

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 77**

Introduced By: Nantkes, 46;  
Read first time: January 5, 2007  
Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend section 48-121, Reissue Revised Statutes of Nebraska;  
3 to change disability compensation provisions; and to repeal  
4 the original section.

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

1           Section 1. Section 48-121, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           48-121. The following schedule of compensation is hereby  
4 established for injuries resulting in disability:

5           (1) For total disability, the compensation during such  
6 disability shall be sixty-six and two-thirds percent of the wages  
7 received at the time of injury, but such compensation shall not be  
8 more than the maximum weekly income benefit specified in section  
9 48-121.01 nor less than the minimum weekly income benefit specified in  
10 section 48-121.01, except that if at the time of injury the employee  
11 receives wages of less than the minimum weekly income benefit  
12 specified in section 48-121.01, then he or she shall receive the full  
13 amount of such wages per week as compensation. Nothing in this  
14 subdivision shall require payment of compensation after disability  
15 shall cease.

16           (2) For disability partial in character, except the  
17 particular cases mentioned in subdivision (3) of this section, the  
18 compensation shall be sixty-six and two-thirds percent of the  
19 difference between the wages received at the time of the injury and  
20 the earning power of the employee thereafter, but such compensation  
21 shall not be more than the maximum weekly income benefit specified in  
22 section 48-121.01. This compensation shall be paid during the period  
23 of such partial disability but not beyond three hundred weeks. Should  
24 total disability be followed by partial disability, the period of  
25 three hundred weeks mentioned in this subdivision shall be reduced by  
26 the number of weeks during which compensation was paid for such total  
27 disability.

1           (3) For disability resulting from permanent injury of the  
2 classes listed in this subdivision, the compensation shall be in  
3 addition to the amount paid for temporary disability, except that the  
4 compensation for temporary disability shall cease as soon as the  
5 extent of the permanent disability is ascertainable. For disability  
6 resulting from permanent injury of the following classes, compensation  
7 shall be: For the loss of a thumb, sixty-six and two-thirds percent of  
8 daily wages during sixty weeks. For the loss of a first finger,  
9 commonly called the index finger, sixty-six and two-thirds percent of  
10 daily wages during thirty-five weeks. For the loss of a second finger,  
11 sixty-six and two-thirds percent of daily wages during thirty weeks.  
12 For the loss of a third finger, sixty-six and two-thirds percent of  
13 daily wages during twenty weeks. For the loss of a fourth finger,  
14 commonly called the little finger, sixty-six and two-thirds percent of  
15 daily wages during fifteen weeks. The loss of the first phalange of  
16 the thumb or of any finger shall be considered to be equal to the loss  
17 of one-half of such thumb or finger and compensation shall be for  
18 one-half of the periods of time above specified, and the compensation  
19 for the loss of one-half of the first phalange shall be for one-fourth  
20 of the periods of time above specified. The loss of more than one  
21 phalange shall be considered as the loss of the entire finger or  
22 thumb, except that in no case shall the amount received for more than  
23 one finger exceed the amount provided in this schedule for the loss of  
24 a hand. For the loss of a great toe, sixty-six and two-thirds percent  
25 of daily wages during thirty weeks. For the loss of one of the toes  
26 other than the great toe, sixty-six and two-thirds percent of daily  
27 wages during ten weeks. The loss of the first phalange of any toe

1 shall be considered equal to the loss of one-half of such toe, and  
2 compensation shall be for one-half of the periods of time above  
3 specified. The loss of more than one phalange shall be considered as  
4 the loss of the entire toe. For the loss of a hand, sixty-six and  
5 two-thirds percent of daily wages during one hundred seventy-five  
6 weeks. For the loss of an arm, sixty-six and two-thirds percent of  
7 daily wages during two hundred twenty-five weeks. For the loss of a  
8 foot, sixty-six and two-thirds percent of daily wages during one  
9 hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds  
10 percent of daily wages during two hundred fifteen weeks. For the loss  
11 of an eye, sixty-six and two-thirds percent of daily wages during one  
12 hundred twenty-five weeks. For the loss of an ear, sixty-six and  
13 two-thirds percent of daily wages during twenty-five weeks. For the  
14 loss of hearing in one ear, sixty-six and two-thirds percent of daily  
15 wages during fifty weeks. For the loss of the nose, sixty-six and  
16 two-thirds percent of daily wages during fifty weeks.

17 In any case in which there is a loss or loss of use of more  
18 than one member or parts of more than one member set forth in this  
19 subdivision, but not amounting to total and permanent disability,  
20 compensation benefits shall be paid for the loss or loss of use of  
21 each such member or part thereof, with the periods of benefits to run  
22 consecutively. The total loss or permanent total loss of use of both  
23 hands, or both arms, or both feet, or both legs, or both eyes, or  
24 hearing in both ears, or of any two thereof, in one accident, shall  
25 constitute total and permanent disability and be compensated for  
26 according to subdivision (1) of this section. In all other cases  
27 involving a loss or loss of use of both hands, both arms, both feet,

1 both legs, both eyes, or hearing in both ears, or of any two thereof,  
2 total and permanent disability shall be determined in accordance with  
3 the facts. Amputation between the elbow and the wrist shall be  
4 considered as the equivalent of the loss of a hand, and amputation  
5 between the knee and the ankle shall be considered as the equivalent  
6 of the loss of a foot. Amputation at or above the elbow shall be  
7 considered as the loss of an arm, and amputation at or above the knee  
8 shall be considered as the loss of a leg. Permanent total loss of the  
9 use of a finger, hand, arm, foot, leg, or eye shall be considered as  
10 the equivalent of the loss of such finger, hand, arm, foot, leg, or  
11 eye. In all cases involving a permanent partial loss of the use or  
12 function of any of the members mentioned in this subdivision, the  
13 compensation shall bear such relation to the amounts named in such  
14 subdivision as the disabilities bear to those produced by the injuries  
15 named therein.

16 If, in the court's discretion, a combination of member  
17 impairments from the same accident or illness adversely affects a  
18 worker such that simple member disability alone does not accurately  
19 assess an employee's injury, then the court shall determine the  
20 employee's loss of earning capacity consistent with the process for  
21 such determination under subdivision (1) or (2) of this section.

22 If the employer and the employee are unable to agree upon  
23 the amount of compensation to be paid in cases not covered by the  
24 schedule, the amount of compensation shall be settled according to  
25 sections 48-173 to 48-185. Compensation under this subdivision shall  
26 not be more than the maximum weekly income benefit specified in  
27 section 48-121.01 nor less than the minimum weekly income benefit

1 specified in section 48-121.01, except that if at the time of the  
2 injury the employee received wages of less than the minimum weekly  
3 income benefit specified in section 48-121.01, then he or she shall  
4 receive the full amount of such wages per week as compensation.

5 (4) For disability resulting from permanent disability, if  
6 immediately prior to the accident the rate of wages was fixed by the  
7 day or hour, or by the output of the employee, the weekly wages shall  
8 be taken to be computed upon the basis of a workweek of a minimum of  
9 five days, if the wages are paid by the day, or upon the basis of a  
10 workweek of a minimum of forty hours, if the wages are paid by the  
11 hour, or upon the basis of a workweek of a minimum of five days or  
12 forty hours, whichever results in the higher weekly wage, if the wages  
13 are based on the output of the employee.

14 (5) The employee shall be entitled to compensation from his  
15 or her employer for temporary disability while undergoing physical or  
16 medical rehabilitation and while undergoing vocational rehabilitation  
17 whether such vocational rehabilitation is voluntarily offered by the  
18 employer and accepted by the employee or is ordered by the Nebraska  
19 Workers' Compensation Court or any judge of the compensation court.

20 Sec. 2 Original section 48-121, Reissue Revised Statutes of  
21 Nebraska, is repealed.