

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 276**

Introduced by Harr, 8.

Read first time January 14, 2015

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend sections 48-106 and 48-116, Reissue Revised Statutes of  
3 Nebraska, and section 48-1,110, Revised Statutes Cumulative  
4 Supplement, 2014; to provide for certified independent contractors  
5 and exempt such persons from the act; to harmonize provisions; and  
6 to repeal the original sections.

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

1           Section 1.   (1) A person who regularly and customarily performs  
2 services for others at a location other than that person's own fixed  
3 business location may apply to the Department of Labor to be a certified  
4 independent contractor. A certified independent contractor:

5           (a) Is exempt from all requirements to be covered under a policy of  
6 workers' compensation insurance pursuant to the Nebraska Workers'  
7 Compensation Act; and

8           (b) Is precluded from obtaining any benefits under the act.

9           (2) To become a certified independent contractor, a person shall  
10 submit an application to the Department of Labor, on a form prescribed by  
11 the department, which includes the following:

12           (a) The applicant's name, address, and telephone number;

13           (b) The applicant's social security number;

14           (c) The applicant's business, trade, or occupation;

15           (d) The applicant's business name, business address, and the type of  
16 business entity;

17           (e) A completed certified independent contractor questionnaire;

18           (f) A completed and signed waiver of benefits form to waive all  
19 benefits under the Nebraska Workers' Compensation Act;

20           (g) Certification from the applicant that he or she has been and  
21 will continue to be free from control or direction in the performance of  
22 his or her services except as required for compliance with local, state,  
23 and federal regulations; and

24           (h) A fee as determined by the Department of Labor.

25           (3) The Department of Labor shall use the application and the  
26 applicant's answers to the certified independent contractor questionnaire  
27 to determine whether the applicant is qualified to be a certified  
28 independent contractor. The department may, at its option, require  
29 documentation or other proof of any statements made on the application or  
30 questionnaire.

31           (4) Any person who knowingly provides false information on an

1 application or on a certified independent contractor questionnaire shall  
2 be guilty of a Class II misdemeanor. Any person who requires his or her  
3 employee to provide false information on an application or on a certified  
4 independent contractor questionnaire in order for the employee to obtain  
5 status as a certified independent contractor shall be guilty of a Class  
6 II misdemeanor.

7 (5) A certified independent contractor may, at any time, elect to be  
8 bound by the Nebraska Workers' Compensation Act by filing such election  
9 with the Department of Labor and by obtaining a policy of workers'  
10 compensation insurance in accordance with the Nebraska Workers'  
11 Compensation Act.

12 Sec. 2. Section 48-106, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 48-106 (1) The Nebraska Workers' Compensation Act shall apply to the  
15 State of Nebraska, to every governmental agency created by the state,  
16 and, except as provided in this section, to every resident employer in  
17 this state and nonresident employer performing work in this state who  
18 employs one or more employees in the regular trade, business, profession,  
19 or vocation of such employer.

20 (2) The act shall not apply to:

21 (a) A railroad company engaged in interstate or foreign commerce;

22 (b) Service performed by a worker who is a household domestic  
23 servant in a private residence;

24 (c) Service performed by a worker when performed for an employer who  
25 is engaged in an agricultural operation and employs only related  
26 employees;

27 (d) Service performed by a worker when performed for an employer who  
28 is engaged in an agricultural operation and employs unrelated employees  
29 unless such service is performed for an employer who during any calendar  
30 year employs ten or more unrelated, full-time employees, whether in one  
31 or more locations, on each working day for thirteen calendar weeks,

1 whether or not such weeks are consecutive. The act shall apply to an  
2 employer thirty days after the thirteenth such week; ~~and~~

3 (e) Service performed by a person who is engaged in an agricultural  
4 operation, or performed by his or her related employees, when the service  
5 performed is (i) occasional and (ii) for another person who is engaged in  
6 an agricultural operation who has provided or will provide reciprocal or  
7 similar service; and -

8 (f) Service performed by a certified independent contractor who is  
9 certified pursuant to section 1 of this act.

10 (3) If the employer is the state or any governmental agency created  
11 by the state, the exemption from the act under subdivision (2)(d) of this  
12 section does not apply.

13 (4) If the act applies to an employer because the employer meets the  
14 requirements of subdivision (2)(d) of this section, all unrelated  
15 employees shall be covered under the act and such employees' wages shall  
16 be considered for premium purposes.

17 (5) If an employer to whom the act applies because the employer  
18 meets the requirements of subdivision (2)(d) of this section subsequently  
19 does not employ ten or more unrelated, full-time employees, such employer  
20 shall continue to provide workers' compensation insurance coverage for  
21 the employees for the remainder of the calendar year and for the next  
22 full calendar year. When the required coverage period has expired, such  
23 employer may elect to return to exempt status by (a) posting,  
24 continuously in a conspicuous place at the employment locations of the  
25 employees for a period of at least ninety days, a written or printed  
26 notice stating that the employer will no longer carry workers'  
27 compensation insurance for the employees and the date such insurance will  
28 cease and (b) thereafter no longer carrying a policy of workers'  
29 compensation insurance. Failure to provide notice in accordance with this  
30 subsection voids an employer's attempt to return to exempt status.

31 (6) An employer who is exempt from the act under subsection (2) of

1 this section may elect to bring the employees of such employer under the  
2 act. Such election is made by the employer obtaining a policy of workers'  
3 compensation insurance covering such employees. Such policy shall be  
4 obtained from a corporation, association, or organization authorized and  
5 licensed to transact the business of workers' compensation insurance in  
6 this state. If such an exempt employer procures a policy of workers'  
7 compensation insurance which is in full force and effect at the time of  
8 an accident to an employee of such employer, such procurement is  
9 conclusive proof of the employer's and employee's election to be bound by  
10 the act. Such an exempt employer who has procured a policy of workers'  
11 compensation insurance may elect to return to exempt status by (a)  
12 posting, continuously in a conspicuous place at the employment locations  
13 of the employees for a period of at least ninety days, a written or  
14 printed notice stating that the employer will no longer carry workers'  
15 compensation insurance for the employees and the date such insurance will  
16 cease and (b) thereafter no longer carrying a policy of workers'  
17 compensation insurance. Failure to provide notice in accordance with this  
18 subsection voids an employer's attempt to return to exempt status.

19 (7) Every employer exempted under subdivision (2)(d) of this section  
20 who does not elect to provide workers' compensation insurance under  
21 subsection (6) of this section shall give all unrelated employees at the  
22 time of hiring or at any time more than thirty calendar days prior to the  
23 time of injury the following written notice which shall be signed by the  
24 unrelated employee and retained by the employer: "In this employment you  
25 will not be covered by the Nebraska Workers' Compensation Act and you  
26 will not be compensated under the act if you are injured on the job or  
27 suffer an occupational disease. You should plan accordingly." Failure to  
28 provide the notice required by this subsection subjects an employer to  
29 liability under and inclusion in the act for any unrelated employee to  
30 whom such notice was not given.

31 (8) An exclusion from coverage in any health, accident, or other

1 insurance policy covering a person employed by an employer who is exempt  
2 from the act under this section which provides that coverage under the  
3 health, accident, or other insurance policy does not apply if such person  
4 is entitled to workers' compensation coverage is void as to such person  
5 if such employer has not elected to bring the employees of such employer  
6 within the act as provided in subsection (6) of this section.

7 (9) For purposes of this section:

8 (a) Agricultural operation means (i) the cultivation of land for the  
9 production of agricultural crops, fruit, or other horticultural products  
10 or (ii) the ownership, keeping, or feeding of animals for the production  
11 of livestock or livestock products;

12 (b) Full-time employee means a person who is employed to work one-  
13 half or more of the regularly scheduled hours during each pay period; and

14 (c) Related employee means a spouse of an employer and an employee  
15 related to the employer within the third degree by blood or marriage.  
16 Relationship by blood or marriage within the third degree includes  
17 parents, grandparents, great grandparents, children, grandchildren, great  
18 grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and  
19 spouses of the same. If the employer is a partnership, limited liability  
20 company, or corporation in which all of the partners, members, or  
21 shareholders are related within the third degree by blood or marriage,  
22 then related employee means any employee related to any such partner,  
23 member, or shareholder within the third degree by blood or marriage.

24 Sec. 3. Section 48-116, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 48-116 Any person, firm, or corporation creating or carrying into  
27 operation any scheme, artifice, or device to enable him or her, them, or  
28 it to execute work without being responsible to the workers for the  
29 provisions of the Nebraska Workers' Compensation Act shall be included in  
30 the term employer, and with the immediate employer shall be jointly and  
31 severally liable to pay the compensation herein provided for and be

1 subject to all the provisions of such act. This section, however, shall  
2 not be construed as applying to (1) an owner who lets a contract to a  
3 contractor in good faith, or a contractor, who, in good faith, lets to a  
4 subcontractor a portion of his or her contract, if the owner or principal  
5 contractor, as the case may be, requires the contractor or subcontractor,  
6 respectively, to procure a policy or policies of insurance from an  
7 insurance company licensed to write such insurance in this state, which  
8 policy or policies of insurance shall guarantee payment of compensation  
9 according to the Nebraska Workers' Compensation Act to injured workers or  
10 (2) service performed by a certified independent contractor who is  
11 certified pursuant to section 1 of this act.

12 Sec. 4. Section 48-1,110, Revised Statutes Cumulative Supplement,  
13 2014, is amended to read:

14 48-1,110 Sections 48-101 to 48-1,117 and section 1 of this act shall  
15 be known and may be cited as the Nebraska Workers' Compensation Act.

16 Sec. 5. Original sections 48-106 and 48-116, Reissue Revised  
17 Statutes of Nebraska, and section 48-1,110, Revised Statutes Cumulative  
18 Supplement, 2014, are repealed.