

AMENDMENTS TO LB455

Introduced by Business and Labor.

1           1. Strike the original sections and insert the following new  
2 sections:

3           **Section 1.** Section 48-118, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           48-118 (1) When a third person is liable to the employee or to the  
6 dependents for the injury or death of the employee, the employer or  
7 workers' compensation insurer shall be subrogated to the right of the  
8 employee or to the dependents against such third person. The recovery by  
9 such employer or workers' compensation insurer shall not be limited to  
10 the amount payable as compensation to such employee or dependents, but  
11 such employer or workers' compensation insurer may recover any amount  
12 which such employee or his or her dependents should have been entitled to  
13 recover.

14           (2) Any recovery by the employer or workers' compensation insurer  
15 against such third person, in excess of the compensation paid by the  
16 employer or workers' compensation insurer after deducting the expenses of  
17 making such recovery, including reasonable attorney's fees, shall be paid  
18 forthwith to the employee or to the dependents pursuant to subsections  
19 (2) and (3) of section 48-118.04. ~~and shall be treated as an advance~~  
20 ~~payment by the employer on account of any future installments of~~  
21 ~~compensation.~~

22           (3) Nothing in the Nebraska Workers' Compensation Act shall be  
23 construed to deny the right of an injured employee or of his or her  
24 personal representative to bring suit against such third person in his or  
25 her own name or in the name of the personal representative based upon  
26 such liability, but in such event an employer or workers' compensation  
27 insurer having paid or paying compensation to such employee or his or her

1 dependents shall be made a party to the suit for the purpose of  
2 reimbursement, under the right of subrogation, of any compensation paid.

3 (4) For purposes of sections 48-118 to 48-118.05, third person shall  
4 include, but is not limited to, an insurer that issued a policy that  
5 includes uninsured or underinsured motorist coverage insuring the injured  
6 employee, his or her employer, or both the injured employee and his or  
7 her employer.

8 **Sec. 2.** Section 48-118.04, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 48-118.04 (1) A settlement of a third-party claim or suit under the  
11 Nebraska Workers' Compensation Act is void unless:

12 (a) Such settlement is agreed upon in writing by the employee or his  
13 or her personal representative and the workers' compensation insurer of  
14 the employer, if there is one, and if there is no insurer, then by the  
15 employer; or

16 (b) In the absence of such agreement, the court before which the  
17 action is pending or, if no action is pending, the district court in  
18 which such action could be brought or the Nebraska Workers' Compensation  
19 Court, determines that the settlement offer is fair and reasonable  
20 considering liability, damages, and the ability of the third person and  
21 his or her liability insurance carrier to satisfy any judgment.

22 (2) If the employee or his or her personal representative or the  
23 employer or his or her workers' compensation insurer do not agree in  
24 writing upon distribution of the proceeds of any judgment or settlement,  
25 the court before which the action is pending or, if no action is pending,  
26 the district court in which such action could be brought or the Nebraska  
27 Workers' Compensation Court, upon application, shall order the a fair and  
28 equitable distribution of the proceeds as follows: of any judgment or  
29 settlement.

30 (a) After deducting the reasonable expenses of making the recovery,  
31 including reasonable attorney's fees, one-third of the remainder shall be

1 paid to the employee or his or her personal representative;

2 (b) Out of the balance remaining after the deduction and payment  
3 specified in subdivision (a) of this subsection, the employer or workers'  
4 compensation insurer shall be paid for all compensation payments that  
5 have been made by the employer or workers' compensation insurer; and

6 (c) Any balance remaining after the distributions described in  
7 subdivisions (a) and (b) of this subsection have been made shall be paid  
8 to the employee or his or her personal representative.

9 (3) Payment to the employee or his or her personal representative  
10 under subsection (2) of this section shall be treated as an advance  
11 payment by the employer of any future installments of compensation owed  
12 by the employer to the employee. The amount of the advance payment shall  
13 be reduced by the amount of compensation which would have been owed by  
14 the employer but for the payment to the employee specified under  
15 subsection (2) of this section. In the event the employee or his or her  
16 personal representative and the employer or workers' compensation insurer  
17 do not agree that the advance payment has been exhausted, the employee or  
18 his or her personal representative shall make application to the Nebraska  
19 Workers' Compensation Court for a determination of exhaustion. When the  
20 amount of the advance payment is exhausted, the employer or workers'  
21 compensation insurer shall resume payment of all additional benefits owed  
22 to the employee under the Nebraska Workers' Compensation Act.

23 **Sec. 3.** Section 48-144.01, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 48-144.01 (1) In every case of reportable injury arising out of and  
26 in the course of employment, the employer or workers' compensation  
27 insurer shall file a report thereof with the Nebraska Workers'  
28 Compensation Court. Such report shall be filed within ten days after the  
29 employer or insurer has been given notice of or has knowledge of the  
30 injury.

31 (2)(a) To protect the confidentiality of the employee, a report made

1 under subsection (1) of this section shall not be disclosed, redisclosed,  
2 released, disseminated, or otherwise published with the employee's  
3 confidential information except as otherwise provided in this subsection  
4 or as necessary for the compensation court to administer and enforce or  
5 perform its lawful duties under the Nebraska Workers' Compensation Act.

6 (b) The information reported pursuant to subsection (1) of this  
7 section may be made available to the employee for whom the report is  
8 made, with or without a request from the employee. If the employee is  
9 deceased, any right or obligation under this subdivision shall extend to  
10 the employee's personal representative as defined in section 30-2209. The  
11 compensation court may provide any or all information from that report to  
12 the employee or such personal representative.

13 (c) The information reported pursuant to subsection (1) of this  
14 section is subject to disclosure by the compensation court pursuant to  
15 sections 84-712 to 84-712.09, except as to the employee's confidential  
16 information and any other personally identifiable information. A request  
17 to obtain a report filed under subsection (1) of this section or for any  
18 information contained in such report may be fulfilled by the compensation  
19 court pursuant to sections 84-712 to 84-712.09 so long as the  
20 confidential information and any other personally identifiable  
21 information is redacted from such report or extract.

22 (d) An employee may elect to waive confidentiality of reports under  
23 subsection (1) of this section involving such employee. A waiver of  
24 confidentiality shall permit disclosure of the employee's confidential  
25 information. An election to waive, once made, shall remain in effect  
26 notwithstanding any change in employment by such employee unless the  
27 election to waive is revoked by the employee. An election to waive  
28 confidentiality or revocation of that waiver shall be made in a form and  
29 manner prescribed by the administrator of the compensation court.

30 (e) At the discretion of the compensation court, information from  
31 the report made pursuant to subsection (1) may be used in any pending

1 matter before the compensation court involving the employee.

2 (f) In response to a public records request pursuant to sections  
3 84-712 to 84-712.09, any report made pursuant to subsection (1) of this  
4 section that includes the employee's confidential information may be  
5 provided by the compensation court:

6 (i) To an attorney or authorized agent representing the employee as  
7 to any workers' compensation claim or claim involving personal injury. An  
8 attorney or authorized agent representing the employee shall provide a  
9 written authorization to obtain a report from the employee if requested  
10 by the compensation court;

11 (ii) To the employer, workers' compensation insurer, risk management  
12 pool, or third-party administrator involved in the reported injury or an  
13 attorney or authorized agent who represents the employer, workers'  
14 compensation insurer, risk management pool, or third-party administrator.  
15 An attorney or authorized agent representing the employer, workers'  
16 compensation insurer, risk management pool, or third-party administrator  
17 shall provide a written authorization to obtain a report from the  
18 employer, workers' compensation insurer, risk management pool, or third-  
19 party administrator if requested by the compensation court;

20 (iii) To an attorney or authorized agent of an insurer or a third-  
21 party administrator who is involved in administering any claim for  
22 insurance benefits related to any injury of the employee whose report is  
23 filed with the compensation court. An attorney or authorized agent of  
24 such insurer or third-party administrator shall provide a written  
25 authorization to obtain a report from the insurer or third-party  
26 administrator if requested by the compensation court;

27 (iv) To an attorney representing a party to a lawsuit filed by or on  
28 behalf of the employee whose report is filed with the compensation court.  
29 An attorney representing a party to such a lawsuit shall provide a  
30 written authorization to obtain a report from the party if requested by  
31 the compensation court;

1           (v) To a federal or state governmental unit at the request of the  
2 governmental unit if the information sought to be disclosed is necessary  
3 for the receiving federal or state governmental unit to operate a program  
4 or carry out a purpose specifically authorized by federal or state  
5 statute, including, but not limited to, the investigation of a fraud,  
6 criminal offense, or licensing or regulatory violation, child support  
7 enforcement, or to act upon an application for benefits submitted by the  
8 employee who is the subject of the report under subsection (1) of this  
9 section;

10           (vi) To a person engaged in bona fide statistical research,  
11 including, but not limited to, actuarial studies and health or safety  
12 investigations which are authorized by federal or state statute or  
13 regulation or other federal or state governmental units. The employee's  
14 confidential information or any other personally identifiable information  
15 shall not be disclosed unless the researcher has entered into a  
16 confidentiality agreement with the compensation court and has agreed that  
17 any research findings or reports will not disclose the employee's  
18 confidential information or any other personally identifiable  
19 information;

20           (vii) To a nonprofit organization that certifies to the  
21 administrator of the compensation court under penalty of perjury that the  
22 purpose of using the confidential information is to offer financial  
23 assistance to dependents of the employee or to send condolences to,  
24 provide memorials for, or offer grief counseling to family members of an  
25 employee whose injury or death was caused by a workplace incident;

26           (viii) When release of the report is ordered by a court of competent  
27 jurisdiction; or

28           (ix) When a request to obtain a report filed under subsection (1) of  
29 this section is made by a treating physician or other health care  
30 provider who has rendered treatment to an employee or is seeking  
31 authorization for treatment or special services and the information

1 sought to be disclosed relates to the compensability of a claim related  
2 to such treatment or authorization for special services or billing for  
3 services provided.

4 (g) Any request to obtain a report filed under subsection (1) of  
5 this section shall be made in a form and manner prescribed by the  
6 administrator of the compensation court.

7 (3) (2) For purposes of this section:

8 (a) Reportable injury means an injury or diagnosed occupational  
9 disease which results in: (i) Death, regardless of the time between the  
10 death and the injury or onset of disease; (ii) time away from work; (iii)  
11 restricted work or termination of employment; (iv) loss of consciousness;  
12 or (v) medical treatment other than first aid;

13 (b) Restricted work means the inability of the employee to perform  
14 one or more of the duties of his or her normal job assignment. Restricted  
15 work does not occur if the employee is able to perform all of the duties  
16 of his or her normal job assignment, but a work restriction is assigned  
17 because the employee is experiencing minor musculoskeletal discomfort and  
18 for the purpose of preventing a more serious condition from developing;

19 (c) Medical treatment means treatment administered by a physician or  
20 other licensed health care professional; ~~and~~

21 (d) First aid means:

22 (i) Using a nonprescription medication at nonprescription strength.  
23 For medications available in both prescription and nonprescription form,  
24 a recommendation by a physician or other licensed health care  
25 professional to use a nonprescription medication at prescription strength  
26 is not first aid;

27 (ii) Administering tetanus immunizations. Administering other  
28 immunizations, such as hepatitis B vaccine and rabies vaccine, is not  
29 first aid;

30 (iii) Cleaning, flushing, or soaking wounds on the surface of the  
31 skin;

1 (iv) Using wound coverings, such as bandages and gauze pads, and  
2 superficial wound closing devices, such as butterfly bandages and steri-  
3 strips. Using other wound closing devices, such as sutures and staples,  
4 is not first aid;

5 (v) Using hot or cold therapy;

6 (vi) Using any nonrigid means of support, such as elastic bandages,  
7 wraps, and nonrigid back belts. Using devices with rigid stays or other  
8 systems designed to immobilize parts of the body is not first aid;

9 (vii) Using temporary immobilization devices, such as splints,  
10 slings, neck collars, and back boards, while transporting accident  
11 victims;

12 (viii) Drilling of a fingernail or toenail to relieve pressure or  
13 draining fluid from a blister;

14 (ix) Using eye patches;

15 (x) Removing foreign bodies from the eye using only irrigation or a  
16 cotton swab;

17 (xi) Removing splinters or foreign material from areas other than  
18 the eye by irrigation, tweezers, cotton swabs, or other simple means;

19 (xii) Using finger guards;

20 (xiii) Using massages. Using physical therapy or chiropractic  
21 treatment is not first aid; and

22 (xiv) Drinking fluids for relief of heat stress; and -

23 (e) Confidential information means an employee's name, address,  
24 telephone number, and email address.

25 **Sec. 4.** Original sections 48-118, 48-118.04, and 48-144.01, Reissue  
26 Revised Statutes of Nebraska, are repealed.