

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 188**

Introduced by Watermeier, 1.

Read first time January 12, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to vehicular pursuit; to amend sections 13-911
- 2 and 81-8,215.01, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to innocent third parties; to harmonize
- 4 provisions; 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 Nebraska, is  
2 amended to read:

3 13-911 (1) In case of death, injury, or property damage to any  
4 innocent third party proximately caused by the action of a law  
5 enforcement officer employed by a political subdivision during vehicular  
6 pursuit, damages shall be paid to such third party by the political  
7 subdivision employing the officer.

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

13 (a) The driver of the fleeing vehicle;

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

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

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

28 (e) The state employing law enforcement officers whose actions  
29 contributed to the proximate cause of death, injury, or property damage  
30 sustained by the innocent third party, except that the liability of the  
31 state shall not exceed the damages sustained by the innocent third party

1 apportioned equally among all political subdivisions employing law  
2 enforcement officers whose actions contributed to the proximate cause of  
3 the death, injury, or property damage sustained by the innocent third  
4 party and the state; and

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

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

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

22 (5) For purposes of this section, a passenger in or on the fleeing  
23 vehicle shall not be considered an innocent third party if the passenger:

24 (a) Enters into the vehicle without coercion knowing, or with a  
25 reasonable belief, that the driver of the vehicle is under the influence  
26 of alcoholic liquor or drugs;

27 (b) Fails to take reasonable steps to persuade the driver of the  
28 fleeing vehicle to stop the vehicle;

29 (c) Promotes, provokes, or persuades the driver to engage in flight  
30 from law enforcement personnel;

31 (d) Is subject to arrest or sought to be apprehended by law

1 enforcement personnel; or

2 (e) Is engaged in any illegal activity which would itself give rise  
3 to an arrest.

4 (~~6~~ 5) For purposes of this section, vehicular pursuit means an  
5 active attempt by a law enforcement officer operating a motor vehicle to  
6 apprehend one or more occupants of another motor vehicle, when the driver  
7 of the fleeing vehicle is or should be aware of such attempt and is  
8 resisting apprehension by maintaining or increasing his or her speed,  
9 ignoring the officer, or attempting to elude the officer while driving at  
10 speeds in excess of those reasonable and proper under the conditions.

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

13 81-8,215.01 (1) In case of death, injury, or property damage to any  
14 innocent third party proximately caused by the action of a law  
15 enforcement officer employed by the state during vehicular pursuit,  
16 damages shall be paid to such third party by the state employing the  
17 officer.

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

23 (a) The driver of the fleeing vehicle;

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

27 (c) Every insurer or self-insurance surety of either the driver of  
28 the fleeing vehicle or any organization, including a sole proprietorship,  
29 partnership, limited liability company, or corporation, liable for the  
30 conduct of the driver of the fleeing vehicle, except that no such insurer  
31 or self-insurance surety shall be required to pay in excess of the

1 liability limit of its applicable policies or bonds;

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

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

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

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

24 (5) For purposes of this section, a passenger in or on the fleeing  
25 vehicle shall not be considered an innocent third party if the passenger:

26 (a) Enters into the vehicle without coercion knowing, or with a  
27 reasonable belief, that the driver of the vehicle is under the influence  
28 of alcoholic liquor or drugs;

29 (b) Fails to take reasonable steps to persuade the driver of the  
30 fleeing vehicle to stop the vehicle;

31 (c) Promotes, provokes, or persuades the driver to engage in flight

1 from law enforcement personnel;

2 (d) Is subject to arrest or sought to be apprehended by law  
3 enforcement personnel; or

4 (e) Is engaged in any illegal activity which would itself give rise  
5 to an arrest.

6 (6 ~~5~~) For purposes of this section, vehicular pursuit means an  
7 active attempt by a law enforcement officer operating a motor vehicle to  
8 apprehend one or more occupants of another motor vehicle when the driver  
9 of the fleeing vehicle is or should be aware of such attempt and is  
10 resisting apprehension by maintaining or increasing his or her speed,  
11 ignoring the officer, or attempting to elude the officer while driving at  
12 speeds in excess of those reasonable and proper under the conditions.

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