

AMENDMENTS TO LB 462

Introduced by D. Pederson, 42

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

3 1. Section 48-146.02, Revised Statutes Supplement, 2005,
4 is amended to read:

5 48-146.02 (1)(a) If a three-judge panel of the Nebraska
6 Workers' Compensation Court finds, after due notice and hearing at
7 which the workers' compensation insurer is entitled to be heard
8 and present evidence, that such insurer has failed to comply
9 with an obligation under the Nebraska Workers' Compensation Act
10 with such frequency as to indicate a general business practice to
11 engage in that type of conduct, the three-judge panel may request
12 the Director of Insurance to suspend or revoke the authorization
13 of such insurer to write workers' compensation insurance under
14 the provisions of Chapter 44 and such act. Such suspension or
15 revocation shall not affect the liability of any such insurer under
16 policies in force prior to the suspension or revocation.

17 (b) If a three-judge panel of the compensation court
18 finds, after due notice and hearing at which the risk management
19 pool is entitled to be heard and present evidence, that such
20 pool has failed to comply with an obligation under the Nebraska
21 Workers' Compensation Act, as set out in subsection (1) of section
22 44-4319, with such frequency as to indicate a general business
23 practice to engage in that type of conduct, the three-judge panel

1 may suspend or revoke the authority of the pool to provide group
2 self-insurance coverage of workers' compensation liability pursuant
3 to the Intergovernmental Risk Management Act. Such suspension
4 or revocation shall not affect the liability of any such risk
5 management pool under the terms of the agreement forming the pool
6 in force prior to the suspension or revocation.

7 (c) If a three-judge panel of the compensation court
8 finds, after due notice and hearing at which the self-insurer is
9 entitled to be heard and present evidence, that such self-insurer
10 has failed to comply with an obligation under the Nebraska
11 Workers' Compensation Act with such frequency as to indicate a
12 general business practice to engage in that type of conduct, the
13 three-judge panel may revoke the approval of such self-insurer to
14 provide self-insurance coverage of workers' compensation liability
15 pursuant to section 48-145. Such revocation shall not affect
16 the liability of any such self-insurer under an approval by the
17 compensation court to self-insure in force prior to the revocation.

18 (d) The Attorney General, when requested by the
19 administrator of the compensation court, may file a motion pursuant
20 to section 48-162.03 for an order directing a workers' compensation
21 insurer, risk management pool, or self-insurer to appear before a
22 three-judge panel of the compensation court and show cause as to
23 why the panel should not take action pursuant to this subsection.
24 The Attorney General shall be considered a party for purposes of
25 such motion. The Attorney General may appear before the three-judge
26 panel and present evidence that the workers' compensation insurer,
27 risk management pool, or self-insurer has failed to comply with an

1 obligation under the Nebraska Workers' Compensation Act with such
2 frequency as to indicate a general business practice to engage
3 in that type of conduct. The presiding judge shall rule on a
4 motion of the Attorney General pursuant to this subdivision and,
5 if applicable, shall appoint judges of the compensation court to
6 serve on the three-judge panel. The presiding judge shall not serve
7 on such panel.

8 (e) Appeal from an action by a three-judge panel of the
9 compensation court pursuant to subdivision (1)(b) or (1)(c) of this
10 section shall be in accordance with section 48-185.

11 (2) In addition to any other obligations under the
12 Nebraska Workers' Compensation Act, the following acts or
13 practices, when committed with such frequency as to indicate a
14 general business practice to engage in that type of conduct, shall
15 subject the workers' compensation insurer, risk management pool, or
16 self-insurer to action pursuant to subsection (1) of this section:

17 (a) Knowingly misrepresenting relevant facts or the
18 provisions of the act or any rule or regulation adopted pursuant to
19 such act;

20 (b) Failing to acknowledge with reasonable promptness
21 pertinent communications with respect to claims arising under the
22 act;

23 (c) Failing to promptly investigate claims arising under
24 the act;

25 (d) Not attempting in good faith to effectuate prompt,
26 fair, and equitable payment of benefits when compensability has
27 become reasonably clear;

1 (e) Refusing to pay benefits without conducting a
2 reasonable investigation;

3 (f) Failing to affirm or deny compensability of a claim
4 within a reasonable time after having completed the investigation
5 related to such claim;

6 (g) Paying substantially less than amounts owed under the
7 act where there is no reasonable controversy;

8 (h) Making payment to an injured employee, beneficiary of
9 a deceased employee, or provider of medical, surgical, or hospital
10 services without providing a reasonable and accurate explanation of
11 the basis for the payment;

12 (i) Unreasonably delaying the investigation or payment
13 of benefits by knowingly requiring excessive verification or
14 duplication of information;

15 (j) Failing, in the case of the denial of compensability
16 or the denial, change in, or termination of benefits, to promptly
17 provide a reasonable and accurate explanation of the basis for
18 such action to the injured employee or beneficiary of a deceased
19 employee;

20 (k) Failing, in the case of the denial of payment for
21 medical, surgical, or hospital services, to promptly provide a
22 reasonable and accurate explanation of the basis for such action to
23 the provider of such services; or

24 (l) Failing to provide the compensation court's address
25 and telephone number to an injured employee or beneficiary of
26 a deceased employee with instructions to contact the court for
27 further information:

1 (i) At or near the time the workers' compensation
2 insurer, risk management pool, or self-insurer receives notice
3 or has knowledge of the injury; and

4 (ii) At or near the time of the denial of compensability
5 or the denial, change in, or termination of benefits.

6 (3) In order for a workers' compensation insurer, risk
7 management pool, or self-insurer to fulfill the obligations of
8 subsection (2) of this section, an employee filing a claim
9 for workers' compensation benefits with a workers' compensation
10 insurer, risk management pool, or self-insurer shall provide
11 a patient's waiver to the workers' compensation insurer, risk
12 management pool, or self-insurer upon the request by the same,
13 allowing the employee's employer or workers' compensation insurer,
14 risk management pool, or self-insurer or its representative
15 to obtain all previous hospital and medical records, including
16 patient information forms, concerning the employee's previous
17 treatment with any physician. A workers' compensation insurer, risk
18 management pool, self-insurer, or employer shall not pursuant to a
19 patient's waiver be entitled to an employee's hospital or medical
20 records that pertain to an employee's previous treatment for sexual
21 abuse, reproductive health care, human immunodeficiency virus,
22 mental health conditions, or alcohol or controlled substance abuse.
23 The compensation court shall prescribe a patient's waiver form to
24 implement this subsection. Failure of the employee to provide a
25 patient's waiver following a request for the same by the workers'
26 compensation insurer, risk management pool, or self-insurer shall
27 suspend the running of the thirty-day period for purposes of

1 liability under section 48-125 until such time as the employee
2 provides the patient's waiver. A workers' compensation insurer,
3 risk management pool, or self-insurer obtaining an employee's
4 hospital or medical records pursuant to a patient's waiver shall
5 provide a listing or compilation of such records to the employee or
6 the employee's designated agent upon request. Upon the filing of a
7 petition in the compensation court by an injured employee or his
8 or her representative, such employee shall provide the patient's
9 waiver to the defendants named in the lawsuit within thirty days
10 after filing the petition.

11 ~~(3)~~ (4) In order to determine compliance with obligations
12 under the Nebraska Workers' Compensation Act, the compensation
13 court or its designee may examine the workers' compensation records
14 of (a) a workers' compensation insurer, a risk management pool,
15 or a self-insurer or (b) an adjuster, a third-party administrator,
16 or other agent acting on behalf of such workers' compensation
17 insurer, risk management pool, or self-insurer. The authority of
18 the compensation court pursuant to this subsection is subject
19 to the limitations provided under the work-product doctrine and
20 attorney-client privilege as recognized in Nebraska law.

21 ~~(4)~~ (5) The compensation court may adopt and promulgate
22 rules and regulations necessary to implement this section.

23 2. Original section 48-146.02, Revised Statutes
24 Supplement, 2005, is repealed.