

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 881

Introduced by Watermeier, 1.

Read first time January 14, 2014

Committee:

A BILL

1 FOR AN ACT relating to vehicular pursuit; to amend sections 13-911
2 and 81-8,215.01, Reissue Revised Statutes of Nebraska; to
3 change provisions relating to innocent third parties; to
4 harmonize provisions; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-911, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-911 (1) In case of death, injury, or property damage
4 to any innocent third party proximately caused by the action of a law
5 enforcement officer employed by a political subdivision during
6 vehicular pursuit, damages shall be paid to such third party by the
7 political subdivision employing the officer.

8 (2) Upon payment by a political subdivision of those
9 damages sustained by an innocent third party, whether upon voluntary
10 settlement or in satisfaction of a judgment, the political
11 subdivision shall be entitled to reimbursement of the amount of
12 damages paid by the political subdivision from each and all of the
13 following sources:

14 (a) The driver of the fleeing vehicle;

15 (b) Any organization, including a sole proprietorship,
16 partnership, limited liability company, or corporation, liable for
17 the conduct of the driver of the fleeing vehicle;

18 (c) Every insurer or self-insurance surety of either the
19 driver of the fleeing vehicle or any organization, including a sole
20 proprietorship, partnership, limited liability company, or
21 corporation, liable for the conduct of the driver of the fleeing
22 vehicle, except that no such insurer or self-insurance surety shall
23 be required to pay in excess of the liability limit of its applicable
24 policies or bonds;

25 (d) Any uninsured or underinsured motorist insurer or

1 self-insurance surety legally liable to the innocent third party,
2 except that the sum recoverable from such insurer or self-insurance
3 surety shall not exceed the highest limit of liability determined in
4 accord with the Uninsured and Underinsured Motorist Insurance
5 Coverage Act;

6 (e) The state employing law enforcement officers whose
7 actions contributed to the proximate cause of death, injury, or
8 property damage sustained by the innocent third party, except that
9 the liability of the state shall not exceed the damages sustained by
10 the innocent third party apportioned equally among all political
11 subdivisions employing law enforcement officers whose actions
12 contributed to the proximate cause of the death, injury, or property
13 damage sustained by the innocent third party and the state; and

14 (f) Any political subdivision employing law enforcement
15 officers whose actions contributed to the proximate cause of death,
16 injury, or property damage sustained by the innocent third party,
17 except that the liability of the political subdivision shall not
18 exceed the lesser of (i) its maximum statutory liability pursuant to
19 the Political Subdivisions Tort Claims Act or (ii) damages sustained
20 by the innocent third party apportioned equally among all political
21 subdivisions and the state employing law enforcement officers whose
22 actions contributed to the proximate cause of the death, injury, or
23 property damage sustained by the innocent third party.

24 (3) This section shall not relieve any public or private
25 source required statutorily or contractually to pay benefits for

1 disability or loss of earned income or medical expenses of the duty
2 to pay such benefits when due. No such source of payment shall have
3 any right of subrogation or contribution against the political
4 subdivision.

5 (4) This section shall be considered part of the
6 Political Subdivisions Tort Claims Act and all provisions of the act
7 apply.

8 (5) For purposes of this section, a passenger in or on
9 the fleeing vehicle shall not be considered an innocent third party
10 if the passenger:

11 (a) Enters into the vehicle without coercion knowing, or
12 with a reasonable belief, that the driver of the vehicle is under the
13 influence of alcoholic liquor or drugs;

14 (b) Fails to take reasonable steps to persuade the driver
15 of the fleeing vehicle to stop the vehicle;

16 (c) Promotes, provokes, or persuades the driver to engage
17 in flight from law enforcement personnel;

18 (d) Is subject to arrest or sought to be apprehended by
19 law enforcement personnel; or

20 (e) Is engaged in any illegal activity which would itself
21 give rise to an arrest.

22 ~~(5)~~ (6) For purposes of this section, vehicular pursuit
23 means an active attempt by a law enforcement officer operating a
24 motor vehicle to apprehend one or more occupants of another motor
25 vehicle, when the driver of the fleeing vehicle is or should be aware

1 of such attempt and is resisting apprehension by maintaining or
2 increasing his or her speed, ignoring the officer, or attempting to
3 elude the officer while driving at speeds in excess of those
4 reasonable and proper under the conditions.

5 Sec. 2. Section 81-8,215.01, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 81-8,215.01 (1) In case of death, injury, or property
8 damage to any innocent third party proximately caused by the action
9 of a law enforcement officer employed by the state during vehicular
10 pursuit, damages shall be paid to such third party by the state
11 employing the officer.

12 (2) Upon payment by the state of those damages sustained
13 by an innocent third party, whether upon voluntary settlement or in
14 satisfaction of a judgment, the state shall be entitled to
15 reimbursement of the amount of damages paid by the state from each
16 and all of the following sources:

17 (a) The driver of the fleeing vehicle;

18 (b) Any organization, including a sole proprietorship,
19 partnership, limited liability company, or corporation, liable for
20 the conduct of the driver of the fleeing vehicle;

21 (c) Every insurer or self-insurance surety of either the
22 driver of the fleeing vehicle or any organization, including a sole
23 proprietorship, partnership, limited liability company, or
24 corporation, liable for the conduct of the driver of the fleeing
25 vehicle, except that no such insurer or self-insurance surety shall

1 be required to pay in excess of the liability limit of its applicable
2 policies or bonds;

3 (d) Any uninsured or underinsured motorist insurer or
4 self-insurance surety legally liable to the innocent third party,
5 except that the sum recoverable from such insurer or self-insurance
6 surety shall not exceed the highest limit of liability determined in
7 accord with the Uninsured and Underinsured Motorist Insurance
8 Coverage Act; and

9 (e) Any political subdivision employing law enforcement
10 officers whose actions contributed to the proximate cause of death,
11 injury, or property damage sustained by the innocent third party,
12 except that the liability of any such political subdivision shall not
13 exceed the lesser of (i) its maximum statutory liability pursuant to
14 the Political Subdivisions Tort Claims Act or (ii) the damages
15 sustained by the innocent third party apportioned equally among the
16 state and all political subdivisions employing law enforcement
17 officers whose actions contributed to the proximate cause of the
18 death, injury, or property damage sustained by the innocent third
19 party.

20 (3) This section shall not relieve any public or private
21 source required statutorily or contractually to pay benefits for
22 disability or loss of earned income or medical expenses of the duty
23 to pay such benefits when due. No such source of payment shall have
24 any right of subrogation or contribution against the state.

25 (4) This section shall be considered part of the State

1 Tort Claims Act and all provisions of the act apply.

2 (5) For purposes of this section, a passenger in or on
3 the fleeing vehicle shall not be considered an innocent third party
4 if the passenger:

5 (a) Enters into the vehicle without coercion knowing, or
6 with a reasonable belief, that the driver of the vehicle is under the
7 influence of alcoholic liquor or drugs;

8 (b) Fails to take reasonable steps to persuade the driver
9 of the fleeing vehicle to stop the vehicle;

10 (c) Promotes, provokes, or persuades the driver to engage
11 in flight from law enforcement personnel;

12 (d) Is subject to arrest or sought to be apprehended by
13 law enforcement personnel; or

14 (e) Is engaged in any illegal activity which would itself
15 give rise to an arrest.

16 ~~(5)~~(6) For purposes of this section, vehicular pursuit
17 means an active attempt by a law enforcement officer operating a
18 motor vehicle to apprehend one or more occupants of another motor
19 vehicle when the driver of the fleeing vehicle is or should be aware
20 of such attempt and is resisting apprehension by maintaining or
21 increasing his or her speed, ignoring the officer, or attempting to
22 elude the officer while driving at speeds in excess of those
23 reasonable and proper under the conditions.

24 Sec. 3. Original sections 13-911 and 81-8,215.01, Reissue
25 Revised Statutes of Nebraska, are repealed.