

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 388

Introduced by Hansen, 26.

Read first time January 16, 2015

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-121, Reissue Revised Statutes of Nebraska; to
- 3 provide annual adjustments for total disability income benefits; and
- 4 to repeal 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 Nebraska, is
2 amended to read:

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

5 (1) For total disability, the compensation during such disability
6 shall be sixty-six and two-thirds percent of the wages received at the
7 time of injury, but such compensation shall not be more than the maximum
8 weekly income benefit specified in section 48-121.01 nor less than the
9 minimum weekly income benefit specified in section 48-121.01, except that
10 if at the time of injury the employee receives wages of less than the
11 minimum weekly income benefit specified in section 48-121.01, then he or
12 she shall receive the full amount of such wages per week as compensation.
13 Any weekly income benefit for total disability awarded after the
14 effective date of this act shall be adjusted each year in a proportion
15 equal to annual increases resulting from the determination of the average
16 weekly wage under section 48-121.02. Nothing in this subdivision shall
17 require payment of compensation after disability shall cease;

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

29 (3) For disability resulting from permanent injury of the classes
30 listed in this subdivision, the compensation shall be in addition to the
31 amount paid for temporary disability, except that the compensation for

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

1 and two-thirds percent of daily wages during two hundred fifteen weeks.
2 For the loss of an eye, sixty-six and two-thirds percent of daily wages
3 during one hundred twenty-five weeks. For the loss of an ear, sixty-six
4 and two-thirds percent of daily wages during twenty-five weeks. For the
5 loss of hearing in one ear, sixty-six and two-thirds percent of daily
6 wages during fifty weeks. For the loss of the nose, sixty-six and two-
7 thirds percent of daily wages during fifty weeks.

8 In any case in which there is a loss or loss of use of more than one
9 member or parts of more than one member set forth in this subdivision,
10 but not amounting to total and permanent disability, compensation
11 benefits shall be paid for the loss or loss of use of each such member or
12 part thereof, with the periods of benefits to run consecutively. The
13 total loss or permanent total loss of use of both hands, or both arms, or
14 both feet, or both legs, or both eyes, or hearing in both ears, or of any
15 two thereof, in one accident, shall constitute total and permanent
16 disability and be compensated for according to subdivision (1) of this
17 section. In all other cases involving a loss or loss of use of both
18 hands, both arms, both feet, both legs, both eyes, or hearing in both
19 ears, or of any two thereof, total and permanent disability shall be
20 determined in accordance with the facts. Amputation between the elbow and
21 the wrist shall be considered as the equivalent of the loss of a hand,
22 and amputation between the knee and the ankle shall be considered as the
23 equivalent of the loss of a foot. Amputation at or above the elbow shall
24 be considered as the loss of an arm, and amputation at or above the knee
25 shall be considered as the loss of a leg. Permanent total loss of the use
26 of a finger, hand, arm, foot, leg, or eye shall be considered as the
27 equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In
28 all cases involving a permanent partial loss of the use or function of
29 any of the members mentioned in this subdivision, the compensation shall
30 bear such relation to the amounts named in such subdivision as the
31 disabilities bear to those produced by the injuries named therein.

1 If, in the compensation court's discretion, compensation benefits
2 payable for a loss or loss of use of more than one member or parts of
3 more than one member set forth in this subdivision, resulting from the
4 same accident or illness, do not adequately compensate the employee for
5 such loss or loss of use and such loss or loss of use results in at least
6 a thirty percent loss of earning capacity, the compensation court shall,
7 upon request of the employee, determine the employee's loss of earning
8 capacity consistent with the process for such determination under
9 subdivision (1) or (2) of this section, and in such a case the employee
10 shall not be entitled to compensation under this subdivision.

11 If the employer and the employee are unable to agree upon the amount
12 of compensation to be paid in cases not covered by the schedule, the
13 amount of compensation shall be settled according to sections 48-173 to
14 48-185. Compensation under this subdivision shall not be more than the
15 maximum weekly income benefit specified in section 48-121.01 nor less
16 than the minimum weekly income benefit specified in section 48-121.01,
17 except that if at the time of the injury the employee received wages of
18 less than the minimum weekly income benefit specified in section
19 48-121.01, then he or she shall receive the full amount of such wages per
20 week as compensation;

21 (4) For disability resulting from permanent disability, if
22 immediately prior to the accident the rate of wages was fixed by the day
23 or hour, or by the output of the employee, the weekly wages shall be
24 taken to be computed upon the basis of a workweek of a minimum of five
25 days, if the wages are paid by the day, or upon the basis of a workweek
26 of a minimum of forty hours, if the wages are paid by the hour, or upon
27 the basis of a workweek of a minimum of five days or forty hours,
28 whichever results in the higher weekly wage, if the wages are based on
29 the output of the employee; and

30 (5) The employee shall be entitled to compensation from his or her
31 employer for temporary disability while undergoing physical or medical

1 rehabilitation and while undergoing vocational rehabilitation whether
2 such vocational rehabilitation is voluntarily offered by the employer and
3 accepted by the employee or is ordered by the Nebraska Workers'
4 Compensation Court or any judge of the compensation court.

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