

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 238

Introduced by Conrad, 46.

Read first time January 11, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
 2 amend sections 48-125, 48-145.01, 48-155, 48-156, 48-170,
 3 48-178, 48-180, 48-182, 48-185, and 48-1,110, Reissue
 4 Revised Statutes of Nebraska; to eliminate review by a
 5 three-judge panel; to authorize modification of awards
 6 and orders; to harmonize provisions; to provide operative
 7 provisions; to repeal the original sections; and to
 8 outright repeal sections 48-179 and 48-181, Reissue
 9 Revised Statutes of Nebraska.

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

1 Section 1. Section 48-125, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-125 (1)(a) Except as hereinafter provided, all amounts
4 of compensation payable under the Nebraska Workers' Compensation Act
5 shall be payable periodically in accordance with the methods of
6 payment of wages of the employee at the time of the injury or death.
7 Such payments shall be sent directly to the person entitled to
8 compensation or his or her designated representative except as
9 otherwise provided in section 48-149.

10 (b) Fifty percent shall be added for waiting time for all
11 delinquent payments after thirty days' notice has been given of
12 disability or after thirty days from the entry of a final order,
13 award, or judgment of the compensation court, except that for any
14 award or judgment against the state in excess of one hundred thousand
15 dollars which must be reviewed by the Legislature as provided in
16 section 48-1,102, fifty percent shall be added for waiting time for
17 delinquent payments thirty days after the effective date of the
18 legislative bill appropriating any funds necessary to pay the portion
19 of the award or judgment in excess of one hundred thousand dollars.

20 (2) Whenever the employer refuses payment of compensation
21 or medical payments subject to section 48-120, or when the employer
22 neglects to pay compensation for thirty days after injury or neglects
23 to pay medical payments subject to such section after thirty days'
24 notice has been given of the obligation for medical payments, and
25 proceedings are held before the Nebraska Workers' Compensation Court,

1 a reasonable attorney's fee shall be allowed the employee by the
2 compensation court in all cases when the employee receives an award.
3 Attorney's fees allowed shall not be deducted from the amounts
4 ordered to be paid for medical services nor shall attorney's fees be
5 charged to the medical providers. If the employer files an
6 ~~application for review before the compensation court~~ appeal from an
7 award of a judge of the compensation court and fails to obtain any
8 reduction in the amount of such award, the ~~compensation court~~ Court
9 of Appeals or Supreme Court shall allow the employee a reasonable
10 attorney's fee to be taxed as costs against the employer for such
11 ~~review, and the Court of Appeals or Supreme Court shall in like~~
12 ~~manner allow the employee a reasonable sum as attorney's fees for the~~
13 ~~proceedings in the Court of Appeals or Supreme Court.~~ appeal. If the
14 employee files an ~~application for a review before the compensation~~
15 ~~court~~ appeal from an order of a judge of the compensation court
16 denying an award and obtains an award or if the employee files an
17 ~~application for a review before the compensation court~~ appeal from an
18 award of a judge of the compensation court when the amount of
19 compensation due is disputed and obtains an increase in the amount of
20 such award, the ~~compensation court~~ Court of Appeals or Supreme Court
21 may allow the employee a reasonable attorney's fee to be taxed as
22 costs against the employer for such ~~review, and the Court of Appeals~~
23 ~~or Supreme Court may in like manner allow the employee a reasonable~~
24 ~~sum as attorney's fees for the proceedings in the Court of Appeals or~~
25 ~~Supreme Court.~~ appeal. A reasonable attorney's fee allowed pursuant

1 to this section shall not affect or diminish the amount of the award.

2 (3) When an attorney's fee is allowed pursuant to this
3 section, there shall further be assessed against the employer an
4 amount of interest on the final award obtained, computed from the
5 date compensation was payable, as provided in section 48-119, until
6 the date payment is made by the employer, at a rate equal to the rate
7 of interest allowed per annum under section 45-104.01, as such rate
8 may from time to time be adjusted by the Legislature. Interest shall
9 apply only to those weekly compensation benefits awarded which have
10 accrued as of the date payment is made by the employer. If the
11 employer pays or tenders payment of compensation, the amount of
12 compensation due is disputed, and the award obtained is greater than
13 the amount paid or tendered by the employer, the assessment of
14 interest shall be determined solely upon the difference between the
15 amount awarded and the amount tendered or paid.

16 Sec. 2. Section 48-145.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-145.01 (1) Any employer required to secure the payment
19 of compensation under the Nebraska Workers' Compensation Act who
20 willfully fails to secure the payment of such compensation shall be
21 guilty of a Class I misdemeanor. If the employer is a corporation,
22 limited liability company, or limited liability partnership, any
23 officer, member, manager, partner, or employee who had authority to
24 secure payment of compensation on behalf of the employer and
25 willfully failed to do so shall be individually guilty of a Class I

1 misdemeanor and shall be personally liable jointly and severally with
2 such employer for any compensation which may accrue under the act in
3 respect to any injury which may occur to any employee of such
4 employer while it so fails to secure the payment of compensation as
5 required by section 48-145.

6 (2) If an employer subject to the Nebraska Workers'
7 Compensation Act fails to secure the payment of compensation as
8 required by section 48-145, the employer may be enjoined from doing
9 business in this state until the employer complies with subdivision
10 (1) of section 48-145. If a temporary injunction is granted at the
11 request of the State of Nebraska, no bond shall be required to make
12 the injunction effective. The Nebraska Workers' Compensation Court or
13 the district court may order an employer who willfully fails to
14 secure the payment of compensation to pay a monetary penalty of not
15 more than one thousand dollars for each violation. For purposes of
16 this subsection, each day of continued failure to secure the payment
17 of compensation as required by section 48-145 constitutes a separate
18 violation. If the employer is a corporation, limited liability
19 company, or limited liability partnership, any officer, member,
20 manager, partner, or employee who had authority to secure payment of
21 compensation on behalf of the employer and willfully failed to do so
22 shall be personally liable jointly and severally with the employer
23 for such monetary penalty. All penalties collected pursuant to this
24 subsection shall be remitted to the State Treasurer for distribution
25 in accordance with Article VII, section 5, of the Constitution of

1 Nebraska.

2 (3) It shall be the duty of the Attorney General to act
3 as attorney for the State of Nebraska for purposes of this section.
4 The Attorney General may file a motion pursuant to section 48-162.03
5 for an order directing an employer to appear before a judge of the
6 compensation court and show cause as to why a monetary penalty should
7 not be assessed against the employer pursuant to subsection (2) of
8 this section. The Attorney General shall be considered a party for
9 purposes of such motion. The Attorney General may appear before the
10 compensation court and present evidence of a violation or violations
11 pursuant to subsection (2) of this section and the identity of the
12 person who had authority to secure the payment of compensation.
13 Appeal from an order of a judge of the compensation court pursuant to
14 subsection (2) of this section shall be in accordance with ~~section~~
15 ~~48-179.~~ sections 48-182 and 48-185.

16 Sec. 3. Section 48-155, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-155 The judges of the Nebraska Workers' Compensation
19 Court shall, on July 1 of every odd-numbered year by a majority vote,
20 select one of their number as presiding judge for the next two years,
21 subject to approval of the Supreme Court. The presiding judge may
22 designate one of the other judges to act as presiding judge in his or
23 her stead whenever necessary during the disqualification, disability,
24 or absence of the presiding judge. The presiding judge shall rule on
25 all matters submitted to the compensation court except those arising

1 in the course of ~~original or review~~ hearings or as otherwise provided
2 by law, assign or direct the assignment of the work of the
3 compensation court to the several judges, clerk, and employees who
4 support the judicial proceedings of the compensation court, preside
5 at such meetings of the judges of the compensation court as may be
6 necessary, and perform such other supervisory duties as the needs of
7 the compensation court may require. During the disqualification,
8 disability, or absence of the presiding judge, the acting presiding
9 judge shall exercise all of the powers of the presiding judge.

10 Sec. 4. Section 48-156, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 48-156 A majority of the judges of the Nebraska Workers'
13 Compensation Court shall constitute a quorum to adopt rules and
14 regulations, as provided in sections 48-163 and 48-164, to transact
15 business, except when the statute or a rule adopted by the
16 compensation court permits one judge thereof to act, ~~and three~~
17 ~~judges shall constitute a quorum for the review of any disputed claim~~
18 ~~for compensation.~~ The act or decision of a majority of the judges
19 constituting such quorum shall in all such cases be deemed the act or
20 decision of the compensation court, except that a majority vote of
21 all the judges shall be required to adopt rules and regulations.

22 Sec. 5. Section 48-170, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 48-170 Every order and award of a single judge of the
25 Nebraska Workers' Compensation Court shall be binding upon each party

1 at interest unless an ~~application for review~~ appeal has been filed
2 with the compensation court within fourteen days after the date of
3 entry of the order or award.

4 Sec. 6. Section 48-178, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-178 The judge shall make such findings and orders,
7 awards, or judgments as the Nebraska Workers' Compensation Court or
8 judge is authorized by law to make. Such findings, orders, awards,
9 and judgments shall be signed by the judge before whom such
10 proceedings were had. When proceedings are had before a judge of the
11 compensation court, his or her findings, orders, awards, and
12 judgments shall be conclusive upon all parties at interest unless
13 reversed or modified upon ~~review or~~ appeal as hereinafter provided. A
14 shorthand record or tape recording shall be made of all testimony and
15 evidence submitted in such proceedings. The compensation court or
16 judge thereof, at the party's expense, may appoint a court reporter
17 or may direct a party to furnish a court reporter to be present and
18 report or, by adequate mechanical means, to record and, if necessary,
19 transcribe proceedings of any hearing. The charges for attendance
20 shall be paid initially to the reporter by the employer or, if
21 insured, by the employer's workers' compensation insurer. The charges
22 shall be taxed as costs and the party initially paying the expense
23 shall be reimbursed by the party or parties taxed with the costs. The
24 compensation court or judge thereof may award and tax such costs and
25 apportion the same between the parties or may order the compensation

1 court to pay such costs as in its discretion it may think right and
2 equitable. If the expense is unpaid, the expense shall be paid by the
3 party or parties taxed with the costs or may be paid by the
4 compensation court. The reporter shall faithfully and accurately
5 report or record the proceedings.

6 Sec. 7. Section 48-180, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 48-180 The Nebraska Workers' Compensation Court may, on
9 its own motion, modify or change its findings, order, award, or
10 judgment at any time before appeal and within ~~ten~~fourteen days from
11 after the date of such findings, order, award, or judgment. ~~for the~~
12 ~~purpose of correcting any ambiguity, clerical error, or patent or~~
13 ~~obvious error.~~ The time for appeal shall not be lengthened because of
14 the ~~correction~~modification or change unless the correction
15 substantially changes the result of the award.

16 Sec. 8. Section 48-182, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-182 In case either party at interest refuses to accept
19 any final order of the Nebraska Workers' Compensation Court ~~on~~
20 ~~original~~after the hearing, such party may, within ~~fourteen~~thirty
21 days thereafter, file with the compensation court ~~an application for~~
22 ~~review~~a notice of appeal and within ~~fourteen~~thirty days from ~~after~~
23 the date of such final order file with the compensation court a
24 praecipe for a bill of exceptions. Within two months from the date of
25 the filing of the praecipe, the court reporter or transcriber shall

1 deliver to the clerk of the Nebraska Workers' Compensation Court a
2 bill of exceptions which shall include a transcribed copy of the
3 testimony and the evidence taken before the compensation court ~~on~~
4 ~~original~~ at the hearing, which transcribed copy when certified to by
5 the person who made or transcribed the record shall constitute the
6 bill of exceptions. The transcript and bill of exceptions shall be
7 paid for by the party ordering the same, except that upon the
8 affidavit of any claimant for workers' compensation, filed with or
9 before the praecipe, that he or she is without means with which to
10 pay and unable to secure such means, payment may, in the discretion
11 of the compensation court, be waived as to such claimant and the bill
12 of exceptions shall be paid for by the compensation court in the same
13 manner as other compensation court expenses.

14 The procedure for preparation, settlement, signature,
15 allowance, certification, filing, and amendment of a bill of
16 exceptions shall be regulated and governed by rules of practice
17 prescribed by the Supreme Court except as otherwise provided in this
18 section.

19 When a bill of exceptions has been ordered according to
20 law and the court reporter or transcriber fails to prepare and file
21 the bill of exceptions with the clerk of the Nebraska Workers'
22 Compensation Court within two months from the date of the filing of
23 the praecipe, the compensation court may, on the motion of any party
24 accompanied by a proper showing, grant additional time for the
25 preparation and filing of the bill of exceptions under such

1 conditions as the court may require. Applications for such an
2 extension of time shall be regulated and governed by rules of
3 practice prescribed by the compensation court.

4 Sec. 9. Section 48-185, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-185 Any appeal from the judgment of the Nebraska
7 Workers' Compensation Court ~~after review~~ shall be prosecuted and the
8 procedure, including the designation of parties, handling of costs
9 and the amounts thereof, filing of briefs, certifying the opinion of
10 the Supreme Court or decision of the Court of Appeals to the
11 compensation court, handling of the bill of exceptions, and issuance
12 of the mandate, shall be in accordance with the general laws of the
13 state and procedures regulating appeals in actions at law from the
14 district courts except as otherwise provided in section 48-182 and
15 this section. The proceedings to obtain a reversal, vacation, or
16 modification of judgments, awards, or final orders made by the
17 compensation court ~~after a review~~ shall be by filing in the office of
18 the clerk of the Nebraska Workers' Compensation Court, within thirty
19 days after the entry of such judgment, decree, or final order, a
20 notice of intention to prosecute such appeal signed by the appellant
21 or his or her attorney of record. No motion for a new trial shall be
22 filed. An appeal shall be deemed perfected and the appellate court
23 shall have jurisdiction of the cause when such notice of appeal shall
24 have been filed in the office of the clerk of the Nebraska Workers'
25 Compensation Court, and after being so perfected no appeal shall be

1 dismissed without notice, and no step other than the filing of such
2 notice of appeal shall be deemed jurisdictional. The clerk of the
3 Nebraska Workers' Compensation Court shall forthwith forward a
4 certified copy of such notice of appeal to the Clerk of the Supreme
5 Court, whereupon the Clerk of the Supreme Court shall forthwith
6 docket such appeal. Within thirty days after the date of filing of
7 notice of appeal, the clerk of the Nebraska Workers' Compensation
8 Court shall prepare and file with the Clerk of the Supreme Court a
9 transcript certified as a true copy of the proceedings contained
10 therein. The transcript shall contain the judgment, decree, or final
11 order sought to be reversed, vacated, or modified and all pleadings
12 filed with such clerk. Neither the form nor the substance of such
13 transcript shall affect the jurisdiction of the appellate court. Such
14 appeal shall be perfected within thirty days after the entry of
15 judgment by the compensation court, the cause shall be advanced for
16 argument before the appellate court, and the appellate court shall
17 render its judgment and write an opinion, if any, in such cases as
18 speedily as possible. The judgment made by the compensation court
19 ~~after review~~ shall have the same force and effect as a jury verdict
20 in a civil case. A judgment, order, or award of the compensation
21 court may be modified, reversed, or set aside only upon the grounds
22 that (1) the compensation court acted without or in excess of its
23 powers, (2) the judgment, order, or award was procured by fraud, (3)
24 there is not sufficient competent evidence in the record to warrant
25 the making of the order, judgment, or award, or (4) the findings of

1 fact by the compensation court do not support the order or award.

2 Sec. 10. Cases pending before the compensation court on
3 the effective date of this act shall not be affected by the changes
4 made by this legislative bill. Any cause of action not in suit on the
5 effective date of this act shall follow the procedures as amended by
6 this legislative bill.

7 Sec. 11. Section 48-1,110, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 48-1,110 Sections 48-101 to 48-1,117 and section 10 of
10 this act shall be known and may be cited as the Nebraska Workers'
11 Compensation Act.

12 Sec. 12. Original sections 48-125, 48-145.01, 48-155,
13 48-156, 48-170, 48-178, 48-180, 48-182, 48-185, and 48-1,110, Reissue
14 Revised Statutes of Nebraska, are repealed.

15 Sec. 13. The following sections are outright repealed:
16 Sections 48-179 and 48-181, Reissue Revised Statutes of Nebraska.