

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 928

Introduced by McDonnell, 5.

Read first time January 09, 2018

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-122.01, Reissue Revised Statutes of Nebraska, and
- 3 section 48-122, Revised Statutes Cumulative Supplement, 2016; to
- 4 change provisions relating to compensation paid upon the death of an
- 5 employee; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-122, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 48-122 (1) If death results from injuries and the deceased employee
4 leaves one or more dependents dependent upon his or her earnings for
5 support at the time of injury, the compensation, subject to section
6 48-123, shall be not more than the maximum weekly income benefit
7 specified in section 48-121.01 nor less than the minimum weekly income
8 benefit specified in section 48-121.01, except that if at the time of
9 injury the employee receives wages of less than the minimum weekly income
10 benefit specified in section 48-121.01, then the compensation shall be
11 the full amount of such wages per week, payable in the amount and to the
12 persons enumerated in section 48-122.01 subject to the maximum limits
13 specified in this section and section 48-122.03.

14 (2) When death results from injuries suffered in employment, if
15 immediately prior to the accident the rate of wages was fixed by the day
16 or hour, or by the output of the employee, the weekly wages shall be
17 taken to be computed upon the basis of a workweek of a minimum of five
18 days, if the wages are paid by the day, or upon the basis of a workweek
19 of a minimum of forty hours, if the wages are paid by the hour, or upon
20 the basis of a workweek of a minimum of five days or forty hours,
21 whichever results in the higher weekly wage, if the wages are based on
22 the output of the employee.

23 (3) Upon the death of an employee, resulting through personal
24 injuries as defined in section 48-151, whether or not there are
25 dependents entitled to compensation, the reasonable expenses of burial,
26 not exceeding fourteen times the state average weekly wage determined
27 pursuant to section 48-121.02 for the year of death ~~ten thousand dollars,~~
28 without deduction of any amount previously paid or to be paid for
29 compensation or for medical expenses, shall be paid to his or her
30 dependents, or if there are no dependents, then to his or her personal
31 representative.

1 (4) Compensation under the Nebraska Workers' Compensation Act to
2 alien dependents who are not residents of the United States shall be the
3 same in amount as is provided in each case for residents, except that at
4 any time within one year after the death of the injured employee the
5 employer may at his or her option commute all future installments of
6 compensation to be paid to such alien dependents. The amount of the
7 commuted payment shall be determined as provided in section 48-138.

8 (5) The consul general, consul, vice consul general, or vice consul
9 of the nation of which the employee, whose injury results in death, is a
10 citizen, or the representative of such consul general, consul, vice
11 consul general, or vice consul residing within the State of Nebraska
12 shall be regarded as the sole legal representative of any alien
13 dependents of the employee residing outside of the United States and
14 representing the nationality of the employee. Such consular officer, or
15 his or her representative, residing in the State of Nebraska, shall have
16 in behalf of such nonresident dependents, the exclusive right to adjust
17 and settle all claims for compensation provided by the Nebraska Workers'
18 Compensation Act, and to receive the distribution to such nonresident
19 alien dependents of all compensation arising thereunder.

20 Sec. 2. Section 48-122.01, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-122.01 Compensation under section 48-122 shall be payable in the
23 amount and to the following persons subject to the maximum limits
24 specified in sections 48-122 and 48-122.03:

25 (1) If there is a widow or widower and no children of the deceased,
26 as defined in section 48-124, to such widow or widower, sixty-six and
27 two-thirds percent of the average weekly wage of the deceased, during
28 widowhood or widowerhood;

29 (2) To the widow or widower, if there is a child or children living
30 with the widow or widower, sixty percent of the average weekly wage of
31 the deceased, or fifty-five percent, if such child is not or such

1 children are not living with a widow or widower, and, in addition
2 thereto, fifteen percent for each child. When there are two or more such
3 children, the indemnity benefits payable on account of such children
4 shall be divided among such children, share and share alike;

5 (3) Two years' indemnity benefits in one lump sum shall be payable
6 to a widow or widower upon remarriage;

7 (4) To the children, if there is no widow or widower, sixty-six and
8 two-thirds percent of such wage for one child, and fifteen percent for
9 each additional child, divided among such children, share and share
10 alike;

11 (5) The income benefits payable on account of any child under this
12 section shall cease when he or she dies, marries, or reaches the age of
13 nineteen, or when a child over such age ceases to be physically or
14 mentally incapable of self-support, or if actually dependent ceases to be
15 actually dependent, or, if enrolled as a full-time student in any
16 accredited educational institution, ceases to be so enrolled or reaches
17 the age of twenty-five. A child who originally qualified as a dependent
18 by virtue of being less than nineteen years of age may, upon reaching age
19 nineteen, continue to qualify if he or she satisfies the tests of being
20 physically or mentally incapable of self-support, actual dependency, or
21 enrollment in an educational institution;

22 (6) To each parent, if actually dependent, twenty-five percent;

23 (7) To the brothers, sisters, grandparents, and grandchildren, if
24 actually dependent, twenty-five percent to each such dependent. If there
25 should be more than one of such dependents, the total income benefits
26 payable on account of such dependents shall be divided share and share
27 alike;

28 (8) The income benefits of each beneficiary under subdivisions (6)
29 and (7) of this section shall be paid until he or she, if a parent or
30 grandparent, dies, marries, or ceases to be actually dependent, or, if a
31 brother, sister, or grandchild, dies, marries, or reaches the age of

1 nineteen or if over that age ceases to be physically or mentally
2 incapable of self-support, or ceases to be actually dependent;~~and~~

3 (9) A person ceases to be actually dependent when his or her income
4 from all sources exclusive of workers' compensation income benefits is
5 such that, if it had existed at the time as of which the original
6 determination of actual dependency was made, it would not have supported
7 a finding of dependency. In any event, if the present annual income of an
8 actual dependent person including workers' compensation income benefits
9 at any time exceeds the total annual support received by the person from
10 the deceased employee, the workers' compensation benefits shall be
11 reduced so that the total annual income is no greater than such amount of
12 annual support received from the deceased employee. In all cases, a
13 person found to be actually dependent shall be presumed to be no longer
14 actually dependent three years after each time as of which the person was
15 found to be actually dependent. This presumption may be overcome by proof
16 of continued actual dependency as defined in this subdivision and section
17 48-124; ~~and -~~

18 (10) If there is no spouse, child, or other dependent entitled to
19 benefits under this section, twenty-five thousand dollars to the personal
20 representative of the estate of the deceased.

21 Sec. 3. Original section 48-122.01, Reissue Revised Statutes of
22 Nebraska, and section 48-122, Revised Statutes Cumulative Supplement,
23 2016, are repealed.