

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 453**

Introduced by Rogert, 16.

Read first time January 20, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section  
2 48-106, Revised Statutes Cumulative Supplement, 2008;  
3 to change provisions relating to notice of excepted  
4 occupations; and to repeal the original section.

5 Be it enacted by the people of the State of Nebraska,

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

3           48-106 (1) The Nebraska Workers' Compensation Act shall  
4 apply to the State of Nebraska, to every governmental agency  
5 created by the state, and, except as provided in this section,  
6 to every resident employer in this state and nonresident employer  
7 performing work in this state who employs one or more employees  
8 in the regular trade, business, profession, or vocation of such  
9 employer.

10           (2) The act shall not apply to:

11           (a) A railroad company engaged in interstate or foreign  
12 commerce;

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

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

18           (d) Service performed by a worker when performed for  
19 an employer who is engaged in an agricultural operation and  
20 employs unrelated employees unless such service is performed for  
21 an employer who during any calendar year employs ten or more  
22 unrelated, full-time employees, whether in one or more locations,  
23 on each working day for thirteen calendar weeks, whether or not  
24 such weeks are consecutive. The act shall apply to an employer  
25 thirty days after the thirteenth such week; and

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

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

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

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

1 of workers' compensation insurance. Failure to provide notice in  
2 accordance with this subsection voids an employer's attempt to  
3 return to exempt status.

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

25 (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;

1           (b) Full-time employee means a person who is employed to  
2 work one-half or more of the regularly scheduled hours during each  
3 pay period; and

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

16           Sec. 2. Original section 48-106, Revised Statutes  
17 Cumulative Supplement, 2008, is repealed.