

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 407**

Introduced by McDonnell, 5.

Read first time January 14, 2021

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend section 48-101.01, Revised Statutes Cumulative Supplement,  
3 2020; to provide, change, and eliminate definitions; to include  
4 certain county correctional employees within provisions concerning  
5 mental injuries and mental illness; to harmonize provisions; and to  
6 repeal the original section.

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

1 Section 1. Section 48-101.01, Revised Statutes Cumulative  
2 Supplement, 2020, is amended to read:

3 48-101.01 (1) The Legislature finds and declares:

4 (a) The occupations of first responders are recognized as stressful  
5 occupations. Only our nation's combat soldiers endure more stress.  
6 Similar to military personnel, first responders face unique and uniquely  
7 dangerous risks in their sworn mission to keep the public safe. They rely  
8 on each other for survival to protect the communities they serve;

9 (b) On any given day, first responders can be called on to make life  
10 and death decisions, witness a young child dying with the child's grief-  
11 stricken family, make a decision that will affect a community member for  
12 the rest of such person's life, or be exposed to a myriad of communicable  
13 diseases and known carcinogens;

14 (c) On any given day, first responders protect high-risk individuals  
15 from themselves and protect the community from such individuals;

16 (d) First responders are constantly at significant risk of bodily  
17 harm or physical assault while they perform their duties;

18 (e) Constant, cumulative exposure to horrific events make first  
19 responders uniquely susceptible to the emotional and behavioral impacts  
20 of job-related stressors;

21 (f) Trauma-related injuries can become overwhelming and manifest in  
22 post-traumatic stress, which may result in substance use disorders and  
23 even, tragically, suicide; and

24 (g) It is imperative for society to recognize occupational injuries  
25 related to post-traumatic stress and to promptly seek diagnosis and  
26 treatment without stigma. This includes recognizing that mental injury  
27 and mental illness as a result of trauma is not disordered, but is a  
28 normal and natural human response to trauma, the negative effects of  
29 which can be ameliorated through diagnosis and effective treatment.

30 (2) Personal injury includes mental injuries and mental illness  
31 unaccompanied by physical injury for an employee who is a first

1 responder, ~~or~~ frontline state employee, or county correctional officer if  
2 such ~~first responder or frontline state employee~~:

3 (a) Establishes that the employee's employment conditions causing  
4 the mental injury or mental illness were extraordinary and unusual in  
5 comparison to the normal conditions of the particular employment; and

6 (b) Establishes, through a mental health professional, the medical  
7 causation between the mental injury or mental illness and the employment  
8 conditions by medical evidence.

9 (3) The employee bears the burden of establishing the matters  
10 described in subsection (2) of this section by a preponderance of the  
11 evidence.

12 (4) Until January 1, 2028, a first responder may establish prima  
13 facie evidence of a personal injury that is a mental injury or mental  
14 illness if the first responder:

15 (a) Presents evidence that the first responder underwent a mental  
16 health examination by a mental health professional upon entry into such  
17 service or subsequent to such entry and before the onset of the mental  
18 injury or mental illness and such examination did not reveal the mental  
19 injury or mental illness for which the first responder seeks  
20 compensation;

21 (b) Presents testimony or an affidavit from a mental health  
22 professional stating the first responder suffers from a mental injury or  
23 mental illness caused by one or more events or series of events which  
24 cumulatively produced the mental injury or mental illness which brought  
25 about the need for medical attention and the interruption of employment;

26 (c) Presents evidence that such events or series of events arose out  
27 of and in the course of the first responder's employment; and

28 (d) Presents evidence that, prior to the employment conditions which  
29 caused the mental injury or mental illness, the first responder had  
30 participated in resilience training and updated the training at least  
31 annually thereafter.

1 (5) For purposes of this section, mental injuries and mental illness  
2 arising out of and in the course of employment unaccompanied by physical  
3 injury are not considered compensable if they result from any event or  
4 series of events which are incidental to normal employer and employee  
5 relations, including, but not limited to, personnel actions by the  
6 employer such as disciplinary actions, work evaluations, transfers,  
7 promotions, demotions, salary reviews, or terminations.

8 (6)(a) The Department of Health and Human Services shall reimburse a  
9 first responder for the cost of annual resilience training not reimbursed  
10 by the first responder's employer. The department shall pay reimbursement  
11 at a rate determined by the Critical Incident Stress Management Program  
12 under section 71-7104. Reimbursement shall be subject to the annual limit  
13 set by such program under section 71-7104.

14 (b) To obtain reimbursement under this subsection, a first responder  
15 shall submit an application to the Department of Health and Human  
16 Services on a form and in a manner prescribed by the department.

17 (7) The Department of Health and Human Services shall maintain and  
18 annually update records of first responders who have completed annual  
19 resilience training.

20 (8) For purposes of this section:

21 (a) County correctional officer means a correctional officer  
22 employed by a high-population county whose:

23 (i) Position obligates such employee to maintain order and custody  
24 of inmates in a county jail; and

25 (ii) Whose duties involve regular and direct interaction with high-  
26 risk individuals;

27 (b) Custody means:

28 (i) Under the charge or control of a state institution or state  
29 agency and includes time spent outside of the state institution or state  
30 agency; and

31 (ii) In custody of a county jail or in the process of being placed

1 in the custody of a county jail in a high-population county;

2 (c) ~~(a)~~ First responder means a sheriff, a deputy sheriff, a police  
3 officer, an officer of the Nebraska State Patrol, a volunteer or paid  
4 firefighter, or a volunteer or paid individual licensed under a licensure  
5 classification in subdivision (1) of section 38-1217 who provides medical  
6 care in order to prevent loss of life or aggravation of physiological or  
7 psychological illness or injury;

8 (d) ~~(b)~~ Frontline state employee means an employee of the Department  
9 of Correctional Services or the Department of Health and Human Services  
10 whose duties involve regular and direct interaction with high-risk  
11 individuals;

12 (e) High-population county means a county with more than three  
13 hundred thousand inhabitants as determined by the most recent federal  
14 decennial census or the most recent revised certified count by the United  
15 States Bureau of the Census;

16 (f) ~~(e)~~ High-risk individual means an individual in state custody  
17 for whom violent or physically intimidating behavior is common,  
18 including, but not limited to, a committed offender as defined in section  
19 83-170, a patient at a regional center as defined in section 71-911, ~~and~~  
20 a juvenile committed to the Youth Rehabilitation and Treatment Center-  
21 Kearney or the Youth Rehabilitation and Treatment Center-Geneva, and a  
22 person in the custody of a county jail or in the process of being placed  
23 in the custody of a county jail in a high-population county;

24 (g) ~~(d)~~ Mental health professional means:

25 (i) A practicing physician licensed to practice medicine in this  
26 state under the Medicine and Surgery Practice Act;

27 (ii) A practicing psychologist licensed to engage in the practice of  
28 psychology in this state as provided in section 38-3111 or as provided in  
29 similar provisions of the Psychology Interjurisdictional Compact; or

30 (iii) A person licensed as an independent mental health practitioner  
31 under the Mental Health Practice Act; and

1           (h) ~~(e)~~ Resilience training means training that meets the guidelines  
2 established by the Critical Incident Stress Management Program under  
3 section 71-7104 and that teaches how to adapt to, manage, and recover  
4 from adversity, trauma, tragedy, threats, or significant sources of  
5 stress. ~~;~~ ~~and~~

6           ~~(f) State custody means under the charge or control of a state~~  
7 ~~institution or state agency and includes time spent outside of the state~~  
8 ~~institution or state agency.~~

9           (9) All other provisions of the Nebraska Workers' Compensation Act  
10 apply to this section.

11           Sec. 2. Original section 48-101.01, Revised Statutes Cumulative  
12 Supplement, 2020, is repealed.