

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1103**

Introduced by Hansen, M., 26.

Read first time January 21, 2020

Committee:

- 1 A BILL FOR AN ACT relating to workers' compensation; to amend section
- 2 48-139, Revised Statutes Cumulative Supplement, 2018; to change
- 3 requirements for lump-sum settlement approval or release by the
- 4 Nebraska Workers' Compensation Court; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,  
2 2018, 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;

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

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

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

25 (b) If such lump-sum settlement is not required to be submitted for  
26 approval by the compensation court, a release shall be filed with the  
27 compensation court as provided in subsection (3) of this section. Nothing  
28 in this section shall be construed to increase the compensation court's  
29 duties or authority with respect to the approval of lump-sum settlements  
30 under the act.

31 (2)(a) An application for an order approving a lump-sum settlement,

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

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

25 (ii) If the expenses for medical, surgical, or hospital services  
26 provided to the employee are not paid by the employer, or if any person,  
27 other than medicaid, who has made any payment to the supplier of medical,  
28 surgical, or hospital services provided to the employee, is not  
29 reimbursed by the employer, it shall be conclusively presumed that the  
30 nonpayment or nonreimbursement of disputed medical, surgical, or hospital  
31 expenses, as set forth in the application, is in conformity with the

1 compensation schedule and for the best interests of the employee or his  
2 or her dependents, if the employee's attorney elects to affirm and does  
3 affirm in the application that the nonpayment or nonreimbursement of  
4 disputed medical, surgical, or hospital expenses is in conformity with  
5 the compensation schedule and for the best interests of the employee or  
6 his or her dependents under all the circumstances.

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

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

22 (c) Every such lump-sum settlement approved by order of the  
23 compensation court shall be final and conclusive unless procured by  
24 fraud. An order approving an application under this subsection shall, in  
25 any case in which the employee is represented by counsel and in which the  
26 application contains a description of the medical, surgical, or hospital  
27 expenses incurred for treatment of the injury that will remain unpaid as  
28 part of the settlement which are disputed and for which compensability  
29 has been denied by the employer, provide that the employer is not liable  
30 for such expenses. Upon paying the amount approved by the compensation  
31 court, the employer shall be discharged from further liability on account

1 of the injury or death, other than liability for the payment of future  
2 medical, surgical, or hospital expenses if such liability is approved by  
3 the compensation court on the application of the parties.

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

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

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

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

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

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

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

28 (b) The employee is not eligible for medicare, is not a current  
29 medicare beneficiary, and does not have a reasonable expectation of  
30 becoming eligible for medicare within thirty months after the date the  
31 settlement is executed. This subdivision (b) is not applicable if the

1 employee's right to receive future medical, surgical, and hospital  
2 services as provided in section 48-120 is specifically excluded from the  
3 settlement;

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

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

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

23 (5) The fees of the clerk of the compensation court for filing,  
24 docketing, and indexing an application for an order approving a lump-sum  
25 settlement or filing a release as provided in this section shall be  
26 fifteen dollars. The fees shall be remitted by the clerk to the State  
27 Treasurer for credit to the Compensation Court Cash Fund.

28 Sec. 2. Original section 48-139, Revised Statutes Cumulative  
29 Supplement, 2018, is repealed.