

## LEGISLATIVE BILL 210

Approved by the Governor May 28, 2003

Introduced by Bromm, 23; Connealy, 16

AN ACT relating to workers' compensation; to amend section 48-125.01, Reissue Revised Statutes of Nebraska, and section 48-106, Revised Statutes Supplement, 2002; to change applicability; to change penalties; and to repeal the original sections.

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

Section 1. Section 48-106, Revised Statutes Supplement, 2002, is amended to read:

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

(2) The act shall not apply to:

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

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

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

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

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

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

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

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this

subsection voids an employer's attempt to return to exempt status.

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

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

(9) For purposes of this section:

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

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

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage. The Nebraska Workers' Compensation Act shall apply to the State of Nebraska and every governmental agency created by it, and to every employer in this state, including nonresident employers performing work in the State of Nebraska, employing one or more employees, in the regular trade, business, profession, or vocation of such employer, except railroad companies engaged in interstate or foreign commerce.

(2) The following are declared not to be hazardous occupations and not within the provisions of the Nebraska Workers' Compensation Act: Employers of household domestic servants and employers of farm or ranch laborers. An employer who is excluded from the act under this subsection may elect to bring the employees of such employer within the provisions of the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If an employer who is excluded from the act under this subsection has not elected to bring the employees of such employer within the provisions of the act by obtaining a policy of workers' compensation insurance as provided in this subsection and any health, accident, or other insurance policy covering such employees contains an exclusion of coverage if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such employees.

(3) The procuring by any such employer of such a policy of insurance, referred to in subsection (2) of this section, which is in full force and effect at the time of an accident to any of his or her employees, shall be conclusive proof of such employer's and his or her employees' election to be bound by the Nebraska Workers' Compensation Act, to all intents and purposes as if they had not been specifically excluded by the terms of this section. Such employer of household domestic servants and such employer of farm or ranch laborers who has procured such a policy of insurance may elect to return to the status of being not within the provisions of the Nebraska Workers' Compensation Act by (a) no longer carrying a policy of workers' compensation insurance and (b) posting and thereafter keeping continuously posted for a period of at least one year in a conspicuous place about the place or places where his or her workers are employed a written or printed notice of election not to be bound by the provisions of such act.

Sec. 2. Section 48-125.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-125.01. Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer, after one of his or her employees has been injured within the purview of the Nebraska Workers' Compensation Act, and with intent to avoid the payment of compensation under such act to such employee or his or her dependents, shall be guilty of a Class I misdemeanor. In any case when such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I misdemeanor as well as jointly and severally liable with such corporation for any fine imposed upon the corporation. In any case when such employer is a limited liability company, any member or manager thereof, if knowingly participating or acquiescing in the act with intent to avoid the payment of compensation under the Nebraska Workers' Compensation Act, shall be also individually guilty of a Class I misdemeanor as well as jointly and severally liable with such limited liability company for any fine imposed upon the limited liability company. In any case when such employer is a limited partnership or a limited liability partnership, any general partner, if knowingly participating or acquiescing in the act with intent to avoid the payment under the Nebraska Workers' Compensation Act, shall also be guilty of a Class I misdemeanor as well as jointly and severally liable with such limited partnership or limited liability partnership, and limited partners shall not be liable.

Sec. 3. Original section 48-125.01, Reissue Revised Statutes of Nebraska, and section 48-106, Revised Statutes Supplement, 2002, are repealed.