

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 447**

Introduced by Fulton, 29.

Read first time January 14, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tort claims; to amend sections 13-911 and  
2 81-8,215.01, Reissue Revised Statutes of Nebraska; to  
3 change provisions relating to vehicular pursuit; and to  
4 repeal the original sections.  
5 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, vehicular pursuit means  
9 an active attempt by a law enforcement officer operating a motor  
10 vehicle to apprehend one or more occupants of another motor vehicle,  
11 when the driver of the fleeing vehicle is or should be aware of such  
12 attempt and is resisting apprehension by maintaining or increasing  
13 his or her speed, ignoring the officer, or attempting to elude the  
14 officer while driving at speeds in excess of those reasonable and  
15 proper under the conditions. Vehicular pursuit shall be considered  
16 ended when a law enforcement officer has made a conscious decision  
17 and taken action to terminate pursuit.

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

20 81-8,215.01 (1) In case of death, injury, or property  
21 damage to any innocent third party proximately caused by the action  
22 of a law enforcement officer employed by the state during vehicular  
23 pursuit, damages shall be paid to such third party by the state  
24 employing the officer.

25 (2) Upon payment by the state of those damages sustained

1 by an innocent third party, whether upon voluntary settlement or in  
2 satisfaction of a judgment, the state shall be entitled to  
3 reimbursement of the amount of damages paid by the state from each  
4 and all of the following sources:

5 (a) The driver of the fleeing vehicle;

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

9 (c) Every insurer or self-insurance surety of either the  
10 driver of the fleeing vehicle or any organization, including a sole  
11 proprietorship, partnership, limited liability company, or  
12 corporation, liable for the conduct of the driver of the fleeing  
13 vehicle, except that no such insurer or self-insurance surety shall  
14 be required to pay in excess of the liability limit of its applicable  
15 policies or bonds;

16 (d) Any uninsured or underinsured motorist insurer or  
17 self-insurance surety legally liable to the innocent third party,  
18 except that the sum recoverable from such insurer or self-insurance  
19 surety shall not exceed the highest limit of liability determined in  
20 accord with the Uninsured and Underinsured Motorist Insurance  
21 Coverage Act; and

22 (e) Any political subdivision employing law enforcement  
23 officers whose actions contributed to the proximate cause of death,  
24 injury, or property damage sustained by the innocent third party,  
25 except that the liability of any such political subdivision shall not

1 exceed the lesser of (i) its maximum statutory liability pursuant to  
2 the Political Subdivisions Tort Claims Act or (ii) the damages  
3 sustained by the innocent third party apportioned equally among the  
4 state and all political subdivisions employing law enforcement  
5 officers whose actions contributed to the proximate cause of the  
6 death, injury, or property damage sustained by the innocent third  
7 party.

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

13 (4) This section shall be considered part of the State  
14 Tort Claims Act and all provisions of the act apply.

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

25 Sec. 3. Original sections 13-911 and 81-8,215.01, Reissue

1 Revised Statutes of Nebraska, are repealed.