

## LEGISLATIVE BILL 598

Approved by the Governor May 26, 2009

Introduced by Ashford, 20.

FOR AN ACT relating to victims of tragedy; to amend sections 81-1801, 81-1802, 81-1803, 81-1805, 81-1813, 81-1818, 81-1820, 81-1822, 81-1823, 81-1825, 81-1833, 81-1834, 81-1835, 81-1839, 81-1840, and 81-1841, Reissue Revised Statutes of Nebraska; to authorize a Community Trust; to redefine terms; to change provisions relating to the Nebraska Crime Victim's Reparations Act; and to repeal the original sections.

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

Section 1. (1) A nonprofit organization, to be known as the Community Trust, may be created. After a tragedy, the Community Trust shall accept contributions from the public, manage such funds, and make distributions to help individuals, families, and communities in Nebraska who have suffered from a tragedy of violence or natural disaster. The committee shall oversee the Community Trust. The committee shall require at least annual reports from the Community Trust.

(2) The Community Trust shall be a qualified organization under section 501(c)(3) of the Internal Revenue Code thereby enabling contributions to the Community Trust to be tax deductible for the donor if the donor itemizes deductions for income tax purposes and distributions to be tax-free to the extent allowed under applicable sections of the Internal Revenue Code. The Community Trust shall create a separate fund for each tragedy and shall begin accepting contributions immediately after a tragedy. A report of distributions shall be made within two weeks after the distribution, and contributions shall be acknowledged within two weeks after receipt.

(3) The procedures for applications, hearings, and compensation orders for victims shall follow the procedures in the Nebraska Crime Victim's Reparations Act, as applicable, unless the board of directors of the Community Trust creates an alternative procedure. In any alternative procedure, the Community Trust shall establish a distribution committee for the tragedy within one week after the tragedy, establish eligible recipient criteria and eligible uses of the fund, begin initial distribution of the fund within three weeks after the tragedy, make subsequent distributions within three months after the tragedy, and complete all distributions within six months after the tragedy.

Sec. 2. Section 81-1801, Reissue Revised Statutes of Nebraska, is amended to read:

81-1801 For purposes of the Nebraska Crime Victim's Reparations Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Committee shall mean the Crime Victim's Reparations Committee;

(3) Dependent shall mean a relative of a deceased victim who was dependent upon the victim's income at the time of death, including a child of a victim born after a victim's death;

(4) Executive director shall mean the executive director of the commission;

(5) Personal injury shall mean actual bodily harm;

(6) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parent; and

(7) Victim shall mean a person who is injured or killed as a result of conduct specified in section 81-1818 or as a result of a natural disaster.

Sec. 3. Section 81-1802, Reissue Revised Statutes of Nebraska, is amended to read:

81-1802 A Crime Victim's Reparations Committee is hereby created. The committee shall consist of five members of the commission and two public members to be appointed by the Governor subject to approval by the Legislature. One public member shall represent charitable organizations, and one public member shall represent businesses. The members of the committee shall select a chairperson who is a member of the ~~committee~~ commission.

Sec. 4. Section 81-1803, Reissue Revised Statutes of Nebraska, is amended to read:

81-1803 Members of the committee shall serve for terms of four years, except that of the public members first appointed ~~two~~ one shall be appointed for ~~terms~~ a term of two years and ~~three~~ one for ~~terms~~ a term of four

years.

Sec. 5. Section 81-1805, Reissue Revised Statutes of Nebraska, is amended to read:

81-1805 Members of the committee shall receive no reimbursement for the performance of their duties as members of the committee, except that such members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177. ~~for state employees.~~

Sec. 6. Section 81-1813, Reissue Revised Statutes of Nebraska, is amended to read:

81-1813 The committee may, subject to the approval of the commission, adopt and promulgate rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under the Nebraska Crime Victim's Reparations Act and any other matters the committee considers appropriate, including special circumstances, such as when expenses of job retraining or similar employment-related rehabilitative services are involved, under which an award ~~under the act~~ from the Victim's Compensation Fund may exceed ten thousand dollars. The committee shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

Sec. 7. Section 81-1818, Reissue Revised Statutes of Nebraska, is amended to read:

81-1818 The committee or hearing officer may order:

(1) The ~~the~~ payment of compensation from the Victim's Compensation Fund or a distribution from the Community Trust for personal injury or death which resulted from:

~~(1) (a)~~ An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his or her duties, or to aid a victim of a crime; or

~~(2) (b)~~ The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska; ~~or-~~

(2) A distribution from the Community Trust for loss resulting from a natural disaster.

Sec. 8. Section 81-1820, Reissue Revised Statutes of Nebraska, is amended to read:

81-1820 (1) Prior to the hearing officer taking action on an application for compensation from the Victim's Compensation Fund, the applicant may request that a hearing officer make an emergency award of compensation to the applicant. If it appears to the hearing officer that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the hearing officer may make an emergency award of compensation to the applicant pending a final decision in the case, except that:

(a) The amount of the emergency compensation shall not exceed five hundred dollars;

(b) The amount of the emergency compensation shall be deducted from the final compensation made to the applicant; and

(c) The excess amount of the emergency compensation over the final amount shall be repaid by the applicant to the committee.

(2) If the hearing officer refuses to make an emergency award of compensation to the applicant, the applicant may request an emergency hearing before the committee which may be conducted by means of teleconference. The committee shall forthwith specify a time and place for an emergency hearing and shall give written notice to the applicant. If it appears to the committee that the claim is one for which compensation is probable and undue hardship will result to the applicant if immediate payment is not made, the committee may make an emergency award of compensation to the applicant pending a final decision in the case, subject to the conditions and limitations stated in subsection (1) of this section.

Sec. 9. Section 81-1822, Reissue Revised Statutes of Nebraska, is amended to read:

81-1822 No compensation shall be awarded:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

(2) If the offender will receive economic benefit or unjust enrichment from the compensation;

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) unless the operator is

charged with a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any chemical test of the operator's breath or blood indicates an alcohol concentration equal to or in excess of the limits prescribed in section 60-6,196; or

(5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources. For purposes of this subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

- (a) One year's earnings;
- (b) The victim's equity in his or her home, not exceeding thirty thousand dollars;
- (c) One motor vehicle; and
- (d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss. Subdivision (5) of this section shall not apply to distributions from the Community Trust.

Sec. 10. Section 81-1823, Reissue Revised Statutes of Nebraska, is amended to read:

81-1823 Except as provided in section 81-1813, no compensation shall be awarded under the Nebraska Crime Victim's Reparations Act from the Victim's Compensation Fund in an amount in excess of ten thousand dollars for each applicant per incident unless expenses for job retraining or similar employment-related rehabilitative services for the victim are deemed necessary. In such case, amounts in excess of ten thousand dollars shall be used only for such purposes. Each award shall be paid in installments unless the hearing officer or committee decides otherwise.

Sec. 11. Section 81-1825, Reissue Revised Statutes of Nebraska, is amended to read:

81-1825 When an order for the payment of compensation for personal injury or death is made from the Victim's Compensation Fund, the committee shall be subrogated to the cause of action of the applicant against the person responsible for the injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the committee shall pay the balance to the applicant.

Sec. 12. Section 81-1833, Reissue Revised Statutes of Nebraska, is amended to read:

81-1833 (1) The committee shall prepare and submit to the commission a biennial report of its activities under the Nebraska Crime Victim's Reparations Act, including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded, except that if the applicant was the victim of a sexual assault the victim's name shall not be included in the report, but shall be available to the Governor or a member of the Legislature upon request to the committee. Such report shall be submitted to the Governor and Clerk of the Legislature as part of the commission's report submitted pursuant to section 81-1423.

(2) The committee shall act as the oversight committee for the Community Trust and shall annually report its activities and findings as the oversight committee to the commission, the Governor, and the Clerk of the Legislature. If any questionable or improper actions or inactions on the part of the Community Trust are observed, the committee shall immediately notify the Attorney General who shall investigate the matter.

Sec. 13. Section 81-1834, Reissue Revised Statutes of Nebraska, is amended to read:

81-1834 Any award to a claimant and any judgment in favor of a claimant under the Nebraska Crime Victim's Reparations Act from the Victim's Compensation Fund shall be certified by the committee to the Director of Administrative Services who shall promptly issue a warrant for payment of such award of judgment out of the Victim's Compensation Fund fund if sufficient money is available in such fund.

Sec. 14. Section 81-1835, Reissue Revised Statutes of Nebraska, is amended to read:

81-1835 There is hereby established in the state treasury a The Victim's Compensation Fund is created. The fund shall be used to pay from which all awards or judgments under the Nebraska Crime Victim's Reparations Act other than distributions from the Community Trust. The shall be paid. This fund shall include deposits pursuant to sections 29-2286, 81-1836, and 83-183.01 and shall be in such amount as the Legislature shall determine to be

reasonably sufficient to meet anticipated claims. When the amount of money in the fund is not sufficient to pay any awards or judgments under the act, the Director of Administrative Services shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 15. Section 81-1839, Reissue Revised Statutes of Nebraska, is amended to read:

81-1839 Notwithstanding the provisions of sections 81-1836 to 81-1838, the committee shall make payments from the ~~fund~~ Victim's Compensation Fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Sec. 16. Section 81-1840, Reissue Revised Statutes of Nebraska, is amended to read:

81-1840 Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of ~~this section~~ sections 81-1836 to 81-1839 shall be null and void as against the public policy of this state.

Sec. 17. Section 81-1841, Reissue Revised Statutes of Nebraska, is amended to read:

81-1841 Sections 81-1801 to 81-1842 and section 1 of this act shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

Sec. 18. Original sections 81-1801, 81-1802, 81-1803, 81-1805, 81-1813, 81-1818, 81-1820, 81-1822, 81-1823, 81-1825, 81-1833, 81-1834, 81-1835, 81-1839, 81-1840, and 81-1841, Reissue Revised Statutes of Nebraska, are repealed.