

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1086

Introduced by Lautenbaugh, 18.

Read first time January 22, 2008

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend sections
2 48-118 and 48-118.04, Revised Statutes Cumulative
3 Supplement, 2006; to change provisions relating to
4 third-party claims, subrogation, and settlement; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-118, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 48-118 (1) When a third person is liable to the employee
4 or to the dependents for the injury or death of the employee,
5 the employer shall be subrogated to the right of the employee or
6 to the dependents against such third person. The recovery by such
7 employer shall not be limited to the amount payable as compensation
8 to such employee or dependents, but such employer may recover any
9 amount which such employee or his or her dependents should have
10 been entitled to recover.

11 (2) Any recovery by the employer against such third
12 person, in excess of the compensation paid by the employer after
13 deducting the expenses of making such recovery, shall be paid
14 forthwith to the employee or to the dependents and shall be treated
15 as an advance payment by the employer on account of any future
16 installments of compensation.

17 (3) If an employee or his or her dependents settle
18 a claim or obtain a judgment against such third person, the
19 subrogation right of the employer for all payments related to past
20 and present compensation and any other costs paid to or for the
21 benefit of the employee or his or her dependents shall be allowed
22 in the same proportion as the amount received by or on behalf of
23 the employee or his or her dependents from all sources, other than
24 the employer, bears to the total loss suffered by the employee or
25 his or her dependents. Any amount so received by an employee or his

1 or her dependents from a claim settled or judgment obtained that is
2 in excess of the employer's subrogation right as determined under
3 this section shall be treated as an advance payment by the employer
4 on account of any future installments of compensation and any other
5 costs paid to or for the benefit of the employee or his or her
6 dependents in the same proportion as determined under this section.

7 (4) For purposes of this section, compensation includes
8 wages, medical benefits, rehabilitation costs, and death benefits.
9 This section does not limit the right of an employer to obtain a
10 refund of amounts paid to or on behalf of an employee or his or
11 her dependents that are not covered under the employer's workers'
12 compensation insurance policy.

13 (5) Nothing in the Nebraska Workers' Compensation Act
14 shall be construed to deny the right of an injured employee or
15 of his or her personal representative to bring suit against such
16 third person in his or her own name or in the name of the personal
17 representative based upon such liability, but in such event an
18 employer having paid or paying compensation to such employee or
19 his or her dependents shall be made a party to the suit for the
20 purpose of reimbursement, under the right of subrogation, of any
21 compensation paid.

22 Sec. 2. Section 48-118.04, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 48-118.04 (1) A settlement of a third-party claim under
25 the Nebraska Workers' Compensation Act is void unless:

1 (a) Such settlement is agreed upon in writing by the
2 employee or his or her personal representative and the workers'
3 compensation insurer of the employer, if there is one, and if there
4 is no insurer, then by the employer; or

5 (b) In the absence of such agreement, the court before
6 which the action is pending determines that the settlement offer is
7 fair and reasonable considering liability, damages, and the ability
8 of the third person and his or her liability insurance carrier to
9 satisfy any judgment.

10 (2) If the employee or his or her personal representative
11 or the employer or his or her workers' compensation insurer do
12 not agree in writing upon distribution of the proceeds of any
13 judgment or settlement, the court, upon application, shall order a
14 ~~fair and equitable~~ distribution of the proceeds of any judgment or
15 settlement in accordance with section 48-118.

16 Sec. 3. Original sections 48-118 and 48-118.04, Revised
17 Statutes Cumulative Supplement, 2006, are repealed.