

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 101

Introduced by Erdman, 47.

Read first time January 06, 2023

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-106, Reissue Revised Statutes of Nebraska; to
- 3 provide for an exemption from the act for certain agricultural
- 4 operations; to provide for liability; to repeal the original
- 5 section; and to declare an emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-106, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-106 (1) The Nebraska Workers' Compensation Act shall apply to the
4 State of Nebraska, to every governmental agency created by the state,
5 and, except as provided in this section, to every resident employer in
6 this state and nonresident employer performing work in this state who
7 employs one or more employees in the regular trade, business, profession,
8 or vocation of such employer.

9 (2) The act shall not apply to:

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

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

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

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

23 (e) Service performed by a person who is engaged in an agricultural
24 operation, or performed by his or her related employees, when the service
25 performed is (i) occasional and (ii) for another person who is engaged in
26 an agricultural operation who has provided or will provide reciprocal or
27 similar service.

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

31 (4)(a) Except as provided in subdivision (4)(b) of this section, if

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

5 (b) An employer who meets the requirements of subdivision (2)(d) of
6 this section shall be exempt from the act if such employer files a waiver
7 with the Director of Insurance in a form and manner prescribed by the
8 director. The director shall develop such waiver in consultation with the
9 Nebraska Workers' Compensation Court. Such form shall be available to the
10 public on the website of the Department of Insurance. The department
11 shall make such form available on its website no later than September 1,
12 2023. A properly filed waiver shall be effective for a period of one year
13 from the date of filing. Such waiver may be renewed annually in a form
14 and manner prescribed by the director.

15 (c) An employer who is exempt from the act under subdivision (4)(b)
16 of this section shall be deemed liable for any injury occurring to an
17 employee as a direct result of performing the duties associated with the
18 job. Any company contracting with such employer shall not be deemed
19 liable for any such injury, and an employee of such an employer shall not
20 be considered an employee of such company.

21 (5) If an employer to whom the act applies because the employer
22 meets the requirements of subdivision (2)(d) of this section subsequently
23 does not employ ten or more unrelated, full-time employees, such employer
24 shall continue to provide workers' compensation insurance coverage for
25 the employees for the remainder of the calendar year and for the next
26 full calendar year. When the required coverage period has expired, such
27 employer may elect to return to exempt status by (a) posting,
28 continuously in a conspicuous place at the employment locations of the
29 employees for a period of at least ninety days, a written or printed
30 notice stating that the employer will no longer carry workers'
31 compensation insurance for the employees and the date such insurance will

1 cease and (b) thereafter no longer carrying a policy of workers'
2 compensation insurance. Failure to provide notice in accordance with this
3 subsection voids an employer's attempt to return to exempt status.

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

23 (7) Every employer exempted under subdivision (2)(d) of this section
24 who does not elect to provide workers' compensation insurance under
25 subsection (6) of this section shall give all unrelated employees at the
26 time of hiring or at any time more than thirty calendar days prior to the
27 time of injury the following written notice which shall be signed by the
28 unrelated employee and retained by the employer: "In this employment you
29 will not be covered by the Nebraska Workers' Compensation Act and you
30 will not be compensated under the act if you are injured on the job or
31 suffer an occupational disease. You should plan accordingly." Failure to

1 provide the notice required by this subsection subjects an employer to
2 liability under and inclusion in the act for any unrelated employee to
3 whom such notice was not given.

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

11 (9) For purposes of this section:

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

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

18 (c) Related employee means a spouse of an employer and an employee
19 related to the employer within the third degree by blood or marriage.
20 Relationship by blood or marriage within the third degree includes
21 parents, grandparents, great grandparents, children, grandchildren, great
22 grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and
23 spouses of the same. If the employer is a partnership, limited liability
24 company, or corporation in which all of the partners, members, or
25 shareholders are related within the third degree by blood or marriage,
26 then related employee means any employee related to any such partner,
27 member, or shareholder within the third degree by blood or marriage.

28 Sec. 2. Original section 48-106, Reissue Revised Statutes of
29 Nebraska, is repealed.

30 Sec. 3. Since an emergency exists, this act takes effect when
31 passed and approved according to law.