

LEGISLATIVE BILL 150

Approved by the Governor February 16, 1973

Introduced by Cavanaugh, 9

AN ACT to amend section 48-175.01, Reissue Revised Statutes of Nebraska, 1943, and section 48-115, Revised Statutes Supplement, 1972, relating to workmen's compensation; to provide for entitlement to benefits as prescribed; to define a term; and to repeal the original sections.

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

Section 1. That section 48-115, Revised Statutes Supplement, 1972, be amended to read as follows:

48-115. The terms employee and workman are used interchangeably and have the same meaning throughout this act. The said terms include the plural and all ages and both sexes, and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written; Provided, that (a) for the purposes of this act, volunteer firemen of any fire department of any rural or suburban fire protection district, city or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city or village while in the performance of their duties as members of such department, and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firemen may be officially called to participate in; (b) members of such volunteer fire department, before they are entitled to benefits under this act, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor and city commission, the mayor and council or the chairman and board of trustees, as the case may be, and upon confirmation, shall be deemed employees of the rural or suburban fire protection district, city or village; (c) members of such fire



department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council or board, and thereafter shall not be considered employees of such rural or suburban fire protection district, city or village; (d) firemen of any fire department of any rural or suburban fire protection district, city or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief; (e) any members of the state Civil Defense Agency, any local organization for civil defense or civil defense mobile support unit, which state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit while in the performance of their duties as members of such state Civil Defense Agency, local organization or mobile support unit; and (f) any person fulfilling conditions of probation pursuant to any order of a juvenile or municipal court of this state who shall be working for a governmental body pursuant to any condition of probation shall be deemed an employee of such governmental body for the purposes of this act; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106, under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under this act shall have the same power of contracting and electing as adult employees.

Every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation or by-laws of such corporation shall be an employee of such corporation under the provisions of this act.

The said terms shall not be construed to include (a) any person whose employment is casual, and which is not in the usual course of the trade, business, profession or occupation of his employer; the term casual shall be construed to mean occasional, coming at certain times without regularity, in distinction from stated or regular; or (b) any person to whom articles and materials are given to be made up, cleaned, washed, finished, repaired or adapted for sale in the worker's own home or



on other premises not under the control or management of the employer, unless the employee is required to perform the work at a place designated by the employer.

If an employee subject to this act suffers an injury on account of which he or, in the event of his death, his dependents would otherwise have been entitled to the benefits provided by this act, the employee or, in the event of his death, his dependents shall be entitled to the benefits provided under this act if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

Sec. 2. That section 48-175.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-175.01. (1) The performance of work in the State of Nebraska (a) by an employer, who is a nonresident of the State of Nebraska, (b) by any resident employer who becomes a nonresident of this state after the occurrence of an injury to an employee, or (c) by any agent of such an employer shall be deemed an appointment by such employer of the clerk of the Nebraska Workmen's Compensation Court as a true and lawful attorney and agent upon whom may be served all legal processes in any action or proceeding against him, arising out of or under the provisions of the Nebraska Workmen's Compensation Act, and said performance of work shall be a signification of said employer's agreement that any such process, which is so served in any action against him, shall be of the same legal force and validity as if served upon him personally within this state. The appointment of agent, thus made, shall not be revocable by death but shall continue and be binding upon the executor or administrator of such employer. For purposes of this section, performance of work shall include but not be limited to situations in which (i) the injury or injury resulting in death occurred within this state, (ii) the employment was principally localized within this state, or (iii) the contract of hire was made within this state.

(2) Service of such process, as referred to in subsection (1) of this section, shall be made by serving a copy thereof upon the clerk of the Nebraska Workmen's Compensation Court, personally in his office in the State Capitol or upon someone who, previous to such service, has been designated in writing by the clerk of the Nebraska Workmen's Compensation Court as the person or

one of the persons with whom such copy may be left for such service upon the clerk of the Nebraska Workmen's Compensation Court, and such service shall be sufficient service upon the said employer; Provided, that in making such service, a copy of the petition, and a copy of the process shall, within ten days after the date of service, be sent by the clerk of the Nebraska Workmen's Compensation Court, or such person acting for him in his office, to the defendant by registered or certified mail addressed to the defendant's last-known address, and the defendant's return receipt and affidavit of the clerk of the Nebraska Workmen's Compensation Court, or such person in his office acting for him, of compliance therewith shall be appended to such petition and filed in the office of the clerk of the Nebraska Workmen's Compensation Court; and provided further, that the date of the mailing and the date of the receipt of the return card aforesaid are properly endorsed on such petition and filed by the clerk of the Nebraska Workmen's Compensation Court, or someone acting for him.

(3) The court shall, on its own motion, order such continuance of answer day and trial date, as may to the court seem necessary to afford the defendant reasonable opportunity to plead and to defend. No such continuance shall be for more than ninety days except for good cause shown.

(4) It shall be the duty of the clerk of the Nebraska Workmen's Compensation Court to keep a record of all processes so served, in accordance with subsections (1) and (2) of this section, which record shall show the date of such service, and to so arrange and index said record as to make the same readily accessible and convenient for inspection.

Sec. 3. That original section 48-175.01, Reissue Revised Statutes of Nebraska, 1943, and section 48-115, Revised Statutes Supplement, 1972, are repealed.