

AMENDMENTS TO LB608
(Amendments to AM1129)

Introduced by Hallstrom, 1.

1 1. Insert the following new sections:

2 **Sec. 3.** Section 48-118, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-118 (1) When a third person is liable to the employee or to the
5 dependents for the injury or death of the employee, the employer or
6 workers' compensation insurer shall be subrogated to the right of the
7 employee or to the dependents against such third person. The recovery by
8 such employer or workers' compensation insurer shall not be limited to
9 the amount payable as compensation to such employee or dependents, but
10 such employer or workers' compensation insurer may recover any amount
11 which such employee or his or her dependents should have been entitled to
12 recover.

13 (2) Any recovery by the employer or workers' compensation insurer
14 against such third person, in excess of the compensation paid by the
15 employer or workers' compensation insurer after deducting the expenses of
16 making such recovery, including reasonable attorney's fees, shall be paid
17 forthwith to the employee or to the dependents pursuant to subsections
18 (2) and (3) of section 48-118.04. ~~and shall be treated as an advance~~
19 ~~payment by the employer on account of any future installments of~~
20 ~~compensation.~~

21 (3) Nothing in the Nebraska Workers' Compensation Act shall be
22 construed to deny the right of an injured employee or of his or her
23 personal representative to bring suit against such third person in his or
24 her own name or in the name of the personal representative based upon
25 such liability, but in such event an employer or workers' compensation
26 insurer having paid or paying compensation to such employee or his or her

1 dependents shall be made a party to the suit for the purpose of
2 reimbursement, under the right of subrogation, of any compensation paid.

3 (4) For purposes of sections 48-118 to 48-118.05, third person shall
4 include, but is not limited to, an insurer that issued a policy that
5 includes uninsured or underinsured motorist coverage insuring the injured
6 employee, his or her employer, or both the injured employee and his or
7 her employer.

8 **Sec. 4.** Section 48-118.04, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-118.04 (1) A settlement of a third-party claim or suit under the
11 Nebraska Workers' Compensation Act is void unless:

12 (a) Such settlement is agreed upon in writing by the employee or his
13 or her personal representative and the workers' compensation insurer of
14 the employer, if there is one, and if there is no insurer, then by the
15 employer; or

16 (b) In the absence of such agreement, the court before which the
17 action is pending or, if no action is pending, the district court in
18 which such action could be brought or the Nebraska Workers' Compensation
19 Court, determines that the settlement offer is fair and reasonable
20 considering liability, damages, and the ability of the third person and
21 his or her liability insurance carrier to satisfy any judgment.

22 (2) If the employee or his or her personal representative or the
23 employer or his or her workers' compensation insurer do not agree in
24 writing upon distribution of the proceeds of any judgment or settlement,
25 the court before which the action is pending or, if no action is pending,
26 the district court in which such action could be brought or the Nebraska
27 Workers' Compensation Court, upon application, shall order the a fair and
28 equitable distribution of the proceeds as follows: of any judgment or
29 settlement.

30 (a) After deducting the reasonable expenses of making the recovery,
31 including reasonable attorney's fees, one-third of the remainder shall be

1 paid to the employee or his or her personal representative;

2 (b) Out of the balance remaining after the deduction and payment
3 specified in subdivision (a) of this subsection, the employer or workers'
4 compensation insurer shall be paid for all compensation payments that
5 have been made by the employer or workers' compensation insurer; and

6 (c) Any balance remaining after the distributions described in
7 subdivisions (a) and (b) of this subsection have been made shall be paid
8 to the employee or his or her personal representative.

9 (3) Payment to the employee or his or her personal representative
10 under subsection (2) of this section shall be treated as an advance
11 payment by the employer of any future installments of compensation owed
12 by the employer to the employee. The amount of the advance payment shall
13 be reduced by the amount of compensation which would have been owed by
14 the employer but for the payment to the employee specified under
15 subsection (2) of this section. In the event the employee or his or her
16 personal representative and the employer or workers' compensation insurer
17 do not agree that the advance payment has been exhausted, the employee or
18 his or her personal representative shall make application to the Nebraska
19 Workers' Compensation Court for a determination of exhaustion. When the
20 amount of the advance payment is exhausted, the employer or workers'
21 compensation insurer shall resume payment of all additional benefits owed
22 to the employee under the Nebraska Workers' Compensation Act.

23 **Sec. 5.** Section 48-144.01, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-144.01 (1) In every case of reportable injury arising out of and
26 in the course of employment, the employer or workers' compensation
27 insurer shall file a report thereof with the Nebraska Workers'
28 Compensation Court. Such report shall be filed within ten days after the
29 employer or insurer has been given notice of or has knowledge of the
30 injury.

31 (2)(a) To protect the confidentiality of the employee, a report made

1 under subsection (1) of this section shall not be disclosed, redisclosed,
2 released, disseminated, or otherwise published with the employee's
3 confidential information except as otherwise provided in this subsection
4 or as necessary for the compensation court to administer and enforce or
5 perform its lawful duties under the Nebraska Workers' Compensation Act.

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

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

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

30 (e) At the discretion of the compensation court, information from
31 the report made pursuant to subsection (1) may be used in any pending

1 matter before the compensation court involving the employee.

2 (f) In response to a public records request pursuant to sections
3 84-712 to 84-712.09, any report made pursuant to subsection (1) of this
4 section that includes the employee's confidential information may be
5 provided by the compensation court:

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

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

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

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

1 (v) To a federal or state governmental unit at the request of the
2 governmental unit if the information sought to be disclosed is necessary
3 for the receiving federal or state governmental unit to operate a program
4 or carry out a purpose specifically authorized by federal or state
5 statute, including, but not limited to, the investigation of a fraud,
6 criminal offense, or licensing or regulatory violation, child support
7 enforcement, or to act upon an application for benefits submitted by the
8 employee who is the subject of the report under subsection (1) of this
9 section;

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

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

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

28 (ix) When a request to obtain a report filed under subsection (1) of
29 this section is made by a treating physician or other health care
30 provider who has rendered treatment to an employee or is seeking
31 authorization for treatment or special services and the information

1 sought to be disclosed relates to the compensability of a claim related
2 to such treatment or authorization for special services or billing for
3 services provided.

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

7 (3) (2) For purposes of this section:

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

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

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

21 (d) First aid means:

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

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

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

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

5 (v) Using hot or cold therapy;

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

9 (vii) Using temporary immobilization devices, such as splints,
10 slings, neck collars, and back boards, while transporting accident
11 victims;

12 (viii) Drilling of a fingernail or toenail to relieve pressure or
13 draining fluid from a blister;

14 (ix) Using eye patches;

15 (x) Removing foreign bodies from the eye using only irrigation or a
16 cotton swab;

17 (xi) Removing splinters or foreign material from areas other than
18 the eye by irrigation, tweezers, cotton swabs, or other simple means;

19 (xii) Using finger guards;

20 (xiii) Using massages. Using physical therapy or chiropractic
21 treatment is not first aid; and

22 (xiv) Drinking fluids for relief of heat stress; and -

23 (e) Confidential information means an employee's name, address,
24 telephone number, and email address.