

LEGISLATIVE BILL 13

Approved by the Governor June 2, 2005

Introduced by Landis, 46

AN ACT relating to workers' compensation; to amend sections 48-106, 48-118, 48-120.02, 48-121.02, 48-125, 48-144, 48-144.03, 48-145, 48-145.01, 48-145.02, 48-145.04, 48-146.02, 48-152, 48-155, 48-157, 48-158, 48-159, 48-162, 48-162.01, 48-162.02, 48-163, 48-165, 48-177, 48-188, 48-1,102, 48-1,110, and 48-1,116, Reissue Revised Statutes of Nebraska; to exempt certain agricultural workers from coverage; to change provisions relating to court administration and to provide for the appointment of a court administrator; to change provisions relating to enforcement of the Nebraska Workers' Compensation Act, vocational rehabilitation, awards or judgments against the state, third-party claims and dismissal of a cause of action, and dispensation of prescription drugs; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 48-106, Reissue Revised Statutes of Nebraska, is amended to read:

48-106. (1) The Nebraska Workers' Compensation Act shall apply to the State of Nebraska, to every governmental agency created by the state, and, except as provided in this section, to every resident employer in this state and nonresident employer performing work in this state who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

(2) The act shall not apply to:

(a) A railroad company engaged in interstate or foreign commerce;

(b) Service performed by a worker who is a household domestic servant in a private residence;

(c) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees; ~~and~~

(d) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees, whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive. The act shall apply to an employer thirty days after the thirteenth such week; and

(e) Service performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service.

(3) If the employer is the state or any governmental agency created by the state, the exemption from the act under subdivision (2)(d) of this section does not apply.

(4) If the act applies to an employer because the employer meets the requirements of subdivision (2)(d) of this section, all unrelated employees shall be covered under the act and such employees' wages shall be considered for premium purposes.

(5) If an employer to whom the act applies because the employer meets the requirements of subdivision (2)(d) of this section subsequently does not employ ten or more unrelated, full-time employees, such employer shall continue to provide workers' compensation insurance coverage for the employees for the remainder of the calendar year and for the next full calendar year. When the required coverage period has expired, such employer may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act.

Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(7) Every employer exempted under subdivision ~~(2)(c)~~ or (2)(d) of this section who does not elect to provide workers' compensation insurance under subsection (6) of this section shall give all unrelated employees at the time of hiring the following written notice which shall be signed by the unrelated employee and retained by the employer: "In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly." Failure to provide the notice required by this subsection subjects an employer to liability under and inclusion in the act for all unrelated employees on the basis of failure to give such notice.

(8) An exclusion from coverage in any health, accident, or other insurance policy covering a person employed by an employer who is exempt from the act under this section which provides that coverage under the health, accident, or other insurance policy does not apply if such person is entitled to workers' compensation coverage is void as to such person if such employer has not elected to bring the employees of such employer within the act as provided in subsection (6) of this section.

(9) For purposes of this section:

(a) Agricultural operation means (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products;

(b) Full-time employee means a person who is employed to work one-half or more of the regularly scheduled hours during each pay period; and

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.

Sec. 2. Section 48-118, Reissue Revised Statutes of Nebraska, is amended to read:

48-118. When a third person is liable to the employee or to the dependents, for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. ~~and the~~ The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents, and shall be treated as an advance payment by the employer, on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the ~~above~~ provided right of subrogation, of any

compensation paid. Before the making of a claim or the bringing of suit against such third person by the employee or his or her personal representative or by the employer or his or her insurer, each shall give to all others, unless waived in writing, notice of not less than thirty days, by certified or registered mail, an opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the clerk of the Nebraska Workers' Compensation Court shall become the agent of such party for the giving of such notice as required in this section, and the notice when given to the clerk of the Nebraska Workers' Compensation Court shall include an affidavit setting forth the facts, including the steps taken to locate such party. After the expiration of thirty days, for failure to receive notice or other good cause shown, the district court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the district court in which it could be brought shall allow either party to commence such action. Each shall have an equal voice in the claim and the prosecution of such suit and any dispute arising shall be passed upon by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought. If either party after the giving of such notice fails, by and through his or her attorney, to join in the making of such claim and the prosecuting of the suit, such party shall waive any and all claims or causes of action for improper prosecution of such suit or inadequacy of a settlement made in accordance herewith, and the party bringing the claim or prosecuting the suit shall be entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees, which expenses and attorney's fees shall be prorated to the amounts payable to the employer or his or her insurer under the above right of subrogation and to the amount in excess of such amount payable to the employer or his or her insurer under his or her right of subrogation, and which expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery. If either party makes the claim or prosecutes such action without the giving of a notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party.

If the employee or his or her personal representative or the employer or his or her compensation insurer join in the prosecuting of such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought. A settlement of any lawsuit commenced under this section shall be void unless (1) such settlement is agreed upon in writing by the employee or his or her personal representative and the insurer of the employer if there is one, and if there is no insurer, then by the employer, or (2) in the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment.

If the employee or his or her personal representative and the insurer of the employer if there is one, and if there is no insurer, then the employer, do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court upon application shall order a fair and equitable distribution of the proceeds of any judgment or settlement.

In any case in which an injured employee is entitled to benefits from the Workers' Compensation Trust Fund for injuries occurring before December 17, 1997, as provided in section 48-128 and recovery is had against the third party liable to the employee for the injury, the Workers' Compensation Trust Fund shall be subrogated to the rights of the employee against such third party to the extent of the benefits due to him or her or which shall become due to him or her from such fund, subject to the rights of the employer and his or her insurer.

Sec. 3. Section 48-120.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-120.02. (1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be

adopted and promulgated by the compensation court. Each application for certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court prescribes unless earlier revoked or suspended pursuant to subsection (4) or (5) of this section. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical, and hospital services under the managed care plan, together with a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose a physician to provide medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change the physician initially selected to provide medical, surgical, and hospital services under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, certifications, or registrations of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent medical examiner pursuant to section 48-134.01. No petition may be filed with the compensation court pursuant to section 48-173 solely on the issue of the

reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify ~~or may~~ a managed care plan or a three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify ~~or may revoke or suspend the certification of~~ a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section. A three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan if the panel finds that the plan fails to meet the requirements of this section or that ~~or~~ service under the plan is not being provided in accordance with the terms of a certified plan.

(6) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing representatives of a certified managed care plan to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke or suspend certification of the plan pursuant to subsection (4) or (5) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the managed care plan unfairly restricts direct access within the plan, that the plan fails to meet the requirements of this section, or that service under the plan is not being provided in accordance with the terms of a certified plan. The presiding judge shall rule on a motion of the Attorney General pursuant to this subsection and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a suspension or revocation pursuant to subsection (4) or (5) of this section shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas.

(7) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 4. Section 48-121.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-121.02. For purposes of section 48-121.01, the state average weekly wage shall be determined by the administrator of the Nebraska Workers' Compensation Court as follows: On or before October 1 of each year, the total insured wages reported to the Department of Labor for the preceding calendar year, excluding federal employees, shall be divided by the average monthly number of employees insured under the Employment Security Law. Such average monthly number of employees shall be determined by dividing the total number of employees insured under the Employment Security Law reported for such calendar year by twelve. The state average annual wage thus obtained shall be divided by fifty-two, and the state average weekly wage thus determined shall be rounded to the nearest whole cent. The state average weekly wage as so determined shall be applicable for the calendar year commencing January 1 following the October 1 determination.

Sec. 5. Section 48-125, Reissue Revised Statutes of Nebraska, is amended to read:

48-125. (1) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Fifty, ~~except that fifty~~ percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the compensation court, ~~except that for any award or judgment against the state in excess of one hundred~~

thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(2) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers. If the employer files an application for review before the compensation court from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. If the employee files an application for a review before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a review before the compensation court from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

~~(2)~~ (3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued at the time payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Sec. 6. Section 48-144, Reissue Revised Statutes of Nebraska, is amended to read:

48-144. (1) Reports of accidents and settlements shall be made in a form and manner ~~as prescribed and directed~~ by the administrator of the Nebraska Workers' Compensation Court. Such reports, if filed by ~~an insurance company~~ a workers' compensation insurer on behalf of an employer, shall be deemed to have been filed by the employer.

(2) When an injury results in the death of an employee who is a citizen or subject of a foreign country, the administrator of the compensation court shall, after the death has been reported to ~~it~~ the compensation court, at once notify the superior consular officer of the country of which the employee at the time of his or her death was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he or she shall have formally designated as his or her representative by a communication in writing to the compensation court. Such notification shall contain in addition to the name of the employee such further information as the compensation court may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employee.

Sec. 7. Section 48-144.03, Reissue Revised Statutes of Nebraska, is amended to read:

48-144.03. (1) (a) If an insurer intends to cancel a contract or policy of insurance issued by the insurer under the Nebraska Workers' Compensation Act within the contract or policy period, the insurer shall give notice to such effect to the Nebraska Workers' Compensation Court and to the employer, fixing the date on which it is proposed that such cancellation be

effective. Such notices shall contain a brief statement of the insurer's reasons for cancellation and shall be given to the compensation court and the employer as provided in subsection (3) of this section. No such cancellation shall be effective until thirty days after the giving of such notices, except that such cancellation may be effective ten days after the giving of such notices if such cancellation is based on (i) nonpayment of premium, (ii) failure of the employer to reimburse deductible losses as required under the contract or policy, or (iii) failure of the employer, if covered pursuant to section 48-146.01, to comply with sections 48-443 to 48-445. If the employer has secured insurance with another insurer which would cause double coverage, such cancellation shall be made effective as of the effective date of such other insurance.

(b) In any case when the employer gives notice to the insurer that he or she intends to cancel a contract or policy of insurance issued by the insurer under the Nebraska Workers' Compensation Act within the contract or policy period, the insurer shall immediately give notice to the Nebraska Workers' Compensation Court that such contract or policy is being canceled by the employer and the date on which it is proposed that such cancellation be effective. Such notice shall be given to the compensation court as provided in subsection (3) of this section. No such cancellation shall be effective until ten days after the giving of such notice. If the employer has secured insurance with another insurer which would cause double coverage, such cancellation shall be made effective as of the effective date of such other insurance.

(2) If an insurer intends to nonrenew a contract or policy of insurance issued under the Nebraska Workers' Compensation Act, the insurer shall give notice to such effect to the Nebraska Workers' Compensation Court and to the employer. Such notices shall contain a brief statement of the insurer's reasons for nonrenewal and shall be given to the compensation court and the employer as provided in subsection (3) of this section. No such nonrenewal shall be effective until thirty days after the giving of such notices. This subsection shall not apply to contracts or policies of insurance issued pursuant to section 48-146.01.

(3) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the Nebraska Workers' Compensation Court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt by the compensation court.

Sec. 8. 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, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) 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 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. The compensation court may by rule and regulation 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 subdivision (11) of section 48-115 and section 48-115.02. 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.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, ~~suspend or~~ revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from such suspension or revocation a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, 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 or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion.~~ All money paid by a self-insurer under this subdivision shall be credited to the General Fund; 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.

Sec. 9. Section 48-145.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-145.01. (1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee of the corporation who had authority to secure payment of compensation on behalf of the corporation employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and such officer or employee shall be personally liable jointly and severally with such corporation employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such corporation employer while it so fails to secure the payment of compensation as required by section 48-145. If the employer is a limited liability company, any member or manager of the company who had authority to secure payment of compensation on behalf of the company and willfully failed to do so shall be individually guilty of a Class I misdemeanor and such member or manager shall be personally liable jointly and severally with such company for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such company while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer ~~who is~~ subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, ~~he or she~~ the employer may be enjoined from doing business in this state until ~~he or she~~ the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order ~~such employer~~ an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund. distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the compensation court pursuant to subsection (2) of this section shall be in accordance with section 48-179.

Sec. 10. Section 48-145.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-145.02. Every employer shall upon request of the administrator of the Nebraska Workers' Compensation Court report to it the administrator (1) the number of its his or her employees and the nature and location of their work, (2) and also the name of the insurance company workers' compensation insurer with whom he or she the employer has insured his or her its liability under the Nebraska Workers' Compensation Act and the number and date of expiration of such policy, and (3) the employer's federal employer identification number or numbers. 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 section 48-145.01.

Sec. 11. Section 48-145.04, Reissue Revised Statutes of Nebraska, is amended to read:

48-145.04. (1) The administrator of the Nebraska Workers' Compensation Court shall, prior to January 1 of each year, estimate as closely as possible the actual cost to the court of evaluating an application for self-insurance and supervising and administering the self-insurance program for the ensuing year and assess the amount thereof, but not to exceed two thousand dollars, against each applicant for self-insurance in this state. Such assessment shall be in addition to the payments required by subdivision (2) of section 48-145 and section 48-1,114. The court administrator shall notify each applicant of the amount of the individual assessment. Such assessment shall be due and payable with the application for self-insurance. If any assessment is not paid, the application shall not be considered.

(2) All payments received under subsection (1) of this section shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. Such payments shall be expended solely for evaluating applications for self-insurance and to aid in supervising and administering the self-insurance program. After the first year, the balance remaining of such payments at the time each annual assessment is made shall be taken into account when the total assessment for the ensuing year is made.

Sec. 12. Section 48-146.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-146.02. (1)(a) If a three-judge panel of the Nebraska Workers' Compensation Court finds, after due notice and hearing at which the workers' compensation insurer is entitled to be heard in person or by counsel and present evidence, that such insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the

three-judge panel may request the Director of Insurance to suspend or revoke the authorization of such insurer to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such insurer under policies in force prior to the suspension or revocation.

(b) If a three-judge panel of the compensation court finds, after due notice and hearing at which the risk management pool is entitled to be heard ~~in person or by counsel~~ and present evidence, that such pool has failed to comply with an obligation under the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 44-4319, with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

(c) If a three-judge panel of the compensation court finds, after due notice and hearing at which the self-insurer is entitled to be heard ~~in person or by counsel~~ and present evidence, that such self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may ~~suspend or~~ revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145. Such ~~suspension or~~ revocation shall not affect the liability of any such self-insurer under an approval by the compensation court to self-insure in force prior to the ~~suspension or~~ revocation.

(d) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a workers' compensation insurer, risk management pool, or self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not take action pursuant to this subsection. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the workers' compensation insurer, risk management pool, or self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel.

(e) Appeal from an action by a three-judge panel of the compensation court pursuant to subdivision (1)(b) or (1)(c) of this section shall be in accordance with section 48-185.

(2) In addition to any other obligations under the Nebraska Workers' Compensation Act, the following acts or practices, when committed with such frequency as to indicate a general business practice to engage in that type of conduct, shall subject the workers' compensation insurer, risk management pool, or self-insurer to action pursuant to subsection (1) of this section:

(a) Knowingly misrepresenting relevant facts or the provisions of the ~~Nebraska Workers' Compensation Act~~ act or any rule or regulation adopted pursuant to such act;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under the act;

(c) Failing to promptly investigate claims arising under the act;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable payment of benefits when compensability has become reasonably clear;

(e) Refusing to pay benefits without conducting a reasonable investigation;

(f) Failing to affirm or deny compensability of a claim within a reasonable time after having completed the investigation related to such claim;

(g) Paying substantially less than amounts owed under the act where there is no reasonable controversy;

(h) Making payment to an injured employee, beneficiary of a deceased employee, or provider of medical, surgical, or hospital services without providing a reasonable and accurate explanation of the basis for the payment;

(i) Unreasonably delaying the investigation or payment of benefits by knowingly requiring excessive verification or duplication of information;

(j) Failing, in the case of the denial of compensability or the denial, change in, or termination of benefits, to promptly provide a

reasonable and accurate explanation of the basis for such action to the injured employee or beneficiary of a deceased employee;

(k) Failing, in the case of the denial of payment for medical, surgical, or hospital services, to promptly provide a reasonable and accurate explanation of the basis for such action to the provider of such services; or

(l) Failing to provide the compensation court's address and telephone number to an injured employee or beneficiary of a deceased employee with instructions to contact the court for further information:

(i) At or near the time the workers' compensation insurer, risk management pool, or self-insurer receives notice or has knowledge of the injury; and

(ii) At or near the time of the denial of compensability or the denial, change in, or termination of benefits.

(3) In order to determine compliance with obligations under the Nebraska Workers' Compensation Act, the compensation court or its designee may examine the workers' compensation records of (a) a workers' compensation insurer, a risk management pool, or a self-insurer or (b) an adjuster, a third-party administrator, or other agent acting on behalf of such workers' compensation insurer, risk management pool, or self-insurer. The authority of the compensation court pursuant to this subsection is subject to the limitations provided under the work-product doctrine and attorney-client privilege as recognized in Nebraska law.

(4) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 13. Section 48-152, Reissue Revised Statutes of Nebraska, is amended to read:

48-152. Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) an impartial and efficient administration of the Nebraska Workers' Compensation Act is essential to the prosperity and well-being of the state, and (3) suitable laws should be enacted for the establishing and for the preservation of such an administration of the Nebraska Workers' Compensation Act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Nebraska Constitution, a court, consisting of seven judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and to be known as the Nebraska Workers' Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workers' Compensation Act, and any amendments thereof, except such as are committed to the courts of appellate jurisdiction or as otherwise provided by law.

Sec. 14. Section 48-155, Reissue Revised Statutes of Nebraska, is amended to read:

48-155. The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of original or review hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees ~~thereof~~ who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Sec. 15. Section 48-157, Reissue Revised Statutes of Nebraska, is amended to read:

48-157. ~~The presiding judge of the Nebraska Workers' Compensation Court shall appoint a clerk of the Nebraska Workers' Compensation Court, who shall hold office at the pleasure of the compensation court. The judge shall in like manner appoint such other assistants and employees as he or she may deem necessary to carry out the Nebraska Workers' Compensation Act, including rehabilitation specialists.~~ (1) The presiding judge of the Nebraska Workers' Compensation Court shall appoint a clerk of the compensation court and such employees as the compensation court deems necessary to support the judicial proceedings of the compensation court, subject to approval of the compensation court. The clerk and employees supporting the judicial proceedings of the compensation court shall serve at the pleasure of the compensation court and

shall perform such duties pertaining to the affairs of the court as the compensation court may prescribe or as otherwise provided by law.

(2) The presiding judge shall, subject to approval of the compensation court, appoint an administrator of the compensation court, who shall be the chief administrative officer of the compensation court. The administrator shall serve at the pleasure of the compensation court and shall perform such duties pertaining to affairs of the compensation court as the presiding judge may prescribe or as otherwise provided by law. The administrator shall appoint such other employees as the administrator deems necessary to carry out the duties of the administrator, subject to approval of the presiding judge. Employees appointed by the administrator shall serve at the pleasure of the administrator and shall perform such duties as the administrator may prescribe.

(3) The clerk shall, under the direction of the presiding judge, keep a full and true record of the judicial proceedings of the compensation court, and record all pleadings and other papers documents filed with the compensation court, and issue all necessary notices and writs. No action shall be taken on any pleading or other document filed with the compensation court until the same has been recorded by the clerk. At the time a petition or motion is filed the clerk shall, on a rotating basis, assign one of the judges of the compensation court to hear the cause. no other action shall be taken thereon until the same have been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the clerical business of the compensation court, and perform such other duties as the presiding judge may direct. All other assistants and employees of the compensation court shall perform such duties, pertaining to the affairs thereof, as the compensation court may prescribe.

(4) The clerk may, under the direction of the presiding judge, make or cause to be made preservation duplicates of any court record relating to the judicial proceedings of the compensation court. The original record and other papers may be destroyed, but only with the approval of the State Records Administrator pursuant to ~~sections 84-1201 to 84-1220~~ the Records Management Act. The reproduction of the preservation duplicates shall be admissible as evidence in any court of record in the State of Nebraska and, when duly certified, shall be evidence of equal credibility with the original record.

(5) Notices of hearings, notices of continuances, and summonses may be destroyed without preparing preservation duplicates after a record of their issuance has been made in the docket book. A reproduction of the page of the docket book or of the preservation duplicate of the page of the docket book showing such record and, in the case of summonses, showing issuance or return of the summons, when duly certified, shall be evidence of equal credibility with the original notice or summons. Correspondence, exhibits, and other papers documents relating to the judicial proceedings of the compensation court which the Nebraska Workers' Compensation Court clerk deems to be irrelevant, unimportant, or superfluous may be destroyed without preparing preservation duplicates. The compensation court may charge a fee for the reproduction of documents from preservation duplicates sufficient to pay the costs incurred by the compensation court in providing the service.

Sec. 16. Section 48-158, Reissue Revised Statutes of Nebraska, is amended to read:

48-158. Each of the judges of the Nebraska Workers' Compensation Court, ~~and the administrator of the compensation court, and the clerk thereof,~~ of the compensation court shall, before entering upon or discharging any of the duties of his or her office, be bonded or insured as required by section 11-201 and such judges, administrator, and clerk shall, before entering upon the duties of their offices, take and subscribe the statutory oath of office.

Sec. 17. Section 48-159, Reissue Revised Statutes of Nebraska, is amended to read:

48-159. (1) As soon as the same may be legally paid under the Constitution of Nebraska, each judge of the Nebraska Workers' Compensation Court shall receive an annual salary of ninety-two and one-half percent of the salary set for the Chief Justice and judges of the Supreme Court, payable in the same manner as the salaries of other state officers are paid. ~~Such salary is an increase from the salary of eighty-five percent of the salary set for the Chief Justice and judges of the Supreme Court which such judges have received on and after January 6, 1983.~~ The administrator, the clerk, and all other assistants and employees of the compensation court shall receive such salaries as the compensation court shall determine, but not to exceed the amount of the appropriation made by the Legislature for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees are paid. Such assistants and employees The administrator, clerk, and other employees of the compensation court shall not receive any other

salary or pay for their services from any other source.

(2) In addition to the salaries, as provided by subsection (1) of this section, the judges of the Nebraska Workers' Compensation Court, and the administrator, clerk, and other ~~assistants and~~ employees of the compensation court shall be entitled, while traveling on the business of the compensation court, to be reimbursed by the state for their necessary traveling expenses, consisting of transportation, subsistence, lodging, and such other items of expense as are necessary, to be paid as provided in sections 81-1174 to 81-1177.

Sec. 18. Section 48-162, Reissue Revised Statutes of Nebraska, is amended to read:

48-162. (1) The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, ~~foreman~~ supervisor, or officer of any partnership, limited liability company, or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order.

(2) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, documents, payrolls, medical reports, X-rays, photographs, or plates or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before the compensation court or any judge thereof.

(3) The compensation court or any judge thereof may expedite the hearing of a disputed case when there is an emergency. The compensation court may establish a schedule of fees for services including, but not limited to, copying, preparation of forms and other material, responding to inquiries for information, and publications prepared by the compensation court. The compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their employers under the act. In establishing fees the compensation court shall consider costs for time, material, and delivery.

Sec. 19. Section 48-162.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-162.01. (1) One of the primary purposes of the Nebraska Workers' Compensation Act is restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in ~~physical, medical, or~~ vocational rehabilitation. ~~to be appointed by the presiding judge.~~ Salaries, other benefits, and administrative expenses incurred by the compensation court for purposes of vocational rehabilitation shall be paid from the Compensation Court Cash Fund.

(2) Such Vocational rehabilitation specialists employed by the court shall continuously study the problems of vocational rehabilitation, both physical and vocational, and shall investigate and maintain a directory of rehabilitation facilities and individual service providers, counselors, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court may approve as qualified such facilities, institutions, physicians, and other individual service providers, counselors, and specialists as are capable of rendering competent vocational rehabilitation service to seriously services to injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury and is staffed with trained and qualified personnel and, with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he or she has had the experience and training specified by the compensation court. No individual service provider, counselor, or specialist shall be considered qualified to provide vocational rehabilitation services to injured employees unless he or she has satisfied the standards for certification established by the

compensation court and has been certified by the compensation court.

(3) ~~An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt medical and physical rehabilitation services.~~ When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she is entitled to such vocational rehabilitation services, including job placement and ~~retraining~~ training, as may be reasonably necessary to restore him or her to suitable employment. Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund. When vocational rehabilitation training requires residence at or near a facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and a vocational rehabilitation specialist of the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by a vocational rehabilitation specialist or judge of the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation plan. Any such plan shall be evaluated by a vocational rehabilitation specialist of the compensation court and approved by such specialist or a judge of the compensation court prior to implementation. In evaluating a plan the specialist shall make an independent determination as to whether the proposed plan is likely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. It is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her workers' compensation insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a vocational rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the vocational rehabilitation counselor and a vocational rehabilitation specialist or judge of the compensation court to be unlikely to result in a job placement suitable employment for the injured employee that is consistent with the priorities listed in this ~~section~~ subsection. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer;
- (c) A new job with the same employer;
- (d) A job with a new employer; or
- (e) A period of formal ~~retraining~~ training which is designed to lead to employment in another career field.

~~Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund.~~

(4) The compensation court may cooperate on a reciprocal basis with federal and state agencies for vocational rehabilitation services or with any public or private agency.

(5) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 regarding any issue related to vocational rehabilitation services or costs pursuant to this section. The Attorney General shall be considered a party for purposes

of such motion. The Attorney General may initiate an original action before the compensation court or may intervene in a pending action and become a party to the litigation. Any such motion shall be heard by a judge of the compensation court other than the presiding judge.

(6) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt physical and medical rehabilitation services. If physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' Compensation Court compensation court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a qualified facility, institution, physician, or other individual service provider capable of rendering competent physical or medical rehabilitation services for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her workers' compensation insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her workers' compensation insurer.

~~(5) When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her workers' compensation insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.~~

~~(6) The Nebraska Workers' Compensation Court may cooperate on a reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.~~

(7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the a physical, medical, or vocational rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) or (4) (6) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Sec. 20. Section 48-162.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-162.02. (1) The Workers' Compensation Trust Fund is created. The fund shall be administered by the administrator of the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01 and to make legislative fund transfers to the Compensation Court Cash Fund for the purpose of paying salaries, other benefits, and administrative expenses of the compensation court relating to the Workers' Compensation Trust Fund. Payments from the fund shall be made in the same manner as for claims against the state. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: 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 two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers'

compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in subsection (2) of this section 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 and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under subsections (2) and (6) of this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) ~~The presiding judge of the Nebraska Workers' Compensation Court~~ administrator of the compensation court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The administrator may order payments from the fund for vocational rehabilitation services and costs pursuant to section 48-162.01 when (a) vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, (b) the employee is engaged in an approved vocational rehabilitation plan pursuant to section 48-162.01, and (c) the employer has agreed to pay weekly compensation benefits for temporary disability while the employee is engaged in such plan.

(9) ~~The Attorney General shall appoint a member of his or her staff to represent the fund when necessary or when requested by the presiding judge administrator in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall appoint a member of his or her staff to represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service shall be had upon the Attorney General.~~

~~(9)~~ (10) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund 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 the fund.

~~(10)~~ (11) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments and transfers made pursuant to this section or otherwise or whenever the ~~presiding judge of the Nebraska Workers' Compensation Court~~ administrator of the compensation court determines that payments and transfers likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the ~~presiding judge of the compensation court~~ administrator shall notify all self-insurers and the Director of Insurance, who shall notify

all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars. ~~Payments from the fund shall be made by the compensation court in accordance with section 48-162.01 in the same manner as for claims against the state. Payments from the fund shall be made by the compensation court in accordance with section 48-128 once each month in the same manner as the salaries of the employees of the compensation court are paid.~~

~~(11)~~ (12) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

Sec. 21. Section 48-163, Reissue Revised Statutes of Nebraska, is amended to read:

48-163. (1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act, except that rules and regulations relating to the compensation court's adjudicatory function shall become effective only upon approval of the Supreme Court. ~~and shall administer and enforce all of the provisions of such act, except such as are committed to the Supreme Court.~~

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice.

(3) ~~The administrator of the~~ The compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to such subscribers. ~~The compensation court administrator shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.~~

~~(3) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, papers, payrolls, medical reports, X-rays, photographs or plates, or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before such compensation court or any judge thereof.~~

~~(4) The court may expedite the hearing of a disputed case when there is an emergency.~~

Sec. 22. Section 48-165, Reissue Revised Statutes of Nebraska, is amended to read:

48-165. (1) ~~The administrator of the Nebraska Workers' Compensation Court shall prepare and furnish~~ make available to employees, employers, and workers' compensation insurers ~~to insurance companies licensed to write compensation insurance in this state,~~ such blank forms as deemed proper and advisable. ~~of application for benefits or compensation, elections to operate under the Nebraska Workers' Compensation Act, reports of injury or death, and such other blanks as may be deemed proper and advisable. The compensation court shall provide rules and regulations for the distribution of the blanks so prepared. It shall be the duty of the employers to constantly keep on hand a sufficient supply of such blanks. The compensation court may charge a fee for such forms sufficient to pay the costs incurred by the compensation court in the preparation and delivery of the forms.~~

(2) The administrator of the compensation court may establish a schedule of fees for services including, but not limited to, copying, reproducing documents from preservation duplicates, preparing forms and other material, responding to inquiries for information, and preparing publications. In establishing fees, the administrator may consider costs for time, material, and delivery.

(3) The administrator of the compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their

employers under the act.

Sec. 23. Before making a claim or bringing suit against a third person by the employee or his or her personal representative or by the employer or his or her workers' compensation insurer, thirty days' notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel. If a party entitled to notice cannot be found, the clerk of the Nebraska Workers' Compensation Court shall become the agent of such party for giving notice as required in this section. The notice when given to the clerk of the compensation court shall include an affidavit setting forth the facts, including the steps taken to locate such party.

After the expiration of thirty days, for failure to receive notice or other good cause shown, the district court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the district court in which it could be brought shall allow either party to commence such action. Each party shall have an equal voice in the claim and the prosecution of such suit, and any dispute arising shall be passed upon by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

If the employee or his or her personal representative or the employer or his or her workers' compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

Sec. 24. If either party after receiving notice under section 23 of this act fails, by and through his or her attorney, to join in the third-party claim or suit, such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with section 26 of this act. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amounts payable to the employer or his or her workers' compensation insurer under the right of subrogation established in section 48-118 and (2) to the amount in excess of such amount payable to the employer or his or her workers' compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery.

Sec. 25. If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party.

Sec. 26. (1) A settlement of a third-party claim under the Nebraska Workers' Compensation Act is void unless:

(a) Such settlement is agreed upon in writing by the employee or his or her personal representative and the workers' compensation insurer of the employer, if there is one, and if there is no insurer, then by the employer; or

(b) In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment.

(2) If the employee or his or her personal representative or the employer or his or her workers' compensation insurer do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court, upon application, shall order a fair and equitable distribution of the proceeds of any judgment or settlement.

Sec. 27. In any case in which an injured employee is entitled to benefits from the Workers' Compensation Trust Fund for injuries occurring before December 1, 1997, as provided in section 48-128 and recovery is had against the third party liable to the employee for the injury, the Workers' Compensation Trust Fund shall be subrogated to the rights of the employee against such third party to the extent of the benefits due to him or her or which shall become due to him or her from such fund, subject to the rights of the employer and his or her workers' compensation insurer.

Sec. 28. Any person or entity that dispenses medicines and medical supplies, as required by section 48-120, shall dispense the generic drug equivalent unless:

(1) A generic drug equivalent is unavailable; or

(2) The prescribing physician specifically provides in writing that

a nongeneric drug must be dispensed.

Sec. 29. Section 48-177, Reissue Revised Statutes of Nebraska, is amended to read:

48-177. At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state. An action may be dismissed by the plaintiff, if represented by legal counsel, without prejudice to a future action, before the final submission of the case to the compensation court. Upon a motion for dismissal duly filed by the plaintiff, showing that a dispute between the parties no longer exists, the compensation court may dismiss any such cause without a hearing thereon.

Sec. 30. Section 48-188, Reissue Revised Statutes of Nebraska, is amended to read:

48-188. Any order, award, or judgment by the Nebraska Workers' Compensation Court, or any judge thereof, which is certified to by the clerk of the compensation court, or any order, award, or judgment made pursuant to the Nebraska Workers' Compensation Act by the Court of Appeals or Supreme Court, which is certified to by the Clerk of the Supreme Court, for compensation pursuant to the Nebraska Workers' Compensation Act may, as soon as the same becomes conclusive upon the parties at interest, be filed with the district court of any county or counties in the State of Nebraska upon the payment of a fee of two dollars to the clerk of the district court or courts where such order, award, or judgment is ~~so~~ filed. Upon filing, such order, award, or judgment shall have the same force and effect as a judgment of such district court or courts and all proceedings in relation thereto shall thereafter be the same as though the order, award, or judgment had been rendered in a suit duly heard and determined by such district court or courts.

Sec. 31. Section 48-1,102, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,102. Any final, nonappealable award to a claimant and any or judgment in favor of a claimant under sections 48-192 to 48-1,109 shall be certified by the Attorney General to the Risk Manager and to the Director of Administrative Services. The Director of Administrative Services, who shall promptly issue his or her warrant for payment of such award or judgment out of the Workers' Compensation Claims Revolving Fund, if sufficient money is available in such fund, except that no portion in excess of fifty one hundred thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. Notice of any portion of an award or judgment in excess of one hundred thousand dollars shall be delivered by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable. Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written receipt by the claimant in a form provided by the Attorney General.

Sec. 32. 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 sections 23 to 28 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. 33. Section 48-1,116, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,116. The Compensation Court Cash Fund is hereby created. The fund shall be used to aid in providing for the expense of administering the Nebraska Workers' Compensation Act and the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court.

All fees received pursuant to sections 48-120, 48-120.02, 48-138, 48-139, 48-145.04, ~~48-157, 48-162,~~ and 48-165 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. The fund shall also consist of amounts credited to the fund pursuant to sections 48-1,113, 48-1,114, and 77-912. The State Treasurer may receive and credit to the fund any money which may at any time be contributed to the state or the fund by the federal government 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 the fund.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

~~The State Treasurer shall transfer four million dollars from the Compensation Court Cash Fund to the General Fund within fifteen days after July 1, 2002.~~

Sec. 34. Sections 1 to 4, 6 to 30, 32, 33, and 37 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 35. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 36. Original sections 48-125 and 48-1,102, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 37. Original sections 48-106, 48-118, 48-120.02, 48-121.02, 48-144, 48-144.03, 48-145, 48-145.01, 48-145.02, 48-145.04, 48-146.02, 48-152, 48-155, 48-157, 48-158, 48-159, 48-162, 48-162.01, 48-162.02, 48-163, 48-165, 48-177, 48-188, 48-1,110, and 48-1,116, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 38. Since an emergency exists, this act takes effect when passed and approved according to law.