

LEGISLATIVE BILL 821

Approved by the Governor April 16, 2008

Introduced by Business and Labor Committee: Cornett, 45, Chairperson; McGill, 26; Rogert, 16; Wallman, 30.

FOR AN ACT relating to claims against the state; to amend sections 81-8,210, 81-8,212, 81-8,213, 81-8,220, 81-8,227, 81-8,228, 81-8,300, and 81-8,305, Reissue Revised Statutes of Nebraska, and sections 81-8,211 and 81-8,224, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to the Risk Manager, the State Claims Board, and claim procedures; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 81-8,210, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,210 For purposes of the State Tort Claims Act, ~~unless the context otherwise requires:~~

(1) State agency ~~shall include~~ includes all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency ~~shall not be construed to~~ does not include any contractor with the State of Nebraska;

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

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

(4) Tort claim ~~shall mean~~ means any claim against the State of Nebraska for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the state, while acting within the scope of his or her office or employment, under circumstances in which the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death but ~~shall~~ does not include any claim accruing before January 1, 1970, and any claim against an employee of the state for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of the employee while acting within the scope of his or her employment occurring on or after August 25, 1989; ~~and~~

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

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

Sec. 2. Section 81-8,211, Revised Statutes Cumulative Supplement, 2006, is amended to read:

81-8,211 Authority is hereby conferred upon the Risk Manager and State Claims Board, acting on behalf of the State of Nebraska, to consider, ascertain, adjust, compromise, settle, determine, and allow any tort claim. Any claimant dissatisfied with a decision of the Risk Manager may make application for review of the decision by the State Claims Board by filing an application for review with the Risk Manager within sixty days after receipt of notice of the Risk Manager's decision. If any tort claim is compromised, settled, or allowed in an amount of more than five thousand dollars, the approval of the State Claims Board is required. If any tort claim is compromised, settled, or allowed in an amount of more than five ten thousand dollars, the unanimous approval of all members of the State Claims Board shall be required. If any tort claim is compromised, settled, or allowed in an amount of more than twenty-five thousand dollars, the claim shall also be submitted for approval by the district court for Lancaster County. When approval of the district court is required, the Attorney General shall make application for such approval and shall file with the application a complete record of the action of the State Claims Board on such claim. The claimant

may join in such application, and if the claimant does so, the court may proceed to act on the application without further notice to either party. If the claimant does not join in the application, the court shall require actual notice to all parties before acting on the application. The court may deny the application for any legal and sufficient reason or may direct the State Claims Board to conduct further hearings on any material issues. The fees of the clerk of the district court for filing, docketing, and indexing such application shall be five dollars.

Sec. 3. Section 81-8,212, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,212 All tort claims shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. The Risk Manager shall immediately advise the Attorney General of the filing of any claim. It shall be the duty of the Attorney General to cause a complete investigation to be made of all such claims and serve as a legal advisor to the Risk Manager and State Claims Board on all such claims. In any suit brought under the State Tort Claims Act, service of process shall be made in the manner provided for service of a summons in section 25-510.02.

Sec. 4. Section 81-8,213, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,213 No suit shall be permitted under the State Tort Claims Act unless the Risk Manager or State Claims Board has made final disposition of the claim, except that if the Risk Manager or board does not make final disposition of a claim within six months after the claim is made in writing ~~to~~ and filed with the Risk Manager in the manner prescribed by the board, the claimant may, by notice in writing, withdraw the claim from consideration of the Risk Manager or board and begin suit under such act.

Sec. 5. Section 81-8,220, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,220 The Director of Insurance, Commissioner of Labor, and Director of Administrative Services shall constitute the State Claims Board which shall be a part of the Risk Management Program created by section 81-8,239.01. The Attorney General shall be its legal advisor. With the advice and consent of the other members of the board, the Director of Administrative Services ~~shall~~ may hire a secretary for the board. The members of the board shall receive no compensation for their services except that provided by law for the offices they hold, but they shall be allowed necessary traveling expenses in performing their duties as provided in sections 81-1174 to 81-1177.

Sec. 6. Section 81-8,224, Revised Statutes Cumulative Supplement, 2006, is amended to read:

81-8,224 (1) Any award to a claimant and any judgment in favor of a claimant under the State Tort Claims Act shall be certified by the Risk Manager or State Claims Board to the Director of Administrative Services who shall promptly issue a warrant for payment of such award or judgment out of the Tort Claims Fund or State Insurance Fund, as appropriate, if sufficient money is available in the fund, except that no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. All awards and judgments which arise out of the same facts and circumstances shall be aggregated for the purpose of determining whether such awards and judgments shall be reviewed by the Legislature and specific appropriation made therefor.

(2) Any award, judgment, or associated costs on a claim which is covered by liability insurance or by group self-insurance, the amount of which falls within the applicable policy's self-insured retention, shall be paid from the State Insurance Fund.

(3) Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written release by the claimant in a form approved by the State Claims Board.

Sec. 7. Section 81-8,227, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) If a claim is made or filed under any other law of this state

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

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

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

Sec. 8. Section 81-8,228, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,228 The court rendering a judgment for the claimant under the State Tort Claims Act, the Risk Manager or State Claims Board making an award under section 81-8,211, or the Attorney General settling a claim under section 81-8,218 shall determine and allow reasonable attorney's fees and expenses, to be paid out of but not in addition to the amount of judgment or award recovered, to the attorneys representing the claimant.

Sec. 9. Section 81-8,300, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,300 After investigation, the Risk Manager or State Claims Board shall either approve, approve with conditions or limitations, or disapprove of each claim or request and append to the claim or request a concise statement of the facts brought out in such investigation upon which its approval or disapproval is based. If any claim is approved in an amount of more than five thousand dollars, the approval of the board is required. Such claim or request, together with the original papers supporting it and the appended statement, shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. The Risk Manager shall promptly notify each claimant of the decision by the Risk Manager or State Claims Board on his or her claim by regular mail. The notification shall include (1) the decision of the Risk Manager or State Claims Board, (2) a statement that a dissatisfied claimant a statement that a claimant dissatisfied with the decision of the Risk Manager may have his or her claim reviewed by the board or a statement that a claimant dissatisfied with the decision of the board may have his or her claim reviewed by the Legislature upon application, (3) the procedure for making an application for review, and (4) the time limit for making such application.

If the claimant is dissatisfied with the decision of the Risk Manager, he or she may file an application for review by the board. If the claimant is dissatisfied with the decision of the board, he or she may file an application for review by the Legislature. The application for review shall be filed with the Risk Manager in the manner prescribed by the State Claims Board. board. The application for review shall be filed within sixty days after the date of the decision by the State Claims Board on the claim, which is being reviewed.

Each claim which has been approved or for which an application for review with the Legislature has been filed and each request referred to in section 81-8,297 shall be delivered by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date of the decision of the board. The Risk Manager may direct the payment by the state agency involved of any claim not in excess of ~~two~~ five thousand dollars if such payment is agreed to by the head of the agency involved. The State Claims Board may direct payment by the state agency involved of any claim not in excess of ~~ten~~ fifty thousand dollars if such payment is agreed to by the head of the agency involved and the agency has sufficient funds to pay the claim. If claims approved by the Risk Manager or State Claims Board arise out of the same facts and circumstances, they shall be aggregated. If the Risk Manager or State Claims Board does not direct the payment of a claim as set forth in this section or the claim exceeds the dollar limitations set forth in this section, the claim shall be reviewed by the Legislature and an appropriation made therefor if appropriate. The Risk Manager shall report all claims and judgments paid under the State Miscellaneous Claims Act to the Clerk of the Legislature and the Chairperson of the Business and Labor Committee of the Legislature. The report shall include the name of the claimant, a statement of the amount claimed and paid, and a brief description of the claim including

the agency and program or activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

Sec. 10. Section 81-8,305, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,305 (1) If agreed to by the claimant and the contracting agency, the State Claims Board shall have the authority to consider, ascertain, adjust, compromise, settle, determine, or allow any contract claim. Upon receipt of a contract claim, the Risk Manager shall immediately notify the claimant and the contracting agency of the option of having the dispute submitted to the State Claims Board.

(2) If the claimant and the contracting agency agree to submit the dispute to the State Claims Board as provided in subsection (1) of this section, the board shall resolve such dispute in the manner provided under the State Miscellaneous Claims Act. For claims submitted to the board under this subsection, the contracting agency shall provide the board with all documents and information relating to the claim which the contracting agency obtained during its investigation.

(3) If either the claimant or the contracting agency objects in writing notifies the Risk Manager in writing within ninety days after mailing of the notice required in subsection (1) of this section that the claimant or the contracting agency objects to the submission of the dispute to the State Claims Board, within ninety days of mailing of the notice required in subsection (1) of this section, the board shall have no further jurisdiction over the claim and the claimant may initiate an action in the district court of Lancaster County. The action in the district court of Lancaster County must be filed with the district court within two years after the date the Risk Manager receives the written notification of objection or the claim shall be forever barred.

Sec. 11. Original sections 81-8,210, 81-8,212, 81-8,213, 81-8,220, 81-8,227, 81-8,228, 81-8,300, and 81-8,305, Reissue Revised Statutes of Nebraska, and sections 81-8,211 and 81-8,224, Revised Statutes Cumulative Supplement, 2006, are repealed.