

LEGISLATIVE BILL 649

Approved by the Governor April 20, 1978

Introduced by Judiciary Committee, Barnett, 26, Chmn.; Reutzel, 15; Venditte, 7; Stoney, 4; Carsten, 2; E. Dvorak, 8

AN ACT to amend sections 48-136, 48-173, 48-174, and 48-176, Reissue Revised Statutes of Nebraska, 1943, sections 48-108, 48-153, and 48-177, Revised Statutes Supplement, 1976, and section 48-139, Revised Statutes Supplement, 1977, relating to the Nebraska Workmen's Compensation Court; to delete provisions for a lump sum attorney's fee; to change verification requirements; to require duplicate originals of applications for lump sum settlement; to delete obsolete matter; to provide for the residence of judges; to change an acknowledgement provision; to provide a time for certain filings; to clarify a provision; and to repeal the original sections.

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

Section 1. That section 48-108, Revised Statutes Supplement, 1976, be amended to read as follows:

48-108. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the Nebraska Workmen's Compensation Court. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. When the employee's compensation is payable by the employer in periodical installments, the court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements. ~~The court, in approving an attorney's fee as provided in this section, may order the payment of the fee directly to the attorney in a lump sum, either commencing sufficient of the final payments of compensation payable to a lump sum~~

~~for that purpose or allowing a proportionate credit against each installment of compensation to be paid. When the fee is ordered to be paid in a lump sum, the amount to be paid shall be fixed at an amount which will equal the total sum of the probable future payments of such fee, capitalized at its present value upon the basis of interest calculated at five per cent per annum with annual rests.~~

Sec. 2. That section 48-136, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-136. The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the insurance carrier, if any, and in accordance with the provisions of this act; Provided, that a copy of such settlement, duly verified by all parties, shall be filed with the compensation court and no such settlement shall be binding unless in accord with the provisions of this act.

Sec. 3. That section 48-139, Revised Statutes Supplement, 1977, be amended to read as follows:

48-139. Whenever an injured employee or his dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability or claimed permanent disability, under this act, shall be commuted to one or more lump sum payments, such settlement or agreement therefor shall be submitted to the Nebraska Workmen's Compensation Court, in the following manner: An application for the approval of such settlement, and a duplicate original of such application, both signed and verified by both parties, shall be filed with the clerk of the court, and shall be entitled the same as an action by such employee or dependents against such employer and shall contain a concise statement of the terms of the settlement sought to be approved, together with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, and the nature of the employment. If such application is approved by the Nebraska Workmen's Compensation Court, the application shall be submitted to a judge of the district court in the county in which the accident occurred unless otherwise stipulated by all the parties, but if the accident occurred outside of the State of Nebraska, the application shall, unless otherwise stipulated by all the parties, be submitted to the district court of Lancaster County. The judge of the district court, immediately, or within one week after the filing of such application, unless there be good cause

for continuance, at chambers or in open court and in or out of term time, shall hold a hearing on the application, and proof may be adduced, witnesses subpoenaed and examined the same as in an action in equity. If, after such inquiry, the court finds such settlement is made in conformity with the compensation schedule and for the best interests of the employee or his dependents under all the circumstances, and if such application has been approved by the Nebraska Workmen's Compensation Court, it shall make an order approving the same. If such agreement or settlement be not approved the court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the court. The fees of the clerk of the district court for filing, docketing, and indexing such application shall be ten dollars. Every such lump sum settlement shall be final and conclusive unless procured by fraud. After the application is acted upon by the district court, a copy of the order of the district court shall be filed immediately with the Nebraska Workmen's Compensation Court by the employer or insurer.

Sec. 4. That section 48-153, Revised Statutes Supplement, 1976, be amended to read as follows:

48-153. The Nebraska Workmen's Compensation Court shall consist of five judges. ~~Judges holding such office on April 29, 1967 shall continue in office until expiration of their respective terms of office and thereafter for an additional term which shall expire on January 1 immediately following the next general election.~~ Their right to continue in office for ~~additional terms~~ shall be determined in the manner provided in sections 24-813 to 24-818, and the terms of office ~~thereafter~~ shall be for six years beginning on January 1 immediately following ~~such election~~ their retention. In case of a vacancy occurring in the court, the same shall be filled in accordance with the provisions of Article V, section 21 of the Constitution of the State of Nebraska and the right of any judge so appointed to continue in office shall be determined in the manner provided in sections 24-813 to 24-818. All such judges shall hold office until their successors are appointed and qualified, or until death, voluntary resignation or removal for cause. No judge of the Nebraska Workmen's Compensation Court shall, during his tenure in office as judge, hold any other office or position of profit, pursue any other business or avocation inconsistent or which interferes with his duties as such judge, or serve on or under any committee of any political party. A judge of such court shall possess the same qualifications as are required of a district judge. The judges of such court shall reside in

Lancaster County, Nebraska, unless, for the convenience of the court, they are permitted to reside elsewhere by a majority vote of the court, but no such judge shall be deemed thereby to have lost his residence at the place from which he was selected unless he so chooses.

Sec. 5. That section 48-173, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-173. Procedure before the Nebraska Workmen's Compensation Court shall be as follows: In all cases involving a dispute with reference to workmen's compensation, either party at interest, without cost, either in person or by attorney, may file with the court a ~~verified~~ petition setting forth the names and places of residence of the parties and the facts relating to the employment at the time of the injury for which compensation is claimed, the injury in its extent and character, the amount of wages being received at the time of the injury, the knowledge of or notice to the employer of the occurrence of such injury and such other facts as may be considered necessary for the information of the court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

Sec. 6. That section 48-174, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-174. Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within seven days from the issuance of the summons. An acknowledgment on the ~~back of the~~ summons or the voluntary appearance of a defendant is equivalent to service. In all cases the return day for the original summons shall be on or before seven days from the date of filing the petition.

Sec. 7. That section 48-176, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-176. Within seven days after the return day of such summons the party at interest upon whom the same is served shall file a ~~verified~~ an answer to such petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition.

Sec. 8. That section 48-177, Revised Statutes Supplement, 1976, be amended to read as follows:

48-177. At the expiration of the time fixed for filing the answer, the presiding judge shall assign one of the judges of the court to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 24-902 and except that, upon the written stipulation of the parties, filed with the court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state. Upon a motion for dismissal duly filed by the plaintiff, showing that a dispute between the parties no longer exists, the court may dismiss any such cause without a hearing thereon.

Sec. 9. That original sections 48-136, 48-173, 48-174, and 48-176, Reissue Revised Statutes of Nebraska, 1943, sections 48-108, 48-153, and 48-177, Revised Statutes Supplement, 1976, and section 48-139, Revised Statutes Supplement, 1977, are repealed.