

E AND R AMENDMENTS TO LB961

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. The Governor of Nebraska may execute a
4 compact on behalf of the state with any one or more states
5 who may, by their legislative bodies, authorize a compact, in form
6 substantially as follows:

7 ARTICLE I

8 The purpose of this compact is to promote effective
9 prevention and control of forest fires in the great plains region
10 of the United States by the maintenance of adequate forest fire
11 fighting services by the member states, and by providing for
12 reciprocal aid in fighting forest fires among the compacting states
13 of the region, including South Dakota, North Dakota, Wyoming,
14 Colorado, and any adjoining state of a current member state.

15 ARTICLE II

16 This compact is operative immediately as to those states
17 ratifying it if any two or more of the member states have ratified
18 it.

19 ARTICLE III

20 In each state, the state forester or officer holding
21 the equivalent position who is responsible for forest fire control
22 may act as compact administrator for that state and may consult
23 with like officials of the other member states and may implement

1 cooperation between the states in forest fire prevention and
2 control. The compact administrators of the member states may
3 organize to coordinate the services of the member states and
4 provide administrative integration in carrying out the purposes of
5 this compact. Each member state may formulate and put in effect a
6 forest fire plan for that state.

7 ARTICLE IV

8 If the state forest fire control agency of a member state
9 requests aid from the state forest fire control agency of any
10 other member state in combating, controlling, or preventing forest
11 fires, the state forest fire control agency of that state may
12 render all possible aid to the requesting agency, consonant with
13 the maintenance of protection at home.

14 ARTICLE V

15 If the forces of any member state are rendering outside
16 aid pursuant to the request of another member state under this
17 compact, the employees of the state shall, under the direction
18 of the officers of the state to which they are rendering aid,
19 have the same powers (except the power of arrest), duties, rights,
20 privileges, and immunities as comparable employees of the state to
21 which they are rendering aid.

22 No member state which provides outside aid pursuant to
23 this compact shall be liable in any civil action to respond in
24 damages as a result of acts or omissions arising out of and
25 in the course of rendering outside aid, but such immunity from
26 liability shall not extend to the operation of any motor vehicle in
27 connection with such services. Nothing in this paragraph shall be

1 deemed to grant any such immunity to any person causing damage by
2 his or her gross negligence or willful or wanton conduct.

3 All liability, except as otherwise provided in this
4 compact, that may arise either under the laws of the requesting
5 state or under the laws of the aiding state or under the laws of a
6 third state on account of or in connection with a request for aid,
7 shall be assumed and borne by the requesting state.

8 Any member state rendering outside aid pursuant to this
9 compact shall be reimbursed by the member state receiving the aid
10 for any loss or damage to, or expense incurred in the operation
11 of any equipment answering a request for aid, and for the cost of
12 all materials, transportation, wages, salaries, and maintenance of
13 employees and equipment incurred in connection with such request.
14 However, nothing in this compact prevents any assisting member
15 state from assuming such loss, damage, expense, or other cost or
16 from loaning such equipment or from donating such services to the
17 receiving member state without charge or cost.

18 Each member state shall assure that workers' compensation
19 benefits in conformity with the minimum legal requirements of the
20 state are available to all employees and contract firefighters sent
21 to a requesting state pursuant to this compact.

22 For the purposes of this compact, the term employee
23 includes any volunteer or auxiliary legally included within the
24 forest fire fighting forces of the aiding state under the laws of
25 the aiding state.

26 The compact administrators may formulate procedures for
27 claims and reimbursement under the provisions of this article, in

1 accordance with the laws of the member states.

2 ARTICLE VI

3 Ratification of this compact does not affect any existing
4 statute so as to authorize or permit curtailment or diminution of
5 the forest fire fighting forces, equipment, services, or facilities
6 of any member state.

7 Nothing in the compact authorizes or permits any member
8 state to curtail or diminish its forest fire fighting forces,
9 equipment, services, or facilities. Each member state shall
10 maintain adequate forest fire fighting forces and equipment to
11 meet demands for forest fire protection within its borders in the
12 same manner and to the same extent as if this compact were not
13 operative.

14 Nothing in this compact limits or restricts the powers
15 of any state ratifying the compact to provide for the prevention,
16 control, and extinguishment of forest fires, or to prohibit the
17 enactment or enforcement of state laws, rules, or regulations
18 intended to aid in the prevention, control, and extinguishment in
19 the state.

20 Nothing in this compact affects any existing or future
21 cooperative relationship or arrangement between the United States
22 Forest Service and a member state or states.

23 ARTICLE VII

24 Representatives of the United States Forest Service may
25 attend meetings of the compact administrators.

26 ARTICLE VIII

27 The provisions of articles IV and V of this compact that

1 relate to reciprocal aid in combating, controlling, or preventing
2 forest fires are operative as between any state party to this
3 compact and any other state which is party to this compact and
4 any other state that is party to a regional forest fire protection
5 compact in another region if the Legislature of the other state has
6 given its assent to the mutual aid provisions of this compact.

7 ARTICLE IX

8 This compact shall continue in force and remain binding
9 on each state ratifying it until the Legislature or the Governor of
10 the state takes action to withdraw from the compact. Such action is
11 not effective until six months after notice of the withdrawal has
12 been sent by the chief executive of the state desiring to withdraw
13 to the chief executives of all states then parties to the compact.

14 Sec. 2. No Nebraska volunteer firefighter shall be
15 dispatched on behalf of this state pursuant to the compact set
16 forth in section 1 of this act outside the boundaries of Nebraska
17 unless such volunteer firefighter files with the Nebraska compact
18 administrator a valid certificate of insurance covering him or
19 her for workers' compensation benefits pursuant to the Nebraska
20 Workers' Compensation Act outside the boundaries of Nebraska.

21 Sec. 3. Section 48-126.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 48-126.01 (1)(a) In determining the compensation to be
24 paid any member of the military forces of this state, any member
25 of a law enforcement reserve force, any member of a volunteer
26 fire department in any rural or suburban fire protection district,
27 city, village, or nonprofit corporation, or any member of the

1 Nebraska Emergency Management Agency, any city, village, county,
2 or interjurisdictional emergency management organization, or any
3 state emergency response team, ~~or any member of a volunteer~~
4 ~~emergency medical service~~, which military forces, law enforcement
5 reserve force, ~~fire department~~, or emergency management agency,
6 organization, or team, ~~or volunteer emergency medical service~~ is
7 organized under the laws of the State of Nebraska, or any person
8 fulfilling conditions of probation, or community service as defined
9 in section 29-2277, pursuant to any order of any court of this
10 state who shall be working for a governmental body, or agency as
11 defined in section 29-2277, pursuant to any condition of probation,
12 or community service as defined in section 29-2277, for injuries
13 resulting in disability or death received in the performance of his
14 or her duties as a member of such military forces, reserve force,
15 ~~department~~, agency, organization, or team, ~~or service~~, or pursuant
16 to an order of any court, the wages of such a member or person
17 shall be taken to be those received by him or her from his or
18 her regular employer, and he or she shall receive such proportion
19 thereof as he or she is entitled to under the provisions of section
20 48-121.

21 (b) If such a member or person under subdivision (1)(a)
22 of this section is not regularly employed by some other person, for
23 the purpose of such determination, it shall be deemed and assumed
24 that he or she is receiving income from his or her business or from
25 other employment equivalent to wages in an amount one and one-half
26 times the maximum ~~compensation rate for total disability weekly~~
27 income benefit specified in section 48-121.01.

1 (c) If the wages received for the performance of duties
2 as a member of such military forces, reserve force, ~~department,~~
3 agency, organization, or team, ~~or service~~ exceed the wages received
4 from a regular employer, such member shall be entitled to a rate of
5 compensation based upon wages received as a member of such military
6 forces, reserve force, ~~department,~~ agency, organization, or team.
7 ~~or service.~~

8 (2) In determining the compensation rate to be paid any
9 member of a volunteer fire department in any rural or suburban
10 fire protection district, city, village, or nonprofit corporation
11 or any member of a volunteer emergency medical service, which fire
12 department or emergency medical service is organized under the laws
13 of the State of Nebraska, for injuries resulting in disability or
14 death received in the performance of his or her duties as a member
15 of such fire department or emergency medical service, it shall be
16 deemed and assumed that his or her wages are in an amount one
17 and one-half times the maximum weekly income benefit specified in
18 section 48-121.01 or the wages received by such member from his or
19 her regular employment, whichever is greater. Any member of such
20 volunteer fire department or volunteer emergency medical service
21 shall not lose his or her volunteer status under the Nebraska
22 Workers' Compensation Act if such volunteer receives reimbursement
23 for expenses, reasonable benefits, or a nominal fee, a nominal per
24 call fee, a nominal per shift fee, or combination thereof. It shall
25 be conclusively presumed that a fee is nominal if the fee does
26 not exceed twenty percent of the amount that otherwise would be
27 required to hire a permanent employee for the same services.

1 Sec. 4. Section 48-139, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-139 (1)(a) Whenever an injured employee or his
4 or her dependents and the employer agree that the amounts
5 of compensation due as periodic payments for death, permanent
6 disability, or claimed permanent disability under the Nebraska
7 Workers' Compensation Act shall be commuted to one or more lump-sum
8 payments, such settlement shall be submitted to the Nebraska
9 Workers' Compensation Court for approval as provided in subsection
10 (2) of this section if:

- 11 (i) The employee is not represented by counsel;
- 12 (ii) The employee, at the time the settlement is
13 executed, is eligible for medicare, is a medicare beneficiary,
14 or has a reasonable expectation of becoming eligible for medicare
15 within thirty months after the date the settlement is executed;
- 16 (iii) Medical, surgical, or hospital expenses incurred
17 for treatment of the injury have been paid by medicaid and medicaid
18 will not be reimbursed as part of the settlement;
- 19 (iv) Medical, surgical, or hospital expenses incurred for
20 treatment of the injury will not be fully paid as part of the
21 settlement; or
- 22 (v) The settlement seeks to commute amounts of
23 compensation due to dependents of the employee.

24 (b) If such lump-sum settlement is not required to be
25 submitted for approval by the compensation court, a release shall
26 be filed with the compensation court as provided in subsection (3)
27 of this section. Nothing in this section shall be construed to

1 increase the compensation court's duties or authority with respect
2 to the approval of lump-sum settlements under the act.

3 (2) (a) An application for an order approving a lump-sum
4 settlement, signed and verified by both parties, shall be filed
5 with the clerk of the compensation court and shall be entitled
6 the same as an action by such employee or dependents against such
7 employer. The application shall contain a concise statement of the
8 terms of the settlement or agreement sought to be approved with
9 a brief statement of the facts concerning the injury, the nature
10 thereof, the wages received by the injured employee prior thereto,
11 the nature of the employment, and such other matters as may be
12 required by the compensation court. The application may provide for
13 payment of future medical, surgical, or hospital expenses incurred
14 by the employee. The compensation court may hold a hearing on the
15 application at a time and place selected by the compensation court,
16 and proof may be adduced and witnesses subpoenaed and examined the
17 same as in an action in equity.

18 (b) If the compensation court finds such lump-sum
19 settlement is made in conformity with the compensation schedule and
20 for the best interests of the employee or his or her dependents
21 under all the circumstances, the compensation court shall make
22 an order approving the same. If such settlement is not approved,
23 the compensation court may dismiss the application at the cost of
24 the employer or continue the hearing, in the discretion of the
25 compensation court.

26 (c) Every such lump-sum settlement approved by order
27 of the compensation court shall be final and conclusive unless

1 procured by fraud. Upon paying the amount approved by the
2 compensation court, the employer (i) shall be discharged from
3 further liability on account of the injury or death, other than
4 liability for the payment of future medical, surgical, or hospital
5 expenses if such liability is approved by the compensation court
6 on the application of the parties, and (ii) shall be entitled to
7 a duly executed release. Upon filing the release, the liability of
8 the employer under any agreement, award, finding, or decree shall
9 be discharged of record.

10 (3) If such lump-sum settlement is not required to be
11 submitted for approval by the compensation court, a release shall
12 be filed with the compensation court in accordance with this
13 subsection that is signed and verified by the employee and the
14 employee's attorney. Such release shall be a full and complete
15 discharge from further liability for the employer on account of the
16 injury, including future medical, surgical, or hospital expenses,
17 unless such expenses are specifically excluded from the release.
18 The release shall be made on a form approved by the compensation
19 court and shall contain a statement signed and verified by the
20 employee that:

21 (a) The employee understands and waives all rights under
22 the Nebraska Workers' Compensation Act, including, but not limited
23 to:

24 (i) The right to receive weekly disability benefits, both
25 temporary and permanent;

26 (ii) The right to receive vocational rehabilitation
27 services;

1 (iii) The right to receive future medical, surgical,
2 and hospital services as provided in section 48-120, unless such
3 services are specifically excluded from the release; and

4 (iv) The right to ask a judge of the compensation court
5 to decide the parties' rights and obligations;

6 (b) The employee is not eligible for medicare, is not
7 a current medicare beneficiary, and does not have a reasonable
8 expectation of becoming eligible for medicare within thirty months
9 after the date the settlement is executed;

10 (c) There are no medical, surgical, or hospital expenses
11 incurred for treatment of the injury which have been paid by
12 medicaid and not reimbursed to medicaid by the employer as part of
13 the settlement; and

14 (d) There are no medical, surgical, or hospital expenses
15 incurred for treatment of the injury that will remain unpaid after
16 the settlement.

17 (4) A release filed with the compensation court in
18 accordance with subsection (3) of this section shall be final and
19 conclusive as to all rights waived in the release unless procured
20 by fraud. Amounts to be paid by the employer to the employee
21 pursuant to such release shall be paid within thirty days of
22 filing the release with the compensation court. Fifty percent shall
23 be added for payments owed to the employee if made after thirty
24 days after the date the release is filed with the compensation
25 court. Upon making payment owed by the employer as set forth in
26 the release, such release shall be a full and complete discharge
27 from further liability for the employer on account of the injury,

1 including future medical, surgical, or hospital expenses, unless
2 such expenses are specifically excluded from the release, and the
3 court shall enter an order of dismissal with prejudice as to all
4 rights waived in the release.

5 ~~(4)~~ (5) The fees of the clerk of the compensation court
6 for filing, docketing, and indexing an application for an order
7 approving a lump-sum settlement or filing a release as provided in
8 this section shall be fifteen dollars. The fees shall be remitted
9 by the clerk to the State Treasurer for credit to the Compensation
10 Court Cash Fund.

11 Sec. 5. Original sections 48-126.01 and 48-139, Reissue
12 Revised Statutes of Nebraska, are repealed.

13 2. On page 1, strike beginning with "workers'" in line
14 1 through line 5 and insert "labor; to amend sections 48-126.01
15 and 48-139, Reissue Revised Statutes of Nebraska; to provide for
16 a compact regarding prevention and control of forest fires; to
17 require workers' compensation coverage for volunteer firefighters
18 as prescribed; to change workers' compensation provisions for
19 certain public safety personnel and release provisions for lump-sum
20 settlements; and to repeal the original sections."