

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 256

FINAL READING

Introduced by Hansen, M., 26; Blood, 3.

Read first time January 11, 2021

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-139, Revised Statutes Cumulative Supplement, 2020;
- 3 to change provisions relating to lump-sum settlement approval and
- 4 the filing of releases; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 48-139 (1)(a) Whenever an injured employee or his or her dependents
4 and the employer agree that the amounts of compensation due as periodic
5 payments for death, permanent disability, or claimed permanent disability
6 under the Nebraska Workers' Compensation Act shall be commuted to one or
7 more lump-sum payments, such settlement shall be submitted to the
8 Nebraska Workers' Compensation Court for approval as provided in
9 subsection (2) of this section if:

10 (i) The employee is not represented by counsel;

11 (ii) The employee, at the time the settlement is executed, is
12 eligible for medicare, is a medicare beneficiary, or has a reasonable
13 expectation of becoming eligible for medicare within thirty months after
14 the date the settlement is executed. This subdivision (ii) is not
15 applicable if the employee's right to receive future medical, surgical,
16 and hospital services as provided in section 48-120 is specifically
17 excluded from the settlement and medicare has not paid medical, surgical,
18 or hospital expenses or if medicare has paid medical, surgical, or
19 hospital expenses for which it claims it is entitled to reimbursement and
20 medicare has been reimbursed for such expenses at the time the settlement
21 is executed;

22 (iii) Medical, surgical, or hospital expenses incurred for treatment
23 of the injury have been paid by medicaid and medicaid will not be
24 reimbursed as part of the settlement;

25 (iv) Medical, surgical, or hospital expenses incurred for treatment
26 of the injury will not be fully paid as part of the settlement; or

27 (v) The settlement seeks to commute amounts of compensation due to
28 dependents of the employee.

29 (b) If such lump-sum settlement is not required to be submitted for
30 approval by the compensation court, a release shall be filed with the
31 compensation court as provided in subsection (3) of this section. Nothing

1 in this section shall be construed to increase the compensation court's
2 duties or authority with respect to the approval of lump-sum settlements
3 under the act.

4 (2)(a) An application for an order approving a lump-sum settlement,
5 signed and verified by both parties, shall be filed with the clerk of the
6 compensation court and shall be entitled the same as an action by such
7 employee or dependents against such employer. The application shall
8 contain a concise statement of the terms of the settlement or agreement
9 sought to be approved with a brief statement of the facts concerning the
10 injury, the nature thereof, the wages received by the injured employee
11 prior thereto, the nature of the employment, a description of the
12 medical, surgical, or hospital expenses incurred for treatment of the
13 injury that will remain unpaid as part of the settlement which are
14 disputed and for which compensability has been denied by the employer,
15 and such other matters as may be reasonably required by the compensation
16 court. The application shall also include a statement that the parties
17 have considered the interests of medicare and have taken reasonable steps
18 to protect any interests of medicare. The application may provide for
19 payment of future medical, surgical, or hospital expenses incurred by the
20 employee. The compensation court may, on its own motion, and shall, on a
21 motion by one of the parties, hold a hearing on the application at a time
22 and place selected by the compensation court, and proof may be adduced
23 and witnesses subpoenaed and examined the same as in an action in equity.

24 (b)(i) If the compensation court finds such lump-sum settlement is
25 made in conformity with the compensation schedule and for the best
26 interests of the employee or his or her dependents under all the
27 circumstances, the compensation court shall make an order approving the
28 same.

29 (ii) If the expenses for medical, surgical, or hospital services
30 provided to the employee are not paid by the employer, or if any person,
31 other than medicaid, who has made any payment to the supplier of medical,

1 surgical, or hospital services provided to the employee, is not
2 reimbursed by the employer, it shall be conclusively presumed that the
3 nonpayment or nonreimbursement of disputed medical, surgical, or hospital
4 expenses, as set forth in the application, is in conformity with the
5 compensation schedule and for the best interests of the employee or his
6 or her dependents, if the employee's attorney elects to affirm and does
7 affirm in the application that the nonpayment or nonreimbursement of
8 disputed medical, surgical, or hospital expenses is in conformity with
9 the compensation schedule and for the best interests of the employee or
10 his or her dependents under all the circumstances.

11 (iii) If the employee, at the time the settlement is executed, is
12 eligible for medicare, is a medicare beneficiary, or has a reasonable
13 expectation of becoming eligible for medicare within thirty months after
14 the date the settlement is executed, and if the employee's attorney
15 elects to affirm and does affirm in the application that the parties'
16 agreement relating to consideration of medicare's interests set forth in
17 such lump-sum settlement is in conformity with the compensation schedule
18 and for the best interests of the employee or his or her dependents under
19 all the circumstances, it shall be conclusively presumed that the
20 parties' agreement relating to consideration of medicare's interests set
21 forth in the application is in conformity with the compensation schedule
22 and for the best interests of the employee or his or her dependents.

23 (iv) If such settlement is not approved, the compensation court may
24 dismiss the application at the cost of the employer or continue the
25 hearing, in the discretion of the compensation court.

26 (c) Every such lump-sum settlement approved by order of the
27 compensation court shall be final and conclusive unless procured by
28 fraud. An order approving an application under this subsection shall, in
29 any case in which the employee is represented by counsel and in which the
30 application contains a description of the medical, surgical, or hospital
31 expenses incurred for treatment of the injury that will remain unpaid as

1 part of the settlement which are disputed and for which compensability
2 has been denied by the employer, provide that the employer is not liable
3 for such expenses. Upon paying the amount approved by the compensation
4 court, the employer shall be discharged from further liability on account
5 of the injury or death, other than liability for the payment of future
6 medical, surgical, or hospital expenses if such liability is approved by
7 the compensation court on the application of the parties.

8 (d) An exclusion from coverage in any health, accident, or other
9 insurance policy covering an employee which provides that coverage under
10 such insurance policy does not apply if such employee is entitled to
11 workers' compensation coverage is void as to such employee if his or her
12 employer is not liable for medical, surgical, or hospital expenses
13 incurred for treatment of an injury that will remain unpaid as part of
14 the settlement pursuant to an order entered under subdivision (2)(c) of
15 this section.

16 (3) If such lump-sum settlement is not required to be submitted for
17 approval by the compensation court, a release shall be filed with the
18 compensation court in accordance with this subsection that is signed and
19 verified by the employee and the employee's attorney. The release shall
20 be made on a form approved by the compensation court and shall contain a
21 statement signed and verified by the employee that:

22 (a) The employee understands and waives all rights under the
23 Nebraska Workers' Compensation Act, including, but not limited to:

24 (i) The right to receive weekly disability benefits, both temporary
25 and permanent;

26 (ii) The right to receive vocational rehabilitation services;

27 (iii) The right to receive future medical, surgical, and hospital
28 services as provided in section 48-120, unless such services are
29 specifically excluded from the release; and

30 (iv) The right to ask a judge of the compensation court to decide
31 the parties' rights and obligations;

1 (b) The employee is not eligible for medicare, is not a current
2 medicare beneficiary, and does not have a reasonable expectation of
3 becoming eligible for medicare within thirty months after the date the
4 settlement is executed. This subdivision (b) is not applicable if the
5 employee's right to receive future medical, surgical, and hospital
6 services as provided in section 48-120 is specifically excluded from the
7 settlement and medicare has not paid medical, surgical, or hospital
8 expenses or if medicare has paid medical, surgical, or hospital expenses
9 for which it claims it is entitled to reimbursement and medicare has been
10 reimbursed for such expenses at the time the settlement is executed;

11 (c) There are no medical, surgical, or hospital expenses incurred
12 for treatment of the injury which have been paid by medicaid and not
13 reimbursed to medicaid by the employer as part of the settlement; and

14 (d) There are no medical, surgical, or hospital expenses incurred
15 for treatment of the injury that will remain unpaid after the settlement.

16 (4) Upon the entry of an order of dismissal with prejudice, a
17 release filed with the compensation court in accordance with subsection
18 (3) of this section shall be final and conclusive as to all rights waived
19 in the release unless procured by fraud. Amounts to be paid by the
20 employer to the employee pursuant to such release shall be paid within
21 thirty days of filing the release with the compensation court. Fifty
22 percent shall be added for payments owed to the employee if made after
23 thirty days after the date the release is filed with the compensation
24 court. Upon making payment owed by the employer as set forth in the
25 release and upon the entry of an order of dismissal with prejudice, as to
26 all rights waived in the release, such release shall be a full and
27 complete discharge from further liability for the employer on account of
28 the injury, including future medical, surgical, or hospital expenses,
29 unless such expenses are specifically excluded from the release.

30 (5) The fees of the clerk of the compensation court for filing,
31 docketing, and indexing an application for an order approving a lump-sum

1 settlement or filing a release as provided in this section shall be
2 fifteen dollars. The fees shall be remitted by the clerk to the State
3 Treasurer for credit to the Compensation Court Cash Fund.

4 Sec. 2. Original section 48-139, Revised Statutes Cumulative
5 Supplement, 2020, is repealed.