

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 203

Introduced by Riepe, 12.

Read first time January 09, 2023

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-146.02, Reissue Revised Statutes of Nebraska; to
- 3 provide for release of employee medical records as prescribed; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-146.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 48-146.02 (1)(a) If a three-judge panel of the Nebraska Workers'
4 Compensation Court finds, after due notice and hearing at which the
5 workers' compensation insurer is entitled to be heard and present
6 evidence, that such insurer has failed to comply with an obligation under
7 the Nebraska Workers' Compensation Act with such frequency as to indicate
8 a general business practice to engage in that type of conduct, the three-
9 judge panel may request the Director of Insurance to suspend or revoke
10 the authorization of such insurer to write workers' compensation
11 insurance under the provisions of Chapter 44 and such act. Such
12 suspension or revocation shall not affect the liability of any such
13 insurer under policies in force prior to the suspension or revocation.

14 (b) If a three-judge panel of the compensation court finds, after
15 due notice and hearing at which the risk management pool is entitled to
16 be heard and present evidence, that such pool has failed to comply with
17 an obligation under the Nebraska Workers' Compensation Act, as set out in
18 subsection (1) of section 44-4319, with such frequency as to indicate a
19 general business practice to engage in that type of conduct, the three-
20 judge panel may suspend or revoke the authority of the pool to provide
21 group self-insurance coverage of workers' compensation liability pursuant
22 to the Intergovernmental Risk Management Act. Such suspension or
23 revocation shall not affect the liability of any such risk management
24 pool under the terms of the agreement forming the pool in force prior to
25 the suspension or revocation.

26 (c) If a three-judge panel of the compensation court finds, after
27 due notice and hearing at which the self-insurer is entitled to be heard
28 and present evidence, that such self-insurer has failed to comply with an
29 obligation under the Nebraska Workers' Compensation Act with such
30 frequency as to indicate a general business practice to engage in that
31 type of conduct, the three-judge panel may revoke the approval of such

1 self-insurer to provide self-insurance coverage of workers' compensation
2 liability pursuant to section 48-145. Such revocation shall not affect
3 the liability of any such self-insurer under an approval by the
4 compensation court to self-insure in force prior to the revocation.

5 (d) The Attorney General, when requested by the administrator of the
6 compensation court, may file a motion pursuant to section 48-162.03 for
7 an order directing a workers' compensation insurer, risk management pool,
8 or self-insurer to appear before a three-judge panel of the compensation
9 court and show cause as to why the panel should not take action pursuant
10 to this subsection. The Attorney General shall be considered a party for
11 purposes of such motion. The Attorney General may appear before the
12 three-judge panel and present evidence that the workers' compensation
13 insurer, risk management pool, or self-insurer has failed to comply with
14 an obligation under the Nebraska Workers' Compensation Act with such
15 frequency as to indicate a general business practice to engage in that
16 type of conduct. The presiding judge shall rule on a motion of the
17 Attorney General pursuant to this subdivision and, if applicable, shall
18 appoint judges of the compensation court to serve on the three-judge
19 panel. The presiding judge shall not serve on such panel.

20 (e) Appeal from an action by a three-judge panel of the compensation
21 court pursuant to subdivision (1)(b) or (1)(c) of this section shall be
22 in accordance with section 48-185.

23 (2) In addition to any other obligations under the Nebraska Workers'
24 Compensation Act, the following acts or practices, when committed with
25 such frequency as to indicate a general business practice to engage in
26 that type of conduct, shall subject the workers' compensation insurer,
27 risk management pool, or self-insurer to action pursuant to subsection
28 (1) of this section:

29 (a) Knowingly misrepresenting relevant facts or the provisions of
30 the act or any rule or regulation adopted pursuant to such act;

31 (b) Failing to acknowledge with reasonable promptness pertinent

1 communications with respect to claims arising under the act;

2 (c) Failing to promptly investigate claims arising under the act;

3 (d) Not attempting in good faith to effectuate prompt, fair, and
4 equitable payment of benefits when compensability has become reasonably
5 clear;

6 (e) Refusing to pay benefits without conducting a reasonable
7 investigation;

8 (f) Failing to affirm or deny compensability of a claim within a
9 reasonable time after having completed the investigation related to such
10 claim;

11 (g) Paying substantially less than amounts owed under the act where
12 there is no reasonable controversy;

13 (h) Making payment to an injured employee, beneficiary of a deceased
14 employee, or provider of medical, surgical, or hospital services without
15 providing a reasonable and accurate explanation of the basis for the
16 payment;

17 (i) Unreasonably delaying the investigation or payment of benefits
18 by knowingly requiring excessive verification or duplication of
19 information;

20 (j) Failing, in the case of the denial of compensability or the
21 denial, change in, or termination of benefits, to promptly provide a
22 reasonable and accurate explanation of the basis for such action to the
23 injured employee or beneficiary of a deceased employee;

24 (k) Failing, in the case of the denial of payment for medical,
25 surgical, or hospital services, to promptly provide a reasonable and
26 accurate explanation of the basis for such action to the provider of such
27 services; or

28 (l) Failing to provide the compensation court's address and
29 telephone number to an injured employee or beneficiary of a deceased
30 employee with instructions to contact the court for further information:

31 (i) At or near the time the workers' compensation insurer, risk

1 management pool, or self-insurer receives notice or has knowledge of the
2 injury; and

3 (ii) At or near the time of the denial of compensability or the
4 denial, change in, or termination of benefits.

5 (3) In order for a compensation insurer, risk management pool, or
6 self-insurer to fulfill the obligations of subsection (2) of this
7 section, an employee filing a claim for workers' compensation benefits
8 with a compensation insurer, risk management pool, or self-insurer shall
9 provide a patient's waiver to the compensation insurer, risk management
10 pool, self-insurer, or employer upon the request by the same, allowing
11 the employee's employer or compensation insurer, risk management pool, or
12 self-insurer or its representative to obtain all previous hospital and
13 medical records, including patient information forms, concerning the
14 employee's previous treatment with any physician, psychologist, or other
15 medical provider. A compensation insurer, risk management pool, self-
16 insurer, or employer shall not pursuant to a patient's waiver be entitled
17 to an employee's hospital or medical records that pertain to an
18 employee's previous treatment for sexual abuse, human immunodeficiency
19 virus, reproductive health conditions, mental health conditions unless
20 seeking benefits for mental health injuries, or alcohol or controlled
21 substance abuse. The compensation court shall draft a patient's waiver
22 form to implement this subsection. Failure to provide a patient's waiver
23 shall toll the commencement of the thirty-day period for purposes of
24 liability under section 48-125. Any physician, psychologist, hospital,
25 institution, or other person releasing the information to the employee's
26 employer, compensation insurer, risk management pool, or self-insurer or
27 its representative shall not be liable criminally or for civil damages by
28 reason of the release of the information pursuant to the patient's
29 waiver.

30 (4) ~~(3)~~ In order to determine compliance with obligations under the
31 Nebraska Workers' Compensation Act, the compensation court or its

1 designee may examine the workers' compensation records of (a) a workers'
2 compensation insurer, a risk management pool, or a self-insurer or (b) an
3 adjuster, a third-party administrator, or other agent acting on behalf of
4 such workers' compensation insurer, risk management pool, or self-
5 insurer. The authority of the compensation court pursuant to this
6 subsection is subject to the limitations provided under the work-product
7 doctrine and attorney-client privilege as recognized in Nebraska law.

8 (5) ~~(4)~~ The compensation court may adopt and promulgate rules and
9 regulations necessary to implement this section.

10 Sec. 2. Original section 48-146.02, Reissue Revised Statutes of
11 Nebraska, is repealed.