

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 513**

Introduced by Lautenbaugh, 18.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to vehicular pursuit; to amend sections 13-911  
2 and 81-8,215.01, Reissue Revised Statutes of Nebraska;  
3 to eliminate subrogation and contribution rights for  
4 property damages; and to 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  
5 law 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  
10 voluntary settlement or in satisfaction of a judgment, the  
11 political subdivision shall be entitled to reimbursement of the  
12 amount of damages paid by the political subdivision from each and  
13 all of the 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  
19 the driver of the fleeing vehicle or any organization, including  
20 a sole 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  
23 shall be required to pay in excess of the liability limit of its  
24 applicable 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  
4 in 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  
9 that the liability of the state shall not exceed the damages  
10 sustained by the innocent third party apportioned equally among  
11 all political subdivisions employing law enforcement officers whose  
12 actions contributed to the proximate cause of the death, injury,  
13 or property damage sustained by the innocent third party and the  
14 state; and

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

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

7           (4) This section shall be considered part of the  
8 Political Subdivisions Tort Claims Act and all provisions of  
9 the act apply.

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

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  
2 in 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  
10 the driver of the fleeing vehicle or any organization, including  
11 a sole 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  
14 shall be required to pay in excess of the liability limit of its  
15 applicable 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  
20 in 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

1 not exceed the lesser of (i) its maximum statutory liability  
2 pursuant to the Political Subdivisions Tort Claims Act or (ii)  
3 the damages sustained by the innocent third party apportioned  
4 equally among the state and all political subdivisions employing  
5 law enforcement officers whose actions contributed to the proximate  
6 cause of the death, injury, or property damage sustained by the  
7 innocent third 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, or  
11 property damages of the duty to pay such benefits, expenses, or  
12 damages when due. No such source of payment shall have any right of  
13 subrogation or contribution against the state.

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

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

24 Sec. 3. Original sections 13-911 and 81-8,215.01, Reissue  
25 Revised Statutes of Nebraska, are repealed.