

LEGISLATIVE BILL 255

Approved by the Governor May 24, 2021

Introduced by Hansen, M., 26; Blood, 3; Bostar, 29; Brandt, 32; Cavanaugh, J., 9; Cavanaugh, M., 6; Day, 49; McDonnell, 5; Morfeld, 46; Pahls, 31; Slama, 1; Wishart, 27; Hunt, 8; Aguilar, 35.

A BILL FOR AN ACT relating to first responders; to amend sections 81-8,297, 81-8,299, 81-8,300.01, and 81-8,301, Reissue Revised Statutes of Nebraska; to adopt the In the Line of Duty Compensation Act; to change the State Miscellaneous Claims Act as prescribed; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 5 of this act shall be known and may be cited as the In the Line of Duty Compensation Act.

Sec. 2. For purposes of the In the Line of Duty Compensation Act:

(1) Firefighter means a member of a paid or volunteer fire department in Nebraska, including a member of a rescue squad associated with a paid or volunteer fire department in Nebraska;

(2)(a) Killed in the line of duty means losing one's life as a result of an injury or illness arising on or after the operative date of this act in connection with the active performance of duties as a public safety officer if the death occurs within three years from the date the injury was received or illness was diagnosed and if that injury or illness arose from violence or other accidental cause.

(b) Killed in the line of duty excludes death resulting from the willful misconduct or intoxication of the public safety officer;

(3) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, or any member of the police force of any city or village;

(4) Public safety officer means:

(a) A firefighter;

(b) A law enforcement officer;

(c) A member of an emergency medical services ambulance squad operated by a political subdivision or by a private, nonprofit ambulance service, but excluding any employee of a private, for-profit ambulance service; or

(d) A correctional officer employed by a jail or by the Department of Correctional Services;

(5) Risk Manager means the Risk Manager appointed under section 81-8,239.01; and

(6) State Claims Board means the board created under section 81-8,220.

Sec. 3. (1) If a public safety officer is killed in the line of duty, compensation shall be paid as provided in the In the Line of Duty Compensation Act to recognize the ultimate sacrifice made by such public safety officer.

(2) The amount of compensation to be paid under the act shall be as follows:

(a) For deaths occurring during calendar year 2022, the amount of such compensation shall be fifty thousand dollars; and

(b) For deaths occurring in calendar year 2023 and each calendar year thereafter, the amount of such compensation shall be equal to the compensation amount from the previous calendar year increased by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve months ending on June 30 of such previous calendar year.

(3) The person entitled to receive such compensation shall be determined as follows:

(a) If the public safety officer designated a person to receive the compensation in accordance with subsection (4) of this section, the compensation shall be paid to the designated person; or

(b) If no person is designated by the public safety officer or if the designated person is not alive at the death of the public safety officer, the compensation shall be paid in accordance with the laws of this state regarding intestate succession.

(4) The Risk Manager shall prescribe a form that may be used by a public safety officer to designate a person to receive the compensation. The public safety officer shall file such form with his or her employer or, if he or she is a volunteer, with the entity for which the volunteer service is provided.

(5) Amounts paid under the In the Line of Duty Compensation Act shall not be considered:

(a) Compensation under the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, the State Employees Retirement Act, or any other retirement plan administered by the Public Employees Retirement Board and shall not be eligible for deferral under any deferred compensation plan administered by the Public Employees Retirement Board; or

(b) Regular pay or salary under the Police Officers Retirement Act or sections 16-1020 to 16-1042.

(6) An employer of the public safety officer shall not have any right of subrogation under section 48-118 with respect to compensation paid under the In the Line of Duty Compensation Act.

Sec. 4. (1) To receive compensation under the In the Line of Duty Compensation Act, a claim for the compensation must be filed with the Risk Manager within one year after the date of death of the public safety officer who was killed in the line of duty. Such claim shall be on a form prescribed by the Risk Manager and shall include:

(a) The name, address, and title or position of the public safety officer who was killed in the line of duty;

(b) A copy of the form filed in accordance with subsection (4) of section 3 of this act, if any. If no such form has been filed, the claim shall include the name and address of the person or persons to whom compensation is payable under subdivision (3)(b) of the section 3 of this act;

(c) A sworn statement providing a full factual account of the circumstances resulting in or the course of events causing the death of the public safety officer; and

(d) Such other information as the Risk Manager reasonably requires.

(2) The Risk Manager shall send written notice to all claimants within two weeks after the initiation of a claim indicating whether or not the claim is complete. For purposes of this subsection, a claim is complete if a claimant has submitted to the Risk Manager all documents and information required under subsection (1) of this section. If a claim is incomplete, the Risk Manager shall include in the written notice a list of the documents or information which the claimant must submit in order for the claim to be complete. If a claim is complete, the State Claims Board shall make an investigation of the claim in the manner provided in the State Miscellaneous Claims Act. Upon completion of such investigation, and no later than forty-five days after receipt of a complete claim, the State Claims Board shall approve or deny such claim in accordance with section 81-8,300 and the Risk Manager shall send written notice to the claimant stating whether the claim has been approved or denied. If a claim is denied, the notice shall include the reason or reasons for the denial. If a claimant is dissatisfied with a denial, he or she may file an application for review with the Risk Manager in accordance with subsection (2) of section 81-8,300. If a claim is approved, compensation shall be paid to the claimants entitled to such compensation in accordance with subsection (3) of section 81-8,300.

Sec. 5. The State Claims Board may adopt and promulgate rules and regulations to carry out the In the Line of Duty Compensation Act.

Sec. 6. Section 81-8,297, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,297 The State Claims Board shall have the power and authority to receive, investigate, and otherwise carry out its duties with regard to (1) all claims under the State Miscellaneous Claims Act, (2) all claims under sections 25-1802 to 25-1807, (3) all claims under the State Contract Claims Act, (4) all claims under the In the Line of Duty Compensation Act, (5) all requests on behalf of any department, board, or commission of the state for waiver or cancellation of money or charges when necessary for fiscal or accounting procedures, and (6) ~~(5)~~ all claims filed under section 66-1531. All such claims or requests and supporting documents shall be filed with the Risk Manager and shall be designated by number, name of claimant as requester, and short title. Nothing in this section shall be construed to be a waiver of the sovereign immunity of the state beyond what is otherwise provided by law.

The board shall adopt and promulgate such rules and regulations as are necessary to carry out the powers granted in this section. The Attorney General shall be the legal advisor to the board for purposes of this section and may authorize the assistant attorney general in charge of the Claims Division to perform any of his or her duties under this section.

Sec. 7. Section 81-8,299, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,299 The State Claims Board shall, for the purposes contemplated by the State Contract Claims Act, the State Miscellaneous Claims Act, the In the Line of Duty Compensation Act, and sections 25-1802 to 25-1807 and 66-1531, have the right, power, and duty to (1) administer oaths, (2) compel the attendance of witnesses and the production of books, papers, and documents and issue subpoenas for such purposes, and (3) punish the disobedience of such a subpoena or subpoenas, the refusal of a witness to be sworn or testify, or the failure to produce books, papers, and documents, as required by such subpoena or subpoenas so issued, as contempt, in the same manner as are officers who are authorized to take depositions.

Sec. 8. Section 81-8,300.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,300.01 Claims described in subdivision (4) of section 81-8,297 shall be forever barred unless the claim is filed with the Risk Manager within the time period prescribed in section 4 of this act. Claims described in subdivisions (5) ~~(4)~~ and (6) ~~(5)~~ of section 81-8,297 and claims relating to expiration of state warrants shall have no time bar to recovery. Except as provided in section 25-213, all other claims permitted under the State Miscellaneous Claims Act shall be forever barred unless the claim is filed with the Risk Manager within two years after the time the claim accrued.

Sec. 9. Section 81-8,301, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,301 Any award made under the State Contract Claims Act, the State

Miscellaneous Claims Act, the In the Line of Duty Compensation Act, or section 25-1806 or 66-1531 and accepted by the claimant shall be final and conclusive on all officers of the State of Nebraska except when procured by means of fraud. The acceptance by the claimant of such award shall be final and conclusive on the claimant and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim by reason of the same subject matter.

Sec. 10. This act becomes operative on January 1, 2022.

Sec. 11. Original sections 81-8,297, 81-8,299, 81-8,300.01, and 81-8,301, Reissue Revised Statutes of Nebraska, are repealed.