

LEGISLATIVE BILL 331

Approved by the Governor May 20, 1999

Introduced by Landis, 46; Schimek, 27

AN ACT relating to workers' compensation; to amend sections 48-145.01 and 48-146.02, Reissue Revised Statutes of Nebraska; to provide for monetary penalties; to change provisions relating to suspension or revocation of authority to provide compensation insurance; to provide powers and duties; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 48-145.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-145.01. (1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. ~~In any case when~~ If the employer is a corporation, any officer or employee of the corporation who had authority to secure payment of compensation on behalf of the corporation and willfully failed to do so shall be individually guilty of a Class I misdemeanor and such officer or employee shall be personally liable jointly and severally with such corporation for any compensation which may accrue under the ~~Nebraska Workers' Compensation Act~~ act in respect to any injury which may occur to any employee of such corporation while it ~~shall so fail~~ fails to secure the payment of compensation as required by section 48-145. ~~In any case when~~ If the employer is a limited liability company, any member or manager of the company who had authority to secure payment of compensation on behalf of the company and willfully failed to do so shall be individually guilty of a Class I misdemeanor and such member or manager shall be personally liable jointly and severally with such company for any compensation which may accrue under the ~~Nebraska Workers' Compensation Act~~ act in respect to any injury which may occur to any employee of such company while it ~~shall so fail~~ fails to secure the payment of compensation as required by section 48-145.

(2) ~~If an employer who is subject to the Nebraska Workers' Compensation Act does not carry workers' compensation insurance nor qualify as a self-insurer~~ fails to secure the payment of compensation as required by section 48-145, he or she may also be enjoined from doing business in this state until he or she complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order such employer to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

Sec. 2. Section 48-146.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-146.02. (1)(a) ~~If a three-judge panel of the Nebraska Workers' Compensation Court shall find~~ finds, after due notice and hearing at which the ~~insurance organization shall be workers' compensation insurer~~ is entitled to be heard in person or by counsel and present evidence, that such ~~organization insurer~~ has repeatedly failed to comply with its obligations an obligation under the ~~provisions of the~~ Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, ~~it~~ the three-judge panel may request the Director of Insurance to suspend or revoke the authorization of such ~~organization insurer~~ insurer to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such ~~organization insurer~~ insurer under policies in force prior to the suspension or revocation.

(2) (b) ~~If the Nebraska Workers' Compensation Court shall find a three-judge panel of the compensation court~~ finds, after due notice and hearing at which the risk management pool ~~shall be~~ is entitled to be heard in person or by counsel and present evidence, that such pool has ~~repeatedly failed to comply with its obligations an obligation~~ under the provisions of the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 44-4319, with such frequency as to indicate a general business

practice to engage in that type of conduct, the compensation court three-judge panel may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

(c) If a three-judge panel of the compensation court finds, after due notice and hearing at which the self-insurer is entitled to be heard in person or by counsel and present evidence, that such self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may suspend or revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145. Such suspension or revocation shall not affect the liability of any such self-insurer under an approval by the compensation court to self-insure in force prior to the suspension or revocation.

(d) Appeal from an action by a three-judge panel of the compensation court pursuant to subdivision (1)(b) or (1)(c) of this section shall be in accordance with section 48-185.

(2) In addition to any other obligations under the Nebraska Workers' Compensation Act, the following acts or practices, when committed with such frequency as to indicate a general business practice to engage in that type of conduct, shall subject the compensation insurer, risk management pool, or self-insurer to action pursuant to subsection (1) of this section:

(a) Knowingly misrepresenting relevant facts or the provisions of the Nebraska Workers' Compensation Act or any rule or regulation adopted pursuant to such act;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under the act;

(c) Failing to promptly investigate claims arising under the act;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable payment of benefits when compensability has become reasonably clear;

(e) Refusing to pay benefits without conducting a reasonable investigation;

(f) Failing to affirm or deny compensability of a claim within a reasonable time after having completed the investigation related to such claim;

(g) Paying substantially less than amounts owed under the act where there is no reasonable controversy;

(h) Making payment to an injured employee, beneficiary of a deceased employee, or provider of medical, surgical, or hospital services without providing a reasonable and accurate explanation of the basis for the payment;

(i) Unreasonably delaying the investigation or payment of benefits by knowingly requiring excessive verification or duplication of information;

(j) Failing, in the case of the denial of compensability or the denial, change in, or termination of benefits, to promptly provide a reasonable and accurate explanation of the basis for such action to the injured employee or beneficiary of a deceased employee;

(k) Failing, in the case of the denial of payment for medical, surgical, or hospital services, to promptly provide a reasonable and accurate explanation of the basis for such action to the provider of such services; or

(l) Failing to provide the compensation court's address and telephone number to an injured employee or beneficiary of a deceased employee with instructions to contact the court for further information:

(i) At or near the time the compensation insurer, risk management pool, or self-insurer receives notice or has knowledge of the injury; and

(ii) At or near the time of the denial of compensability or the denial, change in, or termination of benefits.

(3) In order to determine compliance with obligations under the Nebraska Workers' Compensation Act, the compensation court or its designee may examine the workers' compensation records of (a) a compensation insurer, a risk management pool, or a self-insurer or (b) an adjuster, a third-party administrator, or other agent acting on behalf of such compensation insurer, risk management pool, or self-insurer. The authority of the compensation court pursuant to this subsection is subject to the limitations provided under the work-product doctrine and attorney-client privilege as recognized in Nebraska law.

(4) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 3. This act becomes operative on January 1, 2000.

Sec. 4. Original sections 48-145.01 and 48-146.02, Reissue Revised

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Statutes of Nebraska, are repealed.