

E AND R AMENDMENTS TO LB 953

Introduced by Wishart, 27, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 48-139 (1)(a) Whenever an injured employee or his or her dependents
6 and the employer agree that the amounts of compensation due as periodic
7 payments for death, permanent disability, or claimed permanent disability
8 under the Nebraska Workers' Compensation Act shall be commuted to one or
9 more lump-sum payments, such settlement shall be submitted to the
10 Nebraska Workers' Compensation Court for approval as provided in
11 subsection (2) of this section if:

12 (i) The employee is not represented by counsel;

13 (ii) The employee, at the time the settlement is executed, is
14 eligible for medicare, is a medicare beneficiary, or has a reasonable
15 expectation of becoming eligible for medicare within thirty months after
16 the date the settlement is executed;

17 (iii) Medical, surgical, or hospital expenses incurred for treatment
18 of the injury have been paid by medicaid and medicaid will not be
19 reimbursed as part of the settlement;

20 (iv) Medical, surgical, or hospital expenses incurred for treatment
21 of the injury will not be fully paid as part of the settlement; or

22 (v) The settlement seeks to commute amounts of compensation due to
23 dependents of the employee.

24 (b) If such lump-sum settlement is not required to be submitted for
25 approval by the compensation court, a release shall be filed with the
26 compensation court as provided in subsection (3) of this section. Nothing
27 in this section shall be construed to increase the compensation court's

1 duties or authority with respect to the approval of lump-sum settlements
2 under the act.

3 (2)(a) An application for an order approving a lump-sum settlement,
4 signed and verified by both parties, shall be filed with the clerk of the
5 compensation court and shall be entitled the same as an action by such
6 employee or dependents against such employer. The application shall
7 contain a concise statement of the terms of the settlement or agreement
8 sought to be approved with a brief statement of the facts concerning the
9 injury, the nature thereof, the wages received by the injured employee
10 prior thereto, the nature of the employment, a description of the
11 medical, surgical, or hospital expenses incurred for treatment of the
12 injury that will remain unpaid as part of the settlement which are
13 disputed and for which compensability has been denied by the employer,
14 and such other matters as may be reasonably required by the compensation
15 court. The application may provide for payment of future medical,
16 surgical, or hospital expenses incurred by the employee. The compensation
17 court may, on its own motion, and shall, on a motion by one of the
18 parties, hold a hearing on the application at a time and place selected
19 by the compensation court, and proof may be adduced and witnesses
20 subpoenaed and examined the same as in an action in equity.

21 (b)(i) ~~(b)~~ If the compensation court finds such lump-sum settlement
22 is made in conformity with the compensation schedule and for the best
23 interests of the employee or his or her dependents under all the
24 circumstances, the compensation court shall make an order approving the
25 same.

26 (ii) If the expenses for medical, surgical, or hospital services
27 provided to the employee are not paid by the employer, or if any person,
28 other than medicaid, who has made any payment to the supplier of medical,
29 surgical, or hospital services provided to the employee, is not
30 reimbursed by the employer, it shall be conclusively presumed that the
31 nonpayment or nonreimbursement of disputed medical, surgical, or hospital

1 expenses, as set forth in the application, is in conformity with the
2 compensation schedule and for the best interests of the employee or his
3 or her dependents, if the employee's attorney elects to affirm in the
4 application that the nonpayment or nonreimbursement of disputed medical,
5 surgical, or hospital expenses is in conformity with the compensation
6 schedule and for the best interests of the employee or his or her
7 dependents under all the circumstances.

8 (iii) If the employee, at the time the settlement is executed, is
9 eligible for medicare, is a medicare beneficiary, or has a reasonable
10 expectation of becoming eligible for medicare within thirty months after
11 the date the settlement is executed, and if the employee's attorney
12 elects to affirm in the application that the parties' agreement relating
13 to consideration of medicare's interests set forth in such lump-sum
14 settlement is in conformity with the compensation schedule and for the
15 best interests of the employee or his or her dependents under all the
16 circumstances, it shall be conclusively presumed that the parties'
17 agreement relating to consideration of medicare's interests set forth in
18 the application is in conformity with the compensation schedule and for
19 the best interests of the employee or his or her dependents.

20 (iv) If such settlement is not approved, the compensation court may
21 dismiss the application at the cost of the employer or continue the
22 hearing, in the discretion of the compensation court.

23 (c) Every such lump-sum settlement approved by order of the
24 compensation court shall be final and conclusive unless procured by
25 fraud. An order approving an application under this subsection shall, in
26 any case in which the employee is represented by counsel and in which the
27 application contains a description of the medical, surgical, or hospital
28 expenses incurred for treatment of the injury that will remain unpaid as
29 part of the settlement which are disputed and for which compensability
30 has been denied by the employer, provide that the employer is not liable
31 for such expenses. Upon paying the amount approved by the compensation

1 court, the employer ~~(i)~~ shall be discharged from further liability on
2 account of the injury or death, other than liability for the payment of
3 future medical, surgical, or hospital expenses if such liability is
4 approved by the compensation court on the application of the parties, ~~and~~
5 ~~(ii) shall be entitled to a duly executed release. Upon filing the~~
6 ~~release, the liability of the employer under any agreement, award,~~
7 ~~finding, or decree shall be discharged of record.~~

8 (d) An exclusion from coverage in any health, accident, or other
9 insurance policy covering an employee which provides that coverage under
10 such insurance policy does not apply if such employee is entitled to
11 workers' compensation coverage is void as to such employee if his or her
12 employer is not liable for medical, surgical, or hospital expenses
13 incurred for treatment of an injury that will remain unpaid as part of
14 the settlement pursuant to an order entered under subdivision (2)(c) of
15 this section.

16 (3) If such lump-sum settlement is not required to be submitted for
17 approval by the compensation court, a release shall be filed with the
18 compensation court in accordance with this subsection that is signed and
19 verified by the employee and the employee's attorney. The release shall
20 be made on a form approved by the compensation court and shall contain a
21 statement signed and verified by the employee that:

22 (a) The employee understands and waives all rights under the
23 Nebraska Workers' Compensation Act, including, but not limited to:

24 (i) The right to receive weekly disability benefits, both temporary
25 and permanent;

26 (ii) The right to receive vocational rehabilitation services;

27 (iii) The right to receive future medical, surgical, and hospital
28 services as provided in section 48-120, unless such services are
29 specifically excluded from the release; and

30 (iv) The right to ask a judge of the compensation court to decide
31 the parties' rights and obligations;

1 (b) The employee is not eligible for medicare, is not a current
2 medicare beneficiary, and does not have a reasonable expectation of
3 becoming eligible for medicare within thirty months after the date the
4 settlement is executed;

5 (c) There are no medical, surgical, or hospital expenses incurred
6 for treatment of the injury which have been paid by medicaid and not
7 reimbursed to medicaid by the employer as part of the settlement; and

8 (d) There are no medical, surgical, or hospital expenses incurred
9 for treatment of the injury that will remain unpaid after the settlement.

10 (4) Upon the entry of an order of dismissal with prejudice, a A
11 release filed with the compensation court in accordance with subsection
12 (3) of this section shall be final and conclusive as to all rights waived
13 in the release unless procured by fraud. Amounts to be paid by the
14 employer to the employee pursuant to such release shall be paid within
15 thirty days of filing the release with the compensation court. Fifty
16 percent shall be added for payments owed to the employee if made after
17 thirty days after the date the release is filed with the compensation
18 court. Upon making payment owed by the employer as set forth in the
19 release and upon the entry of an order of dismissal with prejudice, as to
20 all rights waived in the release, such release shall be a full and
21 complete discharge from further liability for the employer on account of
22 the injury, including future medical, surgical, or hospital expenses,
23 unless such expenses are specifically excluded from the release, ~~and the~~
24 ~~court shall enter an order of dismissal with prejudice as to all rights~~
25 ~~waived in the release.~~

26 (5) The fees of the clerk of the compensation court for filing,
27 docketing, and indexing an application for an order approving a lump-sum
28 settlement or filing a release as provided in this section shall be
29 fifteen dollars. The fees shall be remitted by the clerk to the State
30 Treasurer for credit to the Compensation Court Cash Fund.

31 Sec. 2. Section 48-2907, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 48-2907 (1) In addition to any other fines or penalties provided by
3 law, if the commissioner finds, after notice and hearing, that a
4 contractor has violated the Employee Classification Act, the contractor
5 shall be assessed, by the commissioner, a five-hundred-dollar fine per
6 each misclassified individual for the first offense and a five-thousand-
7 dollar fine per each misclassified individual for each second and
8 subsequent offense.

9 (2) Any contractor who has unpaid fines for a violation of the
10 Employee Classification Act shall be barred from contracting with the
11 state or any political subdivision until such fines are paid.

12 Sec. 3. Section 48-2911, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 48-2911 Any contract between the state or a political subdivision
15 and a contractor shall require that each contractor who performs
16 construction or delivery service pursuant to the contract submit to the
17 state or political subdivision an affidavit attesting that (1) each
18 individual performing services for such contractor is properly classified
19 under the Employee Classification Act, (2) such contractor has completed
20 a federal I-9 immigration form and has such form on file for each
21 employee performing services, (3) such contractor has complied with
22 section 4-114, (4) such contractor has no reasonable basis to believe
23 that any individual performing services for such contractor is an
24 undocumented worker, and (5) as of the time of the contract, such
25 contractor is not barred from contracting with the state or any political
26 subdivision pursuant to section 48-2907 or 48-2912. Such contract shall
27 also require that the contractor follow the provisions of the Employee
28 Classification Act. A violation of the act by a contractor is grounds for
29 rescission of the contract by the state or political subdivision.

30 Sec. 4. Original sections 48-2907 and 48-2911, Reissue Revised
31 Statutes of Nebraska, and section 48-139, Revised Statutes Cumulative

1 Supplement, 2016, are repealed.

2 2. On page 1, strike beginning with "the" in line 1 through line 4
3 and insert "labor; to amend sections 48-2907 and 48-2911, Reissue Revised
4 Statutes of Nebraska, and section 48-139, Revised Statutes Cumulative
5 Supplement, 2016; to change provisions relating to lump-sum settlements;
6 to prohibit contractors with unpaid fines under the Employee
7 Classification Act from contracting with the state or a political
8 subdivision; to change provisions relating to a required affidavit; and
9 to repeal the original sections."