A BILL FOR AN ACT relating to workers' compensation; to amend section 71-7104, Reissue Revised Statutes of Nebraska, and section 48-101.01, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to personal injuries of first responders and frontline state employees; to provide a means of demonstrating a prima facie case of personal injury; to provide duties for the Critical Incident Stress Management Program and the Department of Health and Human Services; to require reimbursement for training as prescribed; to provide and eliminate definitions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 48-101.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-101.01 (1) The Legislature finds and declares:

(a) The occupations of first responders are recognized as stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, first responders face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival to protect the communities they serve;

(b) On any given day, first responders can be called on to make life and death decisions, witness a young child dying with the child's grief-stricken family, make a decision that will affect a community member for the rest of such person's life, or be exposed to a myriad of communicable diseases and known carcinogens;

(c) On any given day, first responders protect high-risk individuals from themselves and protect the community from such individuals;

(d) First responders are constantly at significant risk of bodily harm or physical assault while they perform their duties;

(e) Constant, cumulative exposure to horrific events make first responders uniquely susceptible to the emotional and behavioral impacts of job-related stressors;

(f) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide; and

(g) It is imperative for society to recognize occupational injuries related to post-traumatic stress and to promptly seek diagnosis and treatment without stigma. This includes recognizing that mental injury and mental illness as a result of trauma is not disordered, but is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.

(2) (1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder.
or frontline state employee if such first responder or frontline state employee establishes, through a mental health professional:

(a) That establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) The establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(3) The employee bears the burden of establishing the matters described in subsection (2) of this section by a preponderance of the evidence.

(4) A first responder may establish prima facie evidence of a personal injury that is a mental injury or mental illness if the first responder:

(a) Presents evidence that the first responder underwent a mental health examination upon entry into such service or subsequent to such entry and before the onset of the mental injury or mental illness and such examination did not reveal the mental injury or mental illness for which the first responder seeks compensation;

(b) Presents testimony or an affidavit from a mental health professional stating the first responder suffers from a mental injury or mental illness; and

(c) Prior to the employment conditions which caused the mental injury or mental illness, had participated in resilience training and updated the training at least annually thereafter.

(5) (2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by
the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(6)(a) The Department of Health and Human Services shall reimburse a first responder for the cost of annual resilience training not reimbursed by the first responder's employer. The department shall pay reimbursement at a rate determined by the Critical Incident Stress Management Program under section 71-7104. Reimbursement shall be subject to the annual limit set by such program under section 71-7104.

(b) To obtain reimbursement under this subsection, a first responder shall submit an application to the Department of Health and Human Services on a form and in a manner prescribed by the department.

(7) The Department of Health and Human Services shall maintain and annually update records of first responders who have completed annual resilience training.

(8) (3) For purposes of this section:

(a) First responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

(b) Frontline state employee means an employee of the Department of Correctional Services or the Department of Health and Human Services whose duties involve regular and direct interaction with high-risk individuals;

(c) High-risk individual means an individual in state custody for whom violent or physically intimidating behavior is common, including, but not limited to, a committed offender as defined in section 83-170, a patient at a regional center as defined in section 71-91, and a juvenile committed to the Youth Rehabilitation and Treatment Center-Kearney or the Youth Rehabilitation and Treatment Center-Geneva; and
(d) Mental health professional means:

(i) A practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act;

(ii) A practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact;

(iii) A physician assistant licensed under the Medicine and Surgery Practice Act who has proof of current certification in a psychiatric or mental health specialty;

(iv) An advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Practice Act who has proof of current certification in a psychiatric or mental health specialty;

(v) A person licensed as a mental health practitioner under the Mental Health Practice Act; or

(vi) A clergy member of a recognized denomination who can provide documentation of completion of a generally recognized clinical pastoral education program which includes a practicum or of current or recent membership in the American Association of Pastoral Counselors or an equivalent organization;

(e) Resilience training means training that meets the guidelines established by the Critical Incident Stress Management Program under section 71-7104 and that teaches how to adapt to, manage, and recover from adversity, trauma, tragedy, threats, or significant sources of stress; and

(f) (d) State custody means under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency.

Sec. 2. Section 71-7104, Reissue Revised Statutes of Nebraska, is amended to read:

71-7104 There is hereby created the Critical Incident Stress Management Program. The focus of the program shall be to minimize the
harmful effects of critical incident stress for emergency service personnel, with a high priority on confidentiality and respect for the individuals involved. The program shall:

(1) Provide a stress management session to emergency service personnel who appropriately request such assistance in an effort to address critical incident stress;

(2) Assist in providing the emotional and educational support necessary to ensure optimal functioning of emergency service personnel;

(3) Conduct preincident educational programs to acquaint emergency service personnel with stress management techniques;

(4) Promote interagency cooperation; and

(5) Provide an organized statewide response to the emotional needs of emergency service personnel impacted by critical incidents;

(6) Develop guidelines for resilience training for first responders under section 48-101.01;

(7) Set reimbursement rates for resilience training under section 48-101.01; and

(8) Set an annual limit on the hours or quantity of resilience training for which reimbursement is required under section 48-101.01.

Sec. 3. Original section 71-7104, Reissue Revised Statutes of Nebraska, and section 48-101.01, Revised Statutes Cumulative Supplement, 2018, are repealed.