

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 953**

Introduced by Albrecht, 17.

Read first time January 10, 2018

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-139, Revised Statutes Cumulative Supplement, 2016;
- 3 to change provisions relating to lump-sum settlements; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,  
2 2016, 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;

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

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

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

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

28 (2)(a) An application for an order approving a lump-sum settlement,  
29 signed and verified by both parties, shall be filed with the clerk of the  
30 compensation court and shall be entitled the same as an action by such  
31 employee or dependents against such employer. The application shall

1 contain a concise statement of the terms of the settlement or agreement  
2 sought to be approved with a brief statement of the facts concerning the  
3 injury, the nature thereof, the wages received by the injured employee  
4 prior thereto, the nature of the employment, and such other matters as  
5 may be required by the compensation court. The application may provide  
6 for payment of future medical, surgical, or hospital expenses incurred by  
7 the employee. The compensation court may, on its own motion, and shall,  
8 on a motion by one of the parties, hold a hearing on the application at a  
9 time and place selected by the compensation court, and proof may be  
10 adduced and witnesses subpoenaed and examined the same as in an action in  
11 equity.

12 (b)(i) ~~(b)~~ If the compensation court finds such lump-sum settlement  
13 is made in conformity with the compensation schedule and for the best  
14 interests of the employee or his or her dependents under all the  
15 circumstances, the compensation court shall make an order approving the  
16 same.

17 (ii) If medical, surgical, or hospital services provided to the  
18 employee are not paid by the employer, or if any person, other than  
19 medicaid, who has made any payment to the supplier of medical, surgical,  
20 or hospital services provided to the employee, is not reimbursed by the  
21 employer, it shall be conclusively presumed that such lump-sum settlement  
22 is in conformity with the compensation schedule and for the best  
23 interests of the employee or his or her dependents, if the employee's  
24 attorney affirms in the application for an order approving the settlement  
25 that such lump-sum settlement is in conformity with the compensation  
26 schedule and for the best interests of the employee or his or her  
27 dependents under all the circumstances.

28 (iii) If the employee, at the time the settlement is executed, is  
29 eligible for medicare, is a medicare beneficiary, or has a reasonable  
30 expectation of becoming eligible for medicare within thirty months after  
31 the date the settlement is executed, and if the employee's attorney

1 affirms in the application for an order approving the settlement that  
2 such lump-sum settlement is in conformity with the compensation schedule  
3 and for the best interests of the employee or his or her dependents under  
4 all the circumstances, it shall be conclusively presumed that such lump-  
5 sum settlement is in conformity with the compensation schedule and for  
6 the best interests of the employee or his or her dependents.

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

10 (c) Every such lump-sum settlement approved by order of the  
11 compensation court shall be final and conclusive unless procured by  
12 fraud. Upon paying the amount approved by the compensation court, the  
13 employer ~~(i)~~ shall be discharged from further liability on account of the  
14 injury or death, other than liability for the payment of future medical,  
15 surgical, or hospital expenses if such liability is approved by the  
16 compensation court on the application of the parties, ~~and (ii) shall be~~  
17 ~~entitled to a duly executed release. Upon filing the release, the~~  
18 ~~liability of the employer under any agreement, award, finding, or decree~~  
19 ~~shall be discharged of record.~~

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

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

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

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

31 (iii) The right to receive future medical, surgical, and hospital

1 services as provided in section 48-120, unless such services are  
2 specifically excluded from the release; and

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

5 (b) The employee is not eligible for medicare, is not a current  
6 medicare beneficiary, and does not have a reasonable expectation of  
7 becoming eligible for medicare within thirty months after the date the  
8 settlement is executed;

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

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

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

30 (5) The fees of the clerk of the compensation court for filing,  
31 docketing, and indexing an application for an order approving a lump-sum

1 settlement or filing a release as provided in this section shall be  
2 fifteen dollars. The fees shall be remitted by the clerk to the State  
3 Treasurer for credit to the Compensation Court Cash Fund.

4       Sec. 2.     Original section 48-139, Revised Statutes Cumulative  
5 Supplement, 2016, is repealed.