

LEGISLATIVE BILL 474

Approved by the Governor March 26, 1997

Introduced by Vrtiska, 1; Abboud, 12; Brashear, 4; Bromm, 23; Bruning, 3; Coordsen, 32; Crosby, 29; Cudaback, 36; Hudkins, 21; Jensen, 20; Jones, 43; Kristensen, 37; Landis, 46; Matzke, 47; Maurstad, 30; Dw. Pedersen, 39; Robinson, 16; Schmitt, 41; Schrock, 38; Stuhr, 24; Tyson, 19; Warner, 25; Wehrbein, 2; Wesely, 26; Witek, 31

AN ACT relating to workers' compensation; to amend sections 48-103, 48-145, 48-146, 48-147, and 48-1,110, Reissue Revised Statutes of Nebraska, and section 48-115, Revised Statutes Supplement, 1996; to provide for compensation for employment involving leased commercial motor vehicles by agreement; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 48-103, Reissue Revised Statutes of Nebraska, is amended to read:

48-103. If an employer, as defined in section 48-106, does not carry a policy of workers' compensation insurance nor qualify as a self-insurer or in the case of an employer who is a lessor of one or more commercial motor vehicles leased to a self-insured motor carrier, is not a party to an effective agreement pursuant to section 3 of this act, he or she loses the right to interpose the three defenses mentioned in section 48-102 in any action brought against him or her for personal injury or death of an employee.

Sec. 2. Section 48-115, Revised Statutes Supplement, 1996, is amended to read:

48-115. The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written. For the purposes of the Nebraska Workers' Compensation Act, (a) volunteer firefighters of any fire department of any rural or suburban fire protection district, city, or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city, or village while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firefighters may be officially called to participate in, (b) members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of the rural or suburban fire protection district, city, or village, (c) members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council, or board and thereafter shall not be considered employees of such rural or suburban fire protection district, city, or village, (d) firefighters of any fire department of any rural or suburban fire protection district, city, or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief, (e) any members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team, (f) any person fulfilling

conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act, (g) volunteer ambulance drivers and attendants who provide ambulance service for any county, city, or village or any combination of such county, city, or village under the authority of section 13-303 shall be deemed employees of the county, city, or village or combination thereof while in the performance of their duties as such ambulance drivers or attendants and shall be considered as having entered into and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any emergency in which the volunteer drivers or attendants may be officially called to participate, but such volunteer ambulance drivers or attendants shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so, (h) before such volunteer ambulance drivers or attendants shall be entitled to benefits under the Nebraska Workers' Compensation Act, they shall be confirmed to perform such duties by the county board or the governing body of the city or village or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of the county, city, or village or combination thereof and may be removed by majority vote of such county board or governing body of the city or village, (i) members of a law enforcement reserve force appointed in accordance with section 81-1438 shall be deemed employees of the county or city for which they were appointed, and (j) any inmate working for offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827 shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) and (2) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

(3) Every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation shall be an employee of such corporation under the Nebraska Workers' Compensation Act, except that an executive officer of a Nebraska corporation who owns twenty-five percent or more of the common stock of such corporation may waive his or her right to coverage. Such waiver shall be in writing and filed with the secretary of the corporation and the Nebraska Workers' Compensation Court. Such waiver, as prescribed by the compensation court, shall include a statement in substantially the following form: Notice. I am aware that health and accident insurance policies frequently exclude coverage for personal injuries caused by accident or occupational disease arising out of and in the course of employment. Before waiving my rights to coverage under the Nebraska Workers' Compensation Act, I certify that I have carefully examined the terms of my health and accident coverage. Such waiver shall become effective from the date of receipt by the compensation court and shall remain in effect until the waiver is terminated by the officer in writing and filed with the secretary of the corporation and the compensation court. The termination of the corporate executive officer's waiver shall be effective upon receipt of the termination by the compensation court. It shall not be permissible to terminate a waiver prior to one year after the waiver has become effective.

(4) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis may elect to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act, if he or she (a) files with his or her current workers' compensation insurer written notice of election to have the same rights as an employee only for purposes of workers' compensation insurance coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and subsequent policies issued by such insurer until such time as such employer, partner, limited liability company member, or self-employed person files a written statement withdrawing such election with the current workers' compensation insurer or until such coverage by such insurer is terminated, whichever occurs first. When so included, the individual employer, partner, limited liability company member, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under the Nebraska Workers' Compensation Act. If any individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and any health, accident, or other insurance policy issued to or renewed by such person after July 10, 1984, contains an exclusion of coverage, if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person.

(5) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor may elect to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Sec. 3. An employer who is a lessor of one or more commercial motor vehicles leased to a self-insured motor carrier may agree with the self-insured motor carrier that benefits under the Nebraska Workers' Compensation Act with respect to personal injury or death to the driver or drivers employed by such lessor caused by accident or occupational disease arising out of and in the course of performing services for the self-insured motor carrier in connection with such lease shall be paid by the self-insured motor carrier in the same manner and to the same extent as benefits under the Nebraska Workers' Compensation Act are paid to or on behalf of employees of the self-insured motor carrier. To participate in an agreement under this section the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act.

Such an agreement shall (1) constitute compliance by such lessor with the requirements of section 48-145 with respect to such driver or drivers, but only insofar as liability for personal injury or death to the driver or drivers employed by such lessor caused by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease is concerned, (2) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (3) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply

to such lessor, the driver or drivers employed by such lessor, and the self-insured motor carrier with respect to personal injury or death caused to such driver or drivers by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such an agreement is effective.

Sec. 4. Section 48-145, Reissue Revised Statutes of Nebraska, is amended to read:

48-145. To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106 shall either (a) insure and keep insured his or her liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state or, in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 3 of this act or (b) as a self-insurer furnish to the State Treasurer an annual amount equal to two percent 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 or she shall also furnish to the Nebraska Workers' Compensation Court satisfactory proof of his or her financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. In the latter case the compensation court may in its discretion require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act under subdivision (5) of section 48-115 and section 3 of this act. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document. 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 subdivision (1) of this section, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The Nebraska Workers' Compensation Court, any judge thereof, or any representative of the compensation 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; and

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents. All money paid by an employer to the State Treasurer, under subdivisions (1) and (2) of this section, shall be credited to the General Fund of the State of Nebraska, except that subdivisions (1) and (2) of this section shall not apply to the State of Nebraska.

Sec. 5. Section 48-146, Reissue Revised Statutes of Nebraska, is amended to read:

48-146. (1) No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such 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 or her 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 or risk management pool to the person entitled to compensation enforceable in his or her name. Every policy for the insurance of the compensation herein provided, or against liability thereof, or agreement forming any risk management pool

shall be deemed to be made subject to the Nebraska Workers' Compensation 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 the Nebraska Workers' Compensation Act and agreements pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to the effect (a) that as between the employer and the insurer or risk management pool 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 or risk management pool, (b) that jurisdiction of the insured for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (c) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. All such policies insuring the payment of compensation and all such agreements providing such group self-insurance coverage shall include within their terms the payment of compensation to all employees, officers, or workers who are within the scope and purview of the Nebraska Workers' Compensation Act.

(2) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to section 48-145 shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (5) of section 48-115 and section 3 of this act as generally provided in this chapter.

Sec. 6. Section 48-147, Reissue Revised Statutes of Nebraska, is amended to read:

48-147. Nothing in the Nebraska Workers' Compensation Act shall affect any existing contract for employers 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 such act; but liability for compensation under such 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 or her 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. 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 or her employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by the Nebraska Workers' Compensation 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 such act shall be guilty of a Class II misdemeanor. Nothing in this section invalidates or prohibits agreements pursuant to subdivision (5) of section 48-115 or section 3 of this act.

Sec. 7. Section 48-1,110, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,110. (1) Sections 48-101 to 48-1,117 and section 3 of this act shall be known and may be cited as the Nebraska Workers' Compensation Act.

(2) It is the intent of the Legislature that the changes made in Laws 1986, LB 811, shall not affect or alter any rights, privileges, or obligations existing immediately prior to July 17, 1986.

Sec. 8. Original sections 48-103, 48-145, 48-146, 48-147, and 48-1,110, Reissue Revised Statutes of Nebraska, and section 48-115, Revised Statutes Supplement, 1996, are repealed.