

## ENGROSSED LEGISLATIVE BILL 397

Introduced by Moser, 22.

A BILL FOR AN ACT relating to labor; to amend sections 44-3,158, 48-144.03, 48-443, and 48-446, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to safety committees and a safety program; to terminate a fund; to harmonize provisions; to repeal the original sections; and to outright repeal sections 48-444 and 48-445, Reissue Revised Statutes of Nebraska.

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

**Section 1.** Section 44-3,158, Reissue Revised Statutes of Nebraska, is amended to read:

44-3,158 (1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods; and

(b) Director means the Director of Insurance.

(2)(a) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(b) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average

rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(c) If the assigned risk system described in subdivisions (2)(a) and (b) of this section ceases to be viable because no qualified insurer is willing to provide workers' compensation coverage at an average rate level of two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 without also requiring substantial sharing of losses with all other workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act, then the director may, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers writing workers' compensation insurance in this state and such risk management pools. If established, such alternative assigned risk system shall not utilize an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) An employer shall not be considered to be in good faith entitled to be covered by workers' compensation insurance under this section if:

(a) The employer is in default on workers' compensation premiums;

(b) The employer has failed to reimburse an insurer for amounts to be

repaid pursuant to workers' compensation insurance written on a policy with a deductible;

(c) The employer has failed to provide an insurer reasonable access to books and records necessary for a premium audit;

(d) The employer has defrauded or attempted to defraud an insurer; or

(e) The employer is found to have been owned or controlled by persons who owned or controlled a prior employer that is or would be ineligible for coverage pursuant to subdivisions (4)(a) through (d) of this section.

**Sec. 2.** Section 48-144.03, Reissue Revised Statutes of Nebraska, is amended to read:

48-144.03 (1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2)(a) This subsection applies to workers' compensation policies other than master policies or multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (i) notice from the employer to the insurer to cancel the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, or (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer.

(c) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No policy shall expire or lapse until

thirty days after giving such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the employer to the insurer to not renew the policy, (ii) nonpayment of premium due the insurer under any policy written by the insurer for the employer, or (iii) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer.

(3)(a) This subsection applies to workers' compensation master policies obtained by a professional employer organization.

(b) No cancellation of a master policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such cancellation shall be effective until thirty days after giving such notices.

(c) No termination of coverage for a client or any employees of a client under a master policy within the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium.

(d) No master policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the professional employer organization. No master policy shall expire or lapse until thirty days after giving such notices.

(e) Notice of the cancellation or nonrenewal of a master policy or the termination of coverage for a client or the employees of a client under such a policy shall be given by the professional employer organization to the client within fifteen days after the cancellation, nonrenewal, or termination unless

replacement coverage has been obtained.

(4)(a) This subsection applies to workers' compensation multiple coordinated policies obtained by a professional employer organization.

(b) No cancellation of a policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client employer. No such cancellation shall be effective until thirty days after giving such notices, except that the cancellation may be effective ten days after giving such notices if such cancellation is based on (i) notice from the client to the professional employer organization or the insurer to cancel the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, or (iii) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(c) No termination of coverage for any employees of the client during the policy period shall be effective unless notice is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No such termination of coverage shall be effective until thirty days after giving such notices, except that the termination of coverage may be effective ten days after the giving of such notices if such termination is based on (i) notice from the client to the professional employer organization or the insurer to terminate the coverage or (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(d) No policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court, to the professional employer organization, and to the client. No policy shall expire or lapse until thirty days after giving such

notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (i) notice from the client to the professional employer organization or the insurer to not renew the policy, (ii) notice from the professional employer organization of the client's nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03, or (iii) for policies issued pursuant to section 44-3,158, nonpayment of premium or failure to reimburse deductibles for policies issued pursuant to section 48-146.03.

(e) An insurer may refrain from sending notices required by this subsection to a professional employer organization's client based upon the professional employer organization's representation that coverage has been or will be replaced. Such representation shall not absolve the insurer of its responsibility to continue coverage if such representation proves inaccurate.

(5) Notwithstanding other provisions of this section, if replacement workers' compensation insurance coverage has been secured with another workers' compensation insurer, then the cancellation or nonrenewal of the policy or the termination of coverage for a client or employees of a client under the policy shall be effective as of the effective date of such other insurance coverage.

(6) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy or termination of coverage for a client or employees of a client under a policy.

(7) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt and acceptance by the compensation court.

**Sec. 3.** Section 48-443, Reissue Revised Statutes of Nebraska, is amended to read:

48-443 (1) Every public employer subject to the Nebraska Workers'

Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(2)(a) For public employers subject to collective-bargaining agreements, the establishment of the safety committee may be accomplished through the collective-bargaining process.

(b) For public employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the public employer.

(3) A public employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

**Sec. 4.** Section 48-446, Reissue Revised Statutes of Nebraska, is amended to read:

48-446 There is hereby created the Workplace Safety Consultation Program Cash Fund. The fund terminates on the effective date of this act, and the State Treasurer shall transfer any money in the fund on such date to the General Fund.

**Sec. 5.** Original sections 44-3,158, 48-144.03, 48-443, and 48-446, Reissue Revised Statutes of Nebraska, are repealed.

**Sec. 6.** The following sections are outright repealed: Sections 48-444 and

48-445, Reissue Revised Statutes of Nebraska.

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**PRESIDENT OF THE LEGISLATURE**

*THIS IS TO CERTIFY that the within LB 397 was passed by the One Hundred Ninth Legislature of Nebraska at its Second Session on the ..... day of ..... 20.....*

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**CLERK OF THE LEGISLATURE**

**Approved:**

..... 20....., ..... o'clock .....M.

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**GOVERNOR**