

LEGISLATIVE BILL 1146

Approved by the Governor March 23, 1988

Introduced by Hall, 7

AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-145, Revised Statutes Supplement, 1986, and section 48-146, Revised Statutes Supplement, 1987; to change provisions relating to self-insurance; to provide for treatment of instruments evidencing self-insurance; 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 48-145, Revised Statutes Supplement, 1986, be amended to read as follows:

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

(1) Every employer in the occupations described in section 48-106 shall either (a) insure and keep insured his or her liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state or (b) as a self-insurer furnish to the State Treasurer an annual amount equal to two percent of the prevailing premium rate which would be paid for like employment to any corporation, association, or organization, for carrying such risk as provided in this section but in no event less than twenty-five dollars. He or she shall also furnish to the Nebraska Workers' Compensation Court satisfactory proof of his or her financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. In the latter case the compensation court may in its discretion require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the

self-insurer. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document. The compensation court may in its discretion withdraw such approval as a self-insurer at any time;

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

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

Sec. 2. That section 48-146, Revised Statutes Supplement, 1987, be amended to read as follows:

48-146. (1) No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or

otherwise. Such agreement shall be construed to be a direct promise by the insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Every policy for the insurance of the compensation herein provided, or against liability thereof, or agreement forming any risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into any such policy of insurance unless copies of such forms have been filed with and approved by the Department of Insurance. All policies insuring the payment of compensation under the Nebraska Workers' Compensation Act and agreements pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool ~~must~~ shall contain a clause to the effect ~~(1)~~ (a) that as between the employer and the insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, ~~(2)~~ (b) that jurisdiction of the insured for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and ~~(3)~~ (c) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. All such policies insuring the payment of compensation and all such agreements providing such group self-insurance coverage shall include within their terms the payment of compensation to all employees, officers, or workers who are within the scope and purview of the Nebraska Workers' Compensation Act.

(2) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to section 48-145 shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees as generally provided in this chapter.

Sec. 3. That original section 48-145, Revised Statutes Supplement, 1986, and section 48-146, Revised Statutes Supplement, 1987, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.