

## LEGISLATIVE BILL 776

Approved by the Governor April 3, 1984

Introduced by Barrett, 39; Hannibal, 4

AN ACT relating to workmen's compensation; to amend section 48-115, Revised Statutes Supplement, 1983; to provide an election for coverage for certain people as prescribed; and to repeal the original section.

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

Section 1. That section 48-115, Revised Statutes Supplement 1983, be amended to read as follows:

48-115. The terms employee and workman are used interchangeably and have the same meaning throughout ~~this act~~ Chapter 48, article 1. ~~The said~~ Such terms include the plural and all ages and both sexes; and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written; PROVIDED, that (a) for the purposes of ~~this act~~ Chapter 48, article 1, volunteer firefighters of any fire department of any rural or suburban fire protection district, city, or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city, or village while in the performance of their duties as members of such department; and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firefighters may be officially called to participate in; (b) members of such volunteer fire department, before they are entitled to benefits under ~~this act~~ Chapter 48, article 1, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation; shall be deemed employees of the rural or suburban fire protection district, city, or village; (c) members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council, or board; and

thereafter shall not be considered employees of such rural or suburban fire protection district, city, or village; (d) firefighters of any fire department of any rural or suburban fire protection district, city, or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief; (e) any members of the state Civil Defense Agency, any local organization for civil defense, or any civil defense mobile support unit, which state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit while in the performance of their duties as members of such state Civil Defense Agency, local organization, or mobile support unit; (f) any person fulfilling conditions of probation pursuant to any order of any court of this state who shall be working for a governmental body pursuant to any condition of probation shall be deemed an employee of such governmental body for the purposes of ~~this act~~ Chapter 48, article 1; (g) volunteer ambulance drivers and attendants who provide ambulance service for any county, city, or village or any combination of such county, city, or village under the authority of section 23-378 shall be deemed employees of the county, city, or village or combination thereof while in the performance of their duties as such ambulance drivers or attendants and shall be considered as having entered into and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any emergency in which the volunteer drivers or attendants may be officially called to participate, but such volunteer ambulance drivers or attendants shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so; (h) before such volunteer ambulance drivers or attendants shall be entitled to benefits under ~~this act~~ Chapter 48, article 1, they shall be confirmed to perform such duties by the county board, or the governing body of the city or village or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of the county, city, or village or combination thereof and may be removed by majority vote of such county board or governing body of the city or village; and (i) members of a law enforcement reserve force appointed in accordance with section 81-1438 shall be

deemed employees of the county or city for which they were appointed; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under this act Chapter 48, article 1, shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) and (2) of this section, the terms employee and workman shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to Chapter 48, article 1, suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by Chapter 48, article 1, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under Chapter 48, article 1, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

(3) Every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation shall be an employee of such corporation under the provisions of this act Chapter 48, article 1, except that an executive officer of a Nebraska corporation who owns twenty-five per cent or more of the common stock of such corporation may waive his or her right to coverage. Such waiver shall be in writing and filed with the secretary of the corporation and the Nebraska Workmen's Compensation Court. Such waiver, as prescribed by the Nebraska Workmen's Compensation Court, shall include a statement in substantially the following form: Notice. I am aware that health and accident insurance policies frequently exclude coverage for personal injuries caused by accident or occupational disease arising out of and in the course of employment. Before waiving my rights to coverage under workmen's compensation law, I certify that I have carefully examined the terms of my health and accident coverage. Such waiver shall become effective from the date of receipt by the court and shall remain in effect until the waiver is terminated by the officer in writing and filed with the secretary of the corporation and the Nebraska Workmen's Compensation Court. The termination of the corporate executive officer's waiver shall be effective upon receipt of the termination by the

court. It shall not be permissible to terminate a waiver prior to one year after the waiver has become effective.

(4) Each individual employer, partner, or self-employed person who is actually engaged in the individual employer's, partnership's, or self-employed person's business on a substantially full-time basis may elect to bring himself or herself within the provisions of Chapter 48, article 1, if he or she (a) files with his or her current workmen's compensation insurer written notice of election to have the same rights as an employee only for purposes of workmen's compensation insurance coverage acquired by and for such individual employer, partner, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and subsequent policies issued by such insurer until such time as such employer, partner, or self-employed person files a written statement withdrawing such election with the current workmen's compensation insurer or until such coverage by such insurer is terminated, whichever occurs first. When so included, the individual employer, partner, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under Chapter 48, article 1. If any individual employer, partner, or self-employed person who is actually engaged in the individual employer's partnership's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of Chapter 48, article 1, pursuant to this subdivision and any health, accident, or other insurance policy issued to or renewed by such person after the effective date of this act contains an exclusion of coverage, if the insured is otherwise entitled to workmen's compensation coverage, such exclusion shall be null and void as to such person.

The said terms shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to this act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by this act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under this act if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

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Sec. 2. That original section 48-115, Revised Statutes Supplement, 1983, is repealed.