

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 300**

Introduced by Ashford, 20.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to victims of tragedies; to amend sections  
2 81-8,239.01 and 84-1410, Reissue Revised Statutes of  
3 Nebraska, and sections 81-1801, 81-1801.02, 81-1818, and  
4 81-1822, Revised Statutes Cumulative Supplement, 2010; to  
5 change and eliminate provisions relating to the Community  
6 Trust; to state intent; to change provisions relating to  
7 closed sessions of public bodies; to harmonize  
8 provisions; to repeal the original sections; and to  
9 declare an emergency.  
10 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 81-8,239.01, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3                   81-8,239.01 (1) For purposes of sections 81-8,239.01 to  
4 81-8,239.08 and 81-8,239.11, unless the context otherwise requires,  
5 the definition of state agencies found in section 81-8,210 shall  
6 apply, except that such term shall not include the Board of Regents  
7 of the University of Nebraska.

8                   (2) There is hereby established a division within the  
9 Department of Administrative Services to be known as the risk  
10 management and state claims division. The division shall be headed by  
11 the Risk Manager who shall be appointed by the Director of  
12 Administrative Services. The division shall be responsible for the  
13 Risk Management Program, which program is hereby created. The program  
14 shall consist of the systematic identification of exposures to risk  
15 of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165,  
16 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104,  
17 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233,  
18 81-8,239.01 to 81-8,239.08, 81-8,239.11, ~~and 81-8,300,~~ and 81-1801.02  
19 and shall include the appropriate methods for dealing with such  
20 exposures in relation to the state budget pursuant to such sections.  
21 Such program shall be administered by the Risk Manager and shall  
22 include the operations of the State Claims Board and other operations  
23 provided in such sections.

24                   (3) Under the Risk Management Program, the Risk Manager  
25 shall have the authority and responsibility to:

1                   (a) Employ any personnel necessary to administer the Risk  
2 Management Program;

3                   (b) Develop and maintain loss and exposure data on all  
4 state property and liability risks;

5                   (c) Develop and recommend risk reduction or elimination  
6 programs for the state and its agencies and establish, implement, and  
7 monitor a statewide safety program;

8                   (d) Determine which risk exposures shall be insured and  
9 which risk exposures shall be self-insured or assumed by the state;

10                  (e) Establish standards for the purchase of necessary  
11 insurance coverage or risk management services at the lowest costs,  
12 consistent with good underwriting practices and sound risk management  
13 techniques;

14                  (f) Be the exclusive negotiating and contracting agency  
15 to purchase insurance or risk management services and, after  
16 consultation with the state agency for which the insurance or  
17 services are purchased, enter into such contracts on behalf of the  
18 state and its agencies, officials, and employees to the extent deemed  
19 necessary and in the best interest of the state, and authorize  
20 payment for such purchase out of the appropriate funds created by  
21 section 81-8,239.02;

22                  (g) Determine whether the state suffered a loss for which  
23 self-insured property loss funds have been created and authorize and  
24 administer payments for such loss from the State Self-Insured  
25 Property Fund for the purpose of replacing or rebuilding state

1 property;

2 (h) Perform all duties assigned to the Risk Manager under  
3 the Nebraska Workers' Compensation Act and sections 11-201 to 11-203,  
4 81-8,239.05, 81-8,239.07, 81-8,239.11, and 84-1601 to 84-1615;

5 (i) Approve the use of risk management pools by any  
6 department, agency, board, bureau, commission, or council of the  
7 State of Nebraska; and

8 (j) Recommend to the Legislature such legislation as may  
9 be necessary to carry out the purposes of the Risk Management Program  
10 and make appropriation requests for the administration of the program  
11 and the funding of the separate funds administered by the Risk  
12 Manager.

13 (4) No official or employee of any entity created  
14 pursuant to the Interlocal Cooperation Act or the Joint Public Agency  
15 Act shall be considered a state official or employee for purposes of  
16 sections 81-8,239.01 to 81-8,239.06.

17 Sec. 2. Section 81-1801, Revised Statutes Cumulative  
18 Supplement, 2010, is amended to read:

19 81-1801 For purposes of the Nebraska Crime Victim's  
20 Reparations Act, unless the context otherwise requires:

21 (1) Commission shall mean the Nebraska Commission on Law  
22 Enforcement and Criminal Justice;

23 (2) Committee shall mean the Crime Victim's Reparations  
24 Committee;

25 (3) Dependent shall mean a relative of a deceased victim

1 who was dependent upon the victim's income at the time of death,  
2 including a child of a victim born after a victim's death;

3 (4) Executive director shall mean the executive director  
4 of the commission;

5 (5) Personal injury shall mean actual bodily harm;

6 (6) Relative shall mean spouse, parent, grandparent,  
7 stepparent, natural born child, stepchild, adopted child, grandchild,  
8 brother, sister, half brother, half sister, or spouse's parent; and

9 (7) Victim shall mean a person who is injured or killed  
10 as a result of conduct specified in section 81-1818. ~~or as a result~~  
11 ~~of a natural disaster.~~

12 Sec. 3. Section 81-1801.02, Revised Statutes Cumulative  
13 Supplement, 2010, is amended to read:

14 81-1801.02 (1) A nonprofit organization, to be known as  
15 the Community Trust, may be created. After a tragedy, the Community  
16 Trust shall accept contributions from the public, manage such funds,  
17 and make distributions to help individuals, families, and communities  
18 in Nebraska ~~who~~ that have suffered from a tragedy of violence or  
19 natural disaster. The committee shall oversee the Community Trust.  
20 The committee shall require at least annual reports from the  
21 Community Trust.

22 (2) The Community Trust shall be a qualified organization  
23 under section 501(c)(3) of the Internal Revenue Code thereby enabling  
24 contributions to the Community Trust to be tax deductible for the  
25 donor if the donor itemizes deductions for income tax purposes and

1 distributions to be tax-free to the extent allowed under applicable  
2 sections of the Internal Revenue Code.

3 (3) The Community Trust shall be governed by a board of  
4 directors. A director may be represented by the Attorney General in  
5 the same manner as a state officer or employee under sections  
6 81-8,239.05 and 81-8,239.06 in any civil action that arises as a  
7 result of any alleged act or omission occurring in the course and  
8 scope of the director's duties. A director shall also be indemnified  
9 for liability in the same manner as a state officer or employee under  
10 section 81-8,239.05.

11 (4) The Community Trust shall create a separate fund for  
12 each tragedy and shall begin accepting contributions immediately  
13 after a tragedy. A report of distributions shall be made within two  
14 weeks after the distribution, and contributions shall be acknowledged  
15 within two weeks. The Community Trust shall report the distributions  
16 made for each tragedy to the committee, and the Community Trust shall  
17 acknowledge all contributions as soon as reasonably possible after  
18 receipt.

19 (5) The Community Trust may use up to ten percent of the  
20 contributions received for administrative costs of the Community  
21 Trust. It is the intent of the Legislature to appropriate ten  
22 thousand dollars in fiscal year 2011-12 for the start-up expenses of  
23 the Community Trust.

24 ~~(3)-(6) The procedures for applications, hearings, and~~  
25 ~~compensation orders for victims shall follow the procedures in the~~

1 ~~Nebraska Crime Victim's Reparations Act, as applicable, unless the~~  
2 ~~board of directors of the Community Trust creates an alternative~~  
3 ~~procedure. In any alternative procedure, the Community Trust shall~~  
4 establish procedures for receiving contributions and making  
5 distributions from the Community Trust. The board of directors shall  
6 establish a distribution committee for the tragedy within one week  
7 after the tragedy, establish eligible recipient criteria and eligible  
8 uses of the fund, begin initial distribution of the fund within three  
9 weeks after the tragedy, make subsequent distributions within three  
10 months after the tragedy, and complete all distributions within six  
11 months as soon as reasonably possible after the tragedy.

12 (7) In the event that the Community Trust receives  
13 contributions for a tragedy and the volume and size of claims, along  
14 with the amount of contributions, make it impractical for the  
15 Community Trust to follow its normal procedures for the distribution  
16 of the funds, the board of directors, at its sole discretion, may  
17 elect to forward such funds, in their entirety, to another nonprofit  
18 organization that is also serving individuals who are affected by the  
19 tragedy. In such case, the Community Trust shall designate such  
20 contributions to be for the specific individuals who are affected by  
21 the tragedy.

22 Sec. 4. Section 81-1818, Revised Statutes Cumulative  
23 Supplement, 2010, is amended to read:

24 81-1818 The committee or hearing officer may order+ (1)  
25 The the payment of compensation from the Victim's Compensation Fund

1 ~~or a distribution from the Community Trust~~ for personal injury or  
2 death which resulted from:

3           ~~(a)~~ (1) An attempt on the part of the applicant to  
4 prevent the commission of crime, to apprehend a suspected criminal,  
5 to aid or attempt to aid a police officer in the performance of his  
6 or her duties, or to aid a victim of a crime; or

7           ~~(b)~~ (2) The commission or attempt on the part of one  
8 other than the applicant of an unlawful criminal act committed or  
9 attempted in the State of Nebraska. ~~;~~ ~~or~~

10           ~~(2) A distribution from the Community Trust for loss~~  
11 ~~resulting from a natural disaster.~~

12           Sec. 5. Section 81-1822, Revised Statutes Cumulative  
13 Supplement, 2010, is amended to read:

14           81-1822 No compensation shall be awarded from the  
15 Victim's Compensation Fund:

16           (1) If the victim aided or abetted the offender in the  
17 commission of the unlawful act;

18           (2) If the offender will receive economic benefit or  
19 unjust enrichment from the compensation;

20           (3) If the victim violated a criminal law of the state,  
21 which violation caused or contributed to his or her injuries or  
22 death;

23           (4) If the victim is injured as a result of the operation  
24 of a motor vehicle, boat, or airplane (a) unless the vehicle was used  
25 in a deliberate attempt to injure or kill the victim, (b) unless the



1 operator is charged with a violation of section 60-6,196 or 60-6,197  
2 or a city or village ordinance enacted in conformance with either of  
3 such sections, or (c) unless any chemical test of the operator's  
4 breath or blood indicates an alcohol concentration equal to or in  
5 excess of the limits prescribed in section 60-6,196; or

6 (5) If the victim incurs an economic loss which does not  
7 exceed ten percent of his or her net financial resources. For  
8 purposes of this subdivision, a victim's net financial resources  
9 shall not include the present value of future earnings and shall be  
10 determined by the committee by deducting from the victim's total  
11 financial resources:

12 (a) One year's earnings;

13 (b) The victim's equity in his or her home, not exceeding  
14 thirty thousand dollars;

15 (c) One motor vehicle; and

16 (d) Any other property which would be exempt from  
17 execution under section 25-1552 or 40-101.

18 Nothing in this section shall limit payments to a victim  
19 by an offender which are made as full or partial restitution of the  
20 victim's actual pecuniary loss. ~~Subdivision (5) of this section shall  
21 not apply to distributions from the Community Trust.~~

22 Sec. 6. Section 84-1410, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 84-1410 (1) Any public body may hold a closed session by  
25 the affirmative vote of a majority of its voting members if a closed

1 session is clearly necessary for the protection of the public  
2 interest or for the prevention of needless injury to the reputation  
3 of an individual and if such individual has not requested a public  
4 meeting. The subject matter and the reason necessitating the closed  
5 session shall be identified in the motion to close. Closed sessions  
6 may be held for, but shall not be limited to, such reasons as:

7 (a) Strategy sessions with respect to collective  
8 bargaining, real estate purchases, pending litigation, or litigation  
9 which is imminent as evidenced by communication of a claim or threat  
10 of litigation to or by the public body;

11 (b) Discussion regarding deployment of security personnel  
12 or devices;

13 (c) Investigative proceedings regarding allegations of  
14 criminal misconduct; ~~or~~

15 (d) Evaluation of the job performance of a person when  
16 necessary to prevent needless injury to the reputation of a person  
17 and if such person has not requested a public meeting; or -

18 (e) For the Community Trust created under section  
19 81-1801.02, discussion regarding the amounts to be paid to  
20 individuals who have suffered from a tragedy of violence or natural  
21 disaster.

22 Nothing in this section shall permit a closed meeting for  
23 discussion of the appointment or election of a new member to any  
24 public body.

25 (2) The vote to hold a closed session shall be taken in

1 open session. The entire motion, the vote of each member on the  
2 question of holding a closed session, and the time when the closed  
3 session commenced and concluded shall be recorded in the minutes. If  
4 the motion to close passes, then the presiding officer immediately  
5 prior to the closed session shall restate on the record the  
6 limitation of the subject matter of the closed session. The public  
7 body holding such a closed session shall restrict its consideration  
8 of matters during the closed portions to only those purposes set  
9 forth in the motion to close as the reason for the closed session.  
10 The meeting shall be reconvened in open session before any formal  
11 action may be taken. For purposes of this section, formal action  
12 shall mean a collective decision or a collective commitment or  
13 promise to make a decision on any question, motion, proposal,  
14 resolution, order, or ordinance or formation of a position or policy  
15 but shall not include negotiating guidance given by members of the  
16 public body to legal counsel or other negotiators in closed sessions  
17 authorized under subdivision (1)(a) of this section.

18 (3) Any member of any public body shall have the right to  
19 challenge the continuation of a closed session if the member  
20 determines that the session has exceeded the reason stated in the  
21 original motion to hold a closed session or if the member contends  
22 that the closed session is neither clearly necessary for (a) the  
23 protection of the public interest or (b) the prevention of needless  
24 injury to the reputation of an individual. Such challenge shall be  
25 overruled only by a majority vote of the members of the public body.

1 Such challenge and its disposition shall be recorded in the minutes.

2 (4) Nothing in this section shall be construed to require  
3 that any meeting be closed to the public. No person or public body  
4 shall fail to invite a portion of its members to a meeting, and no  
5 public body shall designate itself a subcommittee of the whole body  
6 for the purpose of circumventing the Open Meetings Act. No closed  
7 session, informal meeting, chance meeting, social gathering, email,  
8 fax, or other electronic communication shall be used for the purpose  
9 of circumventing the requirements of the act.

10 (5) The act does not apply to chance meetings or to  
11 attendance at or travel to conventions or workshops of members of a  
12 public body at which there is no meeting of the body then  
13 intentionally convened, if there is no vote or other action taken  
14 regarding any matter over which the public body has supervision,  
15 control, jurisdiction, or advisory power.

16 Sec. 7. Original sections 81-8,239.01 and 84-1410,  
17 Reissue Revised Statutes of Nebraska, and sections 81-1801,  
18 81-1801.02, 81-1818, and 81-1822, Revised Statutes Cumulative  
19 Supplement, 2010, are repealed.

20 Sec. 8. Since an emergency exists, this act takes effect  
21 when passed and approved according to law.