

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB953

Hearing Date: Monday February 05, 2018
Committee On: Business and Labor
Introducer: Albrecht
One Liner: Change provisions relating to lump-sum settlements under the Nebraska Workers' Compensation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Albrecht, Chambers, Crawford, Halloran, Hansen, Howard, Lowe
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

Senator Joni Albrecht
Melissa Woitalewicz
Robert J. Hallstrom

Rolf Shasteen
Paul Barta

Opponents:

Matt Schaefer

Neutral:

Rod Rehm
Erin Fox

Representing:

Introducer
Crete Carrier Corporation
Nebraskans for Workers Compensation Equity & Fairness (NWCEF); National Federation of Independent Businesses (NFIB); Nebraska Chamber of Commerce & Industry (NCCI)
Self
NWCEF; self as defense attorney

Representing:

Nebraska Medical Association; Nebraska Hospital Association

Representing:

NATA
Nebraska Workers Compensation Court

Summary of purpose and/or changes:

Section 1

Section 1 amends Neb. Rev. Stat. 48-139 which pertains to lump-sum payments in workers' compensation cases.

LB 953 requires the Workers' Compensation Court to hold a hearing on the application for an order approving a lump-sum settlement if one of the parties moves for a hearing.

LB 953 provides that lump-sum settlements shall be conclusively presumed to be in conformity with the compensation schedule and for the best interests of the employee (or his or her dependents), even if the medical, surgical, or hospital services provided to the employee are not paid or reimbursed by the employer or the employee is or expects to be a

Medicare beneficiary, if the employee's attorney affirms in the application for approving the settlement that the settlement is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all circumstances.

Section 1 also eliminates the requirement for a duly executed release if a lump-sum settlement is approved by the court. Without this language, once the employer pays the amount approved by the court, the employer is discharged from further liability, aside from court-approved liability for future medical, surgical, or hospital expenses.

The third amendment found in Section 1 addresses a recurring concern with penalties for late payments to employees. Neb. Rev. Stat. 48-139(4) allows for a fifty percent (50%) penalty for each payment made to the employee if the payment is made more than thirty (30) days after the release is filed with the compensation court. Under current language, an injured employee could not enforce the penalty because they are deemed to have waived the right to do so in the release. The amendment would allow an injured employee to enforce the penalty provision because the employee would not waive rights to enforcement until the court enters an order of dismissal with prejudice.

There has been at least one previous attempt to amend this language to allow for penalty payments, but the Workers' Compensation Court has not found the language sufficient to permit penalties. The language here comes directly from a case in the Nebraska Workers' Compensation Court, *Dragon v. The Cheesecake Factory*.

Section 2

Section 2 repeals the original Neb. Rev. Stat. 48-139.

Explanation of amendments:

AM 1779 narrows the portion of the settlement which the Workers' Compensation Court is required to approve. LB 953 requires the entire settlement to be approved if the plaintiff's attorney affirms that the settlement is in conformity with the compensation schedule and is in the best interests of the employee, even if there are unpaid medical bills or the employee is or expects to be a Medicare beneficiary. AM 1779 revises this so that only the portion of the settlement regarding medical expenses and Medicare's interests must be approved by the court if the employee's attorney affirms that the resolution of payment of disputed medical, surgical, or hospital services is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents. The court would not be required to approve other areas of the settlement.

AM 1779 also adds "elects to" before affirms to clarify that attorneys are not required to make such affirmations; the affirmations are voluntary.

Joni Albrecht, Chairperson