

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 262

Introduced by Lathrop, 12.

Read first time January 11, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 44-3,158 and
2 48-144.03, Reissue Revised Statutes of Nebraska; to
3 eliminate certain health and safety regulations,
4 penalties, a program, a fund, and a committee; to
5 harmonize provisions; to repeal the original sections;
6 and to outright repeal sections 48-401, 48-402, 48-403,
7 48-404, 48-405, 48-406, 48-407, 48-408, 48-409, 48-410,
8 48-411, 48-412, 48-413, 48-414, 48-415, 48-416, 48-417,
9 48-419, 48-420, 48-421, 48-422, 48-423, 48-424, 48-425,
10 48-426, 48-427, 48-428, 48-429, 48-430, 48-431, 48-432,
11 48-433, 48-434, 48-435, 48-436, 48-437, 48-438, 48-439,
12 48-440, 48-441, 48-442, 48-443, 48-444, 48-445, and
13 48-446, Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 44-3,158, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-3,158 (1) For purposes of this section:

4 (a) Assigned risk employer means a Nebraska employer that
5 is in good faith entitled to, but is unable to obtain, workers'
6 compensation insurance through ordinary methods; and

7 (b) Director means the Director of Insurance.

8 (2)(a) The director shall enter into an agreement with
9 one or more workers' compensation insurers to provide workers'
10 compensation insurance to assigned risk employers. In selecting an
11 insurer to become an assigned risk insurer, the director shall
12 consider the cost of coverage to assigned risk employers, the loss
13 control and claims handling services available from the workers'
14 compensation insurer, the financial condition of the workers'
15 compensation insurer, and any other relevant factors. An agreement
16 entered into under this subsection may not exceed five years.

17 (b) If the director determines that the cost of workers'
18 compensation insurance premiums for an insurer to provide assigned
19 risk coverage pursuant to such an agreement would be unreasonably
20 high, the director may enter into an agreement in which the assigned
21 risk insurer covers a portion of the losses incurred by the assigned
22 risk employer. Any agreement that involves an average rate level of
23 less than two and one-half times the prospective loss costs approved
24 for an advisory organization pursuant to section 44-7511 shall not be
25 considered unreasonably high for the purposes of this section.

1 Pursuant to any such agreement, remaining losses shall be assessed
2 against all workers' compensation insurers writing workers'
3 compensation insurance in this state and risk management pools
4 created under the Intergovernmental Risk Management Act based on
5 their workers' compensation premiums written in this state or
6 contributions made to risk management pools. Assigned risk premiums
7 shall be excluded from the basis for such assessments.

8 (c) If the assigned risk system described in subdivisions
9 (2)(a) and (b) of this section ceases to be viable because no
10 qualified insurer is willing to provide workers' compensation
11 coverage at an average rate level of two and one-half times the
12 prospective loss costs approved for an advisory organization pursuant
13 to section 44-7511 without also requiring substantial sharing of
14 losses with all other workers' compensation insurers writing workers'
15 compensation insurance in this state and risk management pools
16 created under the Intergovernmental Risk Management Act, then the
17 director may, after consultation with insurers authorized to issue
18 workers' compensation insurance policies in this state, create a
19 reasonable alternative assigned risk system involving the sharing of
20 premiums and losses for assigned risk employers among all such
21 workers' compensation insurers writing workers' compensation
22 insurance in this state and such risk management pools. If
23 established, such alternative assigned risk system shall not utilize
24 an average rate level of less than two and one-half times the
25 prospective loss costs approved for an advisory organization pursuant

1 to section 44-7511.

2 (3) The director may adopt and promulgate rules and
3 regulations to carry out this section.

4 (4) An employer shall not be considered to be in good
5 faith entitled to be covered by workers' compensation insurance under
6 this section if:

7 ~~(a) The employer is required to establish a safety~~
8 ~~committee pursuant to sections 48-443 to 48-445 and is not in~~
9 ~~compliance with such sections;~~

10 ~~(b)—(a)~~ The employer is in default on workers'
11 compensation premiums;

12 ~~(c)—(b)~~ The employer has failed to reimburse an insurer
13 for amounts to be repaid pursuant to workers' compensation insurance
14 written on a policy with a deductible;

15 ~~(d)—(c)~~ The employer has failed to provide an insurer
16 reasonable access to books and records necessary for a premium audit;

17 ~~(e)—(d)~~ The employer has defrauded or attempted to
18 defraud an insurer; or

19 ~~(f)—(e)~~ The employer is found to have been owned or
20 controlled by persons who owned or controlled a prior employer that
21 is or would be ineligible for coverage pursuant to subdivisions ~~(4)~~
22 ~~(b) through (e)~~ (4)(a) through (d) of this section.

23 Sec. 2. Section 48-144.03, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-144.03 (1) Notwithstanding policy provisions that

1 stipulate a workers' compensation insurance policy to be a contract
2 with a fixed term of coverage that expires at the end of the term,
3 coverage under a workers' compensation insurance policy shall
4 continue in full force and effect until notice is given in accordance
5 with this section.

6 (2) No cancellation of a workers' compensation insurance
7 policy within the policy period shall be effective unless notice of
8 the cancellation is given by the workers' compensation insurer to the
9 Nebraska Workers' Compensation Court and to the employer. No such
10 cancellation shall be effective until thirty days after the giving of
11 such notices, except that the cancellation may be effective ten days
12 after the giving of such notices if such cancellation is based on (a)
13 notice from the employer to the insurer to cancel the policy, (b)
14 nonpayment of premium due the insurer under any policy written by the
15 insurer for the employer, or (c) failure of the employer to reimburse
16 deductible losses as required under any policy written by the insurer
17 for the employer, ~~, or (d) failure of the employer, if covered~~
18 ~~pursuant to section 44-3,158, to comply with sections 48-443 to~~
19 ~~48-445.~~

20 (3) No workers' compensation insurance policy shall
21 expire or lapse at the end of the policy period unless notice of
22 nonrenewal is given by the workers' compensation insurer to the
23 compensation court and to the employer. No workers' compensation
24 insurance policy shall expire or lapse until thirty days after the
25 giving of such notices, except that a policy may expire or lapse ten

1 days after the giving of such notices if the nonrenewal is based on
2 (a) notice from the employer to the insurer to not renew the policy,
3 (b) nonpayment of premium due the insurer under any policy written by
4 the insurer for the employer, or (c) failure of the employer to
5 reimburse deductible losses as required under any policy written by
6 the insurer for the employer. ~~, or (d) failure of the employer, if~~
7 ~~covered pursuant to section 44-3,158, to comply with sections 48-443~~
8 ~~to 48-445.~~

9 (4) Subsections (2) and (3) of this section terminate on
10 January 1, 2012. Subsections (5), (6), and (7) of this section apply
11 beginning on January 1, 2012.

12 (5)(a) This subsection applies to workers' compensation
13 policies other than master policies or multiple coordinated policies
14 obtained by a professional employer organization.

15 (b) No cancellation of a policy within the policy period
16 shall be effective unless notice of the cancellation is given by the
17 workers' compensation insurer to the compensation court and to the
18 employer. No such cancellation shall be effective until thirty days
19 after giving such notices, except that the cancellation may be
20 effective ten days after the giving of such notices if such
21 cancellation is based on (i) notice from the employer to the insurer
22 to cancel the policy, (ii) nonpayment of premium due the insurer
23 under any policy written by the insurer for the employer, or (iii)
24 failure of the employer to reimburse deductible losses as required
25 under any policy written by the insurer for the employer. ~~, or (iv)~~

1 ~~failure of the employer, if covered pursuant to section 44-3,158, to~~
2 ~~comply with sections 48-443 to 48-445.~~

3 (c) No policy shall expire or lapse at the end of the
4 policy period unless notice of nonrenewal is given by the workers'
5 compensation insurer to the compensation court and to the employer.
6 No policy shall expire or lapse until thirty days after giving such
7 notices, except that a policy may expire or lapse ten days after the
8 giving of such notices if the nonrenewal is based on (i) notice from
9 the employer to the insurer to not renew the policy, (ii) nonpayment
10 of premium due the insurer under any policy written by the insurer
11 for the employer, or (iii) failure of the employer to reimburse
12 deductible losses as required under any policy written by the insurer
13 for the employer, ~~, or (iv) failure of the employer, if covered~~
14 ~~pursuant to section 44-3,158, to comply with sections 48-443 to~~
15 ~~48-445.~~

16 (6)(a) This subsection applies to workers' compensation
17 master policies obtained by a professional employer organization.

18 (b) No cancellation of a master policy within the policy
19 period shall be effective unless notice of the cancellation is given
20 by the workers' compensation insurer to the compensation court and to
21 the professional employer organization. No such cancellation shall be
22 effective until thirty days after giving such notices.

23 (c) No termination of coverage for a client or any
24 employees of a client under a master policy within the policy period
25 shall be effective unless notice is given by the workers'

1 compensation insurer to the compensation court and to the
2 professional employer organization. No such termination of coverage
3 shall be effective until thirty days after giving such notices,
4 except that the termination of coverage may be effective ten days
5 after the giving of such notices if such termination is based on (i)
6 notice from the client to the professional employer organization or
7 the insurer to terminate the coverage or (ii) notice from the
8 professional employer organization of the client's nonpayment of
9 premium.

10 (d) No master policy shall expire or lapse at the end of
11 the policy period unless notice of nonrenewal is given by the
12 workers' compensation insurer to the compensation court and to the
13 professional employer organization. No master policy shall expire or
14 lapse until thirty days after giving such notices.

15 (e) Notice of the cancellation or nonrenewal of a master
16 policy or the termination of coverage for a client or the employees
17 of a client under such a policy shall be given by the professional
18 employer organization to the client within fifteen days after the
19 cancellation, nonrenewal, or termination unless replacement coverage
20 has been obtained.

21 (7)(a) This subsection applies to workers' compensation
22 multiple coordinated policies obtained by a professional employer
23 organization.

24 (b) No cancellation of a policy within the policy period
25 shall be effective unless notice of the cancellation is given by the

1 workers' compensation insurer to the compensation court, to the
2 professional employer organization, and to the client employer. No
3 such cancellation shall be effective until thirty days after giving
4 such notices, except that the cancellation may be effective ten days
5 after giving such notices if such cancellation is based on (i) notice
6 from the client to the professional employer organization or the
7 insurer to cancel the policy, (ii) notice from the professional
8 employer organization of the client's nonpayment of premium or
9 failure to reimburse deductibles for policies issued pursuant to
10 section 48-146.03, ~~(iii) failure of the client, if covered pursuant~~
11 ~~to section 44-3,158, to comply with sections 48-443 to 48-445, or~~
12 ~~(iv)~~ (iii) for policies issued pursuant to section 44-3,158,
13 nonpayment of premium or failure to reimburse deductibles for
14 policies issued pursuant to section 48-146.03.

15 (c) No termination of coverage for any employees of the
16 client during the policy period shall be effective unless notice is
17 given by the workers' compensation insurer to the compensation court,
18 to the professional employer organization, and to the client. No such
19 termination of coverage shall be effective until thirty days after
20 giving such notices, except that the termination of coverage may be
21 effective ten days after the giving of such notices if such
22 termination is based on (i) notice from the client to the
23 professional employer organization or the insurer to terminate the
24 coverage or (ii) notice from the professional employer organization
25 of the client's nonpayment of premium or failure to reimburse

1 deductibles for policies issued pursuant to section 48-146.03.

2 (d) No policy shall expire or lapse at the end of the
3 policy period unless notice of nonrenewal is given by the workers'
4 compensation insurer to the compensation court, to the professional
5 employer organization, and to the client. No policy shall expire or
6 lapse until thirty days after giving such notices, except that a
7 policy may expire or lapse ten days after the giving of such notices
8 if the nonrenewal is based on (i) notice from the client to the
9 professional employer organization or the insurer to not renew the
10 policy, (ii) notice from the professional employer organization of
11 the client's nonpayment of premium or failure to reimburse
12 deductibles for policies issued pursuant to section 48-146.03, ~~(iii)~~
13 ~~failure of the client, if covered pursuant to section 44-3,158, to~~
14 ~~comply with sections 48-443 to 48-445, or (iv) (iii) for policies~~
15 issued pursuant to section 44-3,158, nonpayment of premium or failure
16 to reimburse deductibles for policies issued pursuant to section
17 48-146.03.

18 (e) An insurer may refrain from sending notices required
19 by this subsection to a professional employer organization's client
20 based upon the professional employer organization's representation
21 that coverage has been or will be replaced. Such representation shall
22 not absolve the insurer of its responsibility to continue coverage if
23 such representation proves inaccurate.

24 (8) Notwithstanding other provisions of this section, if
25 replacement workers' compensation insurance coverage has been secured

1 with another workers' compensation insurer, then the cancellation or
2 nonrenewal of the policy or the termination of coverage for a client
3 or employees of a client under the policy shall be effective as of
4 the effective date of such other insurance coverage.

5 (9) The notices required by this section shall state the
6 reason for the cancellation or nonrenewal of the policy or
7 termination of coverage for a client or employees of a client under a
8 policy.

9 (10) The notices required by this section shall be
10 provided in writing and shall be deemed given upon the mailing of
11 such notices by certified mail, except that notices from insurers to
12 the compensation court may be provided by electronic means if such
13 electronic means is approved by the administrator of the compensation
14 court. If notice is provided by electronic means pursuant to such an
15 approval, it shall be deemed given upon receipt and acceptance by the
16 compensation court.

17 Sec. 3. Original sections 44-3,158 and 48-144.03, Reissue
18 Revised Statutes of Nebraska, are repealed.

19 Sec. 4. The following sections are outright repealed:
20 Sections 48-401, 48-402, 48-403, 48-404, 48-405, 48-406, 48-407,
21 48-408, 48-409, 48-410, 48-411, 48-412, 48-413, 48-414, 48-415,
22 48-416, 48-417, 48-419, 48-420, 48-421, 48-422, 48-423, 48-424,
23 48-425, 48-426, 48-427, 48-428, 48-429, 48-430, 48-431, 48-432,
24 48-433, 48-434, 48-435, 48-436, 48-437, 48-438, 48-439, 48-440,
25 48-441, 48-442, 48-443, 48-444, 48-445, and 48-446, Reissue Revised

1 Statutes of Nebraska.