

## LEGISLATIVE BILL 1221

Approved by the Governor April 11, 2000

Introduced by Business and Labor Committee: Vrtiska, 1, Chairperson;  
Dierks, 40; Hilgert, 7; Preister, 5; Redfield, 12; Schimek, 27

AN ACT relating to workers' compensation; to amend sections 44-5016, 48-118, 48-122.01, 48-124, 48-128, 48-144.04, 48-155, 48-162.02, 48-174, 48-179, 48-195, 48-196, and 48-1,107, Reissue Revised Statutes of Nebraska, and sections 48-120.02, 48-145, 48-145.04, and 48-162.01, Revised Statutes Supplement, 1999; to create, eliminate, and transfer funds; to change provisions relating to age of dependency, service of process, review, certification of managed care plans, and self-insurers; to eliminate certain duties of the Nebraska Workers' Compensation Court; to harmonize provisions; 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. Section 44-5016, Reissue Revised Statutes of Nebraska, is amended to read:

44-5016. Special assessments shall mean guaranty fund assessments, ~~Second Injury Fund assessments, Vocational Rehabilitation Fund Workers' Compensation Trust Fund~~ assessments, residual market assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.

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, the employer shall be subrogated to the right of the employee or to the dependents against such third person, and 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 ~~Second Injury Fund~~ 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 ~~Second Injury Fund~~ 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, Revised Statutes Supplement, 1999, 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 revoked or suspended. 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 ~~providers of~~ medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change ~~medical, surgical, or hospital service providers~~ 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 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 or service under the plan is not being provided in accordance with the terms of a certified plan.

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

Sec. 4. Section 48-122.01, Reissue Revised Statutes of Nebraska, is

amended to read:

48-122.01. Compensation under section 48-122 shall be payable in the amount and to the following persons subject to the maximum limits specified in sections 48-122 and 48-122.03:

(1) If there is a widow or widower and no children of the deceased, as defined in section 48-124, to such widow or widower, sixty-six and two-thirds percent of the average weekly wage of the deceased, during widowhood or widowerhood;

(2) To the widow or widower, if there is a child or children living with the widow or widower, sixty percent of the average weekly wage of the deceased, or fifty-five percent, if such child is not or such children are not living with a widow or widower, and, in addition thereto, fifteen percent for each child. When there are two or more such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike;

(3) Two years' indemnity benefits in one lump sum shall be payable to a widow or widower upon remarriage;

(4) To the children, if there is no widow or widower, sixty-six and two-thirds percent of such wage for one child, and fifteen percent for each additional child, divided among such children, share and share alike;

(5) The income benefits payable on account of any child under this section shall cease when he or she dies, marries, or reaches the age of ~~eighteen~~ nineteen, or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of twenty-five. A child who originally qualified as a dependent by virtue of being less than ~~eighteen~~ nineteen years of age may, upon reaching age ~~eighteen~~ nineteen, continue to qualify if he or she satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution;

(6) To each parent, if actually dependent, twenty-five percent;

(7) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, twenty-five percent to each such dependent. If there should be more than one of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike;

(8) The income benefits of each beneficiary under subdivisions (6) and (7) of this section shall be paid until he or she, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of ~~eighteen~~ nineteen or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent; and

(9) A person ceases to be actually dependent when his or her income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subdivision and section 48-124.

Sec. 5. Section 48-124, Reissue Revised Statutes of Nebraska, is amended to read:

48-124. The following persons shall be conclusively presumed to be dependent for support upon a deceased employee: (1) A wife upon a husband with whom she is living or upon whom she is actually dependent at the time of his injury or death; (2) a husband upon a wife with whom he is living or upon whom he is actually dependent at the time of her injury or death; and (3) a child or children under the age of ~~eighteen~~ nineteen years, or over such age, if physically or mentally incapable of self-support, or any child ~~eighteen~~ nineteen years of age or over who is actually dependent, or any child between ~~eighteen~~ nineteen and twenty-five years of age who is enrolled as a full-time student in any accredited educational institution.

The term child shall include a posthumous child, a child legally adopted or for whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an

actually dependent stepchild, or a child born out of wedlock. Child shall not include a married child unless receiving substantially entire support from the employee. Grandchild shall mean a child, as above defined, of a child, as above defined, except that as to the latter child, the limitations as to age in the above definition do not apply.

Brother or sister shall mean a brother or sister under ~~eighteen~~ nineteen years of age, or ~~eighteen~~ nineteen years of age or over and physically or mentally incapable of self-support, or ~~eighteen~~ nineteen years of age or over and actually dependent. The terms brother and sister shall include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption but shall not include married brothers or married sisters unless receiving substantially entire support from the employee.

Parent shall mean a mother or father, a stepparent, a parent by adoption, a parent-in-law, and any person who for more than one year immediately prior to the death of the employee stood in the place of a parent to him or her, if actually dependent in each case.

Actually dependent shall mean dependent in fact upon the employee and shall refer only to a person who received more than half of his or her support from the employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word dependent shall mean any person entitled to death benefits. No person shall be considered a dependent, unless he or she be a member of the family of the deceased employee, or bears to him or her the relation of widow, widower, lineal descendant, ancestor, brother, or sister. Questions as to who constitute dependents and the extent of their dependency shall initially be determined as of the date of the accident to the employee, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees. No dependent of any injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him or her for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Sec. 6. Section 48-128, Reissue Revised Statutes of Nebraska, is amended to read:

48-128. (1) For injuries occurring before December 1, 1997:

(a) If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his or her obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. For the additional disability, the employee shall be compensated out of a ~~special trust fund created for that purpose which shall be known as the Second Injury Fund which is hereby created~~ the Workers' Compensation Trust Fund. If the subsequent compensable injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent partial disability, the employer shall pay the compensation benefits prescribed by this subsection for a period not exceeding three hundred twenty-five weeks, and for any compensation benefits payable after such period of three hundred twenty-five weeks, the dependents shall be compensated out of the fund.

(b) In order to qualify under this subsection, the employer must establish by written records that the employer had knowledge of the preexisting permanent partial disability at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired such knowledge.

(c) As used in this subsection, preexisting permanent partial disability shall mean any preexisting permanent condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this subsection unless it would support a rating of twenty-five percent loss of earning power or more or support a rating which would result in compensation payable for a period of

ninety weeks or more for disability for permanent injury as computed under subdivision (3) of section 48-121.

(2) Any money in the Second Injury Fund on the operative date of this act shall be transferred to the Workers' Compensation Trust Fund. ~~(2)(a)~~ The Second Injury Fund shall be for the purpose of making payments in accordance with subsection (1) of this section and for paying administrative expenses relating to such fund. 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.

(b) The computation of the amounts as provided in this subsection 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 risk management pools 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 or herself that the amounts have been properly paid in conformity with this subsection.

(c) The Director of Insurance, after notice and hearing pursuant to sections 44-2301 and 44-2312, may rescind or refuse to reissue the license of any company which fails to remit the amounts due in conformity with this subsection.

(d) The Director of Insurance shall remit the amounts paid, in conformity with this subsection, to the State Treasurer for credit to the Second Injury Fund promptly upon completion of his or her 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. One percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(e) 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 furnish to the State Treasurer for the benefit of the 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.

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

~~(3)(a)~~ The presiding judge of the Nebraska Workers' Compensation Court shall be charged with the conservation of the assets of the Second Injury Fund. In furtherance of this purpose the Attorney General shall appoint a member of his or her staff to represent the Second Injury Fund in all proceedings brought to enforce claims for or against such fund.

(b) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Second Injury Fund setting forth the balance of the fund as of the beginning of each month while such fund is in existence, the income and its sources, the payments from such 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.

(c) When the fund equals or exceeds eight hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance carriers. Thereafter whenever the amount of the fund is reduced below four hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the presiding judge of the Nebraska Workers' Compensation Court determines that payments likely to be

made from the fund in the next succeeding year will probably cause the fund to be reduced below four hundred thousand dollars, the presiding judge of the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance carriers 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 eight hundred thousand dollars. Out of the Second Injury Fund, the additional compensation payments shall be made to such employee or dependent by the compensation court once each month in the same manner as the salaries of the employees of the compensation court are paid. In all cases when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, employer's insurer, or risk management pool under this section or when a claim is made against such fund, 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 of summons shall be had upon the Attorney General. It shall be the duty of the Attorney General to act as attorney for the state.

(d) Any expenses necessarily incurred by the Second Injury Fund or by the Attorney General on behalf of such fund in any case when a claim is asserted by the state on behalf of the Second Injury Fund against an employer, employer's insurer, or risk management pool under this section or when a claim is made against the Second Injury Fund may be paid out of such fund. Such expenses may be taxed as costs and recovered by the Second Injury Fund in any such case in which the Second Injury Fund prevails.

Sec. 7. Section 48-144.04, Reissue Revised Statutes of Nebraska, is amended to read:

48-144.04. Any employer, risk management pool, or insurance carrier who fails, neglects, or refuses to file any report required of him or her by the Nebraska Workers' Compensation Court shall be guilty of a Class II misdemeanor for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer, risk management pool, or insurance carrier has been given notice, or the employer, risk management pool, or the insurance carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in section 48-137 and for injuries occurring before December 1, 1997, the limitations in section 48-128 shall not begin to run against the claim of the injured employee or his or her dependents entitled to compensation or against the State of Nebraska on behalf of the Second Injury Fund Workers' Compensation Trust Fund, or in favor of either the employer, risk management pool, or the insurance carrier until such report shall have been furnished as required by the compensation court.

Sec. 8. Section 48-145, Revised Statutes Supplement, 1999, 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 ~~his or her~~ 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) ~~or,~~ in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 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 ~~or (b) as a self-insurer 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. He or she shall also furnish to the Nebraska Workers' Compensation Court~~ 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~~ The compensation court may in its discretion 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 the Nebraska Workers' Compensation Act~~ 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. ~~The compensation court may in its discretion withdraw such approval as a self-insurer at any time;~~

(2) 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. Appeal from such suspension or revocation 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 subdivision (1) of this section 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. 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. 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. 9. Section 48-145.04, Revised Statutes Supplement, 1999, is amended to read:

48-145.04. (1) 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 ~~(1)(b)~~ (2) of section 48-145 and section 48-1,114. The court 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. 10. 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. 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 ~~preside at all review hearings held by the compensation court, make all rulings for the compensation court at such review hearings,~~ rule on all matters submitted to the compensation court except those arising in the course of original or review hearings, ~~before a single judge,~~ assign or direct the assignment of the work of the compensation court to the several judges and employees thereof, 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. 11. Section 48-162.01, Revised Statutes Supplement, 1999, 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, ~~and~~ or vocational rehabilitation to be appointed by the presiding judge. Salaries, other benefits, and expenses incurred for purposes of vocational rehabilitation may be paid from the Vocational Rehabilitation Fund created under section 48-162.02 Workers' Compensation Trust Fund.

(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 and individual service providers, ~~and~~ counselors, both private and public, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court ~~shall~~ may approve as qualified such facilities, institutions, physicians, and other individual service providers, ~~and~~ counselors, and specialists 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 or she has had the experience and training specified by the compensation court. No individual service provider, ~~or~~ counselor, or specialist shall be considered qualified 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, as may be reasonably necessary to restore him or her to suitable employment.

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 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 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. 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 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 to be unlikely to result in a job placement for the injured employee that is consistent with the priorities listed in this section. 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 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) If physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' 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 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 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 insurer.

Vocational rehabilitation training costs shall be paid from the Vocational Rehabilitation Fund.

(4) (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 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 Vocational Rehabilitation Fund ~~Workers' Compensation Trust Fund~~ and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(5) (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.

(6) (7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the 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) 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. 12. Section 48-162.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-162.02. (1) The Vocational Rehabilitation Fund ~~is hereby Workers' Compensation Trust Fund~~ is created.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01 and for paying

~~administrative expenses relating to such fund. The Vocational Rehabilitation Fund shall be for the purpose of making payments in accordance with section 48-162.01.~~ 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 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 ~~relative to the amounts as may be needed or desirable~~ deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations ~~and satisfy himself or herself that the amounts have been properly paid in conformity with this section to determine that the proper amount has been paid.~~

(4) The Director of Insurance, after notice and hearing ~~pursuant to sections 44-2301 and 44-2312~~ in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the license certificate of authority of any company or pool which fails to remit the amounts amount due. ~~in conformity with this section.~~

(5) The Director of Insurance shall remit the amounts paid, ~~in conformity with this section,~~ to the State Treasurer for credit to the Vocational Rehabilitation Fund Workers' Compensation Trust Fund promptly upon completion of ~~his or her~~ 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 ~~may not be deposited by the director with the State Treasurer~~ shall be credited to a suspense account until disposition of the controversy. ~~One 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 ~~furnish~~ remit to the State Treasurer for ~~the benefit of the Vocational Rehabilitation Fund~~ 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 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 shall be charged with the conservation of the assets of the ~~Vocational Rehabilitation Fund Workers' Compensation Trust Fund.~~ 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 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) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the ~~Vocational Rehabilitation Fund Workers' Compensation Trust Fund~~ setting forth the balance of the fund as of the ~~beginning of each~~ beginning of each first day of the preceding month, the income and its sources, the payments from ~~such 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) When the fund equals or exceeds ~~one million five hundred thousand~~ two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance ~~carriers~~ companies. Thereafter whenever the amount of the fund is reduced below ~~eight hundred thousand~~ one million two hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the presiding judge of the Nebraska Workers' Compensation Court determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below ~~eight hundred thousand~~ one million two hundred thousand dollars, the presiding judge of the compensation court shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance ~~carriers~~ 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 ~~one million five hundred thousand~~ 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) Any expenses necessarily incurred by the ~~Vocational Rehabilitation Fund~~ Workers' Compensation Trust Fund or by the Attorney General on behalf of 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.

(12) Any money in the Vocational Rehabilitation Fund on the operative date of this act shall be transferred to the Workers' Compensation Trust Fund.

Sec. 13. Section 48-174, Reissue Revised Statutes of Nebraska, is amended to read:

48-174. Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within seven days ~~from the issuance of the summons after the date of issue.~~ An acknowledgment on the summons or the voluntary appearance of a defendant is equivalent to service. ~~In all cases the return day for the original summons shall be on or before seven days from the date of filing the petition.~~

Sec. 14. Section 48-179, Reissue Revised Statutes of Nebraska, is amended to read:

48-179. Either party at interest who refuses to accept the final findings, order, award, or judgment of the Nebraska Workers' Compensation Court on the original hearing may, within fourteen days after the date thereof, file with the compensation court an application for review before the compensation court, plainly stating the errors on which such party relies for reversal or modification and a brief statement of the relief sought. Such application must be specific as to each finding of fact and conclusion of law urged as error and the reason therefor. General allegations shall not be accepted. The party or parties appealing for review shall be bound by the allegations of error contained in the application and will be deemed to have waived all others. No party may file a motion for new trial, a motion for reconsideration, or a petition for rehearing before the judge at the original hearing. Such party shall at the same time file with the compensation court copies of such application for the other party or parties at interest. The compensation court shall then immediately serve upon such other party or parties by mail or otherwise, as elsewhere herein provided, a copy of such application for review, and shall proceed to hear the cause on the record of the original hearing. The review by the compensation court shall be held in Lancaster County, Nebraska, or in any other county in the state at the discretion of the compensation court. Within fourteen days after such review the compensation court shall make its findings, order, award, or judgment, determining the issues in such cause. Upon the joint stipulation of the parties to dismiss, the compensation court may dismiss such an application without a review. No new evidence may be introduced at such review hearing. The review panel may write an opinion, but need not do so, and may make its decision by a brief summary order. The compensation court may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds that the judge was clearly wrong on the evidence or the decision was contrary to law. On review, the compensation court may affirm, modify,

reverse, or remand the judgment on the original hearing.

Sec. 15. Section 48-195, Reissue Revised Statutes of Nebraska, is amended to read:

48-195. The State Claims Board, ~~with the approval of the Nebraska Workers' Compensation Court,~~ shall, pursuant to the Administrative Procedure Act, adopt and promulgate such rules and regulations as are necessary to carry out sections 48-192 to 48-1,109.

Sec. 16. Section 48-196, Reissue Revised Statutes of Nebraska, is amended to read:

48-196. The State Claims Board, ~~with the approval of the Nebraska Workers' Compensation Court,~~ may delegate to a state agency the handling of workers' compensation claims of employees of that agency, under the supervision and direction of the Attorney General.

Sec. 17. Section 48-1,107, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,107. The Risk Manager, ~~with the approval of the Nebraska Workers' Compensation Court,~~ may, if after proper investigation he or she deems it to be in the best interests of the state, purchase a policy or policies of insurance for investigation, servicing, and payment, or any one or two of such factors, of workers' compensation to protect the agencies and their employees. Such policy or policies shall contain such conditions, requirements, limitations, and amounts deemed necessary by the Risk Manager. ~~and approved by the compensation court.~~ The Risk Manager shall purchase such policy or policies by public letting and payment shall be made therefor out of the State Insurance Fund created pursuant to section 81-8,239.02.

Sec. 18. This act becomes operative on July 1, 2000.

Sec. 19. Original sections 44-5016, 48-118, 48-122.01, 48-124, 48-128, 48-144.04, 48-155, 48-162.02, 48-174, 48-179, 48-195, 48-196, and 48-1,107, Reissue Revised Statutes of Nebraska, and sections 48-120.02, 48-145, 48-145.04, and 48-162.01, Revised Statutes Supplement, 1999, are repealed.

Sec. 20. Since an emergency exists, this act takes effect when passed and approved according to law.