

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 397

FINAL READING

Introduced by Moser, 22.

Read first time January 17, 2025

Committee: Business and Labor

1 A BILL FOR AN ACT relating to labor; to amend sections 44-3,158,
2 48-144.03, 48-443, and 48-446, Reissue Revised Statutes of Nebraska;
3 to change and eliminate provisions relating to safety committees and
4 a safety program; to terminate a fund; to harmonize provisions; to
5 repeal the original sections; and to outright repeal sections 48-444
6 and 48-445, Reissue Revised Statutes of Nebraska.
7 Be it enacted by the people of the State of Nebraska,

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

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

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

7 (b) Director means the Director of Insurance.

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

16 (b) If the director determines that the cost of workers'
17 compensation insurance premiums for an insurer to provide assigned risk
18 coverage pursuant to such an agreement would be unreasonably high, the
19 director may enter into an agreement in which the assigned risk insurer
20 covers a portion of the losses incurred by the assigned risk employer.
21 Any agreement that involves an average rate level of less than two and
22 one-half times the prospective loss costs approved for an advisory
23 organization pursuant to section 44-7511 shall not be considered
24 unreasonably high for the purposes of this section. Pursuant to any such
25 agreement, remaining losses shall be assessed against all workers'
26 compensation insurers writing workers' compensation insurance in this
27 state and risk management pools created under the Intergovernmental Risk
28 Management Act based on their workers' compensation premiums written in
29 this state or contributions made to risk management pools. Assigned risk
30 premiums shall be excluded from the basis for such assessments.

31 (c) If the assigned risk system described in subdivisions (2)(a) and

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

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

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

21 ~~(a) The employer is required to establish a safety committee~~
22 ~~pursuant to sections 48-443 to 48-445 and is not in compliance with such~~
23 ~~sections;~~

24 (a) ~~(b)~~ The employer is in default on workers' compensation
25 premiums;

26 (b) ~~(c)~~ The employer has failed to reimburse an insurer for amounts
27 to be repaid pursuant to workers' compensation insurance written on a
28 policy with a deductible;

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

31 (d) ~~(e)~~ The employer has defrauded or attempted to defraud an

1 insurer; or

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

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

8 48-144.03 (1) Notwithstanding policy provisions that stipulate a
9 workers' compensation insurance policy to be a contract with a fixed term
10 of coverage that expires at the end of the term, coverage under a
11 workers' compensation insurance policy shall continue in full force and
12 effect until notice is given in accordance with this section.

13 ~~(2) No cancellation of a workers' compensation insurance policy~~
14 ~~within the policy period shall be effective unless notice of the~~
15 ~~cancellation is given by the workers' compensation insurer to the~~
16 ~~Nebraska Workers' Compensation Court and to the employer. No such~~
17 ~~cancellation shall be effective until thirty days after the giving of~~
18 ~~such notices, except that the cancellation may be effective ten days~~
19 ~~after the giving of such notices if such cancellation is based on (a)~~
20 ~~notice from the employer to the insurer to cancel the policy, (b)~~
21 ~~nonpayment of premium due the insurer under any policy written by the~~
22 ~~insurer for the employer, (c) failure of the employer to reimburse~~
23 ~~deductible losses as required under any policy written by the insurer for~~
24 ~~the employer, or (d) failure of the employer, if covered pursuant to~~
25 ~~section 44-3,158, to comply with sections 48-443 to 48-445.~~

26 ~~(3) No workers' compensation insurance policy shall expire or lapse~~
27 ~~at the end of the policy period unless notice of nonrenewal is given by~~
28 ~~the workers' compensation insurer to the compensation court and to the~~
29 ~~employer. No workers' compensation insurance policy shall expire or lapse~~
30 ~~until thirty days after the giving of such notices, except that a policy~~
31 ~~may expire or lapse ten days after the giving of such notices if the~~

1 ~~nonrenewal is based on (a) notice from the employer to the insurer to not~~
2 ~~renew the policy, (b) nonpayment of premium due the insurer under any~~
3 ~~policy written by the insurer for the employer, (c) failure of the~~
4 ~~employer to reimburse deductible losses as required under any policy~~
5 ~~written by the insurer for the employer, or (d) failure of the employer,~~
6 ~~if covered pursuant to section 44-3,158, to comply with sections 48-443~~
7 ~~to 48-445.~~

8 ~~(4) Subsections (2) and (3) of this section terminate on January 1,~~
9 ~~2012. Subsections (5), (6), and (7) of this section apply beginning on~~
10 ~~January 1, 2012.~~

11 ~~(2)(a) (5)(a)~~ This subsection applies to workers' compensation
12 policies other than master policies or multiple coordinated policies
13 obtained by a professional employer organization.

14 (b) No cancellation of a policy within the policy period shall be
15 effective unless notice of the cancellation is given by the workers'
16 compensation insurer to the compensation court and to the employer. No
17 such cancellation shall be effective until thirty days after giving such
18 notices, except that the cancellation may be effective ten days after the
19 giving of such notices if such cancellation is based on (i) notice from
20 the employer to the insurer to cancel the policy, (ii) nonpayment of
21 premium due the insurer under any policy written by the insurer for the
22 employer, or (iii) failure of the employer to reimburse deductible losses
23 as required under any policy written by the insurer for the employer, ~~or~~
24 ~~(iv) failure of the employer, if covered pursuant to section 44-3,158, to~~
25 ~~comply with sections 48-443 to 48-445.~~

26 (c) No policy shall expire or lapse at the end of the policy period
27 unless notice of nonrenewal is given by the workers' compensation insurer
28 to the compensation court and to the employer. No policy shall expire or
29 lapse until thirty days after giving such notices, except that a policy
30 may expire or lapse ten days after the giving of such notices if the
31 nonrenewal is based on (i) notice from the employer to the insurer to not

1 renew the policy, (ii) nonpayment of premium due the insurer under any
2 policy written by the insurer for the employer, or (iii) failure of the
3 employer to reimburse deductible losses as required under any policy
4 written by the insurer for the employer, ~~or (iv) failure of the~~
5 ~~employer, if covered pursuant to section 44-3,158, to comply with~~
6 ~~sections 48-443 to 48-445.~~

7 (3)(a) ~~(6)(a)~~ This subsection applies to workers' compensation
8 master policies obtained by a professional employer organization.

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

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

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

29 (e) Notice of the cancellation or nonrenewal of a master policy or
30 the termination of coverage for a client or the employees of a client
31 under such a policy shall be given by the professional employer

1 organization to the client within fifteen days after the cancellation,
2 nonrenewal, or termination unless replacement coverage has been obtained.

3 (4)(a) ~~(7)(a)~~ This subsection applies to workers' compensation
4 multiple coordinated policies obtained by a professional employer
5 organization.

6 (b) No cancellation of a policy within the policy period shall be
7 effective unless notice of the cancellation is given by the workers'
8 compensation insurer to the compensation court, to the professional
9 employer organization, and to the client employer. No such cancellation
10 shall be effective until thirty days after giving such notices, except
11 that the cancellation may be effective ten days after giving such notices
12 if such cancellation is based on (i) notice from the client to the
13 professional employer organization or the insurer to cancel the policy,
14 (ii) notice from the professional employer organization of the client's
15 nonpayment of premium or failure to reimburse deductibles for policies
16 issued pursuant to section 48-146.03, ~~(iii) failure of the client, if~~
17 ~~covered pursuant to section 44-3,158, to comply with sections 48-443 to~~
18 ~~48-445,~~ or (iii) ~~(iv)~~ for policies issued pursuant to section 44-3,158,
19 nonpayment of premium or failure to reimburse deductibles for policies
20 issued pursuant to section 48-146.03.

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

1 section 48-146.03.

2 (d) No policy shall expire or lapse at the end of the policy period
3 unless notice of nonrenewal is given by the workers' compensation insurer
4 to the compensation court, to the professional employer organization, and
5 to the client. No policy shall expire or lapse until thirty days after
6 giving such notices, except that a policy may expire or lapse ten days
7 after the giving of such notices if the nonrenewal is based on (i) notice
8 from the client to the professional employer organization or the insurer
9 to not renew the policy, (ii) notice from the professional employer
10 organization of the client's nonpayment of premium or failure to
11 reimburse deductibles for policies issued pursuant to section 48-146.03,
12 ~~(iii) failure of the client, if covered pursuant to section 44-3,158, to~~
13 ~~comply with sections 48-443 to 48-445, or (iii) (iv) for policies issued~~
14 pursuant to section 44-3,158, nonpayment of premium or failure to
15 reimburse deductibles for policies issued pursuant to section 48-146.03.

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

22 (5) ~~(8)~~ Notwithstanding other provisions of this section, if
23 replacement workers' compensation insurance coverage has been secured
24 with another workers' compensation insurer, then the cancellation or
25 nonrenewal of the policy or the termination of coverage for a client or
26 employees of a client under the policy shall be effective as of the
27 effective date of such other insurance coverage.

28 (6) ~~(9)~~ The notices required by this section shall state the reason
29 for the cancellation or nonrenewal of the policy or termination of
30 coverage for a client or employees of a client under a policy.

31 (7) ~~(10)~~ The notices required by this section shall be provided in

1 writing and shall be deemed given upon the mailing of such notices by
2 certified mail, except that notices from insurers to the compensation
3 court may be provided by electronic means if such electronic means is
4 approved by the administrator of the compensation court. If notice is
5 provided by electronic means pursuant to such an approval, it shall be
6 deemed given upon receipt and acceptance by the compensation court.

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

9 48-443 (1) Every ~~(1)(a) Not later than January 1, 1994,~~ every public
10 ~~and private~~ employer subject to the Nebraska Workers' Compensation Act
11 shall establish a safety committee. Such committee shall adopt and
12 maintain an effective written injury prevention program.

13 ~~(b) A client of a professional employer organization is not relieved~~
14 ~~of its obligation to establish a safety committee based on its workers~~
15 ~~being co-employees of the professional employer organization. A~~
16 ~~professional employer agreement shall not allocate the client's~~
17 ~~responsibility to establish a safety committee to the professional~~
18 ~~employer organization. For purposes of this subdivision, the terms~~
19 ~~client, professional employer organization, and professional employer~~
20 ~~agreement shall have the same meaning as in section 48-2702. This~~
21 ~~subdivision becomes operative on January 1, 2012.~~

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

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

31 (c) The cost of maintaining and operating the safety committee shall

1 be minimal to the public employer.

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

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

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

15 48-446 (1) ~~There is hereby created the Workplace Safety~~
16 ~~Consultation Program. It is the intent of the Legislature that such~~
17 ~~program help provide employees in Nebraska with safe and healthful~~
18 ~~workplaces.~~

19 (2) ~~Under the Workplace Safety Consultation Program, the Department~~
20 ~~of Labor may conduct workplace inspections and consultations to determine~~
21 ~~whether employers are complying with standards issued by the federal~~
22 ~~Occupational Safety and Health Administration or the federal Mine Safety~~
23 ~~and Health Administration for safe and healthful workplaces. Workplace~~
24 ~~inspections and safety consultations shall be performed by employees of~~
25 ~~the Department of Labor who are knowledgeable and experienced in the~~
26 ~~occupational safety and health field and who are trained in the federal~~
27 ~~standards and in the recognition of safety and health hazards. The~~
28 ~~Department of Labor may employ qualified persons as may be necessary to~~
29 ~~carry out this section.~~

30 (3) ~~All employers shall be subject to occupational safety and health~~
31 ~~inspections covering their Nebraska operations. Employers shall be~~

1 ~~selected by the Commissioner of Labor for inspection on the basis of~~
2 ~~factors intended to identify the likelihood of workplace injuries and to~~
3 ~~achieve the most efficient utilization of safety personnel of the~~
4 ~~Department of Labor. Such factors shall include:~~

5 ~~(a) The amount of premium paid by the employer for workers'~~
6 ~~compensation insurance;~~

7 ~~(b) The experience modification produced by the experience rating~~
8 ~~system referenced in section 44-7524;~~

9 ~~(c) Whether the employer is covered by workers' compensation~~
10 ~~insurance under section 44-3,158;~~

11 ~~(d) The relative hazard of the employer's type of business as~~
12 ~~evidenced by insurance rates or loss costs filed with the Director of~~
13 ~~Insurance for the insurance rating classification or classifications~~
14 ~~applicable to the employer;~~

15 ~~(e) The nature, type, or frequency of accidents for the employer as~~
16 ~~may be reported to the Department of Insurance, the Nebraska Workers'~~
17 ~~Compensation Court, or the Department of Labor;~~

18 ~~(f) Workplace hazards as may be reported to the Department of~~
19 ~~Insurance, the Nebraska Workers' Compensation Court, or the Department of~~
20 ~~Labor;~~

21 ~~(g) Previous safety and health history;~~

22 ~~(h) Possible employee exposure to toxic substances;~~

23 ~~(i) Requests by employers for the Department of Labor to inspect~~
24 ~~their workplaces or otherwise provide consulting services on a basis by~~
25 ~~which the employer will reimburse the Department of Labor; and~~

26 ~~(j) All other relevant factors.~~

27 ~~(4) Hazards identified by an inspection shall be eliminated within a~~
28 ~~reasonable time as specified by the Commissioner of Labor.~~

29 ~~(5) An employer who refuses to eliminate workplace hazards in~~
30 ~~compliance with an inspection shall be referred to the federal~~
31 ~~Occupational Safety and Health Administration or the federal Mine Safety~~

1 ~~and Health Administration for enforcement.~~

2 ~~(6) At the discretion of the Commissioner of Labor, inspection of an~~
3 ~~employer may be repeated to ensure compliance by the employer, with the~~
4 ~~expenses incurred by the Department of Labor to be paid by the employer.~~

5 ~~(7) The Commissioner of Labor shall adopt and promulgate rules and~~
6 ~~regulations establishing a schedule of fees for consultations and~~
7 ~~inspections. Such fees shall be established with due regard for the costs~~
8 ~~of administering the Workplace Safety Consultation Program. The cost of~~
9 ~~consultations and inspections shall be borne by each employer for which~~
10 ~~these services are rendered.~~

11 ~~(8) There is hereby created the Workplace Safety Consultation~~
12 ~~Program Cash Fund. The fund terminates on the effective date of this act,~~
13 ~~and the State Treasurer shall transfer any money in the fund on such date~~
14 ~~to the General Fund. All fees collected pursuant to the Workplace Safety~~
15 ~~Consultation Program shall be remitted to the State Treasurer for credit~~
16 ~~to the fund and shall be used for the sole purpose of administering the~~
17 ~~program. Any money in the fund available for investment shall be invested~~
18 ~~by the state investment officer pursuant to the Nebraska Capital~~
19 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

20 ~~(9) Each employer provided a consultation or inspection by the~~
21 ~~Department of Labor shall retain up-to-date records for each place of~~
22 ~~employment as recommended by the inspection or consultation. The employer~~
23 ~~shall make such records available to the Department of Labor upon request~~
24 ~~to ensure continued progress of the employer's efforts to comply with the~~
25 ~~federal Occupational Safety and Health Administration or the federal Mine~~
26 ~~Safety and Health Administration standards.~~

27 ~~(10) Any person who knowingly operates or causes to be operated a~~
28 ~~business in violation of recommendations to correct serious or imminent~~
29 ~~hazards as identified by the Workplace Safety Consultation Program shall~~
30 ~~be referred to the federal Occupational Safety and Health Administration~~
31 ~~or the federal Mine Safety and Health Administration.~~

1 ~~(11) The Attorney General, acting on behalf of the Commissioner of~~
2 ~~Labor, or the county attorney in a county in which a business is located~~
3 ~~or operated may apply to the district court for an order against any~~
4 ~~employer in violation of this section.~~

5 ~~(12) The Workplace Safety Consultation Program shall not be~~
6 ~~construed to alter the duty of care or the liability of an owner or a~~
7 ~~business for injuries or death of any person or damage to any property.~~
8 ~~The state and its officers and employees shall not be construed to assume~~
9 ~~liability arising out of an accident involving a business by reason of~~
10 ~~administration of the Workplace Safety Consultation Program.~~

11 ~~(13) Inspectors employed by the Department of Labor may inspect any~~
12 ~~place of employment with or without notice during normal hours of~~
13 ~~operation. Such inspectors may suspend the operation of equipment~~
14 ~~determined to constitute an imminent danger situation. Operation of such~~
15 ~~equipment shall not resume until the hazardous or unsafe condition is~~
16 ~~corrected to the satisfaction of the inspector.~~

17 ~~(14) No person with a reasonable cause to believe the truth of the~~
18 ~~information shall be subject to civil liability for libel, slander, or~~
19 ~~any other relevant tort cause of action by virtue of providing~~
20 ~~information without malice on workplace hazards or the nature, type, or~~
21 ~~frequency of accidents to the Department of Insurance, the Nebraska~~
22 ~~Workers' Compensation Court, or the Department of Labor.~~

23 ~~(15) Safety and health inspectors employed by the Department of~~
24 ~~Labor shall have the right and power to enter any premise, building, or~~
25 ~~structure, public or private, for the purpose of inspecting any work area~~
26 ~~or equipment. A refusal by the employer of entry by a safety and health~~
27 ~~inspector employed by the Department of Labor shall be a violation of~~
28 ~~this subsection. If the Commissioner of Labor finds, after notice and~~
29 ~~hearing, that an employer has violated this subsection, he or she may~~
30 ~~order payment of a civil penalty of not more than one thousand dollars~~
31 ~~for each violation. Each day of continued violation shall constitute a~~

1 ~~separate violation.~~

2 ~~(16) The Commissioner of Labor shall adopt and promulgate rules and~~
3 ~~regulations to carry out this section.~~

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

6 **Sec. 6.** The following sections are outright repealed: Sections
7 48-444 and 48-445, Reissue Revised Statutes of Nebraska.