

AMENDMENTS TO LB418

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 48-122, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

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

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

25 (3) Upon the death of an employee, resulting through personal
26 injuries as defined in section 48-151, whether or not there are
27 dependents entitled to compensation, the reasonable expenses of burial,

1 not exceeding ten thousand dollars, without deduction of any amount
2 previously paid or to be paid for compensation or for medical expenses,
3 shall be paid to his or her dependents, or if there are no dependents,
4 then to his or her personal representative.

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

12 (5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this
13 section, the consular officer ~~(5) The consul general, consul, vice consul~~
14 ~~general, or vice consul~~ of the nation of which the employee, whose injury
15 results in death, is a citizen, ~~or the representative of such consul~~
16 ~~general, consul, vice consul general, or vice consul~~ residing within the
17 State of Nebraska shall be regarded as the sole legal representative of
18 any alien dependents of the employee residing outside of the United
19 States and representing the nationality of the employee.

20 (ii) At any time prior to the final settlement, a nonresident alien
21 dependent may file with the Nebraska Workers' Compensation Court a power
22 of attorney designating any suitable person residing in this state to act
23 as attorney in fact in proceedings under the Nebraska Workers'
24 Compensation Act. If the compensation court determines that the interests
25 of the nonresident alien dependent will be better served by such person
26 than by the consular officer, the compensation court shall appoint such
27 person to act as attorney in fact in such proceedings. In making such
28 determination the court shall consider, among other things, whether a
29 consular officer's jurisdiction includes Nebraska and the responsiveness
30 of the consular officer to attempts made by an attorney representing the
31 employee to engage such consular officer in the proceedings.

1 **(b)** ~~Such consular officer, or appointed person his or her~~
2 ~~representative, residing in the State of Nebraska,~~ shall have in behalf
3 of such nonresident alien dependents, the exclusive right to institute
4 proceedings for, adjust, and settle all claims for compensation provided
5 by the Nebraska Workers' Compensation Act, and to receive the
6 distribution to such nonresident alien dependents of all compensation
7 arising thereunder.

8 **(c)** A person appointed under subdivision (5)(a)(ii) of this section
9 shall furnish a bond satisfactory to the compensation court conditioned
10 upon the proper application of any money received as compensation under
11 the Nebraska Workers' Compensation Act. Before the bond is discharged,
12 such appointed person shall file with the compensation court a verified
13 account of receipts and disbursements of such money.

14 **(d)** For purposes of this section, consular officer means a consul
15 general, vice consul general, or vice consul or the representative of any
16 such official residing within the State of Nebraska.

17 **(6)** The changes made to this section by this legislative bill apply
18 to cases under the Nebraska Workers' Compensation Act that are pending on
19 the effective date of this act and to cases filed on or after such date.

20 Sec. 2. Section 48-193, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-193 For purposes of sections 48-192 to 48-1,109, unless the
23 context otherwise requires:

24 (1) State agency shall include all departments, agencies, boards,
25 courts, bureaus, and commissions of the State of Nebraska and
26 corporations the primary function of which is to act as, and while acting
27 as, instrumentalities or agencies of the State of Nebraska, including the
28 University of Nebraska and the state colleges, but shall not include
29 corporations that are essentially private corporations or entities
30 created pursuant to the Interlocal Cooperation Act or the Joint Public
31 Agency Act. State agency shall not be construed to include any contractor

1 with the State of Nebraska except and unless such contractor comes within
2 the provisions of section 48-116;

3 ~~(2) State Claims Board shall mean the board created by section~~
4 ~~81-8,220;~~

5 (2) ~~(3)~~ Employee of the state shall mean any one or more officers or
6 employees of the state or any state agency and shall include duly
7 appointed members of boards or commissions when they are acting in their
8 official capacity. State employee shall not be construed to include any
9 employee of an entity created pursuant to the Interlocal Cooperation Act
10 or the Joint Public Agency Act or any contractor with the State of
11 Nebraska unless such contractor comes within the provisions of section
12 48-116;

13 (3) ~~(4)~~ Workers' compensation claim shall mean any claim against the
14 State of Nebraska arising under the Nebraska Workers' Compensation Act;
15 and

16 (4) ~~(5)~~ Award shall mean any amount determined by the Risk Manager
17 and the Attorney General ~~State Claims Board~~ to be payable to a claimant
18 under sections 48-192 to 48-1,109 or the amount of any compromise or
19 settlement under such sections.

20 Sec. 3. Section 48-194, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-194 The Risk Manager, ~~on behalf of the State Claims Board and~~
23 with the advice of the Attorney General, shall have the authority to pay
24 claims of all workers' compensation benefits when liability is
25 undisputed. In any claims when liability or the amount of liability is
26 disputed by the Attorney General, authority is hereby conferred upon the
27 Attorney General to consider, ascertain, adjust, determine, and allow any
28 workers' compensation claim. If any such claim is compromised or settled,
29 the approval of the claimant, the Risk Manager ~~State Claims Board~~, and
30 the Attorney General shall be required and such settlements also shall be
31 approved by the Nebraska Workers' Compensation Court following the

1 procedure in the Nebraska Workers' Compensation Act.

2 Sec. 4. Section 48-195, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-195 The risk management and state claims division of the
5 Department of Administrative Services may ~~State Claims Board shall~~,
6 pursuant to the Administrative Procedure Act, adopt and promulgate such
7 rules and regulations as are necessary to carry out sections 48-192 to
8 48-1,109.

9 Sec. 5. Section 48-196, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 48-196 The Risk Manager ~~State Claims Board~~ may delegate to a state
12 agency the handling of workers' compensation claims of employees of that
13 agency, under the supervision and direction of the Attorney General.

14 Sec. 6. Section 48-197, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 48-197 All claims under sections 48-192 to 48-1,109 shall be filed
17 with the Risk Manager. The Risk Manager shall immediately advise the
18 Attorney General of the filing of any claim. It shall be the duty of the
19 Attorney General to cause a complete investigation to be made of all such
20 claims. Whenever any state agency receives notice or has knowledge of any
21 alleged injury under the Nebraska Workers' Compensation Act, such state
22 agency shall immediately file a first report of such alleged injury with
23 the Nebraska Workers' Compensation Court and the Risk Manager and shall
24 file such other forms as may be required by such court or the Risk
25 Manager ~~board~~.

26 Sec. 7. Section 48-1,108, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 48-1,108 Whenever a claim or suit against the state is covered by
29 workers' compensation insurance, the provisions of the insurance policy
30 on defense and settlement shall be applicable notwithstanding any
31 inconsistent provisions of sections 48-192 to 48-1,109. The Attorney

1 General and the Risk Manager State Claims Board shall cooperate with the
2 insurance company.

3 Sec. 8. (1) After receipt of the notices provided for in this
4 section, no debt collection shall be undertaken by a provider of
5 services, supplier of services, collection agency, collector, or creditor
6 attempting to collect a debt incurred against an employee or his or her
7 spouse for treatment of a work-related injury while the matter is pending
8 in the compensation court until final adjudication of the case regarding
9 such debt.

10 (2) Notice under this section shall be made in writing and provided
11 to each provider of services, supplier of services, collection agency,
12 collector, or creditor as described in subsection (1) of this section.
13 Notice shall not be imputed to any party from the service of notice upon
14 another party.

15 (3) The initial notice shall contain the provider's name, employee's
16 name, date of the injury, and a description of the injury, together with
17 the filing date and case number pending in the compensation court. Within
18 thirty days after the initial notice, an additional notice shall be
19 provided specifically identifying the debt upon which collection should
20 be stayed, unless identification was made in the initial notice. Notice
21 shall be void if it fails to provide the proper information or is not
22 provided within the required timeframes, or until proper notice is
23 provided.

24 (4) Notice shall be made by personally delivering the notice to the
25 person on whom it is to be served or by sending it by first-class mail
26 addressed to the person or business entity on whom it is to be served at
27 his or her residence or the principal office address of a business
28 entity, or by a method otherwise agreed to between the parties. Each
29 provider, supplier, collection agency, collector, or creditor shall not
30 be deemed to be notified under this section unless receipt of the notice
31 can be demonstrated.

1 (5) If collection efforts continue after both notices are received
2 by the entity seeking to collect, the notices may be forwarded to the
3 Attorney General requesting his or her assistance in gaining compliance
4 with this act. The entity seeking to collect shall be copied on such
5 notification to the Attorney General, and shall be given a reasonable
6 period of time to respond to the notice and to cure any noncompliance. If
7 noncompliance continues, the Attorney General may take such reasonable
8 steps as is necessary to ensure compliance with this section. No private
9 cause of action shall exist under this section. A violation of this
10 section shall not be considered a violation of any other state or federal
11 law.

12 (6) After notice is provided, collection lawsuits may be stayed,
13 where applicable, by the plaintiff in a pending collection case, until
14 final adjudication by the compensation court of the matter of the debt
15 alleged to be subject to this section.

16 (7) The statute of limitations on the collection of such debt shall
17 be tolled during the pendency of the compensation case from the date the
18 case was filed with the compensation court.

19 (8) This section shall have no applicability outside of the Nebraska
20 Workers' Compensation Act and shall not apply to any other cause of
21 action under state or federal law.

22 Sec. 9. Section 48-1,110, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 48-1,110 Sections 48-101 to 48-1,117 and section 8 of this act shall
25 be known and may be cited as the Nebraska Workers' Compensation Act.

26 Sec. 10. Section 81-8,224, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 81-8,224 (1) Any award to a claimant and any judgment in favor of a
29 claimant under the State Tort Claims Act shall be certified by the Risk
30 Manager or State Claims Board to the Director of Administrative Services
31 who shall promptly issue a warrant for payment of such award or judgment

1 out of the Tort Claims Fund or State Insurance Fund, as appropriate, if
2 sufficient money is available in the fund, except that no portion in
3 excess of fifty thousand dollars of any award or judgment shall be paid
4 until such award or judgment has been reviewed by the Legislature and
5 specific appropriation made therefor. All awards and judgments which
6 arise out of the same facts and circumstances shall be reported to the
7 Legislature if the aggregated amount exceeds fifty thousand dollars
8 ~~aggregated for the purpose of determining whether such awards and~~
9 ~~judgments shall be reviewed by the Legislature and specific appropriation~~
10 ~~made therefor.~~

11 (2) Any award, judgment, or associated costs on a claim which is
12 covered by liability insurance or by group self-insurance, the amount of
13 which falls within the applicable policy's self-insured retention, shall
14 be paid from the State Insurance Fund.

15 (3) Delivery of any warrant in satisfaction of an award or judgment
16 shall be made only upon receipt of a written release by the claimant in a
17 form approved by the State Claims Board.

18 Sec. 11. Section 81-8,239.02, Reissue Revised Statutes of Nebraska,
19 is amended to read:

20 81-8,239.02 The following separate permanent revolving funds are
21 established in the state treasury for use under the Risk Management
22 Program according to the purposes for which each fund is established:

23 (1) The State Insurance Fund is hereby created for the purpose of
24 purchasing insurance to cover property, fidelity, and liability risks of
25 the state and workers' compensation claims against the state and other
26 risks to which the state or its agencies, officials, or employees are
27 exposed and for paying related expenses, including the costs of
28 administering the Risk Management Program. The fund may receive deposits
29 from assessments against state agencies to provide insurance coverage as
30 directed by the Risk Manager. The Risk Manager may retain in the fund
31 sufficient money to pay for any deductibles, self-insured retentions, or

1 copayments as may be required by such insurance policies and Risk
2 Management Program expenses;

3 (2) The State Self-Insured Property Fund is hereby created for the
4 purpose of replacing, repairing, or rebuilding state property which has
5 incurred damage or is suffering other loss not fully covered by insurance
6 and for paying related expenses. The fund may receive deposits from
7 assessments against state agencies to provide property coverage as
8 directed by the Risk Manager. The Risk Manager may assess state agencies
9 to provide self-insured property coverage;

10 (3) The State Self-Insured Indemnification Fund is hereby created
11 for the purpose of paying indemnification claims under section
12 81-8,239.05. Indemnification claims shall include payments for awards,
13 settlements, and associated costs, including appeal bonds and reasonable
14 costs associated with a required appearance before any tribunal. The fund
15 may receive deposits from assessments against state agencies to pay for
16 the costs associated with providing and supporting indemnification
17 claims. The creation of this fund shall not be interpreted as expanding
18 the liability exposure of the state or its agencies, officials, or
19 employees; and

20 (4) The State Self-Insured Liability Fund is hereby created for the
21 purpose of paying compensable liability and fidelity claims against the
22 state or its agencies, officials, or employees which are not fully
23 covered by insurance and for which there is insufficient agency funding
24 and for which a legislative appropriation is made under ~~the provisions of~~
25 section 81-8,239.11. The fund may be used to pay claims against the state
26 or its agencies, officials, or employees for which there is a specific
27 provision of law for the resolution of such claim but which are not
28 otherwise payable from the State Insurance Fund, State Self-Insured
29 Property Fund, State Self-Insured Indemnification Fund, Workers'
30 Compensation Claims Revolving Fund, or Tort Claims Fund. Such claims
31 shall include payments for awards, settlements, and associated costs,

1 including appeal bonds and reasonable costs associated with a required
2 appearance before any tribunal. The creation of this fund shall not be
3 interpreted as expanding the liability exposure of the state or its
4 agencies, officials, or employees. The Risk Manager shall report
5 electronically all claims and judgments paid from the State Self-Insured
6 Liability Fund to the Clerk of the Legislature annually. The report shall
7 include the name of the claimant, the amount claimed and paid, and a
8 brief description of the claim, including any agency, program, and
9 activity under which the claim arose. Any member of the Legislature may
10 receive an electronic copy of the report by making a request to the Risk
11 Manager.

12 Sec. 12. Section 81-1021, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 81-1021 (1) All motor vehicles acquired by the State of Nebraska
15 except any vehicle rented as a bureau fleet vehicle shall be indelibly
16 and conspicuously lettered, in plain letters of a contrasting color or
17 reflective material:

18 (a) On each side thereof with the words State of Nebraska and
19 following such words the name of whatever board, department, bureau,
20 division, institution, including the University of Nebraska or state
21 college, office, or other state expending agency of the state to which
22 the motor vehicle belongs; and

23 (b) On the back thereof with the words State of Nebraska.

24 (2) This section shall not apply to motor vehicles used or
25 controlled by:

26 (a) The Nebraska State Patrol, the Public Service Commission, the
27 Game and Parks Commission, deputy state sheriffs employed by the Nebraska
28 Brand Committee and State Fire Marshal for state law enforcement
29 purposes, inspectors employed by the Nebraska Liquor Control Commission,
30 and persons employed by the Tax Commissioner for state revenue
31 enforcement purposes, the exemption for state law enforcement purposes

1 and state revenue enforcement purposes being confined strictly to the
2 seven agencies specifically named;

3 (b) The Department of Health and Human Services or the Department of
4 Correctional Services for the purpose of apprehending and returning
5 escaped offenders or parole violators to facilities in the Department of
6 Correctional Services and transporting offenders and personnel of the
7 Department of Correctional Services and patients and personnel of the
8 Department of Health and Human Services who are engaged in off-campus
9 program activities;

10 (c) The Military Department;

11 (d) Vocational rehabilitation counselors and the Department of
12 Health and Human Services for the purposes of communicable disease
13 control, for the prevention and control of those communicable diseases
14 which endanger the public health, or used by the Department of Health and
15 Human Services in the enforcement of drug control laws or for other
16 investigation purposes;

17 (e) The Department of Agriculture for special investigative
18 purposes;

19 (f) The Nebraska Motor Vehicle Industry Licensing Board for
20 investigative purposes; ~~and~~

21 (g) The Insurance Fraud Prevention Division of the Department of
22 Insurance for investigative purposes; and -

23 (h) The Department of Justice.

24 Sec. 13. Original sections 48-193, 48-194, 48-195, 48-196, 48-197,
25 48-1,108, 81-8,224, 81-8,239.02, and 81-1021, Reissue Revised Statutes of
26 Nebraska, and sections 48-122 and 48-1,110, Revised Statutes Cumulative
27 Supplement, 2018, are repealed.