by the injured or damaged party or his or her legal representative in a civil action brought in any court of competent jurisdiction.

Sec. 11. That section 81-8,219, Revised Statutes Supplement, 1990, be amended to read as follows:

81-8,219. ~~(1)~~ The State Tort Claims Act shall not apply to:

~~(a)~~ (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;

~~(b)~~ (2) Any claim arising ~~in~~ 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;

~~(c)~~ (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;

~~(d)~~ (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;

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

~~(f)~~ (6) Any claim based on activities of the Nebraska National Guard when such claim is cognizable

under the National Guard Tort Claims Act of the United States, 32 U.S.C.A. 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;

(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;

(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;

(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;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 39-602, 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;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in section 39-602 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; or

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in section 39-602, 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.

(2) With respect to any tort claim based on the alleged insufficiency or want of repair of any highway or bridge on the state highway system; it is the intent of the legislature to waive the state's immunity from suit and liability to the same extent that liability has been imposed upon counties pursuant to section 13-912 and only to that extent. The legislature further declares that judicial interpretations of section 13-912 governing the liability of counties on December 25, 1969, also shall be controlling on the liability of the state for the alleged insufficiency or want of repair of any highway or bridge. It is the further intent of the legislature that the words insufficiency or want of repair shall refer to a spot or localized highway defect and shall not be construed to refer to the general or overall condition of a highway.

Sec. 12. That original sections 13-902, 13-910, 25-21,185, and 39-619, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,219, Revised Statutes Supplement, 1990, and also sections 25-21,185.01 to 25-21,185.06, Revised Statutes Supplement, 1991, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.