

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 963

FINAL READING
(SECOND)

Introduced by Brewer, 43; Geist, 25; Gragert, 40; Lowe, 37; McDonnell, 5;
Wishart, 27; Blood, 3; Hansen, M., 26.

Read first time January 13, 2020

Committee: Business and Labor

1 A BILL FOR AN ACT relating to workers' compensation; to amend section
2 71-7104, Reissue Revised Statutes of Nebraska, section 48-101.01,
3 Revised Statutes Cumulative Supplement, 2018, and section 48-122,
4 Revised Statutes Supplement, 2019; to state intent; to change
5 provisions relating to personal injuries of first responders and
6 frontline state employees; to provide a means of demonstrating a
7 prima facie case of personal injury; to provide duties for the
8 Critical Incident Stress Management Program and the Department of
9 Health and Human Services; to require reimbursement for training as
10 prescribed; to change provisions relating to compensation paid for
11 burial expenses; to define and redefine terms; to provide an
12 operative date; and to repeal the original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-101.01, Revised Statutes Cumulative
2 Supplement, 2018, is amended to read:

3 48-101.01 (1) The Legislature finds and declares:

4 (a) The occupations of first responders are recognized as stressful
5 occupations. Only our nation's combat soldiers endure more stress.
6 Similar to military personnel, first responders face unique and uniquely
7 dangerous risks in their sworn mission to keep the public safe. They rely
8 on each other for survival to protect the communities they serve;

9 (b) On any given day, first responders can be called on to make life
10 and death decisions, witness a young child dying with the child's grief-
11 stricken family, make a decision that will affect a community member for
12 the rest of such person's life, or be exposed to a myriad of communicable
13 diseases and known carcinogens;

14 (c) On any given day, first responders protect high-risk individuals
15 from themselves and protect the community from such individuals;

16 (d) First responders are constantly at significant risk of bodily
17 harm or physical assault while they perform their duties;

18 (e) Constant, cumulative exposure to horrific events make first
19 responders uniquely susceptible to the emotional and behavioral impacts
20 of job-related stressors;

21 (f) Trauma-related injuries can become overwhelming and manifest in
22 post-traumatic stress, which may result in substance use disorders and
23 even, tragically, suicide; and

24 (g) It is imperative for society to recognize occupational injuries
25 related to post-traumatic stress and to promptly seek diagnosis and
26 treatment without stigma. This includes recognizing that mental injury
27 and mental illness as a result of trauma is not disordered, but is a
28 normal and natural human response to trauma, the negative effects of
29 which can be ameliorated through diagnosis and effective treatment.

30 (2) ~~(1)~~ Personal injury includes mental injuries and mental illness
31 unaccompanied by physical injury for an employee who is a first responder

1 or frontline state employee if such first responder or frontline state
2 employee:

3 (a) Establishes, ~~by a preponderance of the evidence,~~ that the
4 employee's employment conditions causing the mental injury or mental
5 illness were extraordinary and unusual in comparison to the normal
6 conditions of the particular employment; and

7 (b) Establishes, through a mental health professional ~~by a~~
8 ~~preponderance of the evidence,~~ the medical causation between the mental
9 injury or mental illness and the employment conditions by medical
10 evidence.

11 (3) The employee bears the burden of establishing the matters
12 described in subsection (2) of this section by a preponderance of the
13 evidence.

14 (4) Until January 1, 2028, a first responder may establish prima
15 facie evidence of a personal injury that is a mental injury or mental
16 illness if the first responder:

17 (a) Presents evidence that the first responder underwent a mental
18 health examination by a mental health professional upon entry into such
19 service or subsequent to such entry and before the onset of the mental
20 injury or mental illness and such examination did not reveal the mental
21 injury or mental illness for which the first responder seeks
22 compensation;

23 (b) Presents testimony or an affidavit from a mental health
24 professional stating the first responder suffers from a mental injury or
25 mental illness caused by one or more events or series of events which
26 cumulatively produced the mental injury or mental illness which brought
27 about the need for medical attention and the interruption of employment;

28 (c) Presents evidence that such events or series of events arose out
29 of and in the course of the first responder's employment; and

30 (d) Presents evidence that, prior to the employment conditions which
31 caused the mental injury or mental illness, the first responder had

1 participated in resilience training and updated the training at least
2 annually thereafter.

3 (5) (2) For purposes of this section, mental injuries and mental
4 illness arising out of and in the course of employment unaccompanied by
5 physical injury are not considered compensable if they result from any
6 event or series of events which are incidental to normal employer and
7 employee relations, including, but not limited to, personnel actions by
8 the employer such as disciplinary actions, work evaluations, transfers,
9 promotions, demotions, salary reviews, or terminations.

10 (6)(a) The Department of Health and Human Services shall reimburse a
11 first responder for the cost of annual resilience training not reimbursed
12 by the first responder's employer. The department shall pay reimbursement
13 at a rate determined by the Critical Incident Stress Management Program
14 under section 71-7104. Reimbursement shall be subject to the annual limit
15 set by such program under section 71-7104.

16 (b) To obtain reimbursement under this subsection, a first responder
17 shall submit an application to the Department of Health and Human
18 Services on a form and in a manner prescribed by the department.

19 (7) The Department of Health and Human Services shall maintain and
20 annually update records of first responders who have completed annual
21 resilience training.

22 (8) (3) For purposes of this section:

23 (a) First responder means a sheriff, a deputy sheriff, a police
24 officer, an officer of the Nebraska State Patrol, a volunteer or paid
25 firefighter, or a volunteer or paid individual licensed under a licensure
26 classification in subdivision (1) of section 38-1217 who provides medical
27 care in order to prevent loss of life or aggravation of physiological or
28 psychological illness or injury;

29 (b) Frontline state employee means an employee of the Department of
30 Correctional Services or the Department of Health and Human Services
31 whose duties involve regular and direct interaction with high-risk

1 individuals;

2 (c) High-risk individual means an individual in state custody for
3 whom violent or physically intimidating behavior is common, including,
4 but not limited to, a committed offender as defined in section 83-170, a
5 patient at a regional center as defined in section 71-911, and a juvenile
6 committed to the Youth Rehabilitation and Treatment Center-Kearney or the
7 Youth Rehabilitation and Treatment Center-Geneva; ~~and~~

8 (d) Mental health professional means:

9 (i) A practicing physician licensed to practice medicine in this
10 state under the Medicine and Surgery Practice Act;

11 (ii) A practicing psychologist licensed to engage in the practice of
12 psychology in this state as provided in section 38-3111 or as provided in
13 similar provisions of the Psychology Interjurisdictional Compact; or

14 (iii) A person licensed as an independent mental health practitioner
15 under the Mental Health Practice Act;

16 (e) Resilience training means training that meets the guidelines
17 established by the Critical Incident Stress Management Program under
18 section 71-7104 and that teaches how to adapt to, manage, and recover
19 from adversity, trauma, tragedy, threats, or significant sources of
20 stress; and

21 (f) ~~(d)~~ State custody means under the charge or control of a state
22 institution or state agency and includes time spent outside of the state
23 institution or state agency.

24 (9) All other provisions of the Nebraska Workers' Compensation Act
25 apply to this section.

26 Sec. 2. Section 48-122, Revised Statutes Supplement, 2019, is
27 amended to read:

28 48-122 (1) If death results from injuries and the deceased employee
29 leaves one or more dependents dependent upon his or her earnings for
30 support at the time of injury, the compensation, subject to section
31 48-123, shall be not more than the maximum weekly income benefit

1 specified in section 48-121.01 nor less than the minimum weekly income
2 benefit specified in section 48-121.01, except that if at the time of
3 injury the employee receives wages of less than the minimum weekly income
4 benefit specified in section 48-121.01, then the compensation shall be
5 the full amount of such wages per week, payable in the amount and to the
6 persons enumerated in section 48-122.01 subject to the maximum limits
7 specified in this section and section 48-122.03.

8 (2) When death results from injuries suffered in employment, if
9 immediately prior to the accident the rate of wages was fixed by the day
10 or hour, or by the output of the employee, the weekly wages shall be
11 taken to be computed upon the basis of a workweek of a minimum of five
12 days, if the wages are paid by the day, or upon the basis of a workweek
13 of a minimum of forty hours, if the wages are paid by the hour, or upon
14 the basis of a workweek of a minimum of five days or forty hours,
15 whichever results in the higher weekly wage, if the wages are based on
16 the output of the employee.

17 (3) Upon the death of an employee, resulting through personal
18 injuries as defined in section 48-151, whether or not there are
19 dependents entitled to compensation, the reasonable expenses of burial,
20 not exceeding eleven ~~ten~~ thousand dollars, without deduction of any
21 amount previously paid or to be paid for compensation or for medical
22 expenses, shall be paid to his or her dependents, or if there are no
23 dependents, then to his or her personal representative. Beginning in
24 2023, the Nebraska Workers' Compensation Court shall annually adjust the
25 dollar limitation in this subsection. The adjusted limitation shall be
26 equal to the then current limitation adjusted by the greater of one
27 percent or the percentage change, for the preceding year, in the Consumer
28 Price Index for All Urban Consumers, as prepared by the United States
29 Department of Labor, Bureau of Labor Statistics. Any adjustment shall be
30 effective on July 1. The adjustment shall not exceed two and three-
31 quarters percent per annum. If the amount so adjusted is not a multiple

1 of one hundred dollars, the amount shall be rounded to the nearest
2 multiple of one hundred dollars.

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

10 (5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this
11 section, the consular officer of the nation of which the employee, whose
12 injury results in death, is a citizen shall be regarded as the sole legal
13 representative of any alien dependents of the employee residing outside
14 of the United States and representing the nationality of the employee.

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

27 (b) Such consular officer or appointed person shall have in behalf
28 of such nonresident alien dependents the exclusive right to institute
29 proceedings for, adjust, and settle all claims for compensation provided
30 by the Nebraska Workers' Compensation Act and to receive the distribution
31 to such nonresident alien dependents of all compensation arising

1 thereunder.

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

8 (d) For purposes of this section, consular officer means a consul
9 general, vice consul general, or vice consul or the representative of any
10 such official residing within the State of Nebraska.

11 (6) The changes made to this section by Laws 2019, LB418, apply to
12 cases under the Nebraska Workers' Compensation Act that are pending on
13 September 1, 2019, and to cases filed on or after such date.

14 Sec. 3. Section 71-7104, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 71-7104 There is hereby created the Critical Incident Stress
17 Management Program. The focus of the program shall be to minimize the
18 harmful effects of critical incident stress for emergency service
19 personnel, with a high priority on confidentiality and respect for the
20 individuals involved. The program shall:

21 (1) Provide a stress management session to emergency service
22 personnel who appropriately request such assistance in an effort to
23 address critical incident stress;

24 (2) Assist in providing the emotional and educational support
25 necessary to ensure optimal functioning of emergency service personnel;

26 (3) Conduct preincident educational programs to acquaint emergency
27 service personnel with stress management techniques;

28 (4) Promote interagency cooperation;~~and~~

29 (5) Provide an organized statewide response to the emotional needs
30 of emergency service personnel impacted by critical incidents; ~~-~~

31 (6) Develop guidelines for resilience training for first responders

1 under section 48-101.01;

2 (7) Set reimbursement rates for resilience training under section
3 48-101.01; and

4 (8) Set an annual limit on the hours or quantity of resilience
5 training for which reimbursement is required under section 48-101.01.

6 Sec. 4. This act becomes operative on July 1, 2021.

7 Sec. 5. Original section 71-7104, Reissue Revised Statutes of
8 Nebraska, section 48-101.01, Revised Statutes Cumulative Supplement,
9 2018, and section 48-122, Revised Statutes Supplement, 2019, are
10 repealed.