

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 243

Introduced by Nantkes, 46.

Read first time January 13, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act;
2 to amend section 48-121, Revised Statutes Cumulative
3 Supplement, 2008; to provide for annual adjustments for
4 total disability income benefits; and to repeal the
5 original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-121, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 48-121 The following schedule of compensation is hereby
4 established for injuries resulting in disability:

5 (1) For total disability, the compensation during such
6 disability shall be sixty-six and two-thirds percent of the wages
7 received at the time of injury, but such compensation shall
8 not be more than the maximum weekly income benefit specified
9 in section 48-121.01 nor less than the minimum weekly income
10 benefit specified in section 48-121.01, except that if at the
11 time of injury the employee receives wages of less than the
12 minimum weekly income benefit specified in section 48-121.01, then
13 he or she shall receive the full amount of such wages per week
14 as compensation. Any weekly income benefit for total disability
15 awarded after the effective date of this act shall be adjusted each
16 year in a proportion equal to annual increases resulting from the
17 determination of the average weekly wage under section 48-121.02.

18 Nothing in this subdivision shall require payment of compensation
19 after disability shall cease;

20 (2) For disability partial in character, except the
21 particular cases mentioned in subdivision (3) of this section,
22 the compensation shall be sixty-six and two-thirds percent of the
23 difference between the wages received at the time of the injury and
24 the earning power of the employee thereafter, but such compensation
25 shall not be more than the maximum weekly income benefit specified

1 in section 48-121.01. This compensation shall be paid during the
2 period of such partial disability but not beyond three hundred
3 weeks. Should total disability be followed by partial disability,
4 the period of three hundred weeks mentioned in this subdivision
5 shall be reduced by the number of weeks during which compensation
6 was paid for such total disability;

7 (3) For disability resulting from permanent injury of
8 the classes listed in this subdivision, the compensation shall be
9 in addition to the amount paid for temporary disability, except
10 that the compensation for temporary disability shall cease as
11 soon as the extent of the permanent disability is ascertainable.
12 For disability resulting from permanent injury of the following
13 classes, compensation shall be: For the loss of a thumb, sixty-six
14 and two-thirds percent of daily wages during sixty weeks. For the
15 loss of a first finger, commonly called the index finger, sixty-six
16 and two-thirds percent of daily wages during thirty-five weeks. For
17 the loss of a second finger, sixty-six and two-thirds percent of
18 daily wages during thirty weeks. For the loss of a third finger,
19 sixty-six and two-thirds percent of daily wages during twenty
20 weeks. For the loss of a fourth finger, commonly called the little
21 finger, sixty-six and two-thirds percent of daily wages during
22 fifteen weeks. The loss of the first phalange of the thumb or of
23 any finger shall be considered to be equal to the loss of one-half
24 of such thumb or finger and compensation shall be for one-half of
25 the periods of time above specified, and the compensation for the

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

1 wages during fifty weeks.

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

1 this subdivision, the compensation shall bear such relation to the
2 amounts named in such subdivision as the disabilities bear to those
3 produced by the injuries named therein.

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

16 If the employer and the employee are unable to agree upon
17 the amount of compensation to be paid in cases not covered by the
18 schedule, the amount of compensation shall be settled according
19 to sections 48-173 to 48-185. Compensation under this subdivision
20 shall not be more than the maximum weekly income benefit specified
21 in section 48-121.01 nor less than the minimum weekly income
22 benefit specified in section 48-121.01, except that if at the
23 time of the injury the employee received wages of less than the
24 minimum weekly income benefit specified in section 48-121.01, then
25 he or she shall receive the full amount of such wages per week as

1 compensation;

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

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

18 Sec. 2. Original section 48-121, Revised Statutes
19 Cumulative Supplement, 2008, is repealed.