

LEGISLATIVE BILL 881

Approved by the Governor March 19, 1974

Introduced by Labor Committee, R. Maresh, 32, Chmn;  
Kelly, 35; Kime, 43; Cavanaugh, 9; Dickinson,  
31; Kennedy, 21; F. Carstens, 30

AN ACT to amend section 48-128, Revised Statutes Supplement, 1972, relating to workmen's compensation; to clarify provisions respecting the Second Injury Fund; and to repeal the original section.

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

Section 1. That section 48-128, Revised Statutes Supplement, 1972, be amended to read as follows:

48-128. If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself; and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability, and for the additional disability the employee shall be compensated out of a special trust fund created for that purpose, which sum so set aside shall be known as the Second Injury Fund. If the subsequent compensable injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent partial disability, the employer shall pay the compensation benefits prescribed by this section for a period not exceeding three hundred twenty-five weeks and for any compensation benefits payable after such period of three hundred twenty-five weeks, the dependents shall be compensated out of the Second Injury Fund.

In order to qualify under this section, the employer must establish by written records that the

employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge.

As used in this section, preexisting permanent partial disability shall mean any preexisting permanent condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this section unless it would support a rating of twenty-five per cent loss of earning power or more or support a rating which would result in compensation payable for a period of ninety weeks or more for disability for permanent injury as computed under the provisions of subdivision (3) of section 48-121.

The Second Injury Fund shall be for the purpose of making payments in accordance with the provisions of this section. The State Treasurer shall be the custodian of the Second Injury Fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The Second Injury Fund shall be raised and derived from the following source: Every insurance company which is transacting business in this state shall, on or before March 1 of each year, pay to the Director of Insurance an amount equal to one per cent of the gross amount of direct writing premiums received by it during the preceding calendar year for workmen's compensation insurance business done in this state.

The computation of the amounts as provided in this section shall be made on forms furnished by the Department of Insurance, and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself that the amounts have been properly paid in conformity with the provisions of this section.

The Director of Insurance, after notice and hearing pursuant to Chapter 44, article 23, may rescind or refuse to reissue the license of any company which fails to remit the amounts due in conformity with the provisions of this section.

The Director of Insurance shall deposit the amounts paid, in conformity with the provisions of this section, with the State Treasurer for the benefit of the Second Injury Fund promptly upon completion of his audit and examination, and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy; Provided, that one per cent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

Every employer in the occupations described in section 48-106 who shall qualify as a self-insurer and who shall be issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the Second Injury Fund an annual amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workmen's compensation insurance to insure such risk as provided in this section but in no event less than twenty-five dollars.

The amounts required to be paid by the insurance companies and self-insurers under this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

The Nebraska Workmen's Compensation Court shall be charged with the conservation of the assets of the Second Injury Fund. In furtherance of this purpose the Attorney General shall appoint a member of his staff to represent the Second Injury Fund in all proceedings brought to enforce claims for or against the Second Injury Fund.

The State Treasurer, as custodian of the Second Injury Fund, shall furnish monthly to the Nebraska Workmen's Compensation Court a statement of such fund setting forth the balance thereof as of the beginning of each month, the income therefrom, and the sources thereof, the payments from such fund in itemized form, and the balance on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise, by reason of any payment made from the fund.

When the fund shall equal or exceed four hundred thousand dollars, no further contributions thereto shall be required by employers or insurance carriers, but thereafter whenever the amount of the fund shall be reduced below two hundred thousand dollars, by reason of payments made pursuant to this section, or otherwise, or whenever the Nebraska Workmen's Compensation Court shall determine that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below two hundred thousand dollars, the Nebraska Workmen's Compensation Court shall notify all self-insurers and the Director of Insurance, who shall notify all workmen's compensation insurance carriers, that such contributions are forthwith to be resumed as of the date set in such notice and such contributions shall thereafter continue as provided in this section after the effective date of such notice, and such contributions shall thereafter continue until the fund shall again amount to four hundred thousand dollars. Out of said Second Injury Fund, the additional compensation payments shall be made to such employee or dependent by the compensation court once each month in the same manner as the salaries of the employees of said court are paid. In all cases where a claim is asserted by the state on behalf of the Second Injury Fund against an employer or employer's insurer under this section, or where a claim is made against said Second Injury Fund, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service of summons shall be had upon the Attorney General. It shall be the duty of the Attorney General to act as attorney for the state.

Any expenses necessarily incurred by the Second Injury Fund or by the Attorney General on behalf of the Second Injury Fund in any case where a claim is asserted by the state on behalf of the Second Injury Fund against an employer or employer's insurer under this section, or when a claim is made against the Second Injury Fund, may be paid out of the Second Injury Fund. Such expenses may be taxed as costs and recovered by the Second Injury Fund in any such case in which the Second Injury Fund prevails.

Sec. 2. That original section 48-128, Revised Statutes Supplement, 1972, is repealed.