

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 906

Introduced by Wallman, 30.

Read first time January 09, 2012

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend sections 48-122 and 48-122.01, Reissue Revised
3 Statutes of Nebraska; to change death benefit provisions;
4 and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-122, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-122 (1) If death results from injuries and the
4 deceased employee leaves one or more dependents dependent upon his or
5 her earnings for support at the time of injury, the compensation,
6 subject to section 48-123, shall be not more than the maximum weekly
7 income benefit specified in section 48-121.01 nor less than the
8 minimum weekly income benefit specified in section 48-121.01;
9 ~~Provided,~~ except that if at the time of injury the employee receives
10 wages of less than the minimum weekly income benefit specified in
11 section 48-121.01, then the compensation shall be the full amount of
12 such wages per week, payable in the amount and to the persons
13 enumerated in section 48-122.01 subject to the maximum limits
14 specified in this section and section 48-122.03.

15 (2) When death results from injuries suffered in
16 employment, if immediately prior to the accident the rate of wages
17 was fixed by the day or hour, or by the output of the employee, the
18 weekly wages shall be taken to be computed upon the basis of a
19 workweek of a minimum of five days, if the wages are paid by the day,
20 or upon the basis of a workweek of a minimum of forty hours, if the
21 wages are paid by the hour, or upon the basis of a workweek of a
22 minimum of five days or forty hours, whichever results in the higher
23 weekly wage, if the wages are based on the output of the employee.

24 (3) Upon the death of an employee, resulting through
25 personal injuries as herein defined, whether or not there be

1 dependents entitled to compensation, the reasonable expenses of
2 burial, not exceeding ~~six thousand dollars,~~ thirteen times the state
3 average weekly wage determined pursuant to section 48-121.02 for the
4 year of death, without deduction of any amount previously paid or to
5 be paid for compensation or for medical expenses, shall be paid to
6 his or her dependents, or if there be no dependents, then to his or
7 her personal representative.

8 (4) Compensation under the Nebraska Workers' Compensation
9 Act to alien dependents who are not residents of the United States
10 shall be the same in amount as is provided in each case for
11 residents, except that at any time within one year after the death of
12 the injured employee the employer may at his or her option commute
13 all future installments of compensation to be paid to such alien
14 dependents. The amount of the commuted payment shall be determined as
15 provided in section 48-138.

16 (5) The consul general, consul, vice consul general, or
17 vice consul of the nation of which the employee, whose injury results
18 in death, is a citizen, or the representative of such consul general,
19 consul, vice consul general, or vice consul residing within the State
20 of Nebraska shall be regarded as the sole legal representative of any
21 alien dependents of the employee residing outside of the United
22 States and representing the nationality of the employee. Such
23 consular officer, or his or her representative, residing in the State
24 of Nebraska, shall have in behalf of such nonresident dependents, the
25 exclusive right to adjust and settle all claims for compensation

1 provided by the Nebraska Workers' Compensation Act, and to receive
2 the distribution to such nonresident alien dependents of all
3 compensation arising thereunder.

4 Sec. 2. Section 48-122.01, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-122.01 Compensation under section 48-122 shall be
7 payable in the amount and to the following persons subject to the
8 maximum limits specified in sections 48-122 and 48-122.03:

9 (1) If there is a widow or widower and no children of the
10 deceased, as defined in section 48-124, to such widow or widower,
11 sixty-six and two-thirds percent of the average weekly wage of the
12 deceased, during widowhood or widowerhood;

13 (2) To the widow or widower, if there is a child or
14 children living with the widow or widower, sixty percent of the
15 average weekly wage of the deceased, or fifty-five percent, if such
16 child is not or such children are not living with a widow or widower,
17 and, in addition thereto, fifteen percent for each child. When there
18 are two or more such children, the indemnity benefits payable on
19 account of such children shall be divided among such children, share
20 and share alike;

21 (3) Two years' indemnity benefits in one lump sum shall
22 be payable to a widow or widower upon remarriage;

23 (4) To the children, if there is no widow or widower,
24 sixty-six and two-thirds percent of such wage for one child, and
25 fifteen percent for each additional child, divided among such

1 children, share and share alike;

2 (5) The income benefits payable on account of any child
3 under this section shall cease when he or she dies, marries, or
4 reaches the age of nineteen, or when a child over such age ceases to
5 be physically or mentally incapable of self-support, or if actually
6 dependent ceases to be actually dependent, or, if enrolled as a full-
7 time student in any accredited educational institution, ceases to be
8 so enrolled or reaches the age of twenty-five. A child who originally
9 qualified as a dependent by virtue of being less than nineteen years
10 of age may, upon reaching age nineteen, continue to qualify if he or
11 she satisfies the tests of being physically or mentally incapable of
12 self-support, actual dependency, or enrollment in an educational
13 institution;

14 (6) To each parent, if actually dependent, twenty-five
15 percent;

16 (7) To the brothers, sisters, grandparents, and
17 grandchildren, if actually dependent, twenty-five percent to each
18 such dependent. If there should be more than one of such dependents,
19 the total income benefits payable on account of such dependents shall
20 be divided share and share alike;

21 (8) The income benefits of each beneficiary under
22 subdivisions (6) and (7) of this section shall be paid until he or
23 she, if a parent or grandparent, dies, marries, or ceases to be
24 actually dependent, or, if a brother, sister, or grandchild, dies,
25 marries, or reaches the age of nineteen or if over that age ceases to

1 be physically or mentally incapable of self-support, or ceases to be
2 actually dependent; ~~and~~

3 (9) A person ceases to be actually dependent when his or
4 her income from all sources exclusive of workers' compensation income
5 benefits is such that, if it had existed at the time as of which the
6 original determination of actual dependency was made, it would not
7 have supported a finding of dependency. In any event, if the present
8 annual income of an actual dependent person including workers'
9 compensation income benefits at any time exceeds the total annual
10 support received by the person from the deceased employee, the
11 workers' compensation benefits shall be reduced so that the total
12 annual income is no greater than such amount of annual support
13 received from the deceased employee. In all cases, a person found to
14 be actually dependent shall be presumed to be no longer actually
15 dependent three years after each time as of which the person was
16 found to be actually dependent. This presumption may be overcome by
17 proof of continued actual dependency as defined in this subdivision
18 and section 48-124; ~~and -~~

19 (10) If there is no spouse, child, or other dependent
20 entitled to benefits under this section, twenty-five thousand dollars
21 to the personal representative of the estate of the deceased.

22 Sec. 3. Original sections 48-122 and 48-122.01, Reissue
23 Revised Statutes of Nebraska, are repealed.