

LEGISLATIVE BILL 608

Approved by the Governor June 7, 1985

Introduced by Schmit, 23; Chambers, 11

AN ACT relating to worker's compensation; to amend sections 48-121 and 48-122, Reissue Revised Statutes of Nebraska, 1943; to change the compensation benefits; and to repeal the original sections.

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

Section 1. That section 48-121, Reissue Revised Statutes of Nebraska, 1943, 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 two hundred dollars per week the maximum weekly income benefit specified in section 3 of this act, nor less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act; PROVIDED, that if at the time of injury the employee receives wages of less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act, then he or she 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 two hundred dollars per week the maximum weekly income benefit specified in section 3 of this act. 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 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 hearing in both ears, 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 hearing in both ears, 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 two hundred dollars per week the maximum weekly income benefit specified in section 3 of this act, nor less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act; PROVIDED, that if at the time of the injury the employee received wages of less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act, then he or she 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) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing rehabilitation.

Sec. 2. That section 48-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-122. (1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of section 48-123, shall be not more than two hundred dollars per week the maximum weekly income benefit specified in section 3 of this act nor less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act; PROVIDED, that if at the time of injury the employee receives wages of less than forty-nine dollars per week the minimum weekly income benefit specified in section 3 of this act, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, 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.

(3) Upon the death of an employee, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of burial, not exceeding two thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there be no dependents, then to his or her personal representative.

(4) Compensation under this act to alien dependents who are not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5) The consul general, consul, vice consul general, or vice consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul general, consul, vice consul general, or vice consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his

or her representative, residing in the State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act, and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

Sec. 3. Commencing on the effective date of this act, the maximum weekly income benefit under sections 48-121 and 48-122 shall be two hundred twenty-five dollars and the minimum weekly income benefit under sections 48-121 and 48-122 shall be forty-nine dollars.

Sec. 4. That original sections 48-121 and 48-122, Reissue Revised Statutes of Nebraska, 1943, are repealed.