

AMENDMENTS TO LB 630

Introduced by Business and Labor.

1           1. Strike the original sections and insert the following  
2 sections:

3           Section 1. Section 48-106, Revised Statutes Cumulative  
4 Supplement, 2008, is amended to read:

5           48-106 (1) The Nebraska Workers' Compensation Act shall  
6 apply to the State of Nebraska, to every governmental agency  
7 created by the state, and, except as provided in this section,  
8 to every resident employer in this state and nonresident employer  
9 performing work in this state who employs one or more employees  
10 in the regular trade, business, profession, or vocation of such  
11 employer.

12           (2) The act shall not apply to:

13           (a) A railroad company engaged in interstate or foreign  
14 commerce;

15           (b) Service performed by a worker who is a household  
16 domestic servant in a private residence;

17           (c) Service performed by a worker when performed for an  
18 employer who is engaged in an agricultural operation and employs  
19 only related employees;

20           (d) Service performed by a worker when performed for  
21 an employer who is engaged in an agricultural operation and  
22 employs unrelated employees unless such service is performed for  
23 an employer who during any calendar year employs ten or more

1 unrelated, full-time employees, whether in one or more locations,  
2 on each working day for thirteen calendar weeks, whether or not  
3 such weeks are consecutive. The act shall apply to an employer  
4 thirty days after the thirteenth such week; and

5 (e) Service performed by a person who is engaged in  
6 an agricultural operation, or performed by his or her related  
7 employees, when the service performed is (i) occasional and (ii)  
8 for another person who is engaged in an agricultural operation who  
9 has provided or will provide reciprocal or similar service.

10 (3) If the employer is the state or any governmental  
11 agency created by the state, the exemption from the act under  
12 subdivision (2)(d) of this section does not apply.

13 (4) If the act applies to an employer because the  
14 employer meets the requirements of subdivision (2)(d) of this  
15 section, all unrelated employees shall be covered under the act and  
16 such employees' wages shall be considered for premium purposes.

17 (5) If an employer to whom the act applies because the  
18 employer meets the requirements of subdivision (2)(d) of this  
19 section subsequently does not employ ten or more unrelated,  
20 full-time employees, such employer shall continue to provide  
21 workers' compensation insurance coverage for the employees for  
22 the remainder of the calendar year and for the next full  
23 calendar year. When the required coverage period has expired,  
24 such employer may elect to return to exempt status by (a) posting,  
25 continuously in a conspicuous place at the employment locations  
26 of the employees for a period of at least ninety days, a written  
27 or printed notice stating that the employer will no longer carry

1 workers' compensation insurance for the employees and the date such  
2 insurance will cease and (b) thereafter no longer carrying a policy  
3 of workers' compensation insurance. Failure to provide notice in  
4 accordance with this subsection voids an employer's attempt to  
5 return to exempt status.

6 (6) An employer who is exempt from the act under  
7 subsection (2) of this section may elect to bring the employees of  
8 such employer under the act. Such election is made by the employer  
9 obtaining a policy of workers' compensation insurance covering  
10 such employees. Such policy shall be obtained from a corporation,  
11 association, or organization authorized and licensed to transact  
12 the business of workers' compensation insurance in this state. If  
13 such an exempt employer procures a policy of workers' compensation  
14 insurance which is in full force and effect at the time of an  
15 accident to an employee of such employer, such procurement is  
16 conclusive proof of the employer's and employee's election to be  
17 bound by the act. Such an exempt employer who has procured a policy  
18 of workers' compensation insurance may elect to return to exempt  
19 status by (a) posting, continuously in a conspicuous place at the  
20 employment locations of the employees for a period of at least  
21 ninety days, a written or printed notice stating that the employer  
22 will no longer carry workers' compensation insurance for the  
23 employees and the date such insurance will cease and (b) thereafter  
24 no longer carrying a policy of workers' compensation insurance.  
25 Failure to provide notice in accordance with this subsection voids  
26 an employer's attempt to return to exempt status.

27 (7) Every employer exempted under subdivision (2)(d) of

1 this section who does not elect to provide workers' compensation  
2 insurance under subsection (6) of this section shall give all  
3 unrelated employees at the time of hiring or at any time more than  
4 thirty calendar days prior to the time of injury the following  
5 written notice which shall be signed by the unrelated employee  
6 and retained by the employer: "In this employment you will not  
7 be covered by the Nebraska Workers' Compensation Act and you will  
8 not be compensated under the act if you are injured on the job  
9 or suffer an occupational disease. You should plan accordingly."  
10 Failure to provide the notice required by this subsection subjects  
11 an employer to liability under and inclusion in the act for all  
12 unrelated employees on the basis of failure to give such notice.

13 (8) An exclusion from coverage in any health, accident,  
14 or other insurance policy covering a person employed by an employer  
15 who is exempt from the act under this section which provides that  
16 coverage under the health, accident, or other insurance policy  
17 does not apply if such person is entitled to workers' compensation  
18 coverage is void as to such person if such employer has not elected  
19 to bring the employees of such employer within the act as provided  
20 in subsection (6) of this section.

21 (9) For purposes of this section:

22 (a) Agricultural operation means (i) the cultivation of  
23 land for the production of agricultural crops, fruit, or other  
24 horticultural products or (ii) the ownership, keeping, or feeding  
25 of animals for the production of livestock or livestock products;

26 (b) Full-time employee means a person who is employed to  
27 work one-half or more of the regularly scheduled hours during each

1 pay period; and

2 (c) Related employee means a spouse of an employer and  
3 an employee related to the employer within the third degree by  
4 blood or marriage. Relationship by blood or marriage within the  
5 third degree includes parents, grandparents, great grandparents,  
6 children, grandchildren, great grandchildren, brothers, sisters,  
7 uncles, aunts, nephews, nieces, and spouses of the same. If  
8 the employer is a partnership, limited liability company, or  
9 corporation in which all of the partners, members, or shareholders  
10 are related within the third degree by blood or marriage, then  
11 related employee means any employee related to any such partner,  
12 member, or shareholder within the third degree by blood or  
13 marriage.

14 Sec. 2. Section 48-120.04, Revised Statutes Cumulative  
15 Supplement, 2008, is amended to read:

16 48-120.04 (1) This section applies only to hospitals  
17 identified in subdivision (1)(c) of section 48-120.

18 (2) For inpatient discharges on or after January 1, 2008,  
19 the Diagnostic Related Group inpatient hospital fee schedule shall  
20 be as set forth in this section, except as otherwise provided in  
21 subdivision (1)(d) of section 48-120. Adjustments shall be made  
22 annually as provided in this section, with such adjustments to  
23 become effective each January 1.

24 (3) For purposes of this section:

25 (a) Current Medicare Factor is derived from the  
26 Diagnostic Related Group Prospective Payment System as established  
27 by the Centers for Medicare and Medicaid Services under the United

1 States Department of Health and Human Services and means the  
2 summation of the following components:

3 (i) Hospital-specific Federal Standardized Amount,  
4 including all wage index adjustments and reclassifications;

5 (ii) Hospital-specific Capital Standard Federal Rate,  
6 including geographic, outlier, and exception adjustment factors;

7 (iii) Hospital-specific Indirect Medical Education Rate,  
8 reflecting a percentage add-on for indirect medical education costs  
9 and related capital; and

10 (iv) Hospital-specific Disproportionate Share Hospital  
11 Rate, reflecting a percentage add-on for disproportionate share of  
12 low income patient costs and related capital;

13 (b) Current Medicare Weight means the weight assigned  
14 to each Medicare Diagnostic Related Group as established by the  
15 Centers for Medicare and Medicaid Services under the United States  
16 Department of Health and Human Services;

17 (c) Diagnostic Related Group means the Diagnostic Related  
18 Group assigned to inpatient hospital services using the public  
19 domain classification and methodology system developed for the  
20 Centers for Medicare and Medicaid Services under the United States  
21 Department of Health and Human Services; and

22 (d) Workers' Compensation Factor means the Current  
23 Medicare Factor for each hospital multiplied by one hundred fifty  
24 percent.

25 (4) The Diagnostic Related Group inpatient hospital  
26 fee schedule shall include at least thirty-eight of the most  
27 frequently utilized Medicare Diagnostic Related Groups for workers'

1 compensation with the goal that the fee schedule covers at least  
2 ninety percent of all workers' compensation inpatient hospital  
3 claims submitted by hospitals identified in subdivision (1)(c) of  
4 section 48-120. Rehabilitation Diagnostic Related Groups shall not  
5 be included in the Diagnostic Related Group inpatient hospital  
6 fee schedule. Claims for inpatient trauma services shall not be  
7 reimbursed under the Diagnostic Related Group inpatient hospital  
8 fee schedule established under this section until January 1, ~~2010-~~  
9 2011. Claims for inpatient trauma services prior to January 1,  
10 ~~2010,~~ 2011, shall be reimbursed under the fees established by  
11 the compensation court pursuant to subdivision (1)(b) of section  
12 48-120 or as contracted pursuant to subdivision (1)(d) of such  
13 section. For purposes of this subsection, trauma means a major  
14 single-system or multisystem injury requiring immediate medical or  
15 surgical intervention or treatment to prevent death or permanent  
16 disability.

17 (5) The Diagnostic Related Group inpatient hospital fee  
18 schedule shall be established by the following methodology:

19 (a) The Diagnostic Related Group reimbursement amount  
20 required under the Nebraska Workers' Compensation Act shall be  
21 equal to the Current Medicare Weight multiplied by the Workers'  
22 Compensation Factor for each hospital;

23 (b) The Stop-Loss Threshold amount shall be the  
24 Diagnostic Related Group reimbursement amount calculated in  
25 subdivision (5)(a) of this section multiplied by two and one-half;

26 (c) For charges over the Stop-Loss Threshold amount of  
27 the schedule, the hospital shall be reimbursed the Diagnostic

1 Related Group reimbursement amount calculated in subdivision (5) (a)  
2 of this section plus sixty percent of the charges over the  
3 Stop-Loss Threshold amount; and

4 (d) For charges less than the Stop-Loss Threshold amount  
5 of the schedule, the hospital shall be reimbursed the lower of  
6 the hospital's billed charges or the Diagnostic Related Group  
7 reimbursement amount calculated in subdivision (5) (a) of this  
8 section.

9 (6) For charges for all other stays or services that are  
10 not on the Diagnostic Related Group inpatient hospital fee schedule  
11 or are not contracted for under subdivision (1) (d) of section  
12 48-120, the hospital shall be reimbursed under the schedule of  
13 fees established by the compensation court pursuant to subdivision  
14 (1) (b) of section 48-120.

15 (7) Each hospital shall assign and include a Diagnostic  
16 Related Group on each workers' compensation claim submitted.  
17 The workers' compensation insurer, risk management pool, or  
18 self-insured employer may audit the Diagnostic Related Group  
19 assignment of the hospital.

20 (8) The chief executive officer of each hospital shall  
21 sign and file with the administrator of the compensation court by  
22 October 15 of each year, in the form and manner prescribed by the  
23 administrator, a sworn statement disclosing the Current Medicare  
24 Factor of the hospital in effect on October 1 of such year and each  
25 item and amount making up such factor.

26 (9) Each hospital, workers' compensation insurer, risk  
27 management pool, and self-insured employer shall report to the



1 administrator of the compensation court by October 15 of each year,  
2 in the form and manner prescribed by the administrator, the total  
3 number of claims submitted for each Diagnostic Related Group and  
4 the number of times billed charges exceeded the Stop-Loss Threshold  
5 amount for each Diagnostic Related Group.

6 (10) The compensation court may add or subtract  
7 Diagnostic Related Groups in striving to achieve the goal of  
8 including those Diagnostic Related Groups that encompass at least  
9 ninety percent of the inpatient hospital workers' compensation  
10 claims submitted by hospitals identified in subdivision (1)(c) of  
11 section 48-120. The administrator of the compensation court shall  
12 annually make necessary adjustments to comply with the Current  
13 Medicare Weights and shall annually adjust the Current Medicare  
14 Factor for each hospital based on the annual statement submitted  
15 pursuant to subsection (8) of this section.

16 Sec. 3. Section 48-121, Revised Statutes Cumulative  
17 Supplement, 2008, is amended to read:

18 48-121 The following schedule of compensation is hereby  
19 established for injuries resulting in disability:

20 (1) For total disability, the compensation during such  
21 disability shall be sixty-six and two-thirds percent of the wages  
22 received at the time of injury, but such compensation shall not be  
23 more than the maximum weekly income benefit specified in section  
24 48-121.01 nor less than the minimum weekly income benefit specified  
25 in section 48-121.01, except that if at the time of injury the  
26 employee receives wages of less than the minimum weekly income  
27 benefit specified in section 48-121.01, then he or she shall

1 receive the full amount of such wages per week as compensation.  
2 Any weekly benefit amount for total disability awarded after the  
3 effective date of this act shall be adjusted each year so that the  
4 benefit amount is the lesser of sixty-six and two-thirds percent  
5 of the wages received at the time of injury or the amount computed  
6 under section 48-121.01. Nothing in this subdivision shall require  
7 payment of compensation after disability shall cease;

8 (2) For disability partial in character, except the  
9 particular cases mentioned in subdivision (3) of this section,  
10 the compensation shall be sixty-six and two-thirds percent of the  
11 difference between the wages received at the time of the injury and  
12 the earning power of the employee thereafter, but such compensation  
13 shall not be more than the maximum weekly income benefit specified  
14 in section 48-121.01. This compensation shall be paid during the  
15 period of such partial disability but not beyond three hundred  
16 weeks. Should total disability be followed by partial disability,  
17 the period of three hundred weeks mentioned in this subdivision  
18 shall be reduced by the number of weeks during which compensation  
19 was paid for such total disability;

20 (3) For disability resulting from permanent injury of  
21 the classes listed in this subdivision, the compensation shall be  
22 in addition to the amount paid for temporary disability, except  
23 that the compensation for temporary disability shall cease as  
24 soon as the extent of the permanent disability is ascertainable.  
25 For disability resulting from permanent injury of the following  
26 classes, compensation shall be: For the loss of a thumb, sixty-six  
27 and two-thirds percent of daily wages during sixty weeks. For the

1 loss of a first finger, commonly called the index finger, sixty-six  
2 and two-thirds percent of daily wages during thirty-five weeks. For  
3 the loss of a second finger, sixty-six and two-thirds percent of  
4 daily wages during thirty weeks. For the loss of a third finger,  
5 sixty-six and two-thirds percent of daily wages during twenty  
6 weeks. For the loss of a fourth finger, commonly called the little  
7 finger, sixty-six and two-thirds percent of daily wages during  
8 fifteen weeks. The loss of the first phalange of the thumb or of  
9 any finger shall be considered to be equal to the loss of one-half  
10 of such thumb or finger and compensation shall be for one-half of  
11 the periods of time above specified, and the compensation for the  
12 loss of one-half of the first phalange shall be for one-fourth of  
13 the periods of time above specified. The loss of more than one  
14 phalange shall be considered as the loss of the entire finger or  
15 thumb, except that in no case shall the amount received for more  
16 than one finger exceed the amount provided in this schedule for  
17 the loss of a hand. For the loss of a great toe, sixty-six and  
18 two-thirds percent of daily wages during thirty weeks. For the  
19 loss of one of the toes other than the great toe, sixty-six and  
20 two-thirds percent of daily wages during ten weeks. The loss of the  
21 first phalange of any toe shall be considered equal to the loss of  
22 one-half of such toe, and compensation shall be for one-half of the  
23 periods of time above specified. The loss of more than one phalange  
24 shall be considered as the loss of the entire toe. For the loss of  
25 a hand, sixty-six and two-thirds percent of daily wages during one  
26 hundred seventy-five weeks. For the loss of an arm, sixty-six and  
27 two-thirds percent of daily wages during two hundred twenty-five

1 weeks. For the loss of a foot, sixty-six and two-thirds percent of  
2 daily wages during one hundred fifty weeks. For the loss of a leg,  
3 sixty-six and two-thirds percent of daily wages during two hundred  
4 fifteen weeks. For the loss of an eye, sixty-six and two-thirds  
5 percent of daily wages during one hundred twenty-five weeks. For  
6 the loss of an ear, sixty-six and two-thirds percent of daily  
7 wages during twenty-five weeks. For the loss of hearing in one ear,  
8 sixty-six and two-thirds percent of daily wages during fifty weeks.  
9 For the loss of the nose, sixty-six and two-thirds percent of daily  
10 wages during fifty weeks.

11           In any case in which there is a loss or loss of use  
12 of more than one member or parts of more than one member set  
13 forth in this subdivision, but not amounting to total and permanent  
14 disability, compensation benefits shall be paid for the loss or  
15 loss of use of each such member or part thereof, with the periods  
16 of benefits to run consecutively. The total loss or permanent  
17 total loss of use of both hands, or both arms, or both feet,  
18 or both legs, or both eyes, or hearing in both ears, or of any  
19 two thereof, in one accident, shall constitute total and permanent  
20 disability and be compensated for according to subdivision (1) of  
21 this section. In all other cases involving a loss or loss of use  
22 of both hands, both arms, both feet, both legs, both eyes, or  
23 hearing in both ears, or of any two thereof, total and permanent  
24 disability shall be determined in accordance with the facts.  
25 Amputation between the elbow and the wrist shall be considered  
26 as the equivalent of the loss of a hand, and amputation between  
27 the knee and the ankle shall be considered as the equivalent of

1 the loss of a foot. Amputation at or above the elbow shall be  
2 considered as the loss of an arm, and amputation at or above the  
3 knee shall be considered as the loss of a leg. Permanent total  
4 loss of the use of a finger, hand, arm, foot, leg, or eye shall  
5 be considered as the equivalent of the loss of such finger, hand,  
6 arm, foot, leg, or eye. In all cases involving a permanent partial  
7 loss of the use or function of any of the members mentioned in  
8 this subdivision, the compensation shall bear such relation to the  
9 amounts named in such subdivision as the disabilities bear to those  
10 produced by the injuries named therein.

11           If, in the compensation court's discretion, compensation  
12 benefits payable for a loss or loss of use of more than one  
13 member or parts of more than one member set forth in this  
14 subdivision, resulting from the same accident or illness, do not  
15 adequately compensate the employee for such loss or loss of use  
16 and such loss or loss of use results in at least a thirty  
17 percent loss of earning capacity, the compensation court shall,  
18 upon request of the employee, determine the employee's loss of  
19 earning capacity consistent with the process for such determination  
20 under subdivision (1) or (2) of this section, and in such a case  
21 the employee shall not be entitled to compensation under this  
22 subdivision.

23           If the employer and the employee are unable to agree upon  
24 the amount of compensation to be paid in cases not covered by the  
25 schedule, the amount of compensation shall be settled according  
26 to sections 48-173 to 48-185. Compensation under this subdivision  
27 shall not be more than the maximum weekly income benefit specified

1 in section 48-121.01 nor less than the minimum weekly income  
2 benefit specified in section 48-121.01, except that if at the  
3 time of the injury the employee received wages of less than the  
4 minimum weekly income benefit specified in section 48-121.01, then  
5 he or she shall receive the full amount of such wages per week as  
6 compensation;

7 (4) For disability resulting from permanent disability,  
8 if immediately prior to the accident the rate of wages was fixed  
9 by the day or hour, or by the output of the employee, the weekly  
10 wages shall be taken to be computed upon the basis of a workweek of  
11 a minimum of five days, if the wages are paid by the day, or upon  
12 the basis of a workweek of a minimum of forty hours, if the wages  
13 are paid by the hour, or upon the basis of a workweek of a minimum  
14 of five days or forty hours, whichever results in the higher weekly  
15 wage, if the wages are based on the output of the employee; and

16 (5) The employee shall be entitled to compensation  
17 from his or her employer for temporary disability while  
18 undergoing physical or medical rehabilitation and while undergoing  
19 vocational rehabilitation whether such vocational rehabilitation is  
20 voluntarily offered by the employer and accepted by the employee or  
21 is ordered by the Nebraska Workers' Compensation Court or any judge  
22 of the compensation court.

23 Sec. 4. Section 48-125, Revised Statutes Cumulative  
24 Supplement, 2008, is amended to read:

25 48-125 ~~(1)~~ (1)(a) Except as hereinafter provided, all  
26 amounts of compensation payable under the Nebraska Workers'  
27 Compensation Act shall be payable periodically in accordance with

1 the methods of payment of wages of the employee at the time of the  
2 injury or death. Such payments shall be sent directly to the person  
3 entitled to compensation or his or her designated representative  
4 except as otherwise provided in section 48-149.

5 (b) Fifty percent shall be added for waiting time for  
6 all delinquent payments after thirty days' notice has been given  
7 of disability or after thirty days from the entry of a final  
8 order, award, or judgment of the compensation court, except that  
9 for any award or judgment against the state in excess of one  
10 hundred thousand dollars which must be reviewed by the Legislature  
11 as provided in section 48-1,102, fifty percent shall be added  
12 for waiting time for delinquent payments thirty days after the  
13 effective date of the legislative bill appropriating any funds  
14 necessary to pay the portion of the award or judgment in excess of  
15 one hundred thousand dollars. ~~Such payments shall be sent directly~~  
16 ~~to the person entitled to compensation or his or her designated~~  
17 ~~representative except as otherwise provided in section 48-149.~~

18 (2) Whenever the employer refuses payment of compensation  
19 or medical payments subject to section 48-120, or when the employer  
20 neglects to pay compensation for thirty days after injury or  
21 neglects to pay medical payments subject to such section after  
22 thirty days' notice has been given of the obligation for medical  
23 payments, and proceedings are held before the Nebraska Workers'  
24 Compensation Court, a reasonable attorney's fee shall be allowed  
25 the employee by the compensation court in all cases when the  
26 employee receives an award. Attorney's fees allowed shall not  
27 be deducted from the amounts ordered to be paid for medical

1 services nor shall attorney's fees be charged to the medical  
2 providers. If the employer files an application for review before  
3 the compensation court from an award of a judge of the compensation  
4 court and fails to obtain any reduction in the amount of such  
5 award, the compensation court shall allow the employee a reasonable  
6 attorney's fee to be taxed as costs against the employer for such  
7 review, and the Court of Appeals or Supreme Court shall in like  
8 manner allow the employee a reasonable sum as attorney's fees for  
9 the proceedings in the Court of Appeals or Supreme Court. If the  
10 employee files an application for a review before the compensation  
11 court from an order of a judge of the compensation court denying an  
12 award and obtains an award or if the employee files an application  
13 for a review before the compensation court from an award of a judge  
14 of the compensation court when the amount of compensation due is  
15 disputed and obtains an increase in the amount of such award, the  
16 compensation court may allow the employee a reasonable attorney's  
17 fee to be taxed as costs against the employer for such review, and  
18 the Court of Appeals or Supreme Court may in like manner allow the  
19 employee a reasonable sum as attorney's fees for the proceedings in  
20 the Court of Appeals or Supreme Court. A reasonable attorney's fee  
21 allowed pursuant to this section shall not affect or diminish the  
22 amount of the award.

23 (3) When an attorney's fee is allowed pursuant to this  
24 section, there shall further be assessed against the employer an  
25 amount of interest on the final award obtained, computed from the  
26 date compensation was payable, as provided in section 48-119, until  
27 the date payment is made by the employer, at a rate equal to the



1 rate of interest allowed per annum under section 45-104.01, as such  
2 rate may from time to time be adjusted by the Legislature. Interest  
3 shall apply only to those weekly compensation benefits awarded  
4 which have accrued as of the date payment is made by the employer.  
5 If the employer pays or tenders payment of compensation, the amount  
6 of compensation due is disputed, and the award obtained is greater  
7 than the amount paid or tendered by the employer, the assessment of  
8 interest shall be determined solely upon the difference between the  
9 amount awarded and the amount tendered or paid.

10           Sec. 5. Section 48-138, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           48-138 The amounts of compensation payable periodically  
13 under the law by agreement of the parties with the approval of  
14 the Nebraska Workers' Compensation Court may be commuted to one  
15 or more lump-sum payments, except compensation due for death,  
16 permanent disability, or claimed permanent disability which may be  
17 commuted only upon the order or decision of the compensation court  
18 pursuant to as provided in section 48-139. If + PROVIDED, that when  
19 commutation is agreed upon pursuant to this section or ~~approved by~~  
20 ~~order pursuant to~~ section 48-139, the lump sum to be paid shall be  
21 fixed at an amount which will equal the total sum of the probable  
22 future payments, capitalized at their present value upon the basis  
23 of interest calculated at five percent per annum with annual rests.

24           The fee of the clerk of the compensation court for  
25 filing, docketing, and indexing an agreement submitted for approval  
26 as provided in this section shall be fifteen dollars. The fees  
27 shall be remitted by the clerk to the State Treasurer for credit to

1 the Compensation Court Cash Fund.

2 Sec. 6. Section 48-139, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

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

13 (i) The employee is not represented by counsel;

14 (ii) The employee, at the time the settlement is  
15 executed, is eligible for medicare, is a medicare beneficiary,  
16 or has a reasonable expectation of becoming eligible for medicare  
17 within thirty months after the date the settlement is executed;

18 (iii) Medical, surgical, or hospital expenses incurred  
19 for treatment of the injury have been paid by medicaid and medicaid  
20 will not be reimbursed as part of the settlement;

21 (iv) Medical, surgical, or hospital expenses incurred for  
22 treatment of the injury will not be fully paid as part of the  
23 settlement; or

24 (v) The settlement seeks to commute amounts of  
25 compensation due to dependents of the employee.

26 (b) If such lump-sum settlement is not required to be  
27 submitted for approval by the compensation court, a release shall

1 be filed with the compensation court as provided in subsection (3)  
2 of this section.

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

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

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

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

23            (a) The employee understands and waives all rights under  
24 the Nebraska Worker's Compensation Act, including, but not limited  
25 to:

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

1           (ii) The right to receive vocational rehabilitation  
2 services;

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

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

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

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

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

19           (4) The fees of the clerk of the compensation court  
20 for filing, docketing, and indexing an application for an order  
21 approving a ~~lump-sum settlement or agreement~~ filing a release as  
22 provided in this section shall be fifteen dollars. The fees shall  
23 be remitted by the clerk to the State Treasurer for credit to the  
24 Compensation Court Cash Fund.

25           Sec. 7. Section 48-140, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           48-140 ~~All settlements~~ Any lump-sum settlement by

1 agreement of the parties with the approval of the Nebraska Workers'  
2 Compensation Court and all pursuant to section 48-139 shall be  
3 final and not subject to readjustment if the settlement is in  
4 conformity with the Nebraska Workers' Compensation Act, unless the  
5 settlement is procured by fraud. All awards of compensation made by  
6 the compensation court, except those amounts payable periodically,  
7 shall be final and not subject to readjustment. ~~PROVIDED, no~~  
8 settlement shall be final unless it is in conformity with the  
9 Nebraska Workers' Compensation Act and approved by order of the  
10 compensation court pursuant to section 48-139.

11 Sec. 8. Section 48-141, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 48-141 All amounts paid by an employer or by an insurance  
14 company carrying such risk, as the case may be, and received by the  
15 employee or his or her dependents by lump-sum payments, ~~approved by~~  
16 ~~order~~ pursuant to section 48-139, shall be final and not subject  
17 to readjustment if the lump-sum settlement is in conformity with  
18 the Nebraska Workers' Compensation Act, unless the settlement is  
19 procured by fraud, but the amount of any agreement or award  
20 payable periodically may be modified as follows: (1) At any time by  
21 agreement of the parties with the approval of the Nebraska Workers'  
22 Compensation Court; or (2) if the parties cannot agree, then at any  
23 time after six months from the date of the agreement or award, an  
24 application may be made by either party on the ground of increase  
25 or decrease of incapacity due solely to the injury or that the  
26 condition of a dependent has changed as to age or marriage or  
27 by reason of the death of the dependent. In such case, the same

1 procedure shall be followed as in sections 48-173 to 48-185 in case  
2 of disputed claim for compensation.

3 Sec. 9. Section 48-144.03, Revised Statutes Cumulative  
4 Supplement, 2008, is amended to read:

5 48-144.03 (1) Notwithstanding policy provisions that  
6 stipulate a workers' compensation insurance policy to be a contract  
7 with a fixed term of coverage that expires at the end of the  
8 term, coverage under a workers' compensation insurance policy  
9 shall continue in full force and effect until notice is given in  
10 accordance with this section.

11 (2) No cancellation of a workers' compensation insurance  
12 policy within the policy period shall be effective unless notice  
13 of the cancellation is given by the workers' compensation insurer  
14 to the Nebraska Workers' Compensation Court and to the employer.  
15 No such cancellation shall be effective until thirty days after  
16 the giving of such notices, except that the cancellation may  
17 be effective ten days after the giving of such notices if such  
18 cancellation is based on (a) notice from the employer to the  
19 insurer to cancel the policy, (b) nonpayment of premium due the  
20 insurer under any policy written by the insurer for the employer,  
21 (c) failure of the employer to reimburse deductible losses as  
22 required under any policy written by the insurer for the employer,  
23 or (d) failure of the employer, if covered pursuant to section  
24 44-3,158, to comply with sections 48-443 to 48-445.

25 (3) No workers' compensation insurance policy shall  
26 expire or lapse at the end of the policy period unless notice  
27 of nonrenewal is given by the workers' compensation insurer to the

1 compensation court and to the employer. No workers' compensation  
2 insurance policy shall expire or lapse until thirty days after the  
3 giving of such notices, except that a policy may expire or lapse  
4 ten days after the giving of such notices if the nonrenewal is  
5 based on (a) notice from the employer to the insurer to not renew  
6 the policy, (b) nonpayment of premium due the insurer under any  
7 policy written by the insurer for the employer, (c) failure of  
8 the employer to reimburse deductible losses as required under any  
9 policy written by the insurer for the employer, or (d) failure of  
10 the employer, if covered pursuant to section 44-3,158, to comply  
11 with sections 48-443 to 48-445.

12 (4) Notwithstanding other provisions of this section, if  
13 the employer has secured workers' compensation insurance coverage  
14 with another workers' compensation insurer, then the cancellation  
15 or nonrenewal shall be effective as of the effective date of such  
16 other insurance coverage.

17 (5) The notices required by this section shall state the  
18 reason for the cancellation or nonrenewal of the policy.

19 (6) The notices required by this section shall be  
20 provided in writing and shall be deemed given upon the mailing  
21 of such notices by certified mail, except that notices from  
22 insurers to the compensation court may be provided by electronic  
23 means if such electronic means is approved by the administrator of  
24 the compensation court. If notice is provided by electronic means  
25 pursuant to such an approval, it shall be deemed given upon receipt  
26 and acceptance by the compensation court.

27 Sec. 10. Section 48-168, Revised Statutes Cumulative



1 Supplement, 2008, is amended to read:

2           48-168 (1) The Nebraska Workers' Compensation Court shall  
3 not be bound by the usual common-law or statutory rules of evidence  
4 or by any technical or formal rules of procedure, other than as  
5 herein provided, but may make the investigation in such manner as  
6 in its judgment is best calculated to ascertain the substantial  
7 rights of the parties and to carry out justly the spirit of the  
8 Nebraska Workers' Compensation Act.

9           (2) (a) The Nebraska Workers' Compensation Court may  
10 establish procedures whereby a dispute may be submitted by  
11 the parties, by the provider of medical, surgical, or hospital  
12 services pursuant to section 48-120, by a vocational rehabilitation  
13 counselor certified pursuant to section 48-162.01, or by the  
14 compensation court on its own motion for informal dispute  
15 resolution by a staff member of the compensation court or outside  
16 mediator. Any party who requests such informal dispute resolution  
17 shall not be precluded from filing a petition pursuant to section  
18 48-173 if otherwise permitted. If informal dispute resolution  
19 is ordered by the compensation court on its own motion, the  
20 compensation court may state a date for the case to return to  
21 court. Such date shall be no longer than ninety days after the  
22 date the order was signed unless the court grants an extension upon  
23 request of the parties. No settlement or agreement reached as the  
24 result of an informal dispute resolution proceeding shall be final  
25 or binding unless such settlement or agreement is in conformity  
26 with the Nebraska Workers' Compensation Act and approved by order  
27 of the compensation court pursuant to section 48-139. Any such

1 settlement or agreement shall be voluntarily entered into by the  
2 parties.

3 ~~(b) Until January 1, 2008, the Nebraska Workers'~~  
4 ~~Compensation Court shall establish procedures for informal dispute~~  
5 ~~resolution and arbitration for a dispute regarding the fees owed~~  
6 ~~for medical, surgical, or hospital services provided pursuant~~  
7 ~~to section 48-120. If the provider of medical, surgical, or~~  
8 ~~hospital services and the workers' compensation insurer, risk~~  
9 ~~management pool, or self-insured employer are unable to reach an~~  
10 ~~agreement on the fees to be paid for such services: (i) They~~  
11 ~~may agree to submit the dispute to an attorney staff member of~~  
12 ~~the compensation court for resolution of the dispute through the~~  
13 ~~informal dispute resolution process and for arbitration, if the~~  
14 ~~dispute is unresolved in the informal dispute resolution process,~~  
15 ~~or (ii) the parties may agree to submit the dispute directly to~~  
16 ~~arbitration. A decision by the attorney staff member for the court~~  
17 ~~as the result of an arbitration proceeding shall be final and~~  
18 ~~binding and not subject to appeal.~~

19 (b) (i) Except as permitted in subdivision (b) (ii) of  
20 this subsection, a mediator shall not make a report, assessment,  
21 evaluation, recommendation, finding, or other communication  
22 regarding a mediation to a judge of the compensation court that may  
23 make a ruling on the dispute that is the subject of the mediation.

24 (ii) A mediator may disclose:

25 (A) Whether the mediation occurred or has terminated,  
26 whether a settlement was reached, and attendance; and

27 (B) A mediation communication evidencing abuse, neglect,

1 abandonment, or exploitation of an individual to a public agency  
2 responsible for protecting individuals against such mistreatment.

3 (iii) A communication made in violation of subdivision  
4 (b) (i) of this subsection shall not be considered by a judge of the  
5 compensation court.

6 (c) Informal dispute resolution ~~and arbitration~~  
7 proceedings shall be regarded as settlement negotiations and no  
8 admission, representation, or statement made in informal dispute  
9 resolution ~~or arbitration~~ proceedings, not otherwise discoverable  
10 or obtainable, shall be admissible as evidence or subject to  
11 discovery. A staff member or mediator shall not be subject  
12 to process requiring the disclosure of any matter discussed  
13 during informal dispute resolution ~~or arbitration~~ proceedings.  
14 Any information from the files, reports, notes of the staff  
15 member or mediator, or other materials or communications, oral or  
16 written, relating to an informal dispute resolution ~~or arbitration~~  
17 proceeding obtained by a staff member or mediator is privileged and  
18 confidential and may not be disclosed without the written consent  
19 of all parties to the proceeding. No staff member or mediator shall  
20 be held liable for civil damages for any statement or decision made  
21 in the process of dispute resolution ~~or arbitration~~ unless such  
22 person acted in a manner exhibiting willful or wanton misconduct.

23 (d) The compensation court may adopt and promulgate  
24 rules and regulations regarding informal dispute resolution ~~and~~  
25 ~~arbitration~~ proceedings that are considered necessary to effectuate  
26 the purposes of this section.

27 Sec. 11. Original sections 48-138, 48-139, 48-140, and

1 48-141, Reissue Revised Statutes of Nebraska, and sections 48-106,  
2 48-120.04, 48-121, 48-125, 48-144.03, and 48-168, Revised Statutes  
3 Cumulative Supplement, 2008, are repealed.

4           Sec. 12. Since an emergency exists, this act takes effect  
5 when passed and approved according to law.