

LEGISLATIVE BILL 390

Approved by the Governor April 1, 1971

Introduced by Roland A. Luedtke, 28th District

AN ACT relating to workmen's compensation; to provide uniform procedures for bringing workmen's compensation claims against the state.

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

Section 1. The Legislature declares that it is its intent and purpose through this act to provide uniform procedures for the bringing of workmen's compensation claims against the state, and that the procedures provided by this act shall be used to the exclusion of all others.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, courts, bureaus, and commissions of the State of Nebraska, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska, including the University of Nebraska and the four state colleges, but shall not include corporations that are essentially private corporations. State agency shall not be construed to include any contractor with the State of Nebraska except and unless such contractor comes within the provisions of section 48-116, Reissue Revised Statutes of Nebraska, 1943;

(2) State Claims Board shall mean the board created by section 81-8,220, Revised Statutes Supplement, 1969;

(3) Employee of the state shall mean any one or more officers or employees of the state or any state agency, and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any contractor with the State of Nebraska unless such contractor comes within the provisions of section 48-116, Reissue Revised Statutes of Nebraska, 1943;

(4) Workmen's compensation claim shall mean any claim against the State of Nebraska arising under Chapter 48, article 1, Reissue Revised Statutes of

Nebraska, 1943, and amendments thereto; and

(5) Award shall mean any amount determined by the State Claims Board to be payable to a claimant under this act, or the amount of any compromise or settlement under this act.

Sec. 3. Authority is hereby conferred upon the Attorney General to consider, ascertain, adjust, determine, and allow any workmen's compensation claim. If any such claim is compromised or settled, the approval of the claimant, the State Claims Board and the Attorney General shall be required, and such settlements also shall be approved by the Nebraska Workmen's Compensation Court and by the district court following the procedure in Chapter 48, article 1, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 4. The State Claims Board, with the approval of the Nebraska Workmen's Compensation Court, shall, pursuant to Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, adopt such rules and regulations as are necessary to carry out the provisions of this act.

Sec. 5. The State Claims Board, with the approval of the workmen's compensation court, may delegate to a state agency the handling of workmen's compensation claims of employees of that agency, under the supervision and direction of the Attorney General.

Sec. 6. All claims under this act shall be filed with the Director of Administrative Services, who shall be secretary of the State Claims Board. The Director of Administrative Services shall immediately advise the Attorney General of the filing of any claim, and it shall be the duty of the Attorney General to cause a complete investigation to be made of all such claims. Whenever any state agency receives notice or has knowledge of any alleged injury under the Nebraska workmen's compensation law, such state agency shall immediately file a first report of such alleged injury with the Nebraska Workmen's Compensation Court and the secretary of the State Claims Board, and shall file such other forms as may be required by such court or board.

Sec. 7. Suits shall be brought in the Nebraska Workmen's Compensation Court as set out in Chapter 48, article 1, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, and the court shall in each case designate and allow the amount of the attorney's fee and expenses to be paid from, but not in addition to, the

award or judgment to the attorney representing the employee or his personal representatives, except as provided in section 48-125, Reissue Revised Statutes of Nebraska, 1943.

Sec. 8. In all suits brought under this act, the state shall be liable in the same manner and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue against the state or any state agency, and disposition of or offer to settle any claim made under this act shall not be competent evidence of liability of the state or any employee or amount of damages.

Sec. 9. The Attorney General shall represent the state in any suit brought under this act, and is authorized to compromise or settle any such suit, with the approval of the court in which such suit is pending and the Nebraska Workmen's Compensation Court.

Sec. 10. The Attorney General may authorize the deputy attorney general in charge of the Claims Division of the Department of Justice to perform any of the duties imposed upon the Attorney General by this act, and may employ other persons, firms, or corporations to investigate claims under this act.

Sec. 11. Any award to a claimant and any judgment in favor of a claimant under this act shall be certified by the Attorney General to the Director of Administrative Services, who shall promptly issue his warrant for payment of such award or judgment out of the Workmen's Compensation Claims Fund, if sufficient money is available in such fund; Provided, no portion in excess of fifty thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written receipt by the claimant in a form provided by the Attorney General.

Sec. 12. There is hereby established in the state treasury a Workmen's Compensation Claims Fund from which all awards or judgments under this act shall be paid. This fund shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the Workmen's Compensation Claims Fund is not sufficient to pay any awards or judgments under this act, the Director of Administrative Services shall immediately advise the Legislature and request an emergency

appropriation to satisfy such awards and judgments.

Sec. 13. The Director of Administrative Services and the Attorney General shall report to each regular session of the Legislature all claims and judgments paid under this act. Such report shall include the name of each claimant, a statement of the amount claimed and the amount awarded, and a brief description of the claim, including the agency and program or activity under which the claim arose.

Sec. 14. From and after the effective date of this act, the authority of any state agency to sue or be sued in its own name shall not be construed to authorize suits against such state agency on workmen's compensation claims except as authorized in this act. The remedies provided by this act in such cases shall be exclusive.

Sec. 15. Nothing in this act shall be deemed to repeal any provision of law authorizing any state agency to consider, ascertain, adjust, compromise, settle, determine, allow, or pay any claim other than a workmen's compensation claim as defined in this act.

Sec. 16. The State Claims Board, with the approval of the Nebraska Workmen's Compensation Court, may if after proper investigation it deems it to be in the best interests of the state, request the Department of Insurance to purchase a policy or policies of insurance for investigation, servicing and payment, or any one or two of such factors, of workmen's compensation to protect the agencies and their employees. Such policy or policies shall contain such conditions, requirements, limitations, and amounts deemed necessary by the board, and approved by the court. The Department of Insurance shall purchase such policy or policies by public letting and shall certify the amount of the premiums to the Director of Administrative Services, who shall cause payment to be made therefor out of the Workmen's Compensation Claim Fund, if sufficient money is available in such fund.

Sec. 17. Whenever a claim or suit against the state is covered by workmen's compensation insurance, the provisions of the insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this act. The Attorney General and the State Claims Board shall cooperate with the insurance company.

Sec. 18. When any employee is injured in any

accident or suffers any occupational disease arising out of or in the course of his employment, such employee as soon as practicable shall report full information on such occurrence to the head of the agency by which he is employed. The head of the agency shall furnish immediately all available information on such occurrence to the Director of Administrative Services. All employees shall cooperate fully with the Attorney General in the investigation of all workmen's compensation claims. Failure to comply with the provisions of this section shall constitute grounds for dismissal from employment.