

## ENGROSSED LEGISLATIVE BILL 455

Introduced by Hallstrom, 1; McKeon, 41; Sorrentino, 39.

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend sections 48-144.01 and 48-146.03, Reissue Revised Statutes of Nebraska; to provide a duty for the Nebraska Workers' Compensation Court; to change provisions relating to certain injury reports; to define a term; to change provisions relating to workers' compensation insurance policies and deductibles; and to repeal the original sections.

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

**Section 1.** Section 48-144.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

(b) Upon receipt of a report filed under this subsection the compensation court shall send a letter to the employee for whom the report is made notifying such employee that a report has been filed and including the following information: The Nebraska Workers' Compensation Court cannot give legal advice. However, if your claim is denied or if you have any questions regarding the handling of your claim, you have the right to contact a Nebraska attorney who accepts workers' compensation cases who can provide guidance on your rights and options.

(2)(a) To protect the confidentiality of the employee, a report made under subsection (1) of this section shall not be disclosed, redisclosed, released, disseminated, or otherwise published with the employee's confidential information except as otherwise provided in this subsection or as necessary for the compensation court to administer and enforce or perform its lawful duties

under the Nebraska Workers' Compensation Act.

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

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

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

(e) At the discretion of the compensation court, information from the report made pursuant to subsection (1) may be used in any pending matter before the compensation court involving the employee.

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

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

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

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

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

(v) To a federal or state governmental unit at the request of the governmental unit if the information sought to be disclosed is necessary for the receiving federal or state governmental unit to operate a program or carry out a purpose specifically authorized by federal or state statute, including, but not limited to, the investigation of a fraud, criminal offense, or

licensing or regulatory violation, child support enforcement, or to act upon an application for benefits submitted by the employee who is the subject of the report under subsection (1) of this section;

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

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

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

(ix) When a request to obtain a report filed under subsection (1) of this section is made by a treating physician or other health care provider who has rendered treatment to an employee or is seeking authorization for treatment or special services and the information sought to be disclosed relates to the compensability of a claim related to such treatment or authorization for special services or billing for services provided; or

(x) When more than sixty days have passed since the date the report was filed.

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

(3) For purposes of this section:

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

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

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

(d) First aid means:

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

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

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

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

(v) Using hot or cold therapy;

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

- (vii) Using temporary immobilization devices, such as splints, slings, neck collars, and back boards, while transporting accident victims;
  - (viii) Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;
  - (ix) Using eye patches;
  - (x) Removing foreign bodies from the eye using only irrigation or a cotton swab;
  - (xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;
  - (xii) Using finger guards;
  - (xiii) Using massages. Using physical therapy or chiropractic treatment is not first aid; and
  - (xiv) Drinking fluids for relief of heat stress; and
- (e) Confidential information means an employee's name, address, telephone number, and email address.

**Sec. 2.** Section 48-146.03, Reissue Revised Statutes of Nebraska, is amended to read:

48-146.03 (1) Each workers' compensation insurance policy issued by an insurer pursuant to the Nebraska Workers' Compensation Act:

(a) Shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of five hundred dollars to two thousand five hundred dollars per claim in increments of five hundred dollars; or

(b) May offer, at the option of the insured employer and the workers' compensation insurer, a deductible for all amounts paid by the insurer as long as the deductible is not more than forty percent of the insured employer's otherwise applicable annual workers' compensation insurance premium at rates approved for the insurer but not less than fifty thousand dollars.

The insured employer, if choosing to exercise one of such options listed in this subsection, may choose only one of the amounts as the deductible. The provisions of this section shall be fully disclosed to each prospective purchaser in writing.

(2) The deductible form shall provide that the workers' compensation insurer shall remain liable for and shall pay the entire cost of medical benefits for each claim directly to the medical provider, shall remain liable for and pay the entire cost of benefits, claims, and expenses as required by the policy irrespective of the deductible provision, and shall then be reimbursed by the employer for any deductible amounts paid by the workers' compensation insurer. The employer shall be liable for reimbursement up to the limit of the deductible.

(3) Beginning January 1, 2027, losses reimbursed by the employer under the deductible shall be credited against the employer's experience modification while the deductible option is used, unless the employer elects to purchase a gross reportable deductible policy.

(4) A workers' compensation insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the employer does not have the financial ability to be responsible for the payment of deductible amounts.

(5) A workers' compensation insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount, and shall make such reports to the compensation court of payments made, including payments made under the deductible provisions, as may be required by the compensation court.

(6) A person who is employed by a policyholder which chooses to exercise the option of a deductible policy shall not be required to pay any of the deductible amount, and any such policyholder shall not require or attempt to require the employee to give up his or her right of selection of physician set out in section 48-120. Any violation of this subsection shall be a Class II misdemeanor.

**Sec. 3.** Original sections 48-144.01 and 48-146.03, Reissue Revised Statutes of Nebraska, are repealed.

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**PRESIDENT OF THE LEGISLATURE**

*THIS IS TO CERTIFY that the within LB 455 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**