

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 480

FINAL READING

Introduced by Harr, 8.

Read first time January 20, 2015

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend section 48-145, Reissue Revised Statutes of Nebraska, and
3 sections 48-120, 48-125, and 48-1,110, Revised Statutes Cumulative
4 Supplement, 2014; to provide for denial of compensation in
5 situations of false representation; to change provisions relating to
6 the collection of fees; to change interest rate provisions on
7 certain compensation court awards; to change provisions relating to
8 the investment of trust funds for self-insurers; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. No compensation shall be allowed if, at the time of or
2 in the course of entering into employment or at the time of receiving
3 notice of the removal of conditions from a conditional offer of
4 employment: (1) The employee knowingly and willfully made a false
5 representation as to his or her physical or medical condition by
6 acknowledging in writing that he or she is able to perform the essential
7 functions of the job with or without reasonable accommodation based upon
8 the employer's written job description; (2) the employer relied upon the
9 false representation and the reliance was a substantial factor in the
10 hiring; and (3) a causal connection existed between the false
11 representation and the injury.

12 Sec. 2. Section 48-120, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 48-120 (1)(a) The employer is liable for all reasonable medical,
15 surgical, and hospital services, including plastic surgery or
16 reconstructive surgery but not cosmetic surgery when the injury has
17 caused disfigurement, appliances, supplies, prosthetic devices, and
18 medicines as and when needed, which are required by the nature of the
19 injury and which will relieve pain or promote and hasten the employee's
20 restoration to health and employment, and includes damage to or
21 destruction of artificial members, dental appliances, teeth, hearing
22 instruments, and eyeglasses, but, in the case of dental appliances,
23 hearing instruments, or eyeglasses, only if such damage or destruction
24 resulted from an accident which also caused personal injury entitling the
25 employee to compensation therefor for disability or treatment, subject to
26 the approval of and regulation by the Nebraska Workers' Compensation
27 Court, not to exceed the regular charge made for such service in similar
28 cases.

29 (b) Except as provided in section 48-120.04, the compensation court
30 shall establish schedules of fees for such services. The compensation
31 court shall review such schedules at least biennially and adopt

1 appropriate changes when necessary. The compensation court may contract
2 with any person, firm, corporation, organization, or government agency to
3 secure adequate data to establish such fees. The compensation court shall
4 publish and furnish to the public the fee schedules established pursuant
5 to this subdivision and section 48-120.04. The compensation court may
6 establish and charge a fee to recover the cost of published fee
7 schedules.

8 (c) Reimbursement for inpatient hospital services provided by
9 hospitals located in or within fifteen miles of a Nebraska city of the
10 metropolitan class or primary class and by other hospitals with fifty-one
11 or more licensed beds shall be according to the Diagnostic Related Group
12 inpatient hospital fee schedule or the trauma services inpatient hospital
13 fee schedule established in section 48-120.04.

14 (d) A workers' compensation insurer, risk management pool, self-
15 insured employer, or managed care plan certified pursuant to section
16 48-120.02 may contract with a provider or provider network for medical,
17 surgical, or hospital services. Such contract may establish fees for
18 services different than the fee schedules established under subdivision
19 (1)(b) of this section or established under section 48-120.04. Such
20 contract shall be in writing and mutually agreed upon prior to the date
21 services are provided.

22 (e) The provider or supplier of such services shall not collect or
23 attempt to collect from any employer, insurer, government, or injured
24 employee or dependent or the estate of any injured or deceased employee
25 any amount in excess of (i) the fee established by the compensation court
26 for any such service, (ii) the fee established under section 48-120.04,
27 or (iii) the fee contracted under subdivision (1)(d) of this section,
28 including any finance charge or late penalty.

29 (2)(a) The employee has the right to select a physician who has
30 maintained the employee's medical records prior to an injury and has a
31 documented history of treatment with the employee prior to an injury or a

1 physician who has maintained the medical records of an immediate family
2 member of the employee prior to an injury and has a documented history of
3 treatment with an immediate family member of the employee prior to an
4 injury. For purposes of this subsection, immediate family member means
5 the employee's spouse, children, parents, stepchildren, and stepparents.
6 The employer shall notify the employee following an injury of such right
7 of selection in a form and manner and within a timeframe established by
8 the compensation court. If the employer fails to notify the employee of
9 such right of selection or fails to notify the employee of such right of
10 selection in a form and manner and within a timeframe established by the
11 compensation court, then the employee has the right to select a
12 physician. If the employee fails to exercise such right of selection in a
13 form and manner and within a timeframe established by the compensation
14 court following notice by the employer pursuant to this subsection, then
15 the employer has the right to select the physician. If selection of the
16 initial physician is made by the employee or employer pursuant to this
17 subsection following notice by the employer pursuant to this subsection,
18 the employee or employer shall not change the initial selection of
19 physician made pursuant to this subsection unless such change is agreed
20 to by the employee and employer or is ordered by the compensation court
21 pursuant to subsection (6) of this section. If compensability is denied
22 by the workers' compensation insurer, risk management pool, or self-
23 insured employer, (i) the employee has the right to select a physician
24 and shall not be made to enter a managed care plan and (ii) the employer
25 is liable for medical, surgical, and hospital services subsequently found
26 to be compensable. If the employer has exercised the right to select a
27 physician pursuant to this subsection and if the compensation court
28 subsequently orders reasonable medical services previously refused to be
29 furnished to the employee by the physician selected by the employer, the
30 compensation court shall allow the employee to select another physician
31 to furnish further medical services. If the employee selects a physician

1 located in a community not the home or place of work of the employee and
2 a physician is available in the local community or in a closer community,
3 no travel expenses shall be required to be paid by the employer or his or
4 her workers' compensation insurer.

5 (b) In cases of injury requiring dismemberment or injuries involving
6 major surgical operation, the employee may designate to his or her
7 employer the physician or surgeon to perform the operation.

8 (c) If the injured employee unreasonably refuses or neglects to
9 avail himself or herself of medical or surgical treatment furnished by
10 the employer, except as herein and otherwise provided, the employer is
11 not liable for an aggravation of such injury due to such refusal and
12 neglect and the compensation court or judge thereof may suspend, reduce,
13 or limit the compensation otherwise payable under the Nebraska Workers'
14 Compensation Act.

15 (d) If, due to the nature of the injury or its occurrence away from
16 the employer's place of business, the employee or the employer is unable
17 to select a physician using the procedures provided by this subsection,
18 the selection requirements of this subsection shall not apply as long as
19 the inability to make a selection persists.

20 (e) The physician selected may arrange for any consultation,
21 referral, or extraordinary or other specialized medical services as the
22 nature of the injury requires.

23 (f) The employer is not responsible for medical services furnished
24 or ordered by any physician or other person selected by the employee in
25 disregard of this section. Except as otherwise provided by the Nebraska
26 Workers' Compensation Act, the employer is not liable for medical,
27 surgical, or hospital services or medicines if the employee refuses to
28 allow them to be furnished by the employer.

29 (3) No claim for such medical treatment is valid and enforceable
30 unless, within fourteen days following the first treatment, the physician
31 giving such treatment furnishes the employer a report of such injury and

1 treatment on a form prescribed by the compensation court. The
2 compensation court may excuse the failure to furnish such report within
3 fourteen days when it finds it to be in the interest of justice to do so.

4 (4) All physicians and other providers of medical services attending
5 injured employees shall comply with all the rules and regulations adopted
6 and promulgated by the compensation court and shall make such reports as
7 may be required by it at any time and at such times as required by it
8 upon the condition or treatment of any injured employee or upon any other
9 matters concerning cases in which they are employed. All medical and
10 hospital information relevant to the particular injury shall, on demand,
11 be made available to the employer, the employee, the workers'
12 compensation insurer, and the compensation court. The party requesting
13 such medical and hospital information shall pay the cost thereof. No such
14 relevant information developed in connection with treatment or
15 examination for which compensation is sought shall be considered a
16 privileged communication for purposes of a workers' compensation claim.
17 When a physician or other provider of medical services willfully fails to
18 make any report required of him or her under this section, the
19 compensation court may order the forfeiture of his or her right to all or
20 part of payment due for services rendered in connection with the
21 particular case.

22 (5) Whenever the compensation court deems it necessary, in order to
23 assist it in resolving any issue of medical fact or opinion, it shall
24 cause the employee to be examined by a physician or physicians selected
25 by the compensation court and obtain from such physician or physicians a
26 report upon the condition or matter which is the subject of inquiry. The
27 compensation court may charge the cost of such examination to the
28 workers' compensation insurer. The cost of such examination shall include
29 the payment to the employee of all necessary and reasonable expenses
30 incident to such examination, such as transportation and loss of wages.

31 (6) The compensation court shall have the authority to determine the

1 necessity, character, and sufficiency of any medical services furnished
2 or to be furnished and shall have authority to order a change of
3 physician, hospital, rehabilitation facility, or other medical services
4 when it deems such change is desirable or necessary. Any dispute
5 regarding medical, surgical, or hospital services furnished or to be
6 furnished under this section may be submitted by the parties, the
7 supplier of such service, or the compensation court on its own motion for
8 informal dispute resolution by a staff member of the compensation court
9 or an outside mediator pursuant to section 48-168. In addition, any party
10 or the compensation court on its own motion may submit such a dispute for
11 a medical finding by an independent medical examiner pursuant to section
12 48-134.01. Issues submitted for informal dispute resolution or for a
13 medical finding by an independent medical examiner may include, but are
14 not limited to, the reasonableness and necessity of any medical treatment
15 previously provided or to be provided to the injured employee. The
16 compensation court may adopt and promulgate rules and regulations
17 regarding informal dispute resolution or the submission of disputes to an
18 independent medical examiner that are considered necessary to effectuate
19 the purposes of this section.

20 (7) For the purpose of this section, physician has the same meaning
21 as in section 48-151.

22 (8) The compensation court shall order the employer to make payment
23 directly to the supplier of any services provided for in this section or
24 reimbursement to anyone who has made any payment to the supplier for
25 services provided in this section. No such supplier or payor may be made
26 or become a party to any action before the compensation court.

27 (9) Notwithstanding any other provision of this section, a workers'
28 compensation insurer, risk management pool, or self-insured employer may
29 contract for medical, surgical, hospital, and rehabilitation services to
30 be provided through a managed care plan certified pursuant to section
31 48-120.02. Once liability for medical, surgical, and hospital services

1 has been accepted or determined, the employer may require that employees
2 subject to the contract receive medical, surgical, and hospital services
3 in the manner prescribed in the contract, except that an employee may
4 receive services from a physician selected by the employee pursuant to
5 subsection (2) of this section if the physician so selected agrees to
6 refer the employee to the managed care plan for any other treatment that
7 the employee may require and if the physician so selected agrees to
8 comply with all the rules, terms, and conditions of the managed care
9 plan. If compensability is denied by the workers' compensation insurer,
10 risk management pool, or self-insured employer, the employee may leave
11 the managed care plan and the employer is liable for medical, surgical,
12 and hospital services previously provided. The workers' compensation
13 insurer, risk management pool, or self-insured employer shall give notice
14 to employees subject to the contract of eligible service providers and
15 such other information regarding the contract and manner of receiving
16 medical, surgical, and hospital services under the managed care plan as
17 the compensation court may prescribe.

18 Sec. 3. Section 48-125, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 48-125 (1)(a) Except as hereinafter provided, all amounts of
21 compensation payable under the Nebraska Workers' Compensation Act shall
22 be payable periodically in accordance with the methods of payment of
23 wages of the employee at the time of the injury or death. Such payments
24 shall be sent directly to the person entitled to compensation or his or
25 her designated representative except as otherwise provided in section
26 48-149.

27 (b) Fifty percent shall be added for waiting time for all delinquent
28 payments after thirty days' notice has been given of disability or after
29 thirty days from the entry of a final order, award, or judgment of the
30 Nebraska Workers' Compensation Court, except that for any award or
31 judgment against the state in excess of one hundred thousand dollars

1 which must be reviewed by the Legislature as provided in section
2 48-1,102, fifty percent shall be added for waiting time for delinquent
3 payments thirty days after the effective date of the legislative bill
4 appropriating any funds necessary to pay the portion of the award or
5 judgment in excess of one hundred thousand dollars.

6 (2)(a) Whenever the employer refuses payment of compensation or
7 medical payments subject to section 48-120, or when the employer neglects
8 to pay compensation for thirty days after injury or neglects to pay
9 medical payments subject to such section after thirty days' notice has
10 been given of the obligation for medical payments, and proceedings are
11 held before the compensation court, a reasonable attorney's fee shall be
12 allowed the employee by the compensation court in all cases when the
13 employee receives an award. Attorney's fees allowed shall not be deducted
14 from the amounts ordered to be paid for medical services nor shall
15 attorney's fees be charged to the medical providers.

16 (b) If the employer files an appeal from an award of a judge of the
17 compensation court and fails to obtain any reduction in the amount of
18 such award, the Court of Appeals or Supreme Court shall allow the
19 employee a reasonable attorney's fee to be taxed as costs against the
20 employer for such appeal.

21 (c) If the employee files an appeal from an order of a judge of the
22 compensation court denying an award and obtains an award or if the
23 employee files an appeal from an award of a judge of the compensation
24 court when the amount of compensation due is disputed and obtains an
25 increase in the amount of such award, the Court of Appeals or Supreme
26 Court may allow the employee a reasonable attorney's fee to be taxed as
27 costs against the employer for such appeal.

28 (d) A reasonable attorney's fee allowed pursuant to this subsection
29 shall not affect or diminish the amount of the award.

30 (3) When an attorney's fee is allowed pursuant to this section,
31 there shall further be assessed against the employer an amount of

1 interest on the final award obtained, computed from the date compensation
2 was payable, as provided in section 48-119, until the date payment is
3 made by the employer. For any injury occurring prior to the effective
4 date of this act, the interest rate shall be ~~, at a rate~~ equal to the
5 rate of interest allowed per annum under section 45-104.01, as such rate
6 may from time to time be adjusted by the Legislature. For any injury
7 occurring on or after the effective date of this act, the interest rate
8 shall be equal to six percentage points above the bond investment yield,
9 as published by the Secretary of the Treasury of the United States, of
10 the average accepted auction price for the first auction of each annual
11 quarter of the twenty-six-week United States Treasury bills in effect on
12 the date of entry of the judgment. Interest shall apply only to those
13 weekly compensation benefits awarded which have accrued as of the date
14 payment is made by the employer. If the employer pays or tenders payment
15 of compensation, the amount of compensation due is disputed, and the
16 award obtained is greater than the amount paid or tendered by the
17 employer, the assessment of interest shall be determined solely upon the
18 difference between the amount awarded and the amount tendered or paid.

19 Sec. 4. Section 48-145, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 48-145 To secure the payment of compensation under the Nebraska
22 Workers' Compensation Act:

23 (1) Every employer in the occupations described in section 48-106,
24 except the State of Nebraska and any governmental agency created by the
25 state, shall either (a) insure and keep insured its liability under such
26 act in some corporation, association, or organization authorized and
27 licensed to transact the business of workers' compensation insurance in
28 this state, (b) in the case of an employer who is a lessor of one or more
29 commercial vehicles leased to a self-insured motor carrier, be a party to
30 an effective agreement with the self-insured motor carrier under section
31 48-115.02, (c) be a member of a risk management pool authorized and

1 providing group self-insurance of workers' compensation liability
2 pursuant to the Intergovernmental Risk Management Act, or (d) with
3 approval of the Nebraska Workers' Compensation Court, self-insure its
4 workers' compensation liability.

5 An employer seeking approval to self-insure shall make application
6 to the compensation court in the form and manner as the compensation
7 court may prescribe, meet such minimum standards as the compensation
8 court shall adopt and promulgate by rule and regulation, and furnish to
9 the compensation court satisfactory proof of financial ability to pay
10 direct the compensation in the amount and manner when due as provided for
11 in the Nebraska Workers' Compensation Act. Approval is valid for the
12 period prescribed by the compensation court unless earlier revoked
13 pursuant to this subdivision or subsection (1) of section 48-146.02.
14 Notwithstanding subdivision (1)(d) of this section, a professional
15 employer organization shall not be eligible to self-insure its workers'
16 compensation liability. The compensation court may by rule and regulation
17 require the deposit of an acceptable security, indemnity, trust, or bond
18 to secure the payment of compensation liabilities as they are incurred.
19 The agreement or document creating a trust for use under this section
20 shall contain a provision that the trust may only be terminated upon the
21 consent and approval of the compensation court. Any beneficial interest
22 in the trust principal shall be only for the benefit of the past or
23 present employees of the self-insurer and any persons to whom the self-
24 insurer has agreed to pay benefits under subdivision (11) of section
25 48-115 and section 48-115.02. Any limitation on the termination of a
26 trust and all other restrictions on the ownership or transfer of
27 beneficial interest in the trust assets contained in such agreement or
28 document creating the trust shall be enforceable, except that any
29 limitation or restriction shall be enforceable only if authorized and
30 approved by the compensation court and specifically delineated in the
31 agreement or document. The trustee of any trust created to satisfy the

1 requirements of this section may invest the trust assets in the same
2 manner authorized under subdivisions (1)(a) through (i) of section
3 30-3209 for corporate trustees holding retirement or pension funds for
4 the benefit of employees or former employees of cities, villages, school
5 districts, or governmental or political subdivisions, except that the
6 trustee shall not invest trust assets into stocks, bonds, or other
7 obligations of the trustor. If, as a result of such investments, the
8 value of the trust assets is reduced below the acceptable trust amount
9 required by the compensation court, then the trustor shall deposit
10 additional trust assets to account for the shortfall.

11 Notwithstanding any other provision of the Nebraska Workers'
12 Compensation Act, a three-judge panel of the compensation court may,
13 after notice and hearing, revoke approval as a self-insurer if it finds
14 that the financial condition of the self-insurer or the failure of the
15 self-insurer to comply with an obligation under the act poses a serious
16 threat to the public health, safety, or welfare. The Attorney General,
17 when requested by the administrator of the compensation court, may file a
18 motion pursuant to section 48-162.03 for an order directing a self-
19 insurer to appear before a three-judge panel of the compensation court
20 and show cause as to why the panel should not revoke approval as a self-
21 insurer pursuant to this subdivision. The Attorney General shall be
22 considered a party for purposes of such motion. The Attorney General may
23 appear before the three-judge panel and present evidence that the
24 financial condition of the self-insurer or the failure of the self-
25 insurer to comply with an obligation under the act poses a serious threat
26 to the public health, safety, or welfare. The presiding judge shall rule
27 on a motion of the Attorney General pursuant to this subdivision and, if
28 applicable, shall appoint judges of the compensation court to serve on
29 the three-judge panel. The presiding judge shall not serve on such panel.
30 Appeal from a revocation pursuant to this subdivision shall be in
31 accordance with section 48-185. No such appeal shall operate as a

1 supersedeas unless the self-insurer executes to the compensation court a
2 bond with one or more sureties authorized to do business within the State
3 of Nebraska in an amount determined by the three-judge panel to be
4 sufficient to satisfy the obligations of the self-insurer under the act;

5 (2) An approved self-insurer shall furnish to the State Treasurer an
6 annual amount equal to two and one-half percent of the prospective loss
7 costs for like employment but in no event less than twenty-five dollars.
8 Prospective loss costs is defined in section 48-151. The compensation
9 court is the sole judge as to the prospective loss costs that shall be
10 used. All money which a self-insurer is required to pay to the State
11 Treasurer, under this subdivision, shall be computed and tabulated under
12 oath as of January 1 and paid to the State Treasurer immediately
13 thereafter. The compensation court or designee of the compensation court
14 may audit the payroll of a self-insurer at the compensation court's
15 discretion. All money paid by a self-insurer under this subdivision shall
16 be credited to the General Fund;

17 (3) Every employer who fails, neglects, or refuses to comply with
18 the conditions set forth in subdivision (1) or (2) of this section shall
19 be required to respond in damages to an employee for personal injuries,
20 or when personal injuries result in the death of an employee, then to his
21 or her dependents; and

22 (4) Any security, indemnity, trust, or bond provided by a self-
23 insurer pursuant to subdivision (1) of this section shall be deemed a
24 surety for the purposes of the payment of valid claims of the self-
25 insurer's employees and the persons to whom the self-insurer has agreed
26 to pay benefits under the Nebraska Workers' Compensation Act pursuant to
27 subdivision (11) of section 48-115 and section 48-115.02 as generally
28 provided in the act.

29 Sec. 5. Section 48-1,110, Revised Statutes Cumulative Supplement,
30 2014, is amended to read:

31 48-1,110 Sections 48-101 to 48-1,117 and section 1 of this act shall

1 be known and may be cited as the Nebraska Workers' Compensation Act.

2 Sec. 6. Original section 48-145, Reissue Revised Statutes of
3 Nebraska, and sections 48-120, 48-125, and 48-1,110, Revised Statutes
4 Cumulative Supplement, 2014, are repealed.