

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 256**

Introduced by Hansen, M., 26.

Read first time January 11, 2021

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-139, Revised Statutes Cumulative Supplement, 2020;
- 3 to change provisions relating to lump-sum settlement approval and
- 4 the filing of releases; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 48-139 (1)(a) Whenever an injured employee or his or her dependents  
4 and the employer agree that the amounts of compensation due as periodic  
5 payments for death, permanent disability, or claimed permanent disability  
6 under the Nebraska Workers' Compensation Act shall be commuted to one or  
7 more lump-sum payments, such settlement shall be submitted to the  
8 Nebraska Workers' Compensation Court for approval as provided in  
9 subsection (2) of this section if:

10 (i) The employee is not represented by counsel;

11 (ii) The employee, at the time the settlement is executed, is  
12 eligible for medicare, is a medicare beneficiary, or has a reasonable  
13 expectation of becoming eligible for medicare within thirty months after  
14 the date the settlement is executed. This subdivision (ii) is not  
15 applicable if the employee's right to receive future medical, surgical,  
16 and hospital services as provided in section 48-120 is specifically  
17 excluded from the settlement and medicare has not paid medical, surgical,  
18 or hospital expenses or if medicare has paid medical, surgical, or  
19 hospital expenses for which it claims it is entitled to reimbursement and  
20 medicare has been reimbursed for such expenses at the time the settlement  
21 is executed;

22 (iii) Medical, surgical, or hospital expenses incurred for treatment  
23 of the injury have been paid by medicaid and medicaid will not be  
24 reimbursed as part of the settlement;

25 (iv) Medical, surgical, or hospital expenses incurred for treatment  
26 of the injury will not be fully paid as part of the settlement; or

27 (v) The settlement seeks to commute amounts of compensation due to  
28 dependents of the employee.

29 (b) If such lump-sum settlement is not required to be submitted for  
30 approval by the compensation court, a release shall be filed with the  
31 compensation court as provided in subsection (3) of this section. Nothing

1 in this section shall be construed to increase the compensation court's  
2 duties or authority with respect to the approval of lump-sum settlements  
3 under the act.

4 (2)(a) An application for an order approving a lump-sum settlement,  
5 signed and verified by both parties, shall be filed with the clerk of the  
6 compensation court and shall be entitled the same as an action by such  
7 employee or dependents against such employer. The application shall  
8 contain a concise statement of the terms of the settlement or agreement  
9 sought to be approved with a brief statement of the facts concerning the  
10 injury, the nature thereof, the wages received by the injured employee  
11 prior thereto, the nature of the employment, a description of the  
12 medical, surgical, or hospital expenses incurred for treatment of the  
13 injury that will remain unpaid as part of the settlement which are  
14 disputed and for which compensability has been denied by the employer,  
15 and such other matters as may be reasonably required by the compensation  
16 court. The application shall also include a statement that the parties  
17 have considered the interests of medicare and have taken reasonable steps  
18 to protect any interests of medicare. The application may provide for  
19 payment of future medical, surgical, or hospital expenses incurred by the  
20 employee. The compensation court may, on its own motion, and shall, on a  
21 motion by one of the parties, hold a hearing on the application at a time  
22 and place selected by the compensation court, and proof may be adduced  
23 and witnesses subpoenaed and examined the same as in an action in equity.

24 (b)(i) If the compensation court finds such lump-sum settlement is  
25 made in conformity with the compensation schedule and for the best  
26 interests of the employee or his or her dependents under all the  
27 circumstances, the compensation court shall make an order approving the  
28 same.

29 (ii) If the expenses for medical, surgical, or hospital services  
30 provided to the employee are not paid by the employer, or if any person,  
31 other than medicaid, who has made any payment to the supplier of medical,

1 surgical, or hospital services provided to the employee, is not  
2 reimbursed by the employer, it shall be conclusively presumed that the  
3 nonpayment or nonreimbursement of disputed medical, surgical, or hospital  
4 expenses, as set forth in the application, is in conformity with the  
5 compensation schedule and for the best interests of the employee or his  
6 or her dependents, if the employee's attorney elects to affirm and does  
7 affirm in the application that the nonpayment or nonreimbursement of  
8 disputed medical, surgical, or hospital expenses is in conformity with  
9 the compensation schedule and for the best interests of the employee or  
10 his or her dependents under all the circumstances.

11 (iii) If the employee, at the time the settlement is executed, is  
12 eligible for medicare, is a medicare beneficiary, or has a reasonable  
13 expectation of becoming eligible for medicare within thirty months after  
14 the date the settlement is executed, and if the employee's attorney  
15 elects to affirm and does affirm in the application that the parties'  
16 agreement relating to consideration of medicare's interests set forth in  
17 such lump-sum settlement is in conformity with the compensation schedule  
18 and for the best interests of the employee or his or her dependents under  
19 all the circumstances, it shall be conclusively presumed that the  
20 parties' agreement relating to consideration of medicare's interests set  
21 forth in the application is in conformity with the compensation schedule  
22 and for the best interests of the employee or his or her dependents.

23 (iv) If such settlement is not approved, the compensation court may  
24 dismiss the application at the cost of the employer or continue the  
25 hearing, in the discretion of the compensation court.

26 (c) Every such lump-sum settlement approved by order of the  
27 compensation court shall be final and conclusive unless procured by  
28 fraud. An order approving an application under this subsection shall, in  
29 any case in which the employee is represented by counsel and in which the  
30 application contains a description of the medical, surgical, or hospital  
31 expenses incurred for treatment of the injury that will remain unpaid as

1 part of the settlement which are disputed and for which compensability  
2 has been denied by the employer, provide that the employer is not liable  
3 for such expenses. Upon paying the amount approved by the compensation  
4 court, the employer shall be discharged from further liability on account  
5 of the injury or death, other than liability for the payment of future  
6 medical, surgical, or hospital expenses if such liability is approved by  
7 the compensation court on the application of the parties.

8 (d) An exclusion from coverage in any health, accident, or other  
9 insurance policy covering an employee which provides that coverage under  
10 such insurance policy does not apply if such employee is entitled to  
11 workers' compensation coverage is void as to such employee if his or her  
12 employer is not liable for medical, surgical, or hospital expenses  
13 incurred for treatment of an injury that will remain unpaid as part of  
14 the settlement pursuant to an order entered under subdivision (2)(c) of  
15 this section.

16 (3) If such lump-sum settlement is not required to be submitted for  
17 approval by the compensation court, a release shall be filed with the  
18 compensation court in accordance with this subsection that is signed and  
19 verified by the employee and the employee's attorney. The release shall  
20 be made on a form approved by the compensation court and shall contain a  
21 statement signed and verified by the employee that:

22 (a) The employee understands and waives all rights under the  
23 Nebraska Workers' Compensation Act, including, but not limited to:

24 (i) The right to receive weekly disability benefits, both temporary  
25 and permanent;

26 (ii) The right to receive vocational rehabilitation services;

27 (iii) The right to receive future medical, surgical, and hospital  
28 services as provided in section 48-120, unless such services are  
29 specifically excluded from the release; and

30 (iv) The right to ask a judge of the compensation court to decide  
31 the parties' rights and obligations;

1 (b) The employee is not eligible for medicare, is not a current  
2 medicare beneficiary, and does not have a reasonable expectation of  
3 becoming eligible for medicare within thirty months after the date the  
4 settlement is executed. This subdivision (b) is not applicable if the  
5 employee's right to receive future medical, surgical, and hospital  
6 services as provided in section 48-120 is specifically excluded from the  
7 settlement and medicare has not paid medical, surgical, or hospital  
8 expenses or if medicare has paid medical, surgical, or hospital expenses  
9 for which it claims it is entitled to reimbursement and medicare has been  
10 reimbursed for such expenses at the time the settlement is executed;

11 (c) There are no medical, surgical, or hospital expenses incurred  
12 for treatment of the injury which have been paid by medicaid and not  
13 reimbursed to medicaid by the employer as part of the settlement; and

14 (d) There are no medical, surgical, or hospital expenses incurred  
15 for treatment of the injury that will remain unpaid after the settlement.

16 (4) Upon the entry of an order of dismissal with prejudice, a  
17 release filed with the compensation court in accordance with subsection  
18 (3) of this section shall be final and conclusive as to all rights waived  
19 in the release unless procured by fraud. Amounts to be paid by the  
20 employer to the employee pursuant to such release shall be paid within  
21 thirty days of filing the release with the compensation court. Fifty  
22 percent shall be added for payments owed to the employee if made after  
23 thirty days after the date the release is filed with the compensation  
24 court. Upon making payment owed by the employer as set forth in the  
25 release and upon the entry of an order of dismissal with prejudice, as to  
26 all rights waived in the release, such release shall be a full and  
27 complete discharge from further liability for the employer on account of  
28 the injury, including future medical, surgical, or hospital expenses,  
29 unless such expenses are specifically excluded from the release.

30 (5) The fees of the clerk of the compensation court for filing,  
31 docketing, and indexing an application for an order approving a lump-sum

1 settlement or filing a release as provided in this section shall be  
2 fifteen dollars. The fees shall be remitted by the clerk to the State  
3 Treasurer for credit to the Compensation Court Cash Fund.

4       Sec. 2.     Original section 48-139, Revised Statutes Cumulative  
5 Supplement, 2020, is repealed.