

LEGISLATIVE BILL 808

Approved by the Governor March 22, 1974

Introduced by Kelly, 35

AN ACT to amend section 48-162.01, Revised Statutes Supplement, 1972, and section 48-121, Revised Statutes Supplement, 1973, as amended by section 1, Legislative Bill 807, Eighty-third Legislature, Second Session, 1974, relating to workmen's compensation; to create the Vocational Rehabilitation Fund and provide its source and use; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 48-121, Revised Statutes Supplement, 1973, as amended by section 1, Legislative Bill 807, Eighty-third Legislature, Second Session, 1974, be amended to read as follows:

48-121. The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds per cent of the wages received at the time of injury, but such compensation shall not be more than eighty dollars per week, nor less than forty-nine dollars per week; Provided, that if at the time of injury the employee receives wages of less than forty-nine dollars per week, then he shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease.

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds per cent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than eighty dollars per week. This compensation shall be paid during the period of such partial disability, but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total

disability.

(3) For disability resulting from permanent injury of the following classes, the compensation shall be in addition to the amount paid for temporary disability; Provided, the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable, viz: For the loss of a thumb, sixty-six and two-thirds per cent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds per cent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds per cent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds per cent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per cent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one half of such thumb or finger and compensation shall be for one half of the periods of time above specified, and the compensation for the loss of one half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; Provided, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds per cent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds per cent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one half of such toe, and compensation shall be for one half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds per cent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds per cent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds per cent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds per cent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds per cent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds per cent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds per cent of daily wages during fifty weeks. For the loss of hearing in both ears, sixty-six and two-thirds per cent of daily wages

during one hundred weeks. For the loss of the nose, sixty-six and two-thirds per cent of daily wages during fifty weeks.

In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to the provisions of subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in said subdivision as the disabilities bear to those produced by the injuries named therein. Should the employer and the employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of sections 48-173 to 48-185. Compensation under this subdivision shall not be more than eighty dollars per week, nor less than forty-nine dollars per week; Provided, that if at the time of the injury the employee received wages of less than forty-nine dollars per week, then he shall receive the full amount of such wages per week as compensation.

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee the weekly wages shall be taken to be computed upon the basis of a work week of a minimum of five days, if the wages are paid by the day, or upon the basis of a work week of a minimum of forty hours, if the

wages are paid by the hour, or upon the basis of a work week of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

~~(5) In determining earning power or the less of earning power or in determining disability, any increase in earning power or earning capacity or any decrease in disability which is the result of vocational rehabilitation undertaken under the provisions of this act shall be taken into consideration and given effect. The employee shall be entitled to compensation from his employer for temporary disability while undergoing undergoing rehabilitation.~~

Sec. 2. That section 48-162.01, Revised Statutes Supplement, 1972, be amended to read as follows:

48-162.01. (1) One of the primary purposes of this act shall be restoration of the injured employee to gainful employment. To this end the Nebraska Workmen's Compensation Court may employ one or more specialists in physical, medical, and vocational rehabilitation to be appointed by the presiding judge.

(2) Such specialists shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public, which have been approved by the court. The court shall approve as qualified such facilities, institutions, and physicians as are capable of rendering competent rehabilitation service to seriously 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 has had the experience and training specified by the court.

(3) An employee who has suffered an injury covered by sections 48-101 to 48-151 shall be entitled to prompt medical and physical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable

employment. If such services are not voluntarily offered and accepted, the court or any judge thereof on its or his own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the court or judge thereof, may refer the employee to a qualified physician or facility for evaluation and report of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation, the costs of such evaluation and report involving physical or medical rehabilitation to be borne by the employer or his insurer, except that the costs of such evaluation and report involving vocational rehabilitation shall be paid from the Vocational Rehabilitation Fund. When both physical or medical rehabilitation and vocational rehabilitation are involved, the costs may be apportioned by the court between the employer and the Vocational Rehabilitation Fund. Upon receipt of such report, and after affording the parties an opportunity to be heard, the court or judge thereof may order that the physical or medical services and treatment recommended in the report, or such other physical or medical rehabilitation treatment or service he or they may deem necessary, be provided at the expense of the employer or his insurer. Vocational rehabilitation training, treatment, or service shall ~~not extend for a period of more than twenty-six weeks--except in unusual cases when by special order of the court, or judge thereof, after hearing, the period may be extended for not to exceed an additional twenty-six weeks~~ be paid from the Vocational Rehabilitation Fund.

(4) ~~where~~ when physical or medical rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, either in or out of the State of Nebraska, the reasonable costs of his board, lodging, and travel shall be paid for by the employer or his insurer in addition to any other benefits payable under sections 48-101 to 48-151, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution and away from the employee's customary residence and whether within or without this state, the reasonable costs of his board, lodging, and travel shall be paid from the Vocational Rehabilitation Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his insurer.

(5) The 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.

(6) Whenever the court or judge thereof determines that there is a reasonable probability that with appropriate training, rehabilitation, or education a person who is entitled to compensation for total or partial disability which is or is likely to be permanent may be rehabilitated to the extent that he will require less care and attendance or to the extent that he can become gainfully employed or increase his earning capacity and that it is for the best interests of such person to undertake such training, rehabilitation, or education, if the injured employee without reasonable cause refuses to undertake the rehabilitation, training, or educational program determined by the court or judge thereof to be suitable for him or refuses to be evaluated under the provisions of subsection (3) of this section, the court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under sections 48-101 to 48-151.

Sec. 3. There is hereby created a special trust fund for the purposes set forth in section 48-162.01, which sum so set aside shall be known as the Vocational Rehabilitation Fund.

The Vocational Rehabilitation Fund shall be for the purpose of making payments in accordance with the provisions of section 48-162.01. The State Treasurer shall be the custodian of the Vocational Rehabilitation 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 Vocational Rehabilitation Fund shall be raised and derived from the following source: Every insurance company which is transacting business in this state shall, on or before March 1 of each year, pay to the Director of Insurance an amount equal to one per cent of the gross amount of direct writing premiums received by it during the preceding calendar year for workmen's compensation insurance business done in this state.

The computation of the amounts as provided in 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 prior to the end of the year for which the amounts are payable together with any information relative to the amounts as may be needed or desirable. Upon receipt of the payment, the director shall audit and examine the computations and satisfy himself that the amounts have been properly paid in conformity with the provisions of this section.

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

The Director of Insurance shall deposit the amounts paid, in conformity with the provisions of this section, with the State Treasurer for the benefit of the Vocational Rehabilitation Fund promptly upon completion of his audit and examination, and in no event later than May 1 of the year in which the amounts have been received, except that when there is a dispute as to the amount payable, the proceeds may not be deposited by the director with the State Treasurer until disposition of the controversy, and one per cent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

Every employer in the occupations described in section 48-106 who shall qualify as a self-insurer and who shall be issued a permit to self-insure shall furnish to the State Treasurer for the benefit of the Vocational Rehabilitation Fund an annual amount equal to one per cent of the prevailing premium rate which would be paid for a policy of workmen's compensation insurance to insure such risk as provided in this section but in no event less than twenty-five dollars.

The amounts required to be paid by the insurance companies and self-insurers under 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.

The Nebraska Workmen's Compensation Court shall be charged with the conservation of the assets of the Vocational Rehabilitation Fund. The Attorney General shall appoint a member of his staff to represent the Vocational Rehabilitation Fund when necessary.

The State Treasurer, as custodian of the Vocational Rehabilitation Fund, shall furnish monthly to the Nebraska Workmen's Compensation Court a statement of such fund setting forth the balance thereof as of the beginning of each month, the income therefrom, and the sources thereof, the payments from such fund in itemized form, and the balance on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress

or otherwise by reason of any payment made from the fund.

When the fund shall equal or exceed four hundred thousand dollars, no further contributions thereto shall be required by employers or insurance carriers, but thereafter whenever the amount of the fund shall be reduced below two hundred thousand dollars, by reason of payments made pursuant to this section, or otherwise, or whenever the Nebraska Workmen's Compensation Court shall determine that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below two hundred thousand dollars, the Nebraska Workmen's Compensation Court shall notify all self-insurers and the Director of Insurance. He shall notify all workmen's compensation insurance carriers, that such contributions are forthwith to be resumed as of the date set in such notice and such contributions shall thereafter continue as provided in this section after the effective date of such notice, and such contributions shall thereafter continue until the fund shall again amount to four hundred thousand dollars. Out of the Vocational Rehabilitation Fund, payments shall be made in accordance with the provisions of section 48-162.01 in the same manner as for claims against the state.

Any expenses necessarily incurred by the Vocational Rehabilitation Fund may be paid out of the Vocational Rehabilitation Fund.

Sec. 4. Sections 1 and 2 of this act shall become operative on July 1, 1975.

Sec. 5. That original section 48-162.01, Revised Statutes Supplement, 1972, and section 48-121, Revised Statutes Supplement, 1973, as amended by section 1, Legislative Bill 807, Eighty-third Legislature, Second Session, 1974, are repealed.

Sec. 6. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.