

LEGISLATIVE BILL 77

Approved by the Governor April 17, 1989

Introduced by Warner, 25

AN ACT relating to state officers and employees; to amend sections 81-8,239.02, 81-8,239.05, and 81-8,239.06, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,239.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 326, Ninety-first Legislature, First Session, 1989; to change and provide duties for the Risk Manager; to provide for indemnification of awards, settlements, and associated costs; to provide for representation before tribunals; to harmonize provisions; 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, as amended by section 2, Legislative Bill 326, Ninety-first Legislature, First Session, 1989, be amended to read as follows:

81-8,239.01. (1) For purposes of sections 44-1615, 44-1616, and 81-8,239.01 to 81-8,239.04, 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. The program, which shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201, 11-201.01, 11-202, 11-203, 13-911, 25-2165, 44-1615, 44-1616, 44-1622, 44-1623, 44-1630, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.06, and 81-8,300 and section 1 of this act and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the operations of the State Claims Board and other operations provided in such sections.

(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 or risk management services 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 or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and to authorize payment for such purchase out of the appropriate funds created by sections 44-1630 and 81-8,239.02;

(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 the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 44-1622, 44-1623, and 44-1630, and 81-8,239.05 and section 1 of this act;

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

(j) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of sections 11-201, 11-201.01, 11-202, 11-203, 13-911, 25-2165, 44-1615, 44-1616, 44-1622, 44-1623, 44-1630, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.06, and 81-8,300 and section 1 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 workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees 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 which are not fully covered by insurance and for paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees.

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 and employees and its past officials and employees ~~against any judgment~~ for money damages and reasonable costs incurred as a result of an act or omission occurring in the course and scope of employment of such official or employee after May 22, 1981. Such official's or employee's right to indemnification shall ~~not exceed the amount subject to collection by a party directly from the official or employee~~ include the payments of awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.

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

(3) The Attorney General shall notify the Risk Manager when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General. The reasonable costs of litigation, including appeal bonds, or the reasonable costs of any appearance before any tribunal shall be paid by the Risk Manager from the State Self-Insured Indemnification and Liability Fund.

(4) The Attorney General shall file copies of all awards and settlements and any final court approval with the Risk Manager and shall request that the Risk Manager make the required payments, if funds are available, from the State Self-Insured Indemnification and Liability Fund, except that any portion of an award or settlement which is for punitive damages may only be paid with the approval of the Legislature. The official or employee may file a claim under the State Miscellaneous Claims Act if payment is not made.

(5) The Risk Manager shall report all claims and judgments paid from the State Self-Insured Indemnification and Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

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, such state official or employee 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. If any state officer or employee is requested to appear before a tribunal and the state may have an interest, such state official or employee may file a written request for representation at the tribunal by the Attorney General asserting that the request to appear is based upon an alleged act or omission in the course and scope of employment. The Attorney General shall thereupon appear and defend or represent 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 or representation before the tribunal has been rejected.

(2) Any official or employee of the state against whom a claim is made or of whom an appearance is requested, 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 or in the appearance. If the Attorney General determines that such official or employee has not cooperated or has otherwise acted to prejudice the defense of his or her the claim or the appearance, the Attorney General may at any time reject the defense of the claim or representation before the tribunal.

(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. Such action by the Attorney General shall not prejudice the right of the state official or employee 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 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 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 81-8,239.02, 81-8,239.05, and 81-8,239.06, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,239.01, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 326, Ninety-first

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Legislature, First Session, 1989, are repealed.