

## LEGISLATIVE BILL 572

Approved by the Governor May 25, 1971

Introduced by Fred W. Carstens, 30th District

AN ACT to amend sections 48-101, 48-102, 48-103, 48-105, 48-106, 48-112, 48-114, 48-145, 48-146, and 48-147, Reissue Revised Statutes of Nebraska, 1943, relating to workmen's compensation; to make coverage under the workmen's compensation law mandatory, as prescribed; to require the filing of reports; to make certain acts unlawful and to provide penalties; to provide duties for the Director of Insurance; to establish an assigned risk system for workmen's compensation insurance; to establish the Uninsured Employers' Fund and to provide for payments to and use of the fund; to provide duties for the workmen's compensation court, the State Treasurer, and the Attorney General; and to repeal the original sections and also sections 48-104 and 48-113, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 48-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-101. When personal injury is caused to an employee by accident or occupational disease, arising out of and in the course of his or her employment, of ~~which the actual or lawful imputed negligence of the employer is the natural and proximate cause~~, such employee shall receive compensation therefor from his or her employer if the employee was not willfully negligent at the time of receiving such injury. ~~The question of whether or not the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence or to law.~~

Sec. 2. That section 48-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-102. In all cases brought under sections 48-101 to 48-108, it shall not be a defense (a) that the employee was negligent, unless it shall also appear that

such negligence was willful, or that the employee was in a state of intoxication; (b) that the injury was caused by the negligence of a fellow employee; or (c) that the employee had assumed the risks inherent in, or incidental to, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished, ~~except as provided in section 48-104.~~

Sec. 3. That section 48-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-103. If an employer, as defined in section 48-106, ~~elects not to come under sections 48-109 to 48-147,~~ does not carry a policy of workmen's compensation insurance nor qualify as a self-insurer he loses the right to interpose the three defenses mentioned in section 48-102 in any action brought against him for personal injury or death of an employee.

Sec. 4. That section 48-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-105. The provisions of sections 48-101 to ~~48-104~~ 48-103 shall apply to any claim for the death of an employee arising under sections 30-809, 30-810, 74-703, 74-704 and 74-705 concerning death by wrongful act.

Sec. 5. That section 48-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-106. (1) The provisions of this act shall apply to the State of Nebraska and every governmental agency created by it, and to every employer in this state, including nonresident employers performing work in the State of Nebraska, employing one or more employees, in the regular trade, business, profession, or vocation of such employer, except railroad companies engaged in interstate or foreign commerce.

(2) The following are declared not to be hazardous occupations and not within the provisions of this act: Employers of household domestic servants and employers of farm or ranch laborers, except as hereinafter provided; Provided, that any such employer may elect to provide and pay compensation for accidental injuries sustained by any of his employees by insuring and keeping insured his employees in some corporation,

association, or organization authorized and licensed to transact the business of workmen's compensation insurance in this state.

(3) The procuring by any such employer of such a policy of insurance, referred to in subsection (2) of this section, which is in full force and effect at the time of an accident to any of his employees, shall be conclusive proof of such employer's and his employees' election to be bound by sections 48-109 to 48-147, to all intents and purposes as if they had not been specifically excluded by the terms of this section; ~~Provided, that any employee of such employer shall have the right, prior to the accident sustained by him, to elect not to accept or be bound by the provisions of this act, the procedure being the same as indicated in section 48-142.~~

Sec. 6. That section 48-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-112. In the occupations described in section 48-106 all contracts of employment shall be presumed to have been made with reference, and subject to the provisions of sections 48-109 to 48-147, ~~unless otherwise expressly stated in the contract, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of said sections.~~ Every such employer and every employee is presumed to accept and come under said such sections, ~~unless prior to accident he shall signify his election not to accept or be bound by the provisions of said sections.~~ This election shall be by notice as follows: (a) The employer shall post and thereafter keep continuously posted in a conspicuous place about the place or places where his workmen are employed a written or printed notice of his election not to be bound by said sections, and shall file a duplicate thereof with the compensation court; (b) the employee shall give written or printed notice to the employer of his election not to be bound by said sections, and shall file a duplicate with proof of service attached thereto with the compensation court.

Sec. 7. That section 48-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-114. The following shall constitute employers subject to the provisions of this act: (1) The state and every governmental agency created by it;

and (2) every person, firm or corporation, including any public service corporation, who is engaged in any trade, occupation, business or profession as described in section 48-106, and who has any person in service under any contract of hire, express or implied, oral or written, ~~and who prior to the time of the accident to the employee for which compensation under this act may be claimed, shall not, in the manner provided in section 48-442 have elected not to become subject to the provisions of sections 48-409 to 48-447.~~

Sec. 8. That section 48-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-145. To secure the payment of compensation under this act:

(1) Every employer in the occupations described in section 48-106 shall either (a) insure and keep insured his liability under this act in some corporation, association, or organization authorized and licensed to transact the business of workmen's compensation insurance in this state, or (b) as a self-insurer furnish to the State Treasurer an annual amount equal to two per cent of the prevailing premium rate which would be paid for like employment to any corporation, association, or organization, for carrying such risk as provided in this section but in no event less than twenty-five dollars. He shall also furnish to the compensation court satisfactory proof of his financial ability to pay direct the compensation in the amount and manner when due as provided for in this act. In the latter case the compensation court may in its discretion require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred. The compensation court may in its discretion withdraw such approval as a self-insurer at any time.

(2) All money which a self-insurer is required to pay to the State Treasurer, under the provisions of subsection (1) of this section, shall be computed and tabulated under oath as of January 1, and paid to the State Treasurer immediately thereafter. The compensation court, any member thereof, or any representative of the court is empowered to audit any such payroll at its discretion. The compensation court shall be the sole judge as to what is the prevailing premium rate.



(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in ~~subsection (1); (2); or both~~ subsections (1) or (2) of this section shall be ~~(a) deemed to have elected not to come under sections 48-109 to 48-115; and (b)~~ required to respond to in damages to an employee for personal injuries, or where personal injuries result in the death of an employee, then to his dependents, ~~in like manner as if the employer had filed an election with the compensation court rejecting the provisions of said sections.~~ All money paid by an employer to the State Treasurer, under the provisions of subsections (1) and (2) of this section, shall be credited to the General Fund of the State of Nebraska; Provided, the provisions of subsections (1) and (2) of this section, shall not apply to the State of Nebraska, ~~or to any governmental agency or political subdivision thereof which is not engaged in a commercial enterprise operated for gain or profit.~~

Sec. 9. That section 48-146, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-146. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to the same all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his estate or discharge therein or by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name. Every policy for the insurance of the compensation herein provided, or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association, or organization shall enter into any such policy of insurance unless copies of such forms have been filed with and approved by the Department of Insurance. All policies insuring the payment of compensation under this act must contain a clause to the effect (1) that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer, (2) that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the

insurer, and (3) that the insurer shall in all things be bound by the awards, judgments, or decrees rendered against such insured. All such policies insuring the payment of compensation shall include within their terms the payment of compensation to all employees, officers, or workmen who are within the scope and purview of this act.

Sec. 10. That section 48-147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-147. Nothing in this act shall affect any existing contract for employer's liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement existing between employers and employees, providing for payment to such employees, their families, dependents or representatives, sick, accident or death benefits in addition to the compensation provided for by this act; but liability for compensation under this act shall not be reduced or affected by any insurance of the injured employee, or any contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name in the manner provided in section 48-146 the liability of any insurer who may, in whole or in part, have insured the liability for such compensation; Provided, however, payment in whole or in part of such compensation by either the employer or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other, of the amount so paid. No agreement by an employee to pay any portion of premium paid by his employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by this act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

Sec. 11. In every case of injury occurring in the course of employment, the employer or insurance carrier shall file a report thereof with the compensation court. Such report shall be filed within five days in case of injury resulting in death and within fifteen days in case of all other injuries after

the employer or insurance carrier has been given notice or has knowledge of any such injury.

Sec. 12. Whenever any insurance carrier shall write a policy of workmen's compensation insurance under this act, such carrier shall file a report showing the name and address of the insured employer, the name of the insurance carrier, the policy number, the effective date and expiration date of such policy and such other information as the compensation court may require. Such report shall be filed with the compensation court within ten days of the effective date of such policy.

Sec. 13. If the insurer or employer intends to cancel a contract or policy of insurance issued by the insurer under this act within the policy period, he shall give notice to such effect in writing to the compensation court and to the other party, fixing the date on which it is proposed that such cancellation be effective. Such notices shall be served personally on or sent by certified mail to the compensation court and the other party. No such cancellation shall be effective until ten days after the mailing of such notice, unless the employer has secured insurance with another carrier which would cause double coverage. In such event the cancellation shall be made effective as of the effective date of such other insurance.

Sec. 14. Any employer or insurance carrier who fails, neglects, or refuses to file any report required of him by the compensation court shall be subject to a penalty not to exceed one thousand dollars for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer or insurance carrier has been given notice, or the employer or the insurance carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in sections 48-137 and 48-128 shall not begin to run against the claim of the injured employee or his dependents entitled to compensation or against the State of Nebraska on behalf of the Second Injury Fund, or in favor of either the employer or the insurance carrier until such report shall have been furnished as required by the compensation court.

Sec. 15. The Director of Insurance, after consultation with carriers authorized to issue workmen's compensation policies in this state, shall put into effect a reasonable system for the equitable apportionment among such carriers of applicants for such



policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on workmen's compensation premiums, shall be covered by workmen's compensation insurance following his application to the assigned risk system and tender of required premium. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no carrier shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such carrier during the preceding year bears to the total compensation premiums written in the state by all such carriers during the preceding calendar year.

Sec. 16. If the compensation court shall find, after due notice and hearing at which the insurance organization shall be entitled to be heard in person or by counsel and present evidence, that such organization has repeatedly failed to comply with its obligations under the provisions of Chapter 48, article 1, it may request the Director of Insurance to suspend or revoke the authorization of such organization to write workmen's compensation insurance under the provisions of Chapter 44 and Chapter 48, article 1. Such suspension or revocation shall not affect the liability of any such organization under policies in force prior to the suspension or revocation.

Sec. 17. Whenever any petition is filed and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer and a carrier or between two or more employers or carriers, the compensation court may order payment of compensation to be made immediately by one or more of such employers or carriers. When the issue is finally resolved, an employer or carrier held not liable shall be reimbursed for any such payments by the employer or carrier held liable.

Sec. 18. Any employer required to secure the payment of compensation under this act who willfully fails to secure the payment of such compensation shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. In any case where the employer is a corporation any officer or employee of the corporation who had authority to secure



payment of compensation on behalf of the corporation and willfully failed to do so shall be individually liable to a similar fine and imprisonment and such officer or employee shall be personally liable jointly and severally with such corporation for any compensation which may accrue under Chapter 48, article 1, in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 48-145. If an employer who is subject to the Workmen's Compensation Act does not carry workmen's compensation insurance nor qualify as a self-insurer, he may also be enjoined from doing business in this state until he complies with the provisions of subsection (1) of section 48-145: Provided, that if a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective.

Sec. 19. Every employer shall upon request of the Nebraska Workmen's Compensation Court report to it the number of his employees and the nature of their work and also the name of the insurance company with whom he has insured his liability under the Workmen's Compensation Act and the number and date of expiration of such policy. Failure to furnish such report within ten days from the making of a request by certified or registered mail shall constitute presumptive evidence that the delinquent employer is violating the provisions of this section.

Sec. 20. Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer, after one of his employees has been injured within the purview of Chapter 48, article 1, and with intent to avoid the payment of compensation under Chapter 48, article 1, to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In any case where such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under Chapter 48, article 1, shall be also individually liable to such penalty of imprisonment as well as jointly and severally liable with such corporation for such fine.

Sec. 21. Sections 18 to 20 of this act shall not affect any other liability of the employer under

Chapter 48, article 1.

Sec. 22. There is hereby established in the state treasury an Uninsured Employers' Fund for the purpose of making payments in accordance with the provisions of this section. The State Treasurer shall be the custodian of the Uninsured Employers' Fund and all money and securities in such fund shall be held in trust by the State Treasurer and shall not be money or property of the state. 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.

Sec. 23. The computation of the amounts as provided in section 22 of this act 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 needful or desirable. Upon receipt of the payment, the Director of Insurance shall audit and examine the computations and satisfy himself that the amounts have been properly paid.

Sec. 24. The Director of Insurance, after notice and hearing pursuant to Chapter 44, article 23, may revoke or refuse to reissue the license of any company which fails to remit the amounts due in conformity with the provisions of this section.

Sec. 25. The Director of Insurance shall deposit the amounts paid pursuant to section 22 of this act with the State Treasurer for the benefit of the Uninsured Employers' 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 if there is a dispute as to the amount payable, the proceeds need not be deposited by the director with the State Treasurer until the 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.



Sec. 26. 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 Uninsured Employers' 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 Chapter 48, article 1, but in no event less than twenty-five dollars.

Sec. 27. The amounts required to be paid by the insurance companies and self-insurers under sections 22 and 26 of this act shall be in addition to any other amounts, either in taxes, assessments, or otherwise, required under any other law of this state.

Sec. 28. Where there has been default in the payment of compensation because of the failure of an employer to secure payment of compensation as provided in Chapter 48, article 1, or because of the insolvency of an insured employer and his carrier or a self-insured employer, payment of any compensation remaining unpaid shall be made from the Uninsured Employers' Fund by the Nebraska Workmen's Compensation Court. Such employer and carrier, or self-insured employer and his surety, if any, shall be liable for payment into the fund of the amounts paid therefrom by the Nebraska Workmen's Compensation Court under the authority of this section, and for the purposes of enforcing the liability the Uninsured Employers' Fund shall be subrogated to all the rights of the person receiving such compensation.

Sec. 29. The Nebraska Workmen's Compensation Court shall be charged with the conservation of the assets of the Uninsured Employers' Fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the Uninsured Employers' Fund in all proceedings brought to enforce claims for or against the Uninsured Employers' Fund.

Sec. 30. The State Treasurer, as custodian of the Uninsured Employers' 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 such fund.

When the fund shall equal or exceed two hundred thousand dollars, no further contributions thereto shall be required by employers or insurance carriers, but whenever thereafter the amount of the fund shall be reduced below one hundred thousand dollars, by reason of payments made pursuant to section 28 of this act, 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 one 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 until the fund shall again amount to two hundred thousand dollars.

Sec. 31. Out of the Uninsured Employers' 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 the court are paid. In all cases where a claim is asserted by the state on behalf of the Uninsured Employers' Fund against an employer or employer's insurer under this section, or where a claim is made against the Uninsured Employers' Fund, the State of Nebraska shall be impleaded as a party plaintiff or defendant and 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.

Sec. 32. Any expenses necessarily incurred by the Uninsured Employers' Fund or by the Attorney General on behalf of the Uninsured Employers' Fund in any case where a claim is asserted by the state on behalf of the Uninsured Employer's Fund against an employer or employer's insurer under this section, or when a claim is made against the Uninsured Employers' Fund, may be paid out of the Uninsured Employers' Fund. Such expenses may be taxed as costs and recovered by the Uninsured Employers' Fund in any such case when the Uninsured Employers' Fund prevails.

Sec. 33. That original sections 48-101, 48-102, 48-103, 48-105, 48-106, 48-112, 48-114, 48-145, 48-146, and 48-147, Reissue Revised Statutes of

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Nebraska, 1943, and also sections 48-104 and 48-113, Reissue Revised Statutes of Nebraska, 1943, are repealed.