

## LEGISLATIVE BILL 757

Approved by the Governor June 8, 1993

Introduced by Landis, 46; Abboud, 12; Coordsen, 32; Withem, 14

AN ACT relating to employees; to amend sections 48-121, 48-138, 48-139, 48-146.01, 48-151, 48-162, 48-162.01, 48-168, 48-172, 48-173, 48-187, 48-194, 48-612, and 77-912, Reissue Revised Statutes of Nebraska, 1943, and sections 44-5028, 48-120, 48-121.01, 48-128, 48-140, 48-141, 48-145.04, 48-162.02, 48-163, and 48-1,110, Revised Statutes Supplement, 1992; to provide for workers' compensation premium rates; to limit and provide duties for employers relating to medical services; to provide for certification of and services by managed care organizations; to provide standards for vocational rehabilitation; to provide when compensation is due during rehabilitation; to change provisions relating to the maximum weekly income benefit; to authorize an independent medical examiner system; to eliminate district court review of certain settlements; to provide certain fees for the compensation court; to define terms; to eliminate funds; to create funds; to change provisions relating to the adoption of rules and regulations; to provide for informal dispute resolution; to provide access to employment records; to harmonize provisions; to provide for payments by certain insurance companies and risk management pools; to provide for safety committees; to provide for the Workplace Safety Consultation Program; to provide powers and duties for the Director of Insurance, Commissioner of Labor, and the Nebraska Workers' Compensation Court; to provide for a study, hearing, and report; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 44-5028, Revised Statutes Supplement, 1992, be amended to read as follows:

44-5028. (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the director by an advisory organization designated by the director.

(2) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which a rate may be made. Such subclassifications and the filing shall be subject to the provisions of the Property and Casualty Insurance Rate and Form Act applicable to filings generally.

(3) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. Such rating plans and the filing shall be subject to the provisions of the act applicable to filings generally.

(4) The director shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data ~~thereby~~ produced can be reported ~~consistent~~ consistently with the uniform classification system and experience rating system and ~~in such a fashion so as to~~ will allow for the application of experience rating filed by the advisory organization.

(5) Workers' compensation premiums shall be calculated on a basis that, as nearly as is practicable, after the effects of experience rating and other applicable rating plans have been considered, the sum of expected losses and expected expenses as a percentage of premium shall be the same for high-wage-paying and low-wage-paying employers in the same job classification. The director shall:

(a) Determine the extent to which high-wage-paying employers are paying premiums higher than those which would produce the same ratio of expected losses and expenses to premiums as for employers paying lower wages;

(b) Determine whether this effect is primarily seen in certain types of job classifications such as contracting;

(c) Investigate alternatives and modifications to the current method of computing workers' compensation premiums, including, but not limited to, wage rate recognition plans used in other states, split classifications, and wage rate caps;

(d) Conduct a hearing or hearings on this matter, including consideration of other alternatives; and

(e) Unless rate filings consistent with the findings of the hearing or hearings are made to be effective within a reasonable time after the conclusion of the hearing or hearings, the director shall adopt and promulgate rules and regulations to become effective no later than January 1, 1995, to equalize, as nearly as is practicable, expected losses and expenses as a percentage of workers' compensation premiums for high-wage-paying and low-wage-paying employers in the same job classification. If the effect is found to be primarily seen in certain types of job classifications, such as contracting, the rules and regulations may be adopted and promulgated to apply only to such types of job classifications.

Sec. 2. That section 48-120, Revised Statutes Supplement, 1992, be amended to read as follows:

48-120. (1) The employer shall be liable for all reasonable medical, surgical, and hospital services, including plastic or reconstructive but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health

and employment, and shall include damage to or destruction of artificial members, dental appliances, teeth, hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

The compensation court may establish schedules of maximum fees for such services. If the compensation court establishes such a schedule, it shall publish and furnish such schedule to the public. The compensation court shall review such schedule at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of the maximum fee established by the compensation court for any such service. The compensation court shall establish and charge a fee to recover the cost of published fee schedules. Notwithstanding any other provision of this section, the compensation court may exclude from the application of such schedules those services performed under a managed care plan certified pursuant to section 3 of this act.

(2)(a) The employee shall have the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member shall mean the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee shall have the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer shall have the right to select the physician. The employee or employer may not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the insurer, risk management pool, or self-insured employer, (i) the employee shall have the right to select a

physician and shall not be made to enter a managed care plan and (ii) the employer shall be liable for medical, surgical, and hospital services subsequently found to be compensable. The employee shall have the right to make the initial selection of his or her physician from among all licensed physicians in the state and shall have the right to make an alternative choice of physician if he or she is not satisfied with the physician first selected. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee shall select selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer shall not be liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to ~~make such selection~~ select a physician using the procedures provided by this subsection, the selection requirements of this ~~section~~ subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury shall require.

(f) The employer shall not be responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer shall not be liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment shall be valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer and the Nebraska Workers' Compensation Court a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the Nebraska Workers' Compensation Court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. Generally, all medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the carrier, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the Nebraska Workers' Compensation Court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the carrier. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The Nebraska Workers' Compensation Court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of ~~doctor~~, physician, hospital, ~~or~~ rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 7 of this act. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician shall mean

any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry.

(8) The Nebraska Workers' Compensation Court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, an insurer, a risk management pool, or a self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 3 of this act. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract shall receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer shall be liable for medical, surgical, and hospital services previously provided. The insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Sec. 3. (1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be adopted and promulgated by the compensation court. Each application for certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical,



and hospital services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose providers of medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change medical, surgical, or hospital service providers under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent medical examiner pursuant to section 7 of this act. No petition may be filed with the compensation court pursuant to section 48-173 regarding the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 7 of this act. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify or may revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify or may revoke or suspend the certification of a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section or service under the plan is not being provided in accordance with the terms of a certified plan.

(6) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 4. That section 48-121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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



(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01; nor less than the minimum weekly income benefit specified in section 48-121.01; PROVIDED, that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease.

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

(3) For disability resulting from permanent injury of the following classes, the compensation shall be in addition to the amount paid for temporary disability; PROVIDED, the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable, viz: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; PROVIDED, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the

entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there ~~shall be~~ is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to ~~the provisions of~~ subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in ~~said~~ such subdivision as the disabilities bear to those produced by the injuries named therein. ~~Should~~ If the employer and the employee ~~be~~ are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to ~~the provisions of~~ sections 48-173 to 48-185. Compensation under this subdivision shall not be more than the maximum weekly income benefit specified in section 48-121.01; nor less than the minimum weekly income benefit specified in section 48-121.01; PROVIDED, that if at the time of the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation.

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day

or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing rehabilitation whether the rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Sec. 5. That section 48-121.01, Revised Statutes Supplement, 1992, be amended to read as follows:

~~48-121.01. Commencing on July 10, 1990, the maximum weekly income benefit under sections 48-121 and 48-122 shall be two hundred fifty-five dollars and the minimum weekly income benefit under sections 48-121 and 48-122 shall be forty-nine dollars. (1)(a)(i) Commencing July 1, 1991, the maximum weekly income benefit under sections 48-121 and 48-122 shall be two hundred sixty-five dollars.~~

(ii) Commencing June 1, 1994, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred ten dollars.

(iii) Commencing January 1, 1995, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred fifty dollars.

(b) Commencing January 1, 1996, and each January 1 thereafter, the maximum weekly income benefit under sections 48-121 and 48-122 shall be one hundred percent, computed to the next higher whole dollar, of the state average weekly wage determined pursuant to section 6 of this act, except that for the purposes of calendar years commencing after 1996, the Governor may not later than November 15, 1996, and not later than each November 15 thereafter, conduct a public hearing after not less than thirty days' notice to consider whether he or she should issue an order to suspend the effectiveness of the change in the maximum weekly income benefit otherwise required by this subdivision for the ensuing calendar year. In order to make his or her decision, the Governor shall consider such factors as recent trends in economic conditions in the state, general wage levels, workers' compensation benefit levels, and workers' compensation premium levels. After such hearing but not later than November 30 immediately thereafter, the Governor may issue an order to suspend the effectiveness of the change in the maximum weekly income benefit otherwise required by this subdivision for the ensuing calendar year. and the

(2) The minimum weekly income benefit under sections 48-121 and 48-122 shall be forty-nine dollars.

Sec. 6. For purposes of section 48-121.01, the state average weekly wage shall be determined by the Nebraska Workers'

Compensation Court as follows: On or before October 1 of each year, the total insured wages reported to the Department of Labor for the preceding calendar year, excluding federal employees, shall be divided by the average monthly number of employees insured under the Employment Security Law. Such average monthly number of employees shall be determined by dividing the total number of employees insured under the Employment Security Law reported for such calendar year by twelve. The state average annual wage thus obtained shall be divided by fifty-two, and the state average weekly wage thus determined shall be rounded to the nearest whole cent. The state average weekly wage as so determined shall be applicable for the calendar year commencing January 1 following the October 1 determination.

Sec. 7. (1) The Nebraska Workers' Compensation Court may develop and implement an independent medical examiner system consistent with the requirements of this section. As part of such system, the compensation court by a majority vote of the judges thereof may create, maintain, and periodically validate a list of health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the compensation court finds most commonly used by injured employees. The compensation court may establish a fee schedule for services rendered by independent medical examiners and may adopt and promulgate any rules and regulations considered necessary to carry out the purposes of this section.

(2) An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner shall not be the employee's treating health care provider and shall not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid.

(3) If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the compensation court shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including, but not limited to, whether the injured employee is able to perform any gainful employment temporarily or permanently, what physical restrictions, if any, would be imposed on the employee's employment, whether the injured employee has reached maximum medical improvement, the existence and extent of any permanent physical impairment, and the reasonableness and necessity of any medical treatment previously provided, or to be provided, to the injured employee.

(4) The compensation court may adopt and promulgate rules and regulations pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. In addition to the review of records and

information, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties or by the compensation court.

(5) The independent medical examiner shall submit a written report to the compensation court, the employer, and the employee stating the examiner's medical findings on the issues raised and providing a description of findings sufficient to explain the basis of those findings. The fee for the examination and report shall be paid by the employer.

(6) The written report of the independent medical examiner's findings shall be admissible in a proceeding before the compensation court and may be received into evidence by the compensation court on its own motion. If the parties agree to use of a medical examiner, the examiner's findings shall be binding unless the employee was not given fair and adequate notice of all rights relinquished by the agreement at the time the agreement was made in a form and manner established by the compensation court or unless the agreement to the use of a medical examiner was procured by fraud or coercion.

(7) Any health care provider acting without malice and within the scope of the provider's duties as an independent medical examiner shall be immune from civil liability for making any report or other information available to the compensation court or for assisting in the origination, investigation, or preparation of the report or other information so provided.

Sec. 8. That section 48-128, Revised Statutes Supplement, 1992, be amended to read as follows:

48-128. (1) If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his or her obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. For the additional disability, the employee shall be compensated out of a special trust fund created for that purpose; which ~~sum so set aside~~ shall be known as the Second Injury Fund which is hereby created. If the subsequent compensable injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent partial disability, the employer shall pay the compensation benefits prescribed by this section for a period not exceeding three hundred twenty-five weeks, and for any

compensation benefits payable after such period of three hundred twenty-five weeks, the dependents shall be compensated out of the ~~Second Injury Fund fund.~~

(2) In order to qualify under this section, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge.

(3) As used in this section, preexisting permanent partial disability shall mean any preexisting permanent condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this section unless it would support a rating of twenty-five percent loss of earning power or more or support a rating which would result in compensation payable for a period of ninety weeks or more for disability for permanent injury as computed under subdivision (3) of section 48-121.

(4) The ~~Second Injury Fund~~ fund shall be for the purpose of making payments in accordance with this section and for paying administrative expenses relating to such fund. The State Treasurer shall be the custodian of the ~~Second Injury Fund fund~~, and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. ~~The Second Injury Fund fund~~ shall be raised and derived ~~from the following source as follows:~~ Every insurance company which is transacting business in this state shall; on or before March 1 of each year; pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(5) The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself or herself that the amounts have been properly paid in conformity with this section.

(6) The Director of Insurance, after notice and hearing pursuant to ~~Chapter 44, article 23~~ sections 44-2301 and 44-2312, may rescind or refuse to reissue the license of any company which fails to remit



the amounts due in conformity with this section.

(7) The Director of Insurance shall ~~deposit~~ remit the amounts paid, in conformity with this section, with to the State Treasurer for ~~the benefit of~~ credit to the Second Injury Fund promptly upon completion of his or her audit and examination, and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy. One percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(8) Every employer in the occupations described in section 48-106 who ~~shall qualify~~ qualifies as a self-insurer and who ~~shall be~~ is issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the ~~Second Injury Fund~~ fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(9) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(10) The presiding judge of the Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Second Injury Fund. In furtherance of this purpose the Attorney General shall appoint a member of his or her staff to represent the Second Injury Fund in all proceedings brought to enforce claims for or against ~~the Second Injury Fund~~ such fund.

(11) ~~The State Treasurer, as custodian of the Second Injury Fund,~~ Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of ~~such fund~~ the Second Injury Fund setting forth the balance ~~thereof~~ of the fund as of the beginning of each month, the income and its therefrom, ~~and the sources, thereof,~~ the payments from such fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise, by reason of any payment made from the fund.

(12) When the fund ~~shall equal or exceed~~ equals or exceeds eight hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance carriers. Thereafter whenever the amount of the fund ~~shall be~~ is reduced below four hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the presiding judge of the Nebraska Workers' Compensation Court ~~shall determine~~ determines that payments likely to be made from the fund in the next

succeeding year will probably cause the fund to be reduced below four hundred thousand dollars, the presiding judge of the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance carriers and risk management pools, that such contributions are ~~forthwith~~ to be resumed as of the date set in such notice and such contributions shall ~~thereafter~~ continue as provided in this section after the effective date of such notice. Such contributions shall ~~thereafter~~ continue until the fund ~~shall~~ again ~~amount to equals~~ eight hundred thousand dollars. Out of the Second Injury Fund, the additional compensation payments shall be made to such employee or dependent by the compensation court once each month in the same manner as the salaries of the employees of the compensation court are paid. In all cases when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, employer's insurer, or risk management pool under this section or when a claim is made against ~~the Second Injury Fund~~ such fund, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service of summons shall be had upon the Attorney General. It shall be the duty of the Attorney General to act as attorney for the state.

(13) Any expenses necessarily incurred by the Second Injury Fund or by the Attorney General on behalf of ~~the Second Injury Fund~~ such fund in any case when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, employer's insurer, or risk management pool under this section or when a claim is made against the Second Injury Fund may be paid out of ~~the Second Injury Fund~~ such fund. Such expenses may be taxed as costs and recovered by the Second Injury Fund in any such case in which the Second Injury Fund prevails.

Sec. 9. That section 48-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-138. The amounts of compensation payable periodically under the law by agreement of the parties with the approval of the Nebraska Workers' Compensation Court may be commuted to one or more lump-sum payments, except compensation due for death, ~~and~~ permanent disability, or claimed permanent disability which may be commuted only upon the order or decision of the compensation court ~~and the district court pursuant to section 48-139~~; PROVIDED, that ~~where~~ when commutation is agreed upon, ~~or ordered~~ pursuant to this section or approved by order pursuant to section 48-139, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five percent per annum with annual rests. ~~Upon paying such amount, the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.~~

The fee of the clerk of the compensation court for filing, docketing, and indexing an agreement submitted for approval as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Sec. 10. That section 48-139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-139. Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability; under the Nebraska Workers' Compensation Act; shall be commuted to one or more lump-sum payments, such settlement or agreement therefor shall be submitted to the Nebraska Workers' Compensation Court; in the following manner: An application for ~~the approval of an order approving~~ such settlement; ~~or agreement~~ and a duplicate original of such application, both signed and verified by both parties, shall be filed with the clerk of the Nebraska Workers' Compensation Court and shall be entitled the same as an action by such employee or dependents against such employer. The application and shall contain a concise statement of the terms of the settlement ~~or agreement~~ sought to be approved, ~~together~~ with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, ~~and~~ the nature of the employment, ~~and such other matters as may be required by the compensation court.~~ If such application is approved by the Nebraska Workers' Compensation Court, the application shall be submitted to a judge of the district court in the county in which the accident occurred unless otherwise stipulated by all the parties, but if the accident occurred outside of the State of Nebraska, the application shall, unless otherwise stipulated by all the parties, be submitted to the district court of Lancaster County. The judge of the district court, immediately, or within one week after the filing of such application, unless there be good cause for continuance, at chambers or in open court and in or out of term time, shall The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

~~If, after such inquiry, the district~~ the compensation court finds such settlement ~~or agreement~~ is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, ~~and if such application has been approved by the compensation court, the district~~ the compensation court shall make an order approving the same. If such agreement or settlement ~~be is~~ not approved, the ~~district~~ compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the ~~district~~ compensation court. ~~The fees of the clerk of the district court for filing, docketing, and indexing such application shall be ten dollars.~~

Every such lump-sum settlement or agreement approved by

order of the compensation court shall be final and conclusive unless procured by fraud. After the application is acted upon by the district court, a copy of the order of the district court shall be filed immediately with the compensation court by the employer or insurer. Upon paying the amount approved by the compensation court, the employer shall be discharged from all further liability on account of the injury or death and shall be entitled to a duly executed release. Upon filing the release or other proof of payment, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a settlement or agreement shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Sec. 11. That section 48-140, Revised Statutes Supplement, 1992, be amended to read as follows:

48-140. All settlements by agreement of the parties with the approval of the Nebraska Workers' Compensation Court and all awards of compensation made by the compensation court, except those amounts payable periodically, shall be final and not subject to readjustment; PROVIDED, no settlement shall be final unless it is in conformity with the Nebraska Workers' Compensation Act and ~~there is approval and a finding by~~ approved by order of the compensation court ~~and the district court or any appellate court pursuant to section 48-139.~~

Sec. 12. That section 48-141, Revised Statutes Supplement, 1992, be amended to read as follows:

48-141. All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents; by lump-sum payments, approved by order pursuant to section 48-139, shall be final, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage; or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

Sec. 13. That section 48-145.04, Revised Statutes Supplement, 1992, be amended to read as follows:

48-145.04. (1) The Nebraska Workers' Compensation Court shall, prior to January 1 of each year, estimate as closely as possible the actual cost to the court of evaluating an application for self-insurance and supervising and administering the self-insurance program for the ensuing year and assess the amount thereof, but not to exceed two thousand dollars, against each applicant for self-insurance in this state.

Such assessment shall be in addition to the payments required by subdivision (1)(b) of section 48-145 and sections 20 and 38 of this act. The court shall notify each applicant of the amount of the individual assessment. Such assessment shall be due and payable with the application for self-insurance. If any assessment is not paid, the application shall not be considered.

(2) All payments received under subsection (1) of this section shall be ~~promptly paid~~ remitted to the State Treasurer for deposit in the state treasury for credit to the Self-Insurance Cash Fund ~~which is hereby created~~ Compensation Court Cash Fund. Such ~~fund~~ payments shall be expended solely for evaluating applications for self-insurance and to aid in supervising and administering the self-insurance program. After the first year, the balance remaining in ~~such fund~~ of such payments at the time each annual assessment is made shall be taken into account when the total assessment for the ensuing year is made.

(3) Any money in the Self-Insurance Cash Fund on the operative date of this section shall be transferred to the Compensation Court Cash Fund on such date. ~~available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.~~

~~(4) The State Treasurer shall furnish monthly to the compensation court a statement of the Self-Insurance Cash Fund setting forth the balance as of the first day of the preceding month, the income and its sources, the payments from such fund in itemized form, and the balance as of the last day of the preceding month.~~

Sec. 14. That section 48-146.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-146.01. (1) The Director of Insurance, after consultation with carriers authorized to issue workers' compensation policies in this state, shall put into effect a reasonable system for the equitable apportionment among such carriers of applicants for such policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on workers' compensation premiums, shall be covered by workers' compensation insurance following his or her application to the assigned-risk system and tender of required premium. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no carrier shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such carrier during the preceding year bears to the total compensation premiums written in the state by all such carriers during the preceding calendar year.

(2) Any employer which is required to establish a safety committee pursuant to sections 32 to 34 of this act and which is not in compliance with such sections shall not be entitled to be covered by workers' compensation insurance under this section.

Sec. 15. That section 48-151, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-151. Throughout the Nebraska Workers' Compensation Act, the following words and phrases ~~as used therein~~ shall be considered to have the following meaning, respectively, unless the context ~~shall~~ clearly ~~indicate~~ indicates a different meaning in the construction used:

(1) The term physician shall include surgeon and in either case shall mean one legally authorized to practice his or her profession within the State of Nebraska and who is in good standing in his or her profession at the time;

(2) The word accident ~~as used in the Nebraska Workers' Compensation Act~~ shall, ~~unless a different meaning is clearly indicated by the context,~~ be construed to mean an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant shall have a burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There shall be no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) The term occupational disease shall mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and shall exclude all ordinary diseases of life to which the general public is exposed;

(4) The terms injury and personal injuries shall mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The terms shall include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms shall include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms shall not be construed to include disability or death due to natural causes but occurring while the employee is at work, nor to mean an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, shall mean only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of the employment, it is hereby declared: ~~Not~~ not to cover workers except while engaged in, on, or about the premises where their duties are being performed; or where their service requires their presence as a part of such service at the time of the injury; and during the hours of service as such workers, and not to cover workers who; on their own



initiative; leave their line of duty or hours of employment for purposes of their own;

(7) ~~For the purpose of the Nebraska Workers' Compensation Act, willful~~ Willful negligence shall consist of (a) deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent; ~~and~~

(8) Intoxication shall include, but not be limited to, being under the influence of a controlled substance not prescribed by a physician; and

(9) ~~(8)~~ Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural shall be included; when the masculine gender is used, the feminine shall be included.

Sec. 16. That section 48-162, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-162. The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, foreman, or officer of any copartnership or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order. The compensation court may establish a schedule of fees for services including, but not limited to, copying, preparation of forms and other material, responding to inquiries for information, and publications prepared by the compensation court. The compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their employers under the act. In establishing fees the compensation court shall consider costs for time, material, and delivery.

~~There is hereby created the Nebraska Workers' Compensation Court Cash Fund. All sums of money received from fees pursuant to this section and sections 48-120, 48-157, and 48-165 shall be paid to the State Treasurer and deposited in the Nebraska Workers' Compensation Court Cash Fund. Money in such fund shall be used to fund the services described in this section and sections 48-120, 48-157, and 48-165. Any money in the fund available for investment shall be invested~~

~~by the state investment officer pursuant to sections 72-1237 to 72-1269.~~

Sec. 17. That section 48-162.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-162.01. (1) One of the primary purposes of the Nebraska Workers' Compensation Act shall be restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in physical, medical, and vocational rehabilitation to be appointed by the presiding judge. Salaries, other benefits, and expenses incurred for purposes of vocational rehabilitation may be paid from the Vocational Rehabilitation Fund created under section 48-162.02.

(2) Such specialists shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities; and individual service providers and counselors, both private and public, which have been approved by the Nebraska Workers' Compensation Court. The compensation court shall approve as qualified such facilities, institutions, ~~and~~ physicians, and other individual service providers and counselors as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury and is staffed with trained and qualified personnel; and, with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he or she has had the experience and training specified by the compensation court. No individual service provider or counselor shall be considered qualified unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act shall be entitled to prompt medical and physical rehabilitation services. When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including job placement and retraining, ~~and job placement~~, as may be reasonably necessary to restore him or her to suitable employment.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2)

of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop a vocational rehabilitation plan. It shall be a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and the vocational rehabilitation plan shall be paid by the employer or his or her insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It shall be a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the rehabilitation counselor to be unlikely to result in a job placement for the injured employee that is consistent with the priorities listed in this section. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same

employer;

(c) A new job with the same employer;

(d) A job with a new employer; or

(e) A period of formal retraining which is designed to lead to employment in another career field.

If such physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' Compensation Court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a qualified ~~physician or~~ facility, institution, physician, or other individual service provider for evaluation and report of the practicability of, need for, and kind of service; ~~or treatment, or training~~ necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation ~~to~~ shall be borne by the employer or his or her insurer, ~~except that the costs of such evaluation and report involving vocational rehabilitation shall be paid from the Vocational Rehabilitation Fund. When both physical or medical rehabilitation and vocational rehabilitation are involved, the costs may be~~

~~apportioned by the compensation court between the employer and the Vocational Rehabilitation Fund.~~ Upon receipt of such report; and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report; or ~~such other necessary~~ physical or medical rehabilitation treatment or service ~~he, she, or they may deem necessary;~~ be provided at the expense of the employer or his or her insurer.

Vocational rehabilitation training, ~~treatment, or service~~ shall be paid from the Vocational Rehabilitation Fund.

(4) When physical or medical rehabilitation requires residence at or near the facility or institution; away from the employee's customary residence, ~~either in or out of the State of Nebraska whether within or without this state,~~ the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution ~~and~~ away from the employee's customary residence, ~~and~~ whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Vocational Rehabilitation Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(5) The Nebraska Workers' Compensation Court may cooperate on a reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.

(6) ~~Whenever the Nebraska Workers' Compensation Court or judge thereof determines that there is a reasonable probability that with appropriate training, rehabilitation, or education a person who is entitled to compensation for total or partial disability which is or is likely to be permanent may be rehabilitated to the extent that he or she will require less care and attendance or to the extent that he or she can become gainfully employed or increase his or her earning capacity and that it is for the best interests of such person to undertake such training, rehabilitation, or education, if~~ If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under ~~the provisions of~~ subsection (3) of this section ~~or fails to cooperate in such evaluation,~~ the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

Sec. 18. That section 48-162.02, Revised Statutes Supplement, 1992, be amended to read as follows:

48-162.02. (1) ~~There is hereby created a special trust fund for the purposes set forth in section 48-162.01, which sum so set aside shall be known as the~~ The Vocational Rehabilitation Fund is hereby

created.

(2) The Vocational Rehabilitation Fund shall be for the purpose of making payments in accordance with section 48-162.01. The State Treasurer shall be the custodian of the ~~Vocational Rehabilitation Fund~~ fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The ~~Vocational Rehabilitation Fund~~ fund shall be raised and derived ~~from the following source as follows:~~ Every insurance company which is transacting business in this state shall; on or before March 1 of each year; pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state.

(3) The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself or herself that the amounts have been properly paid in conformity with this section.

(4) The Director of Insurance, after notice and hearing pursuant to ~~Chapter 44, article 23 sections 44-2301 and 44-2312,~~ may rescind or refuse to reissue the license of any company which fails to remit the amounts due in conformity with this section.

(5) The Director of Insurance shall ~~deposit~~ remit the amounts paid, in conformity with this section, ~~with to~~ the State Treasurer for ~~the benefit of the~~ credit to the Vocational Rehabilitation Fund promptly upon completion of his or her audit and examination; and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy. One percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who ~~shall qualify~~ qualifies as a self-insurer and who ~~shall be~~ is issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the Vocational Rehabilitation Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance

companies, risk management pools, and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The presiding judge of the Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Vocational Rehabilitation Fund. The Attorney General shall appoint a member of his or her staff to represent the ~~Vocational Rehabilitation Fund~~ fund when necessary or when requested by the presiding judge.

(9) The ~~State Treasurer, as custodian of the Vocational Rehabilitation Fund; Department of Administrative Services~~ shall furnish monthly to the Nebraska Workers' Compensation Court a statement of ~~such fund~~ the Vocational Rehabilitation Fund setting forth the balance ~~thereof~~ of the fund as of the beginning of each month, the income and its therefrom; ~~and the sources, thereof;~~ the payments from such fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

(10) When the fund ~~shall equal or exceed~~ equals or exceeds one million five hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance carriers. Thereafter whenever the amount of the fund ~~shall be~~ is reduced below eight hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the presiding judge of the Nebraska Workers' Compensation Court ~~shall determine~~ determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below eight hundred thousand dollars, the presiding judge of the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance carriers and risk management pools, that such contributions are ~~forthwith~~ to be resumed as of the date set in such notice and such contributions shall ~~thereafter~~ continue as provided in this section after the effective date of such notice. Such contributions shall ~~thereafter~~ continue until the fund ~~shall~~ again ~~amount to~~ equals one million five hundred thousand dollars. ~~Out of the Vocational Rehabilitation Fund, payments~~ Payments from the fund shall be made in accordance with section 48-162.01 in the same manner as for claims against the state.

Any expenses necessarily incurred by the Vocational Rehabilitation Fund may be paid out of the ~~Vocational Rehabilitation Fund~~ fund.

Sec. 19. Every insurance company which is transacting workers' compensation insurance business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the gross amount of direct writing premiums received by



the company during the preceding calendar year for workers' compensation insurance business transacted in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to one percent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk. The computation of the amount shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish the forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department.

Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid. After notice and hearing in accordance with the Administrative Procedure Act, the Director of Insurance may rescind or refuse to reissue the certificate of authority of any company which fails to remit the amount due.

The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Compensation Court Cash Fund, except that (1) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account in the state treasury until disposition of the controversy and (2) one percent of the amounts received shall be credited to the Department of Insurance to cover the costs of administration.

Sec. 20. Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and is issued a permit to self-insure shall remit to the State Treasurer for credit to the Compensation Court Cash Fund an annual amount equal to one percent of the prevailing premium rate which would be paid by such employer for a policy of workers' compensation insurance but in no event less than one hundred dollars.

Sec. 21. The amounts required to be paid by insurance companies, risk management pools, and self-insurers under sections 19 and 20 of this act shall be in addition to any other amounts, either in taxes, assessments, or otherwise, required by any other law of this state.

Sec. 22. The Compensation Court Cash Fund is hereby created. The fund shall be used to aid in providing for the expense of administering the Nebraska Workers' Compensation Act and the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court.

All fees received pursuant to sections 48-120, 48-138, 48-139, 48-145.04, 48-157, 48-162, and 48-165 and section 3 of this act shall be remitted to the State Treasurer for credit to the fund. The fund shall also consist of amounts credited to the fund pursuant to section 77-912 and sections 19 and 20 of this act. The State Treasurer may

receive and credit to the fund any money which may at any time be contributed to the state or the fund by the federal government or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Funds in the Nebraska Workers' Compensation Court Cash Fund on the operative date of this section shall be transferred to the Compensation Court Cash Fund on such date.

Sec. 23. The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Compensation Court Cash Fund setting forth the balance in the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance in the fund on hand as of the last day of the preceding month.

At the close of business on June 30 of any year, if the balance in the fund is equal to or exceeds three times the sum expended and encumbered in the fiscal year then ending, the contributions to the fund pursuant to sections 19 and 20 of this act shall abate for the calendar year next ensuing and only for that year and the compensation court shall notify all self-insurers and the Director of Insurance who shall notify all workers' compensation insurance carriers and risk management pools of such abatement and of the date when such contributions shall resume. No abatement shall ever extend beyond one year.

Sec. 24. That section 48-163, Revised Statutes Supplement, 1992, be amended to read as follows:

48-163. (1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act and shall administer and enforce all of the provisions of such act, except such as are committed to the Supreme Court.

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice. The compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to subscribers at a cost to be assessed against each subscriber. The compensation court shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.

(3) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, papers, payrolls, medical reports, X-rays, photographs or plates, or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before such compensation court or any judge thereof.

(4) The court may expedite the hearing of a disputed case when there is an emergency.

Sec. 25. That section 48-168, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-168. (1) The Nebraska Workers' Compensation Court shall not be bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Nebraska Workers' Compensation Act.

(2)(a) The Nebraska Workers' Compensation Court may establish procedures whereby a dispute may be submitted by the parties, by the supplier of medical, surgical, or hospital services pursuant to section 48-120, or by the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173. No settlement or agreement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement or agreement is in conformity with the Nebraska Workers' Compensation Act.

(b) Informal dispute resolution proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution proceedings, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A staff member or mediator shall not be subject to process requiring the disclosure of any matter discussed during informal dispute resolution proceedings. Any information from the files, reports, notes of the staff member or mediator, or other materials or communications, oral or written, relating to an informal dispute resolution proceeding obtained by a staff member or mediator is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. No staff member or mediator shall be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

(c) The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution proceedings that are considered necessary to effectuate the purposes of this section.

Sec. 26. That section 48-172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-172. ~~There~~ Except as provided in sections 48-138 and

48-139, there shall be no filing fees charged by the Nebraska Workers' Compensation Court. When a reasonable attorney's fee is allowed the employee against the employer as provided in section 48-125, the compensation court shall further assess against the employer as costs of the employee; the cost of depositions if admitted into evidence; and may further assess against the employer the fees and mileage for necessary witnesses attending the proceedings at the instance of the employee. Both the necessity for the witness and the reasonableness of the fees shall be approved by the compensation court. Such witnesses shall be reimbursed for their necessary mileage at the rate provided in section 81-1176, ~~for state employees.~~

Sec. 27. That section 48-173, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-173. Procedure before the Nebraska Workers' Compensation Court shall be as follows: In all cases involving a dispute with reference to workers' compensation, either party at interest, without cost, either in person or by attorney, may file with the compensation court a petition setting forth the names and places of residence of the parties and the facts relating to the employment at the time of the injury for which compensation is claimed, the injury in its extent and character, the amount of wages being received at the time of the injury, the knowledge of or notice to the employer of the occurrence of such injury, and such other facts as may be considered necessary for the information of the compensation court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

No petition may be filed with the compensation court regarding the issue of reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 7 of this act.

Sec. 28. That section 48-187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-187. No filing fees shall be charged by the clerk of any court for any service required by the Nebraska Workers' Compensation Act; except as provided in sections ~~48-139~~ 48-138, 48-139, and 48-188.

Sec. 29. That section 48-194, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-194. The Risk Manager, on behalf of the State Claims Board and with the advice of the Attorney General, shall have the authority to pay claims of all workers' compensation benefits when liability is undisputed. In any claims when liability or the amount of liability is disputed by the Attorney General, authority is hereby conferred upon the Attorney General to consider, ascertain, adjust, determine, and allow any workers' compensation claim. If any such claim is compromised or settled, the approval of the claimant, the State Claims Board, and the Attorney General shall be required; and such settlements also shall be approved by the Nebraska Workers' Compensation Court ~~and by the district court~~ following the procedure in the Nebraska Workers' Compensation Act.

Sec. 30. That section 48-1,110, Revised Statutes Supplement, 1992, be amended to read as follows:

48-1,110. (1) Sections 48-101 to 48-1,110 and sections 3, 6, 7, and 19 to 23 of this act shall be known and may be cited as the Nebraska Workers' Compensation Act.

(2) It is the intent of the Legislature that the changes made in Laws 1986, LB 811, shall not affect or alter any rights, privileges, or obligations existing immediately prior to July 17, 1986.

~~(3) On and after July 17, 1986, whenever the terms workmen's compensation and Workmen's Compensation appear in the statutes or in any appropriations measures enacted into law, they shall be taken to mean workers' compensation and Workers' Compensation, respectively.~~

Sec. 31. That section 48-612, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-612. Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the chairperson of any appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Information thus obtained or obtained from any individual pursuant to the administration of such law, shall be held confidential, except to the extent necessary for the proper presentation of the contest of a claim, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but except that (a) any claimant, or his or her legal representative, at a hearing before an appeal tribunal or court shall be supplied with information from such records to the extent necessary for the proper presentation of his or her claim and (b) the Nebraska Workers' Compensation Court may use the names, addresses, and identification numbers of employers for purposes of enforcement of the Nebraska Workers' Compensation Act. Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor. All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

Sec. 32. (1) Not later than January 1, 1994, every public

and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(2)(a) For employers subject to collective-bargaining agreements, the establishment of the safety committee shall be accomplished through the collective-bargaining process.

(b) For employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the employer.

(3) An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

Sec. 33. If the Commissioner of Labor finds, after notice and hearing, that an employer has failed to establish a safety committee pursuant to section 32 of this act within fifteen days after notification by the Commissioner of Labor of the obligation to do so, the Commissioner of Labor may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

Sec. 34. The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out sections 32 and 33 of this act.

Sec. 35. That section 77-912, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-912. The Director of Insurance shall transmit one-half of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer and one-half of such taxes paid to the General Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that;

(1) All ~~of~~ fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be ~~transmitted~~ remitted to the State Treasurer ~~and credited~~ for credit to the Fire Insurance Tax Fund; and

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund.



Sec. 36. (1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-5028;

(c) Whether the employer is covered by workers' compensation insurance under section 48-146.01;

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information

without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Sec. 37. Every insurance company which is transacting workers' compensation insurance business in this state shall on or before March 1, 1994, March 1, 1995, and March 1, 1996, pay to the Director of Insurance an amount equal to one-fourth of one percent of the gross amount of direct writing premiums received by the company during the preceding calendar year for workers' compensation insurance business transacted in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1, 1994, March 1, 1995, and March 1, 1996, pay to the Director of Insurance an amount equal to one-fourth of one percent of the prevailing premium rate which would be paid for a policy of workers' compensation insurance to insure such risk. The computation of the amount shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish the forms to the companies and risk management pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department.

Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid. After notice and hearing in accordance with the Administrative Procedure Act, the Director of Insurance may rescind or refuse to reissue the certificate of authority of any company which fails to remit the amount due.

The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workplace Safety Consultation Program Cash Fund, except that (1) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account in the state treasury until disposition of the controversy and (2) one percent of the amounts received shall be credited to the Department of Insurance to cover the costs of administration.

Sec. 38. Every employer in the occupations described in

section 48-106 who qualifies as a self-insurer and is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workplace Safety Consultation Program Cash Fund an annual amount in 1994, 1995, and 1996 equal to one-fourth of one percent of the prevailing premium rate which would be paid by such employer for a policy of workers' compensation insurance but in no event less than one hundred dollars.

Sec. 39. The amounts required to be paid by insurance companies, risk management pools, and self-insurers under sections 37 and 38 of this act shall be in addition to any other amounts, either in taxes, assessments, or otherwise, required by any other law of this state.

Sec. 40. On January 1, 1997, the Governor shall direct the Director of Insurance and the Commissioner of Labor to conduct and complete a cost-benefit analysis and a review of the effectiveness of the changes made by Legislative Bill 757, Ninety-third Legislature, First Session, 1993, to control or reduce the cost of workers' compensation premiums. Information for the study may be elicited from interested persons and from the Nebraska Workers' Compensation Court. The director and the commissioner shall submit a report, which may include recommendations for further legislation, to the chairperson of the Business and Labor Committee of the Legislature, the Clerk of the Legislature, and the Governor by October 1, 1997. The Business and Labor Committee of the Legislature shall hold a public hearing on the study and shall submit a report to the Legislature by December 1, 1997. The Governor or the Legislature, by resolution, may require a similar study in 1999 and every two years thereafter.

Sec. 41. Sections 13, 19 to 23, 30, 32 to 34, 41, and 43 of this act shall become operative on their effective date. The other sections of this act shall become operative on January 1, 1994.

Sec. 42. That original sections 48-121, 48-138, 48-139, 48-146.01, 48-151, 48-162, 48-162.01, 48-168, 48-172, 48-173, 48-187, 48-194, 48-612, and 77-912, Reissue Revised Statutes of Nebraska, 1943, and sections 44-5028, 48-120, 48-121.01, 48-128, 48-140, 48-141, 48-162.02, and 48-163, Revised Statutes Supplement, 1992, are repealed.

Sec. 43. That original sections 48-145.04 and 48-1,110, Revised Statutes Supplement, 1992, are repealed.