

## LEGISLATIVE BILL 1208

Approved by the Governor April 17, 1986

Introduced by DeCamp, 40

AN ACT relating to the risk management program; to amend sections 81-8,239.01, 81-8,239.02, 81-8,239.05, and 81-8,239.06, Reissue Revised Statutes of Nebraska, 1943; to eliminate references to agents; and to repeal the original sections.

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

Section 1. That section 81-8,239.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,239.01. (1) As used in sections ~~44-1615, 44-1616,~~ and 81-8,239.01 to 81-8,239.04, ~~44-1615, and 44-1616,~~ unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a Risk Management Program for the State of Nebraska, which shall consist of the systematic identification of exposures to risk of loss as provided in this act and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to this act. Such program shall be administered by the Risk Manager, and shall include the operations of the State Claims Board and other operations provided in this act.

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

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

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

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

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

(e) Establish standards for the purchase of

necessary insurance coverage at the lowest costs, consistent with good underwriting practices and sound risk management techniques;

(f) Be the exclusive negotiating and contracting agency to purchase insurance and, after consultation with the state agency for which the insurance is purchased, enter into such contracts of insurance on behalf of the state and its agencies, officials, ~~agents~~, and employees to the extent deemed necessary and in the best interest of the state, and to authorize payment for such purchase of insurance out of the appropriate funds created by sections 44-1630 and 81-8,239.02, ~~and 44-1630~~;

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

(h) Perform all duties assigned to the Risk Manager under Chapter 48, article 1, and sections 11-201 to 11-203, 44-1622, 44-1623, and 44-1630; and

(i) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of this act, and to make appropriation requests for the administration of the Risk Management Program and the funding of the separate funds administered by the Risk Manager.

Sec. 2. That section 81-8,239.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,239.02. The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and ~~workmen's~~ workers' compensation claims against the state and other risks to which the state, ~~or~~ its agencies, officials, ~~or~~ employees, ~~or~~ agents are exposed;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance; and

(3) The State Self-Insured Indemnification and Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state, ~~or~~ its agencies, officials, ~~or~~ employees, ~~or~~

agents, which are not fully covered by insurance and for paying indemnification claims under section 81-8,239.05. The creation of this fund shall not be interpreted as expanding the liability exposure of the state, or its agencies, officials, or employees, ~~or agents-~~

Sec. 3. That section 81-8,239.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,239.05. (1) The State of Nebraska shall indemnify its officials, ~~agents, or~~ and employees and its past officials, ~~agents, or~~ and employees against any judgment for money damages and costs as a result of an act or omission occurring in the course and scope of employment of such official, ~~agent,~~ or employee after May 22, 1981. Such official's, ~~agent's,~~ and or employee's right to indemnification shall not exceed the amount subject to collection by a party directly from the official, ~~agent,~~ or employee.

(2) ~~The provisions of subsection~~ Subsection (1) of this section shall not apply in case of malfeasance in office or willful or wanton neglect of duty. ~~The provisions of this~~ This section shall not be interpreted as an expansion of any state official's, ~~agent's,~~ or employee's personal liability.

Sec. 4. That section 81-8,239.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,239.06. (1) If any civil action is brought against any state officer, ~~or~~ employee, ~~or agent~~ such state official, ~~or~~ employee, ~~or agent~~ may file a written request for counsel with the Attorney General asserting that such civil action is based in fact upon an alleged act or omission in the course and scope of employment. The Attorney General shall thereupon appear and defend that person unless after investigation he or she finds that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of employment or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall give that person written notice that defense of the claim has been rejected.

(2) Any official, ~~or~~ employee, ~~or agent~~ of the state against whom a claim is made, which is not rejected by the Attorney General pursuant to subsection (1) of this section, shall cooperate fully with the Attorney General in the defense of such claim. If the Attorney General determines that such official, ~~or~~ employee, ~~or agent~~ has not cooperated or has otherwise

acted to prejudice the defense of his or her claim, the Attorney General may at any time reject the defense of the claim.

(3) If the Attorney General rejects the defense of a claim pursuant to subsection (1) of this section, or if it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the course or scope of employment or amounted to willful or wanton neglect of duty, no public money shall be paid in settlement of such claim or in payment of any judgment against such official, or employee, ~~or agent~~. Such action by the Attorney General shall not prejudice the right of the state official, or employee, ~~or agent~~ to assert and establish as a defense that the claim arose out of an alleged act or omission occurring in the course and scope of employment or that the act or omission complained of did not amount to malfeasance in office or willful wanton neglect of duty. If the official, or employee, ~~or agent~~ is successful in asserting such defense, he or she shall be indemnified for the reasonable costs of defending the claim.

(4) If a state official, or employee, ~~or agent~~ has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not covered by section 81-8,239.05, the judgment against that person shall provide for payment to the state of the state's costs including a reasonable attorney's fee.

Sec. 5. That original sections 81-8,239.01, 81-8,239.02, 81-8,239.05, and 81-8,239.06, Reissue Revised Statutes of Nebraska, 1943, are repealed.