

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 245

Introduced by Carlson, 38; Fulton, 29; Smith, 14.

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 section 48-146.02, Reissue Revised Statutes of
3 Nebraska; to provide for release of employee medical
4 records as prescribed; and to repeal the original
5 section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-146.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-146.02 (1)(a) If a three-judge panel of the Nebraska
4 Workers' Compensation Court finds, after due notice and hearing at
5 which the workers' compensation insurer is entitled to be heard and
6 present evidence, that such insurer has failed to comply with an
7 obligation under the Nebraska Workers' Compensation Act with such
8 frequency as to indicate a general business practice to engage in
9 that type of conduct, the three-judge panel may request the Director
10 of Insurance to suspend or revoke the authorization of such insurer
11 to write workers' compensation insurance under the provisions of
12 Chapter 44 and such act. Such suspension or revocation shall not
13 affect the liability of any such insurer under policies in force
14 prior to the suspension or revocation.

15 (b) If a three-judge panel of the compensation court
16 finds, after due notice and hearing at which the risk management pool
17 is entitled to be heard and present evidence, that such pool has
18 failed to comply with an obligation under the Nebraska Workers'
19 Compensation Act, as set out in subsection (1) of section 44-4319,
20 with such frequency as to indicate a general business practice to
21 engage in that type of conduct, the three-judge panel may suspend or
22 revoke the authority of the pool to provide group self-insurance
23 coverage of workers' compensation liability pursuant to the
24 Intergovernmental Risk Management Act. Such suspension or revocation
25 shall not affect the liability of any such risk management pool under

1 the terms of the agreement forming the pool in force prior to the
2 suspension or revocation.

3 (c) If a three-judge panel of the compensation court
4 finds, after due notice and hearing at which the self-insurer is
5 entitled to be heard and present evidence, that such self-insurer has
6 failed to comply with an obligation under the Nebraska Workers'
7 Compensation Act with such frequency as to indicate a general
8 business practice to engage in that type of conduct, the three-judge
9 panel may revoke the approval of such self-insurer to provide self-
10 insurance coverage of workers' compensation liability pursuant to
11 section 48-145. Such revocation shall not affect the liability of any
12 such self-insurer under an approval by the compensation court to
13 self-insure in force prior to the revocation.

14 (d) The Attorney General, when requested by the
15 administrator of the compensation court, may file a motion pursuant
16 to section 48-162.03 for an order directing a workers' compensation
17 insurer, risk management pool, or self-insurer to appear before a
18 three-judge panel of the compensation court and show cause as to why
19 the panel should not take action pursuant to this subsection. The
20 Attorney General shall be considered a party for purposes of such
21 motion. The Attorney General may appear before the three-judge panel
22 and present evidence that the workers' compensation insurer, risk
23 management pool, or self-insurer has failed to comply with an
24 obligation under the Nebraska Workers' Compensation Act with such
25 frequency as to indicate a general business practice to engage in

1 that type of conduct. The presiding judge shall rule on a motion of
2 the Attorney General pursuant to this subdivision and, if applicable,
3 shall appoint judges of the compensation court to serve on the three-
4 judge panel. The presiding judge shall not serve on such panel.

5 (e) Appeal from an action by a three-judge panel of the
6 compensation court pursuant to subdivision (1)(b) or (1)(c) of this
7 section shall be in accordance with section 48-185.

8 (2) In addition to any other obligations under the
9 Nebraska Workers' Compensation Act, the following acts or practices,
10 when committed with such frequency as to indicate a general business
11 practice to engage in that type of conduct, shall subject the
12 workers' compensation insurer, risk management pool, or self-insurer
13 to action pursuant to subsection (1) of this section:

14 (a) Knowingly misrepresenting relevant facts or the
15 provisions of the act or any rule or regulation adopted pursuant to
16 such act;

17 (b) Failing to acknowledge with reasonable promptness
18 pertinent communications with respect to claims arising under the
19 act;

20 (c) Failing to promptly investigate claims arising under
21 the act;

22 (d) Not attempting in good faith to effectuate prompt,
23 fair, and equitable payment of benefits when compensability has
24 become reasonably clear;

25 (e) Refusing to pay benefits without conducting a

1 reasonable investigation;

2 (f) Failing to affirm or deny compensability of a claim
3 within a reasonable time after having completed the investigation
4 related to such claim;

5 (g) Paying substantially less than amounts owed under the
6 act where there is no reasonable controversy;

7 (h) Making payment to an injured employee, beneficiary of
8 a deceased employee, or provider of medical, surgical, or hospital
9 services without providing a reasonable and accurate explanation of
10 the basis for the payment;

11 (i) Unreasonably delaying the investigation or payment of
12 benefits by knowingly requiring excessive verification or duplication
13 of information;

14 (j) Failing, in the case of the denial of compensability
15 or the denial, change in, or termination of benefits, to promptly
16 provide a reasonable and accurate explanation of the basis for such
17 action to the injured employee or beneficiary of a deceased employee;

18 (k) Failing, in the case of the denial of payment for
19 medical, surgical, or hospital services, to promptly provide a
20 reasonable and accurate explanation of the basis for such action to
21 the provider of such services; or

22 (l) Failing to provide the compensation court's address
23 and telephone number to an injured employee or beneficiary of a
24 deceased employee with instructions to contact the court for further
25 information:

1 (i) At or near the time the workers' compensation
2 insurer, risk management pool, or self-insurer receives notice or has
3 knowledge of the injury; and

4 (ii) At or near the time of the denial of compensability
5 or the denial, change in, or termination of benefits.

6 (3) In order for a compensation insurer, risk management
7 pool, or self-insurer to fulfill the obligations of subsection (2) of
8 this section, an employee filing a claim for workers' compensation
9 benefits with a compensation insurer, risk management pool, or self-
10 insurer shall provide a patient's waiver to the compensation insurer,
11 risk management pool, self-insurer, or employer upon the request by
12 the same, allowing the employee's employer or compensation insurer,
13 risk management pool, or self-insurer or its representative to obtain
14 all previous hospital and medical records, including patient
15 information forms, concerning the employee's previous treatment with
16 any physician, psychologist, or other medical provider. A
17 compensation insurer, risk management pool, self-insurer, or employer
18 shall not pursuant to a patient's waiver be entitled to an employee's
19 hospital or medical records that pertain to an employee's previous
20 treatment for sexual abuse, human immunodeficiency virus,
21 reproductive health conditions, mental health conditions unless
22 seeking benefits for mental health injuries, or alcohol or controlled
23 substance abuse. The compensation court shall draft a patient's
24 waiver form to implement this subsection. Failure to provide a
25 patient's waiver shall toll the commencement of the thirty-day period

1 for purposes of liability under section 48-125. Any physician,
2 psychologist, hospital, institution, or other person releasing the
3 information to the employee's employer, compensation insurer, risk
4 management pool, or self-insurer or its representative shall not be
5 liable criminally or for civil damages by reason of the release of
6 the information pursuant to the patient's waiver.

7 ~~(3)~~(4) In order to determine compliance with obligations
8 under the Nebraska Workers' Compensation Act, the compensation court
9 or its designee may examine the workers' compensation records of (a)
10 a workers' compensation insurer, a risk management pool, or a self-
11 insurer or (b) an adjuster, a third-party administrator, or other
12 agent acting on behalf of such workers' compensation insurer, risk
13 management pool, or self-insurer. The authority of the compensation
14 court pursuant to this subsection is subject to the limitations
15 provided under the work-product doctrine and attorney-client
16 privilege as recognized in Nebraska law.

17 ~~(4)~~(5) The compensation court may adopt and promulgate
18 rules and regulations necessary to implement this section.

19 Sec. 2. Original section 48-146.02, Reissue Revised
20 Statutes of Nebraska, is repealed.