

LEGISLATIVE BILL 418

Approved by the Governor May 17, 2019

Introduced by Cavanaugh, 6; Bolz, 29; DeBoer, 10; Gragert, 40; Groene, 42; Hunt, 8; McDonnell, 5; Quick, 35; Hansen, M., 26.

A BILL FOR AN ACT relating to state government; to amend sections 48-193, 48-194, 48-195, 48-196, 48-197, 48-1,108, 81-8,224, 81-8,239.02, and 81-1021, Reissue Revised Statutes of Nebraska, and sections 48-122 and 48-1,110, Revised Statutes Cumulative Supplement, 2018; to provide for settlement of claims of alien dependents, define a term, provide for applicability of changes, change provisions relating to claims, and prohibit debt collection while a matter is pending before the Nebraska Workers' Compensation Court as prescribed under the Nebraska Workers' Compensation Act; to change provisions relating to tort claims against the state; to change provisions relating to the State Self-Insured Liability Fund and state vehicles; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 48-122, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-122 (1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding ten thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this section, the consular officer ~~(5) The consul general, consul, vice consul general, or vice consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul general, consul, vice consul general, or vice consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee.~~

(ii) At any time prior to the final settlement, a nonresident alien dependent may file with the Nebraska Workers' Compensation Court a power of attorney designating any suitable person residing in this state to act as attorney in fact in proceedings under the Nebraska Workers' Compensation Act. If the compensation court determines that the interests of the nonresident alien dependent will be better served by such person than by the consular officer, the compensation court shall appoint such person to act as attorney in fact in such proceedings. In making such determination the court shall consider, among other things, whether a consular officer's jurisdiction includes Nebraska and the responsiveness of the consular officer to attempts made by an attorney representing the employee to engage such consular officer in the proceedings.

(b) Such consular officer, or appointed person his or her representative, residing in the State of Nebraska, shall have in behalf of such nonresident alien dependents, the exclusive right to institute proceedings for, adjust, and settle all claims for compensation provided by the Nebraska Workers' Compensation Act, and to receive the distribution to such nonresident alien

dependents of all compensation arising thereunder.

(c) A person appointed under subdivision (5)(a)(ii) of this section shall furnish a bond satisfactory to the compensation court conditioned upon the proper application of any money received as compensation under the Nebraska Workers' Compensation Act. Before the bond is discharged, such appointed person shall file with the compensation court a verified account of receipts and disbursements of such money.

(d) For purposes of this section, consular officer means a consul general, vice consul general, or vice consul or the representative of any such official residing within the State of Nebraska.

(6) The changes made to this section by this legislative bill apply to cases under the Nebraska Workers' Compensation Act that are pending on the effective date of this act and to cases filed on or after such date.

Sec. 2. Section 48-193, Reissue Revised Statutes of Nebraska, is amended to read:

48-193 For purposes of sections 48-192 to 48-1,109, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, courts, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska, including the University of Nebraska and the state colleges, but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency shall not be construed to include any contractor with the State of Nebraska except and unless such contractor comes within the provisions of section 48-116;

~~(2) State Claims Board shall mean the board created by section 81-8,220;~~

~~(2)~~ (3) Employee of the state shall mean any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any employee of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act or any contractor with the State of Nebraska unless such contractor comes within the provisions of section 48-116;

~~(3)~~ (4) Workers' compensation claim shall mean any claim against the State of Nebraska arising under the Nebraska Workers' Compensation Act; and

~~(4)~~ (5) Award shall mean any amount determined by the Risk Manager and the Attorney General State Claims Board to be payable to a claimant under sections 48-192 to 48-1,109 or the amount of any compromise or settlement under such sections.

Sec. 3. Section 48-194, Reissue Revised Statutes of Nebraska, is amended to read:

48-194 The Risk Manager, ~~on behalf of the State Claims Board and~~ with the advice of the Attorney General, shall have the authority to pay claims of all workers' compensation benefits when liability is undisputed. In any claims when liability or the amount of liability is disputed by the Attorney General, authority is hereby conferred upon the Attorney General to consider, ascertain, adjust, determine, and allow any workers' compensation claim. If any such claim is compromised or settled, the approval of the claimant, the Risk Manager State Claims Board, and the Attorney General shall be required and such settlements also shall be approved by the Nebraska Workers' Compensation Court following the procedure in the Nebraska Workers' Compensation Act.

Sec. 4. Section 48-195, Reissue Revised Statutes of Nebraska, is amended to read:

48-195 The risk management and state claims division of the Department of Administrative Services ~~may State Claims Board~~ shall, pursuant to the Administrative Procedure Act, adopt and promulgate such rules and regulations as are necessary to carry out sections 48-192 to 48-1,109.

Sec. 5. Section 48-196, Reissue Revised Statutes of Nebraska, is amended to read:

48-196 The Risk Manager State Claims Board may delegate to a state agency the handling of workers' compensation claims of employees of that agency, under the supervision and direction of the Attorney General.

Sec. 6. Section 48-197, Reissue Revised Statutes of Nebraska, is amended to read:

48-197 All claims under sections 48-192 to 48-1,109 shall be filed with the Risk Manager. The Risk Manager shall immediately advise the Attorney General of the filing of any claim. It shall be the duty of the Attorney General to cause a complete investigation to be made of all such claims. Whenever any state agency receives notice or has knowledge of any alleged injury under the Nebraska Workers' Compensation Act, such state agency shall immediately file a first report of such alleged injury with the Nebraska Workers' Compensation Court and the Risk Manager and shall file such other forms as may be required by such court or the Risk Manager board.

Sec. 7. Section 48-1,108, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,108 Whenever a claim or suit against the state is covered by workers' compensation insurance, the provisions of the insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of sections 48-192 to 48-1,109. The Attorney General and the Risk Manager State Claims Board shall cooperate with the insurance company.

Sec. 8. (1) After receipt of the notices provided for in this section, no debt collection shall be undertaken by a provider of services, supplier of

services, collection agency, collector, or creditor attempting to collect a debt incurred against an employee or his or her spouse for treatment of a work-related injury while the matter is pending in the compensation court until final adjudication of the case regarding such debt.

(2) Notice under this section shall be made in writing and provided to each provider of services, supplier of services, collection agency, collector, or creditor as described in subsection (1) of this section. Notice shall not be imputed to any party from the service of notice upon another party.

(3) The initial notice shall contain the provider's name, employee's name, date of the injury, and a description of the injury, together with the filing date and case number pending in the compensation court. Within thirty days after the initial notice, an additional notice shall be provided specifically identifying the debt upon which collection should be stayed, unless identification was made in the initial notice. Notice shall be void if it fails to provide the proper information or is not provided within the required timeframes, or until proper notice is provided.

(4) Notice shall be made by personally delivering the notice to the person on whom it is to be served or by sending it by first-class mail addressed to the person or business entity on whom it is to be served at his or her residence or the principal office address of a business entity, or by a method otherwise agreed to between the parties. Each provider, supplier, collection agency, collector, or creditor shall not be deemed to be notified under this section unless receipt of the notice can be demonstrated.

(5) If collection efforts continue after both notices are received by the entity seeking to collect, the notices may be forwarded to the Attorney General requesting his or her assistance in gaining compliance with this act. The entity seeking to collect shall be copied on such notification to the Attorney General, and shall be given a reasonable period of time to respond to the notice and to cure any noncompliance. If noncompliance continues, the Attorney General may take such reasonable steps as is necessary to ensure compliance with this section. No private cause of action shall exist under this section. A violation of this section shall not be considered a violation of any other state or federal law.

(6) After notice is provided, collection lawsuits may be stayed, where applicable, by the plaintiff in a pending collection case, until final adjudication by the compensation court of the matter of the debt alleged to be subject to this section.

(7) The statute of limitations on the collection of such debt shall be tolled during the pendency of the compensation case from the date the case was filed with the compensation court.

(8) This section shall have no applicability outside of the Nebraska Workers' Compensation Act and shall not apply to any other cause of action under state or federal law.

Sec. 9. Section 48-1,110, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-1,110 Sections 48-101 to 48-1,117 and section 8 of this act shall be known and may be cited as the Nebraska Workers' Compensation Act.

Sec. 10. Section 81-8,224, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,224 (1) Any award to a claimant and any judgment in favor of a claimant under the State Tort Claims Act shall be certified by the Risk Manager or State Claims Board to the Director of Administrative Services who shall promptly issue a warrant for payment of such award or judgment out of the Tort Claims Fund or State Insurance Fund, as appropriate, if sufficient money is available in the fund, except that no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. All awards and judgments which arise out of the same facts and circumstances shall be reported to the Legislature if the aggregated amount exceeds fifty thousand dollars aggregated for the purpose of determining whether such awards and judgments shall be reviewed by the Legislature and specific appropriation made therefor.

(2) Any award, judgment, or associated costs on a claim which is covered by liability insurance or by group self-insurance, the amount of which falls within the applicable policy's self-insured retention, shall be paid from the State Insurance Fund.

(3) Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written release by the claimant in a form approved by the State Claims Board.

Sec. 11. Section 81-8,239.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,239.02 The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses, including the costs of administering the Risk Management Program. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles, self-insured retentions, or copayments as may be required by such

insurance policies and Risk Management Program expenses;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the Risk Manager. The Risk Manager may assess state agencies to provide self-insured property coverage;

(3) The State Self-Insured Indemnification Fund is hereby created for the purpose of paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees; and

(4) The State Self-Insured Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for which there is insufficient agency funding and for which a legislative appropriation is made under the provisions of section 81-8,239.11. The fund may be used to pay claims against the state or its agencies, officials, or employees for which there is a specific provision of law for the resolution of such claims but which are not otherwise payable from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, Workers' Compensation Claims Revolving Fund, or Tort Claims Fund. Such claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees. The Risk Manager shall report electronically all claims and judgments paid from the State Self-Insured Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive an electronic copy of the report by making a request to the Risk Manager.

Sec. 12. Section 81-1021, Reissue Revised Statutes of Nebraska, is amended to read:

81-1021 (1) All motor vehicles acquired by the State of Nebraska except any vehicle rented as a bureau fleet vehicle shall be indelibly and conspicuously lettered, in plain letters of a contrasting color or reflective material:

(a) On each side thereof with the words State of Nebraska and following such words the name of whatever board, department, bureau, division, institution, including the University of Nebraska or state college, office, or other state expending agency of the state to which the motor vehicle belongs; and

(b) On the back thereof with the words State of Nebraska.

(2) This section shall not apply to motor vehicles used or controlled by:

(a) The Nebraska State Patrol, the Public Service Commission, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, inspectors employed by the Nebraska Liquor Control Commission, and persons employed by the Tax Commissioner for state revenue enforcement purposes, the exemption for state law enforcement purposes and state revenue enforcement purposes being confined strictly to the seven agencies specifically named;

(b) The Department of Health and Human Services or the Department of Correctional Services for the purpose of apprehending and returning escaped offenders or parole violators to facilities in the Department of Correctional Services and transporting offenders and personnel of the Department of Correctional Services and patients and personnel of the Department of Health and Human Services who are engaged in off-campus program activities;

(c) The Military Department;

(d) Vocational rehabilitation counselors and the Department of Health and Human Services for the purposes of communicable disease control, for the prevention and control of those communicable diseases which endanger the public health, or used by the Department of Health and Human Services in the enforcement of drug control laws or for other investigation purposes;

(e) The Department of Agriculture for special investigative purposes;

(f) The Nebraska Motor Vehicle Industry Licensing Board for investigative purposes; ~~and~~

(g) The Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes; ~~and -~~

(h) The Department of Justice.

Sec. 13. Original sections 48-193, 48-194, 48-195, 48-196, 48-197, 48-1,108, 81-8,224, 81-8,239.02, and 81-1021, Reissue Revised Statutes of Nebraska, and sections 48-122 and 48-1,110, Revised Statutes Cumulative Supplement, 2018, are repealed.