

LEGISLATIVE BILL 952

Approved by the Governor April 15, 1996

Introduced by Maurstad, 30; Bernard-Stevens, 42; Chambers, 11

AN ACT relating to vehicular pursuit; to amend sections 13-911, 13-926, 29-211, and 81-8,215.01, Reissue Revised Statutes of Nebraska; to change provisions relating to reimbursement for damages from vehicular pursuit; to require training; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 13-911, Reissue Revised Statutes of Nebraska, is amended to read:

13-911. (1) In case of death, injury, or property damage to any innocent third party proximately caused by the action of a law enforcement officer employed by a political subdivision during vehicular pursuit, damages shall be paid to such third party by the political subdivision employing the officer.

(2) Upon payment by a political subdivision of those damages sustained by an innocent third party, whether upon voluntary settlement or in satisfaction of a judgment, the political subdivision shall be entitled to reimbursement of the amount of damages paid by the political subdivision from each and all of the following sources:

(a) The driver of the fleeing vehicle;

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

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

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

(e) The state employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of the state shall not exceed the damages sustained by the innocent third party apportioned equally among all political subdivisions employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party and the state; and

(f) Any political subdivision employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of the political subdivision shall not exceed the lesser of (i) its maximum statutory liability pursuant to the Political Subdivisions Tort Claims Act or (ii) damages sustained by the innocent third party apportioned equally among all political subdivisions and the state employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party.

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

(4) This section shall be considered part of the Political Subdivisions Tort Claims Act and the all provisions of sections 13-901 to 13-926 shall the act apply.

(5) For purposes of this section, vehicular pursuit shall mean means an active attempt by a law enforcement officer operating a motor vehicle to apprehend one or more occupants of another motor vehicle, when the driver of the fleeing vehicle is or should be aware of such attempt and is resisting apprehension by maintaining or increasing his or her speed, ignoring the officer, or attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

Sec. 2. Section 13-926, Reissue Revised Statutes of Nebraska, is amended to read:

13-926. The total amount recoverable under the Political Subdivisions Tort Claims Act for claims arising out of an occurrence after November 16, 1985, shall be limited to:

- (1) One million dollars for any person for any number of claims arising out of a single occurrence; and
- (2) Five million dollars for all claims arising out of a single occurrence.

If the damages sustained by an innocent third party pursuant to section 13-911 are not fully recoverable from one or more political subdivisions due to the limitations in this section, additional sources for recovery shall be as follows: First, any offsetting payments specified in subsection (3) of section 13-911 shall be reduced to the extent necessary to fully compensate the innocent third party; and second, if such reduction is insufficient to fully compensate the innocent third party, the right of reimbursement granted to the political subdivision in subsection (2) of section 13-911 shall be reduced to the extent necessary to fully compensate the innocent third party.

Sec. 3. Section 29-211, Reissue Revised Statutes of Nebraska, is amended to read:

29-211. (1) Each law enforcement agency within the State of Nebraska shall adopt and implement a written policy regarding the pursuit of motor vehicles. Such policy shall contain at least the following elements:

- ~~(1)~~ (a) Standards which describe when a pursuit may be initiated, taking into consideration the nature and severity of the offense involved;
- ~~(2)~~ (b) Standards which describe when a pursuit is to be discontinued, giving special attention to ~~(a)~~ (i) the degree of danger presented to the general public and the pursuing officer and ~~(b)~~ (ii) the probability of later apprehension of the subject based upon his or her identification;

~~(3)~~ (c) Procedures governing the operation of pursuits including, but not limited to, the number and types of vehicles which may be used, the method of operation of such vehicles, and the exercise of supervision during pursuits;

~~(4)~~ (d) Procedures governing pursuits which include other law enforcement agencies or which extend into the jurisdiction of other law enforcement agencies; and

~~(5)~~ (e) A system of mandatory continued planning and review of training of personnel appropriate and consistent with the policies and jurisdiction of the law enforcement agency regarding the proper handling of pursuits, including, at a minimum, an annual review of the policy with each sworn law enforcement officer and dispatcher.

(2) It shall be the responsibility of each law enforcement agency within the State of Nebraska to ensure that all law enforcement officers who commence employment with such law enforcement agency receive specialized training in pursuit driving at the Nebraska Law Enforcement Training Center or at an equivalent training program approved by the Nebraska Police Standards Advisory Council.

Sec. 4. Section 81-8,215.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) Upon payment by the state of those damages sustained by an innocent third party, whether upon voluntary settlement or in satisfaction of a judgment, the state shall be entitled to reimbursement of the amount of damages paid by the state from each and all of the following sources:

(a) The driver of the fleeing vehicle;

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

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

(d) Any uninsured or underinsured motorist insurer or self-insurance surety legally liable to the innocent third party, except that the sum recoverable from such insurer or self-insurance surety shall not exceed the

highest limit of liability determined in accord with the Uninsured and Underinsured Motorist Insurance Coverage Act; and

(e) Any political subdivision employing law enforcement officers whose actions contributed to the proximate cause of death, injury, or property damage sustained by the innocent third party, except that the liability of any such political subdivision shall not exceed the lesser of (i) its maximum statutory liability pursuant to the Political Subdivisions Tort Claims Act or (ii) the damages sustained by the innocent third party apportioned equally among the state and all political subdivisions employing law enforcement officers whose actions contributed to the proximate cause of the death, injury, or property damage sustained by the innocent third party.

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

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

(5) For purposes of this section, vehicular pursuit shall mean means an active attempt by a law enforcement officer operating a motor vehicle to apprehend one or more occupants of another motor vehicle when the driver of the fleeing vehicle is or should be aware of such attempt and is resisting apprehension by maintaining or increasing his or her speed, ignoring the officer, or attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

Sec. 5. Original sections 13-911, 13-926, 29-211, and 81-8,215.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.