

LEGISLATIVE BILL 961

Approved by the Governor April 16, 2014

Introduced by Cook, 13; Mello, 5.

FOR AN ACT relating to law; to amend sections 44-2825, 45-1201, 45-1202, 45-1203, 45-1204, 45-1205, 48-126.01, 48-139, and 48-601, Reissue Revised Statutes of Nebraska; to provide for a compact regarding prevention and control of forest fires; to require workers' compensation coverage for volunteer firefighters as prescribed; to change the maximum amount recoverable under the Nebraska Hospital-Medical Liability Act; to change provisions of the Nebraska Construction Prompt Pay Act; to change workers' compensation provisions for certain public safety personnel and release provisions for lump-sum settlements; to adopt the short-time compensation program under the Employment Security Law; to appropriate funds; to provide operative dates; and to repeal the original sections.

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

Section 1. The Governor of Nebraska may execute a compact on behalf of the state with any one or more states who may, by their legislative bodies, authorize a compact, in form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state and may consult with like officials of the other member states and may implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V

If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

No member state which provides outside aid pursuant to this compact shall be liable in any civil action to respond in damages as a result of acts or omissions arising out of and in the course of rendering outside aid, but such immunity from liability shall not extend to the operation of any motor vehicle in connection with such services. Nothing in this paragraph shall be deemed to grant any such immunity to any person causing damage by his or her gross negligence or willful or wanton conduct.

All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of any equipment answering a

request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. However, nothing in this compact prevents any assisting member state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall assure that workers' compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

For the purposes of this compact, the term employee includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI

Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services, or facilities of any member state.

Nothing in the compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.

ARTICLE VII

Representatives of the United States Forest Service may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the Legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the Legislature or the Governor of the state takes action to withdraw from the compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

Sec. 2. No Nebraska volunteer firefighter shall be dispatched on behalf of this state pursuant to the compact set forth in section 1 of this act outside the boundaries of Nebraska unless such volunteer firefighter files with the Nebraska compact administrator a valid certificate of insurance covering him or her for workers' compensation benefits pursuant to the Nebraska Workers' Compensation Act outside the boundaries of Nebraska.

Sec. 3. Section 44-2825, Reissue Revised Statutes of Nebraska, is amended to read:

44-2825 (1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) five hundred thousand dollars for any occurrence on or before December 31, 1984, (b) one million dollars for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) one million two hundred fifty thousand dollars for any occurrence after December 31, 1992, and on or before December 31, 2003, and (d) one million seven hundred fifty thousand dollars for any occurrence after December 31, 2003, and on or before December 31, 2014, and (e) two million two hundred fifty thousand dollars for any occurrence after December 31, 2014.

(2) A health care provider qualified under the act shall not be liable to any patient or his or her representative who is covered by the act

for an amount in excess of five hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

Sec. 4. Section 45-1201, Reissue Revised Statutes of Nebraska, is amended to read:

45-1201 Sections 45-1201 to 45-1210 and section 8 of this act shall be known and may be cited as the Nebraska Construction Prompt Pay Act.

Sec. 5. Section 45-1202, Reissue Revised Statutes of Nebraska, is amended to read:

45-1202 For purposes of the Nebraska Construction Prompt Pay Act:

(1) Contractor includes individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person. Contractor does not include an individual or an entity performing work on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision;

(2) Owner means a person (a) who has an interest in any real property improved, (b) for whom an improvement is made, or (c) who contracted for an improvement to be made. Owner includes a person, an entity, or any political subdivision of this state. Owner does not include the State of Nebraska;

(3) Owner's representative means an architect, an engineer, or a construction manager in charge of a project for the owner or such other contract representative or officer as designated in the contract document as the party representing the owner's interest regarding administration and oversight of the project;

(4) Real property means real estate that is improved, including private and public land, and leaseholds, tenements, and improvements placed on the real property;

(5) Receipt means actual receipt of cash or funds by the contractor or subcontractor; ~~and~~

(6) Subcontractor means a person or an entity that has contracted to furnish labor or materials to, or performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property. Subcontractor includes materialmen and suppliers. Subcontractor does not include an individual or an entity performing work as a subcontractor on a contract for the State of Nebraska or performing work on a federal-aid or state-aid project of a political subdivision in which the state makes payments to the contractor on behalf of the political subdivision; and-

(7) Substantially complete means the stage of a construction project when the project, or a designated portion thereof, is sufficiently complete in accordance with the contract so that the owner can occupy or utilize the project for its intended use.

Sec. 6. Section 45-1203, Reissue Revised Statutes of Nebraska, is amended to read:

45-1203 (1) When a contractor has performed work in accordance with the provisions of a contract with an owner, the owner shall pay the contractor within thirty days after receipt by the owner or the owner's representative of a payment request made pursuant to the contract.

(2) When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay the subcontractor and the subcontractor shall pay his, her, or its subcontractor, within ten days after receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for the subcontractor's work and materials based on work completed or service provided under the

subcontract for which the subcontractor has properly requested payment, if the subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work.

(3) The owner or the owner's representative shall release and pay all retainage for work completed in accordance with the provisions of the contract within forty-five days after the project, or a designated portion thereof, is substantially complete. When a subcontractor has performed work in accordance with the provisions of a subcontract and all conditions precedent to payment contained in the subcontract have been satisfied, the contractor shall pay all retainage due such subcontractor within ten days after receipt of the retainage.

Sec. 7. Section 45-1204, Reissue Revised Statutes of Nebraska, is amended to read:

45-1204 When work has been performed pursuant to a contract, a party an owner, a contractor, or a subcontractor may only withhold payment:

~~(1) For retainage, in an amount not to exceed the amount specified in the contract, if applicable, until the work is substantially complete;~~

(1) For retainage, in an amount not to exceed the amount specified in the applicable contract, which shall not exceed a rate of ten percent. If the scope of work for the contractor or subcontractor from which retainage is withheld is fifty percent complete and if the contractor or subcontractor has performed work in accordance with the provisions in the applicable contract, no more than five percent of any additional progress payment may be withheld as retainage if the contractor or subcontractor provides or has provided satisfactory and reasonable assurances of continued performance and financial responsibility to complete the work;

(2) Of a reasonable amount, to the extent that such withholding is allowed in the contract, for any of the following reasons:

(a) Reasonable evidence showing that the contractual completion date will not be met due to unsatisfactory job progress;

(b) Third-party claims filed or reasonable evidence that such a claim will be filed with respect to work under the contract; or

(c) Failure of the contractor to make timely payments for labor, equipment, subcontractors, or materials; or

(3) After substantial completion, in an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the work remaining on the contract.

Sec. 8. Any individual, partnership, firm, limited liability company, corporation, or company may bring an action to recover any damages caused to such person or entity by a violation of the Nebraska Construction Prompt Pay Act. In addition to an award of damages, the court may award a plaintiff reasonable attorney's fees and costs as the court determines is appropriate.

Sec. 9. Section 45-1205, Reissue Revised Statutes of Nebraska, is amended to read:

45-1205 Except as provided in section 45-1204, if a periodic or final payment to (1) a contractor is delayed by more than thirty days after receipt of a properly submitted periodic or final payment request by the owner or owner's representative or (2) a subcontractor is delayed by more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the remitting party owner, contractor, or subcontractor shall pay the contractor or subcontractor interest due until such amount is paid, beginning on the day following the payment due date at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance. Interest is due under this section only after the person charged the interest has been notified of the provisions of this section by the contractor or subcontractor. Acceptance of progress payments or a final payment shall release all claims for interest on such payments.

Sec. 10. Section 48-126.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-126.01 (1)(a) In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation, or any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, or any member of a volunteer emergency medical service, which military forces, law enforcement reserve force, fire department, or emergency management agency, organization, or team, or volunteer emergency medical service is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of

this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, ~~department~~, agency, organization, or team, or service, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

(b) If such a member or person under subdivision (1)(a) of this section is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum compensation rate for total disability weekly income benefit specified in section 48-121.01.

(c) If the wages received for the performance of duties as a member of such military forces, reserve force, ~~department~~, agency, organization, or team, or service exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, ~~department~~, agency, organization, or team, or service.

(2) In determining the compensation rate to be paid any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation or any member of a volunteer emergency medical service, which fire department or emergency medical service is organized under the laws of the State of Nebraska, for injuries resulting in disability or death received in the performance of his or her duties as a member of such fire department or emergency medical service, it shall be deemed and assumed that his or her wages are in an amount one and one-half times the maximum weekly income benefit specified in section 48-121.01 or the wages received by such member from his or her regular employment, whichever is greater. Any member of such volunteer fire department or volunteer emergency medical service shall not lose his or her volunteer status under the Nebraska Workers' Compensation Act if such volunteer receives reimbursement for expenses, reasonable benefits, or a nominal fee, a nominal per call fee, a nominal per shift fee, or combination thereof. It shall be conclusively presumed that a fee is nominal if the fee does not exceed twenty percent of the amount that otherwise would be required to hire a permanent employee for the same services.

Sec. 11. Section 48-139, Reissue Revised Statutes of Nebraska, is amended to read:

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

- (i) The employee is not represented by counsel;
- (ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;
- (iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;
- (iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or
- (v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the

nature of the employment, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

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

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

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

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

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

(ii) The right to receive vocational rehabilitation services;

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

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

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

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

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

(4) A release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release, and the court shall enter an order of dismissal with prejudice as to all rights waived in the release.

~~(4)~~ (5) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Sec. 12. Section 48-601, Reissue Revised Statutes of Nebraska, is amended to read:

48-601 Sections 48-601 to 48-671 and sections 13 to 24 of this act shall be known and may be cited as the Employment Security Law.

Sec. 13. Sections 13 to 24 of this act create the short-time compensation program.

Sec. 14. For purposes of sections 13 to 24 of this act:

(1) Affected unit means a specified plant, department, shift, or other definable unit which includes three or more employees to which an approved short-time compensation plan applies;

(2) Commissioner means the Commissioner of Labor or any delegate or subordinate responsible for approving applications for participation in a short-time compensation plan;

(3) Health and retirement benefits means employer-provided health benefits and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, or contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code, which are incidents of employment in addition to the cash remuneration earned;

(4) Short-time compensation means the unemployment benefits payable to employees in an affected unit under an approved short-time compensation plan, as distinguished from the unemployment benefits otherwise payable under the Employment Security Law;

(5) Short-time compensation plan means a plan submitted by an employer, for written approval by the commissioner, under which the employer requests the payment of short-time compensation to workers in an affected unit of the employer to avert layoffs;

(6) Unemployment compensation means the unemployment benefits payable under the Employment Security Law other than short-time compensation and includes any amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment; and

(7) Usual weekly hours of work means the usual hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed forty hours and not including hours of overtime work.

Sec. 15. An employer wishing to participate in the short-time compensation program shall submit a signed written short-time compensation plan to the commissioner for approval. The commissioner shall develop an application form to request approval of a short-time compensation plan and an approval process. The application shall include:

(1) The affected unit or units covered by the plan, including the number of full-time or part-time employees in such unit, the percentage of employees in the affected unit covered by the plan, identification of each individual employee in the affected unit by name, social security number, and the employer's unemployment tax account number, and any other information required by the commissioner to identify plan participants;

(2) A description of how employees in the affected unit will be notified of the employer's participation in the short-time compensation plan if such application is approved, including how the employer will notify those employees in a collective-bargaining unit as well as any employees in the affected unit who are not in a collective-bargaining unit. If the employer will not provide advance notice to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;

(3) A requirement that the employer identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which their hours will be reduced during all weeks covered by the plan. An application shall specify the percentage of reduction for which a short-time compensation plan application may be approved which shall be not less than ten percent and not more than sixty percent. If the plan includes any week for which the employer regularly provides no work due to a holiday or other plant closing, then such week shall be identified in the application;

(4)(a) Certification by the employer that, if the employer provides health and retirement benefits to any employee whose usual weekly hours of work are reduced under the program, such benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the usual weekly hours of work of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program.

(b) For defined benefit retirement plans, the hours that are reduced under the short-time compensation plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be less due to the reduction in the employee's compensation.

(c) Notwithstanding subdivisions (4)(a) and (b) of this section, an

application may contain the required certification when a reduction in health and retirement benefits scheduled to occur during the duration of the plan will be applicable equally to employees who are not participating in the short-time compensation program and to those employees who are participating;

(5) Certification by the employer that the aggregate reduction in work hours is in lieu of layoffs, temporary or permanent layoffs, or both. The application shall include an estimate of the number of employees who would have been laid off in the absence of the short-time compensation plan;

(6) Certification by the employer that the short-time compensation program shall not serve as a subsidy of seasonal employment during the off-season, nor as a subsidy of temporary part-time or intermittent employment;

(7) Agreement by the employer to: Furnish reports to the commissioner relating to the proper conduct of the plan; allow the commissioner access to all records necessary to approve or disapprove the plan application and, after approval of a plan, to monitor and evaluate the plan; and follow any other directives the commissioner deems necessary for the agency to implement the plan and which are consistent with the requirements for short-time compensation plan applications;

(8) Certification by the employer that participation in the short-time compensation plan and its implementation is consistent with the employer's obligations under applicable federal and state laws;

(9) The effective date and duration of the plan that shall expire not later than the end of the twelfth full calendar month after the effective date;

(10) Certification by the employer that it has obtained the written approval of any applicable collective-bargaining unit representative and has notified all affected employees who are not in a collective-bargaining unit of the proposed short-time compensation plan;

(11) Certification by the employer that it will not hire additional part-time or full-time employees for the affected unit while the short-time compensation plan is in effect; and

(12) Any other provision added to the application by the commissioner that the United States Secretary of Labor determines to be appropriate for purposes of a short-time compensation program.

Sec. 16. (1) The commissioner shall approve or disapprove a short-time compensation plan in writing within thirty days after its receipt and promptly communicate the decision to the employer. A decision disapproving the plan shall clearly identify the reasons for the disapproval. The disapproval shall be final, but the employer shall be allowed to submit another short-time compensation plan for approval not earlier than forty-five days after the date of the disapproval.

(2)(a) A short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating under subdivision (4)(a) of section 48-649, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application.

(b) A short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application.

Sec. 17. (1) A short-time compensation plan shall be effective on the date that is mutually agreed upon by the employer and the commissioner, which shall be specified in the notice of approval to the employer. The plan shall expire on the date specified in the notice of approval, which shall be either the date at the end of the twelfth full calendar month after its effective date or an earlier date mutually agreed upon by the employer and the commissioner.

(2) If a short-time compensation plan is revoked by the commissioner under section 18 of this act, the plan shall terminate on the date specified in the commissioner's written order of revocation.

(3) An employer may terminate a short-time compensation plan at any time upon written notice to the commissioner. Upon receipt of such notice from the employer, the commissioner shall promptly notify each member of the affected unit of the termination date.

(4) An employer may submit a new application to participate in another short-time compensation plan at any time after the expiration or termination date.

Sec. 18. (1) The commissioner may revoke approval of a short-time compensation plan for good cause at any time, including upon the request of any of the affected unit's employees. The revocation order shall be in writing and shall specify the reasons for the revocation and the date the revocation is effective.

(2) The commissioner may periodically review the operation of each employer's short-time compensation plan to assure that no good cause exists for revocation of the approval of the plan. Good cause shall include, but not be limited to, failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the short-time compensation plan, and violation of any criteria on which approval of the plan was based.

Sec. 19. (1) An employer may request a modification of an approved plan by filing a written request with the commissioner. The request shall identify the specific provisions proposed to be modified and provide an explanation of why the proposed modification is appropriate for the short-time compensation plan. The commissioner shall approve or disapprove the proposed modification in writing within thirty days after receipt and promptly communicate the decision to the employer.

(2) The commissioner may approve a request for modification of the plan based on conditions that have changed since the plan was approved if the modification is consistent with and supports the purposes for which the plan was initially approved. A modification does not extend the expiration date of the original plan, and the commissioner shall promptly notify the employer whether the plan modification has been approved and, if approved, the effective date of the modification.

(3) An employer is not required to request approval of a plan modification from the commissioner if the change is not substantial, but the employer must report every change to the plan to the commissioner promptly and in writing. The commissioner may terminate an employer's plan if the employer fails to meet this reporting requirement. If the commissioner determines that the reported change is substantial, the commissioner shall require the employer to request a modification to the plan.

Sec. 20. An individual is eligible to receive short-time compensation with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified for unemployment compensation, and:

(1) During the week, the individual is employed as a member of an affected unit under an approved short-time compensation plan, which was approved prior to that week, and the plan is in effect with respect to the week for which short-time compensation is claimed;

(2) Notwithstanding any other provisions of the Employment Security Law relating to availability for work and actively seeking work, the individual is available for the individual's usual hours of work with the short-time compensation employer, which may include, for purposes of this section, participating in training to enhance job skills that is approved by the commissioner such as employer-sponsored training or training funded under the federal Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.; and

(3) Notwithstanding any other provision of law, an individual covered by a short-time compensation plan is deemed unemployed in any week during the duration of such plan if the individual's remuneration as an employee in an affected unit is reduced based on a reduction of the individual's usual weekly hours of work under an approved short-time compensation plan.

Sec. 21. (1) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the individual's usual weekly hours of work.

(2) An individual may be eligible for short-time compensation or unemployment compensation, as appropriate, except that no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation, nor shall an individual be paid short-time compensation benefits for more than fifty-two weeks under a short-time compensation plan.

(3) The short-time compensation paid to an individual shall be deducted from the maximum entitlement amount of unemployment compensation established for that individual's benefit year.

(4) Provisions applicable to unemployment compensation claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with short-time compensation provisions. An individual who files an initial claim for short-time compensation benefits shall receive a

monetary determination.

(5) The following provisions apply to individuals who work for both a short-time compensation employer and another employer during weeks covered by the approved short-time compensation plan:

(a) If combined hours of work in a week for both employers does not result in a reduction of at least ten percent, or, if higher, the minimum percentage of reduction required to be eligible for a short-time compensation, of the usual weekly hours of work with the short-time employer, the individual shall not be entitled to short-time compensation;

(b) If the combined hours of work for both employers results in a reduction equal to or greater than ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, of the usual weekly hours of work for the short-time compensation employer, the short-time compensation payable to the individual is reduced for that week and is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced by ten percent, or, if higher, the minimum percentage reduction required to be eligible for short-time compensation, or more of the individual's usual weekly hours of work. A week for which benefits are paid under this subdivision shall be reported as a week of short-time compensation; and

(c) If an individual worked the reduced percentage of the usual weekly hours of work for the short-time compensation employer and is available for all his or her usual hours of work with the short-time compensation employer, and the individual did not work any hours for the other employer, either because of the lack of work with that employer or because the individual is excused from work with the other employer, the individual shall be eligible for short-time compensation for that week. The benefit amount for such week shall be calculated as provided in subsection (1) of this section.

(6) An individual who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment compensation shall be eligible for the amount of unemployment compensation to which he or she would otherwise be eligible.

(7) An individual who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment compensation for that week subject to the disqualifying income and other provisions applicable to claims for regular compensation.

Sec. 22. Short-time compensation shall be charged to the employer's experience account in the same manner as unemployment compensation is charged. Employers liable for payments in lieu of contributions shall have short-time compensation attributed to service in their employ in the same manner as unemployment compensation is attributed.

Sec. 23. An individual who has received all of the short-time compensation or combined unemployment compensation and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits under section 48-628.02 and, if otherwise eligible under such section, shall be eligible to receive extended benefits.

Sec. 24. (1) The department shall not use General Funds to implement the short-time compensation program. The department shall use any and all available federal funds to implement the short-time compensation program, including, but not limited to, federal funds distributed to the state under sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended.

(2) The department shall submit an annual report to the Governor and electronically to the Legislature on the short-time compensation program trends, including the number of employers filing short-time compensation program plans, the number of layoffs averted through the use of the short-time compensation program, the amount of short-time compensation program benefits paid, and other information pertinent to the short-time compensation program.

Sec. 25. There is hereby appropriated (1) \$1,797,999 from Federal Funds for FY2014-15 and (2) \$1,576,853 from Federal Funds for FY2015-16 to the Department of Labor, for Program 31, to aid in carrying out the provisions of Legislative Bill 961, One Hundred Third Legislature, Second Session, 2014.

There is included in the appropriation to this program for FY2014-15 \$1,797,999 and for FY2015-16 \$1,576,853 Federal Funds distributed to the state under sections 903(c), 903(d), 903(f), and 903(g) of the federal Social Security Act, as amended, which shall only be used to implement the provisions of Legislative Bill 961, One Hundred Third Legislature, Second Session, 2014.

The Department of Labor shall submit a schedule of proposed expenditures of the appropriation of sections 903(c), 903(d), 903(f), and 903(g) funds made pursuant to this section for administrative purposes for

fiscal years beginning on or after July 1, 2007, to the Legislature as a part of the regular budget submission process. All provisions of subsection (2) of section 48-621 except subdivision (2)(a)(i) shall apply to this appropriation of sections 903(c), 903(d), 903(f), and 903(g) funds.

The Commissioner of Labor shall submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee of the Legislature describing expenditures made pursuant to this section. The report submitted to the committees and the Speaker of the Legislature shall be submitted electronically.

Sec. 26. Sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 28 of this act become operative on October 1, 2016. The other sections of this act become operative three calendar months after the adjournment of this legislative session.

Sec. 27. Original sections 44-2825, 45-1201, 45-1202, 45-1203, 45-1204, 45-1205, 48-126.01, and 48-139, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 28. Original section 48-601, Reissue Revised Statutes of Nebraska, is repealed.