

## LEGISLATIVE BILL 187

Approved by the Governor May 9, 1975

Introduced by Clark, 47

AN ACT to amend sections 48-125, 48-138, 48-139, 48-140, 48-141, 48-142, 48-143, 48-152, 48-153, 48-163, 48-170, 48-182, 48-185, 48-186, 48-188, and 48-1,100, Reissue Revised Statutes of Nebraska, 1943, and section 48-108, Revised Statutes Supplement, 1974, relating to the Nebraska Workmen's Compensation Court; to eliminate district court jurisdiction except for approval of lump sum settlements; to provide for direct appeals to the Supreme Court; to provide for an additional judge; to provide for transition; and to repeal the original sections, and also sections 48-181, 48-183, and 48-184, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 48-108, Revised Statutes Supplement, 1974, be amended to read as follows:

48-108. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by the a judge of the district court-of-the-district-in-which-such-issue-arose Nebraska Workmen's Compensation Court. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. When the employee's compensation is payable by the employer in periodical installments, the court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements. The court, in approving an attorney's fee as provided in this section, may order the payment of the fee directly to the attorney in a lump sum, either commuting sufficient of the final payments of compensation payable to a lump sum for that purpose or allowing a proportionate credit against each installment of compensation to be paid. When the fee is ordered to be paid in a lump sum, the amount to be paid shall be fixed at an amount which will

equal the total sum of the probable future payments of such fee, capitalized at its present value upon the basis of interest calculated at five per cent per annum with annual rests.

Sec. 2. That section 48-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-125. Except as hereinafter provided, all amounts of compensation payable under the provisions of this act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death; Provided, fifty per cent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability. Whenever the employer refuses payment, or when the employer neglects to pay compensation for thirty days after injury, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the court. In the event the employer files an application for a rehearing before the compensation court en banc from an award of a judge of the compensation court ~~or appeals to the district court from the award of the compensation court, or any judge thereof~~; and fails to obtain any reduction in the amount of such award, the compensation court sitting en banc ~~or the district court~~ may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for each such rehearing, ~~or appeal~~; and the Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in that court.

Sec. 3. 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 compensation court, may be commuted to one or more lump sum payments, except compensation due for death and permanent disability, which may be commuted only upon the order or decision of the compensation court ~~or~~ and the district court; Provided, that where commutation is agreed upon, or ordered by the court, 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 per cent 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.

Sec. 4. That section 48-139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-139. Whenever an injured employee or his dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability or claimed permanent disability, under this act, shall be commuted to one or more lump sum payments, such settlement or agreement therefor shall be submitted to the ~~district court~~ Nebraska Workmen's Compensation Court, in the following manner: An application for the approval of such settlement, signed by both parties, shall be filed with the clerk of the ~~district~~ court, and shall be entitled the same as an action by such employee or dependents against such employer and shall contain a concise statement of the terms of the settlement 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. If such application is approved by the Nebraska Workmen's 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 hold a hearing on the application, and proof may be adduced, witnesses subpoenaed and examined the same as in an action in equity. If, after such inquiry, the court finds such settlement is made in conformity with the compensation schedule and for the best interests of the employee or his dependents under all the circumstances, and if such application has been approved by the Nebraska Workmen's Compensation Court, he it shall make an order approving the same. If such agreement or settlement be not approved the court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the court. The fees of the clerk of the district court for filing, docketing, and indexing such application shall be five dollars. Every such lump sum settlement 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 Nebraska Workmen's Compensation Court by the employer or insurer.

Sec. 5. That section 48-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-140. All settlements by agreement of the parties with the approval of the compensation court and all awards of compensation made by the court, except those amounts payable periodically for six months or more, shall be final and not subject to readjustment; Provided, however, no settlement shall be final unless it be in conformity with the provisions of this act, and approval by and a finding by the compensation court and , the district court or any appellate court.

Sec. 6. That section 48-141, Reissue Revised Statutes of Nebraska, 1943, 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 dependents, by lump sum payments, shall be final, but the amount of any agreement or award payable periodically for six months or more may be modified as follows: (a) At any time by agreement of the parties with the approval of the compensation court; or (b) 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, and except that after the district court has entered order, award or judgment in the case then the application shall be made to that court.~~

Sec. 7. That section 48-142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-142. At any time after the amount of any award has been agreed upon by the parties and approved by the ~~district court~~ Nebraska Workmen's Compensation Court, a sum equal to the present value of all future installments of compensation may, where death or the nature of the injury renders the amount of future payments certain, by leave of the ~~district court~~, be paid

by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this state, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the compensation court, shall operate as a satisfaction of such award as to the employer. Payments from such fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until the fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the ~~district~~ court, to the choice of the injured employee or the dependents of the deceased employee as the case may be.

Sec. 8. That section 48-143, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-143. In case of death, where no executor or administrator is qualified, the ~~district--court~~ Nebraska Workmen's Compensation Court shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent, upon like terms as to bond for the proper application of compensation payments as are required of administrators.

Sec. 9. That section 48-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-152. Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) that an impartial and efficient administration of the Nebraska Workmen's Compensation Act is essential to the prosperity and well-being of the state, and (3) that suitable laws should be enacted for the establishing and for the preservation of such an administration of the said act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Constitution of the State of Nebraska, a court, consisting of ~~four~~ five judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Constitution of the State of Nebraska and to be known as the Nebraska Workmen's Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workmen's Compensation Act, and any amendments thereof except such as are committed to the courts of

appellate jurisdiction.

Sec. 10. That section 48-153, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-153. The Nebraska Workmen's Compensation Court shall consist of ~~four~~ five judges. Judges holding such office on April 29, 1967 shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on January 1 immediately following the next general election. Their right to continue in office for additional terms shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office thereafter shall be for six years beginning on January 1 immediately following such election. In case of a vacancy occurring in the court, the same shall be filled in accordance with the provisions of Article V, section 21 of the Constitution of the State of Nebraska and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation or removal for cause. No judge of the Nebraska Workmen's Compensation Court shall, during his tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his duties as such judge, or serve on or under any committee of any political party. A judge of such court shall possess the same qualifications as are required of a district judge.

Sec. 11. That section 48-163, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-163. The Nebraska Workmen's Compensation Court may adopt all reasonable rules necessary for carrying out the intent and purpose of sections 48-101 to 48-190, and shall administer and enforce all of the provisions of said sections, except such as are committed to the ~~courts-of-appellate-jurisdiction~~ Supreme Court; Provided, that the compensation court, or any judge thereof ~~or-any-appellate-court~~, may, upon the motion of either party or upon ~~their~~ its ~~or~~ or ~~his~~ his 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, ~~or-before-any-appellate-court~~.

Sec. 12. That section 48-170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-170. Every order and award of a single judge of the Nebraska Workmen's Compensation Court shall be binding upon each party at interest unless ~~notice of intention to appeal to the district court an application for rehearing~~ has been filed with the Nebraska Workmen's Compensation Court and ~~a petition on appeal has been filed with the district court both~~ within fourteen days following the date of rendition of the order or award. ~~Provided, that the order and award shall be binding and final, notwithstanding notice of intention to appeal has been filed within the time limit, until the appeal has been perfected and service had upon the opposite party or parties.~~

Sec. 13. That section 48-182, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-182. In case either party at interest refuses to accept any final order of the Nebraska Workmen's Compensation Court after rehearing, such party may, within fourteen days one month thereafter, file with the Nebraska Workmen's Compensation Court a notice of intention to appeal and within twenty-one days one month from the date of such final order file with the district court in the county in which such cause arose, or upon the written stipulation of the parties, with the district court in any other county in the state, a verified petition setting forth the contention upon which such party relies for reversal or modification, together with a transcript of the pleadings before the compensation court and the orders of such court certified to by the clerk thereof Nebraska Workmen's Compensation Court, a praecipe for a bill of exceptions. Within forty-five days two months from the date of final order the appellant shall file in the district court the filing of the praecipe, the court reporter or transcriber shall deliver to the clerk of the Nebraska Workmen's Compensation Court a bill of exceptions which shall include a transcribed copy of the testimony and the evidence taken before the compensation court, which transcript when certified to by the person who made or transcribed the record ~~and settled by the compensation court as such~~ shall constitute the bill of exceptions. Such The transcript and bill of exceptions shall be paid for by the party ordering the same; Provided, that upon the affidavit of any claimant for workmen's compensation, filed with or before the praecipe, that he is without means wherewith to pay, and unable to secure such means,

payment may, in the discretion of the Nebraska Workmen's Compensation Court, be waived as to such claimant and the bill of exceptions shall be paid for by the compensation court in the same manner as other compensation court expenses.

The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court, except as otherwise provided in this section.

When a bill of exceptions has been ordered according to law, and the court reporter or transcriber fails to prepare and file the bill of exceptions with the clerk of the Nebraska Workmen's Compensation Court within ~~forty days~~ two months from the date of ~~final order~~, ~~the district court the filing of the praecipe, the Supreme Court~~ may, on the motion of any party accompanied by a proper showing, grant additional time for the preparation and filing of the bill of exceptions under such conditions as the court may require. Applications for such an extension of time shall be ~~made within one month after the expiration of the time allowed by this section or within one month after the expiration of a previous extension of time, or within such additional time as the district court in its discretion upon proper showing may allow~~ regulated and governed by rules of practice prescribed by the Supreme Court. A copy of such order granting an extension of time shall be filed with the Nebraska Workmen's Compensation Court by the party requesting such extension within five days after the date of such order.

Sec. 14. That section 48-185, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-185. Any appeal from the judgment of the ~~district court~~ Nebraska Workmen's Compensation Court ~~after a rehearing~~ shall be prosecuted and the procedure, including the designation of parties, handling of costs and the amounts thereof, filing of briefs, certifying the opinion of the Supreme Court to the Nebraska Workmen's Compensation Court, handling of the bill of exceptions, and issuance of the mandate, shall be in accordance with the general laws of the state and procedures regulating appeals in actions at law from the district courts to the Supreme Court except as otherwise provided in section 48-182 and this section. The proceedings to obtain a reversal, vacation, or modification of judgments, awards, or final orders made by the Nebraska Workmen's Compensation Court after a rehearing shall be by filing



in the office of the clerk of the Nebraska Workmen's Compensation Court within one month after the rendition of such judgment or decree, or the making of such final order, a notice of intention to prosecute such appeal signed by the appellant or his attorney of record. No motion for a new trial shall be required to be filed. An appeal shall be deemed perfected and the Supreme Court shall have jurisdiction of the cause when such notice of appeal shall have been filed in the office of the clerk of the Nebraska Workmen's Compensation Court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal shall be deemed jurisdictional. The clerk of the Nebraska Workmen's Compensation Court shall forthwith forward a certified copy of such notice of appeal to the Clerk of the Supreme Court, whereupon the Clerk of the Supreme Court shall forthwith docket such appeal. Within one month from the date of filing of notice of appeal, the clerk of the Nebraska Workmen's Compensation Court shall prepare and file with the Clerk of the Supreme Court a transcript certified as a true copy of the proceedings contained therein. The transcript shall contain the judgment, decree, or final order sought to be reversed, vacated, or modified and all pleadings filed with such clerk. Neither the form nor the substance of such transcript shall affect the jurisdiction of the Supreme Court. Such appeal shall be perfected within one month from the rendition of judgment by the district court Nebraska Workmen's Compensation Court, the cause shall be advanced for argument before the Supreme Court, and the Supreme Court shall render its judgment and write an opinion in such cases as speedily as possible. The findings of fact made by the Nebraska Workmen's Compensation Court after rehearing shall have the same force and effect as a jury verdict in a civil case. A judgment, order, or award of the district court Nebraska Workmen's Compensation Court may be modified, reversed, or set aside only upon the grounds that (1) the court acted without or in excess of its powers, (2) the judgment, order, or award was procured by fraud, (3) ~~the findings of fact are not supported by the evidence as disclosed by the record and, if so found, the cause shall be considered de novo upon the record~~ there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award, or (4) the findings of fact by the court do not support the order or award.

Sec. 15. That section 48-186, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-186. In all cases where the accident occurred outside of the State of Nebraska, the hearing before a judge of the Nebraska Workmen's Compensation Court shall be at Lincoln, Nebraska, unless otherwise stipulated by the parties at least fourteen days before the date of hearing. ~~All such cases occurring outside of the State of Nebraska, on appeal to the district court shall, unless otherwise stipulated, be heard in the district court of Lancaster County, Nebraska.~~

Sec. 16. That section 48-188, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-188. Any order, award or judgment by the Nebraska Workmen's Compensation Court, or any judge thereof, certified to by the clerk of said court, ~~or any judgment of the district court of any county within the state,~~ or of the Supreme Court, certified to by the clerk thereof, for compensation under the provisions of sections 48-101 to ~~48-199~~ 48-1,109 may, as soon as the same become conclusive upon the parties at interest, be filed with the district court of any county or counties in the State of Nebraska upon the payment of a fee of two dollars to the clerk of the district court or courts where such order, award or judgment is so filed, whereupon such order, award or judgment shall have the same force and effect as a judgment of such court or courts, and all proceedings in relation thereto shall thereafter be the same as though the order, award or judgment had been rendered in a suit duly heard and determined by such court or courts.

Sec. 17. That section 48-1,100, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1,100. The Attorney General shall represent the state in any suit brought under sections 48-192 to 48-1,109, and is authorized to compromise or settle any such suit, with the approval of ~~the court in which such suit is pending~~ and the Nebraska Workmen's Compensation Court.

Sec. 18. Appeals pending in the district courts and cases in which an order after rehearing has been issued by the Nebraska Workmen's Compensation Court prior to January 1, 1976, shall not be affected by reason of the passage of this act, but any cause of action not in suit that accrued prior to January 1, 1976, and any action in suit on which an order after rehearing has not been issued by the Nebraska Workmen's Compensation Court prior to January 1, 1976, shall follow the procedures in

this act.

Sec. 19. That original sections 48-125, 48-138, 48-139, 48-140, 48-141, 48-142, 48-143, 48-152, 48-153, 48-163, 48-170, 48-182, 48-185, 48-186, 48-188, and 48-1,100, Reissue Revised Statutes of Nebraska, 1943, and section 48-108, Revised Statutes Supplement, 1974, and also sections 48-181, 48-183, and 48-184, Reissue Revised Statutes of Nebraska, 1943, are repealed.