

LEGISLATIVE BILL 541

Approved by the Governor May 25, 1989

Introduced by Lindsay, 9; Ashford, 6

AN ACT relating to the State Tort Claims Act; to amend sections 81-8,209, 81-8,210, 81-8,212, 81-8,215, 81-8,218, 81-8,229, and 81-8,231, Revised Statutes Supplement, 1988; to provide for the applicability of the act to claims against employees of the state; to redefine terms; to harmonize provisions; to provide severability; and to repeal the original sections.

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

Section 1. That section 81-8,209, Revised Statutes Supplement, 1988, be amended to read as follows:

81-8,209. The State of Nebraska shall not be liable for the torts of its officers, agents, or employees, and no suit shall be maintained against the state, or any state agency, or any employee of the state on any tort claim except to the extent, and only to the extent, provided by the State Tort Claims Act. The Legislature further declares that it is its intent and purpose through such act to provide uniform procedures for the bringing of tort claims against the state or an employee of the state and that the procedures provided by such act shall be used to the exclusion of all others.

Sec. 2. That section 81-8,210, Revised Statutes Supplement, 1988, be amended to read as follows:

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

(1) State agency shall include all departments, agencies, boards, bureaus, and commissions of the State of Nebraska and corporations whose primary function 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. State agency shall not be construed to include any contractor with the State of Nebraska;

(2) State Claims Board shall mean the board

created by section 81-8,220;

(3) Employee of the state shall mean 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 include any contractor with the State of Nebraska;

(4) Tort claim shall mean 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 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 the effective date of this act; and

(5) Award shall mean any amount determined by the 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.

Sec. 3. That section 81-8,212, Revised Statutes Supplement, 1988, be amended to read as follows:

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 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 a civil action section 25-510.02.

Sec. 4. That section 81-8,215, Revised Statutes Supplement, 1988, be amended to read as follows:

81-8,215. In all suits brought under the State Tort Claims Act, the state shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that no writ

of execution shall issue, against the state or any state agency; and the disposition of or offer to settle any claim made under such act shall not be competent evidence of liability of the state or any employee of the state or the amount of damages.

Sec. 5. That section 81-8,218, Revised Statutes Supplement, 1988, be amended to read as follows:

81-8,218. The Attorney General shall represent the state and employees of the state in any suit brought under the State Tort Claims Act and is authorized to compromise or settle any such suit with the approval of the court in which such suit is pending.

Sec. 6. That section 81-8,229, Revised Statutes Supplement, 1988, be amended to read as follows:

81-8,229. From and after December 25, 1969, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on tort claims except as authorized in the State Tort Claims Act. The remedies provided by such act ~~in such cases for tort claims and suits against the state and employees of the state~~ shall be exclusive.

Sec. 7. That section 81-8,231, Revised Statutes Supplement, 1988, be amended to read as follows:

81-8,231. Whenever a claim or suit ~~against the state or a state agency under the State Tort Claims Act~~ is covered by liability insurance or by group self-insurance provided by a risk management pool, the provisions of the liability insurance policy on defense and settlement of claims or the provisions of the agreement forming the risk management pool and related documents providing for defense and settlement of claims covered under such group self-insurance shall be applicable notwithstanding any inconsistent provisions of ~~the State Tort Claims Act act~~. The Attorney General and the State Claims Board shall cooperate with the insurance company or risk management pool.

Sec. 8. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 9. That original sections 81-8,209, 81-8,210, 81-8,212, 81-8,215, 81-8,218, 81-8,229, and 81-8,231, Revised Statutes Supplement, 1988, are repealed.