

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 168**

Introduced by Ebke, 32.

Read first time January 10, 2017

Committee:

- 1 A BILL FOR AN ACT relating to insurance; to amend section 44-3,128.01,
- 2 Reissue Revised Statutes of Nebraska; to change provisions relating
- 3 to rights of subrogation of medical payments with respect to
- 4 automobile liability policies; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-3,128.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3 44-3,128.01 (1) A provision in an automobile liability policy or  
4 endorsement which is effective in this state and which grants the insurer  
5 the right of subrogation for payment of benefits under the medical  
6 payments coverage portion of the policy shall be valid and enforceable,  
7 except that if the claimant receives less than actual economic loss from  
8 all parties liable for the bodily injuries, subrogation of medical  
9 payments shall be allowed in the same proportion that the medical  
10 expenses bear to the total economic loss. For purposes of this section,  
11 it shall be conclusively presumed that any settlement or judgment which  
12 is less than the policy limits of any applicable liability insurance  
13 coverage constitutes complete recovery of actual economic loss.

14 (2) Except as provided in section 48-118.04, when a lien has been  
15 asserted under section 52-401 for health care services provided to an  
16 injured person or filed with the appropriate court, or when a subrogation  
17 claim has been asserted against the proceeds of any settlement or  
18 judgment arising from a claim against a third party, such lien dispute or  
19 subrogation claim dispute shall be resolved if the resolution is agreed  
20 upon in writing by the claimant or his or her personal representative and  
21 the lienholder or holder of the subrogation claim. In the absence of such  
22 agreement, the court before which the action is pending, or upon  
23 application pursuant to section 25-903, shall determine if the settlement  
24 offer to the lienholder or anyone known to be claiming a subrogation  
25 interest in the third-party claim is fair and equitable considering  
26 liability, damages, and the ability of the third person and his or her  
27 liability insurance carrier to satisfy any judgment.

28 Sec. 2. Original section 44-3,128.01, Reissue Revised Statutes of  
29 Nebraska, is repealed.