

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 464

Introduced by Vargas, 7.

Read first time January 13, 2023

Committee: Business and Labor

1 A BILL FOR AN ACT relating to first responders; to amend sections
2 48-101.01 and 71-7104, Revised Statutes Cumulative Supplement, 2022;
3 to change provisions relating to first responders' claims for mental
4 injuries and mental illness under the Nebraska Workers' Compensation
5 Act; to transfer provisions relating to resilience training; to
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 48-101.01, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 48-101.01 (1) The Legislature finds and declares:

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

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

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

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

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

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

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

30 (2) Personal injury includes mental injuries and mental illness
31 unaccompanied by physical injury for an employee who is a first

1 ~~responder~~, frontline state employee, or county correctional officer if
2 such employee:

3 (a) Establishes that the employee's employment conditions causing
4 the mental injury or mental illness were extraordinary and unusual in
5 comparison to the normal conditions of the particular employment; and

6 (b) Establishes, through a mental health professional, the medical
7 causation between the mental injury or mental illness and the employment
8 conditions by medical evidence.

9 (3)(a) Personal injury includes mental injuries and mental illness
10 unaccompanied by physical injury for an employee who is a first responder
11 if such employee:

12 (i) Receives a diagnosis of post-traumatic stress disorder or
13 another mental injury or mental illness from a mental health
14 professional; and

15 (ii) Receives a statement from such mental health professional that
16 the mental injury or mental illness was caused by an event occurring in
17 the course of employment as a first responder.

18 (b) The following are irrelevant in determining whether a first
19 responder has a compensable injury under this subsection:

20 (i) The fact that the employment conditions causing a first
21 responder's mental injuries or mental illness were an expected part of
22 job duties; and

23 (ii) Whether the employee had received resilience training as
24 defined in section 71-7104 or other similar training.

25 (4) {3} The employee bears the burden of establishing the matters
26 described in subsection (2) or (3) of this section by a preponderance of
27 the evidence.

28 ~~(4) Until January 1, 2028, a first responder may establish prima~~
29 ~~facie evidence of a personal injury that is a mental injury or mental~~
30 ~~illness if the first responder:~~

31 ~~(a) Presents evidence that the first responder underwent a mental~~

1 ~~health examination by a mental health professional upon entry into such~~
2 ~~service or subsequent to such entry and before the onset of the mental~~
3 ~~injury or mental illness and such examination did not reveal the mental~~
4 ~~injury or mental illness for which the first responder seeks~~
5 ~~compensation;~~

6 ~~(b) Presents testimony or an affidavit from a mental health~~
7 ~~professional stating the first responder suffers from a mental injury or~~
8 ~~mental illness caused by one or more events or series of events which~~
9 ~~cumulatively produced the mental injury or mental illness which brought~~
10 ~~about the need for medical attention and the interruption of employment;~~

11 ~~(c) Presents evidence that such events or series of events arose out~~
12 ~~of and in the course of the first responder's employment; and~~

13 ~~(d) Presents evidence that, prior to the employment conditions which~~
14 ~~caused the mental injury or mental illness, the first responder had~~
15 ~~participated in resilience training and updated the training at least~~
16 ~~annually thereafter.~~

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

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

30 ~~(b) To obtain reimbursement under this subsection, a first responder~~
31 ~~shall submit an application to the Department of Health and Human~~

1 ~~Services on a form and in a manner prescribed by the department.~~

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

5 ~~(6) (8)~~ For purposes of this section:

6 (a) County correctional officer means a correctional officer
7 employed by a high-population county whose:

8 (i) Position obligates such employee to maintain order and custody
9 of inmates in a county jail; and

10 (ii) Duties involve regular and direct interaction with high-risk
11 individuals;

12 (b) Custody means:

13 (i) Under the charge or control of a state institution or state
14 agency and includes time spent outside of the state institution or state
15 agency; or

16 (ii) In the custody of a county jail in a high-population county or
17 in the process of being placed in the custody of a county jail in a high-
18 population county;

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

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

29 (e) High-population county means a county with more than three
30 hundred thousand inhabitants as determined by the most recent federal
31 decennial census or the most recent revised certified count by the United

1 States Bureau of the Census;

2 (f) High-risk individual means an individual in custody for whom
3 violent or physically intimidating behavior is common, including, but not
4 limited to, a committed offender as defined in section 83-170, a patient
5 at a regional center as defined in section 71-911, a juvenile committed
6 to a youth rehabilitation and treatment center, and a person in the
7 custody of a county jail in a high-population county or in the process of
8 being placed in the custody of a county jail in a high-population county;
9 and

10 (g) Mental health professional means:

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

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

16 (iii) A person licensed as an independent mental health practitioner
17 under the Mental Health Practice Act; or

18 (iv) A professional counselor who holds a privilege to practice in
19 Nebraska as a professional counselor under the Licensed Professional
20 Counselors Interstate Compact, ~~;~~ ~~and~~

21 ~~(h) Resilience training means training that meets the guidelines~~
22 ~~established by the Critical Incident Stress Management Program under~~
23 ~~section 71-7104 and that teaches how to adapt to, manage, and recover~~
24 ~~from adversity, trauma, tragedy, threats, or significant sources of~~
25 ~~stress.~~

26 (7) ~~(9)~~ All other provisions of the Nebraska Workers' Compensation
27 Act apply to this section.

28 Sec. 2. Section 71-7104, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 71-7104 (1) There is hereby created the Critical Incident Stress
31 Management Program. The focus of the program shall be to minimize the

1 harmful effects of critical incident stress for emergency service
2 personnel, with a high priority on confidentiality and respect for the
3 individuals involved. The program shall:

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

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

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

11 (d) ~~(4)~~ Promote interagency cooperation;

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

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

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

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

20 (2)(a) The department shall reimburse a first responder for the cost
21 of annual resilience training not reimbursed by the first responder's
22 employer. The department shall pay reimbursement at a rate determined by
23 the Critical Incident Stress Management Program. Reimbursement shall be
24 subject to the annual limit set by such program under subdivision (1)(h)
25 of this section.

26 (b) To obtain reimbursement under this subsection, a first responder
27 shall submit an application to the department on a form and in a manner
28 prescribed by the department.

29 (c) The department shall maintain and annually update records of
30 first responders who have completed annual resilience training.

31 (3) For purposes of this section:

1 (a) Department means the Department of Health and Human Services;

2 (b) First responder has the same meaning as in section 48-101.01;

3 and

4 (c) Resilience training means training that meets the guidelines

5 established by the Critical Incident Stress Management Program and that

6 teaches how to adapt to, manage, and recover from adversity, trauma,

7 tragedy, threats, or significant sources of stress.

8 Sec. 3. Original sections 48-101.01 and 71-7104, Revised Statutes

9 Cumulative Supplement, 2022, are repealed.