

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 SECOND SESSION  
**LEGISLATIVE BILL 961**

Final Reading

Introduced by Cook, 13; Mello, 5.

Read first time January 16, 2014

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to law; to amend sections 44-2825, 45-1201,  
 2 45-1202, 45-1203, 45-1204, 45-1205, 48-126.01, 48-139,  
 3 and 48-601, Reissue Revised Statutes of Nebraska; to  
 4 provide for a compact regarding prevention and control of  
 5 forest fires; to require workers' compensation coverage  
 6 for volunteer firefighters as prescribed; to change the  
 7 maximum amount recoverable under the Nebraska Hospital-  
 8 Medical Liability Act; to change provisions of the  
 9 Nebraska Construction Prompt Pay Act; to change workers'  
 10 compensation provisions for certain public safety  
 11 personnel and release provisions for lump-sum  
 12 settlements; to adopt the short-time compensation program  
 13 under the Employment Security Law; to appropriate funds;  
 14 to provide operative dates; and to repeal the original  
 15 sections.

16 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Governor of Nebraska may execute a compact  
2 on behalf of the state with any one or more states who may, by their  
3 legislative bodies, authorize a compact, in form substantially as  
4 follows:

5           ARTICLE I

6           The purpose of this compact is to promote effective  
7 prevention and control of forest fires in the great plains region of  
8 the United States by the maintenance of adequate forest fire fighting  
9 services by the member states, and by providing for reciprocal aid in  
10 fighting forest fires among the compacting states of the region,  
11 including South Dakota, North Dakota, Wyoming, Colorado, and any  
12 adjoining state of a current member state.

13           ARTICLE II

14           This compact is operative immediately as to those states  
15 ratifying it if any two or more of the member states have ratified  
16 it.

17           ARTICLE III

18           In each state, the state forester or officer holding the  
19 equivalent position who is responsible for forest fire control may  
20 act as compact administrator for that state and may consult with like  
21 officials of the other member states and may implement cooperation  
22 between the states in forest fire prevention and control. The compact  
23 administrators of the member states may organize to coordinate the  
24 services of the member states and provide administrative integration  
25 in carrying out the purposes of this compact. Each member state may

1 formulate and put in effect a forest fire plan for that state.

2 ARTICLE IV

3 If the state forest fire control agency of a member state  
4 requests aid from the state forest fire control agency of any other  
5 member state in combating, controlling, or preventing forest fires,  
6 the state forest fire control agency of that state may render all  
7 possible aid to the requesting agency, consonant with the maintenance  
8 of protection at home.

9 ARTICLE V

10 If the forces of any member state are rendering outside  
11 aid pursuant to the request of another member state under this  
12 compact, the employees of the state shall, under the direction of the  
13 officers of the state to which they are rendering aid, have the same  
14 powers (except the power of arrest), duties, rights, privileges, and  
15 immunities as comparable employees of the state to which they are  
16 rendering aid.

17 No member state which provides outside aid pursuant to  
18 this compact shall be liable in any civil action to respond in  
19 damages as a result of acts or omissions arising out of and in the  
20 course of rendering outside aid, but such immunity from liability  
21 shall not extend to the operation of any motor vehicle in connection  
22 with such services. Nothing in this paragraph shall be deemed to  
23 grant any such immunity to any person causing damage by his or her  
24 gross negligence or willful or wanton conduct.

25 All liability, except as otherwise provided in this

1 compact, that may arise either under the laws of the requesting state  
2 or under the laws of the aiding state or under the laws of a third  
3 state on account of or in connection with a request for aid, shall be  
4 assumed and borne by the requesting state.

5 Any member state rendering outside aid pursuant to this  
6 compact shall be reimbursed by the member state receiving the aid for  
7 any loss or damage to, or expense incurred in the operation of any  
8 equipment answering a request for aid, and for the cost of all  
9 materials, transportation, wages, salaries, and maintenance of  
10 employees and equipment incurred in connection with such request.  
11 However, nothing in this compact prevents any assisting member state  
12 from assuming such loss, damage, expense, or other cost or from  
13 loaning such equipment or from donating such services to the  
14 receiving member state without charge or cost.

15 Each member state shall assure that workers' compensation  
16 benefits in conformity with the minimum legal requirements of the  
17 state are available to all employees and contract firefighters sent  
18 to a requesting state pursuant to this compact.

19 For the purposes of this compact, the term employee  
20 includes any volunteer or auxiliary legally included within the  
21 forest fire fighting forces of the aiding state under the laws of the  
22 aiding state.

23 The compact administrators may formulate procedures for  
24 claims and reimbursement under the provisions of this article, in  
25 accordance with the laws of the member states.

1                   ARTICLE VI

2                   Ratification of this compact does not affect any existing  
3 statute so as to authorize or permit curtailment or diminution of the  
4 forest fire fighting forces, equipment, services, or facilities of  
5 any member state.

6                   Nothing in the compact authorizes or permits any member  
7 state to curtail or diminish its forest fire fighting forces,  
8 equipment, services, or facilities. Each member state shall maintain  
9 adequate forest fire fighting forces and equipment to meet demands  
10 for forest fire protection within its borders in the same manner and  
11 to the same extent as if this compact were not operative.

12                   Nothing in this compact limits or restricts the powers of  
13 any state ratifying the compact to provide for the prevention,  
14 control, and extinguishment of forest fires, or to prohibit the  
15 enactment or enforcement of state laws, rules, or regulations  
16 intended to aid in the prevention, control, and extinguishment in the  
17 state.

18                   Nothing in this compact affects any existing or future  
19 cooperative relationship or arrangement between the United States  
20 Forest Service and a member state or states.

21                   ARTICLE VII

22                   Representatives of the United States Forest Service may  
23 attend meetings of the compact administrators.

24                   ARTICLE VIII

25                   The provisions of articles IV and V of this compact that

1 relate to reciprocal aid in combating, controlling, or preventing  
2 forest fires are operative as between any state party to this compact  
3 and any other state which is party to this compact and any other  
4 state that is party to a regional forest fire protection compact in  
5 another region if the Legislature of the other state has given its  
6 assent to the mutual aid provisions of this compact.

7 ARTICLE IX

8 This compact shall continue in force and remain binding  
9 on each state ratifying it until the Legislature or the Governor of  
10 the state takes action to withdraw from the compact. Such action is  
11 not effective until six months after notice of the withdrawal has  
12 been sent by the chief executive of the state desiring to withdraw to  
13 the chief executives of all states then parties to the compact.

14 Sec. 2. No Nebraska volunteer firefighter shall be  
15 dispatched on behalf of this state pursuant to the compact set forth  
16 in section 1 of this act outside the boundaries of Nebraska unless  
17 such volunteer firefighter files with the Nebraska compact  
18 administrator a valid certificate of insurance covering him or her  
19 for workers' compensation benefits pursuant to the Nebraska Workers'  
20 Compensation Act outside the boundaries of Nebraska.

21 Sec. 3. Section 44-2825, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 44-2825 (1) The total amount recoverable under the  
24 Nebraska Hospital-Medical Liability Act from any and all health care  
25 providers and the Excess Liability Fund for any occurrence resulting

1 in any injury or death of a patient may not exceed (a) five hundred  
2 thousand dollars for any occurrence on or before December 31, 1984,  
3 (b) one million dollars for any occurrence after December 31, 1984,  
4 and on or before December 31, 1992, (c) one million two hundred fifty  
5 thousand dollars for any occurrence after December 31, 1992, and on  
6 or before December 31, 2003, ~~and~~(d) one million seven hundred fifty  
7 thousand dollars for any occurrence after December 31, 2003, and on  
8 or before December 31, 2014, and (e) two million two hundred fifty  
9 thousand dollars for any occurrence after December 31, 2014.

10 (2) A health care provider qualified under the act shall  
11 not be liable to any patient or his or her representative who is  
12 covered by the act for an amount in excess of five hundred thousand  
13 dollars for all claims or causes of action arising from any  
14 occurrence during the period that the act is effective with reference  
15 to such patient.

16 (3) Subject to the overall limits from all sources as  
17 provided in subsection (1) of this section, any amount due from a  
18 judgment or settlement which is in excess of the total liability of  
19 all liable health care providers shall be paid from the Excess  
20 Liability Fund pursuant to sections 44-2831 to 44-2833.

21 Sec. 4. Section 45-1201, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 45-1201 Sections 45-1201 to 45-1210 and section 8 of this  
24 act shall be known and may be cited as the Nebraska Construction  
25 Prompt Pay Act.

1                   Sec. 5. Section 45-1202, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   45-1202 For purposes of the Nebraska Construction Prompt  
4 Pay Act:

5                   (1) Contractor includes individuals, firms, partnerships,  
6 limited liability companies, corporations, or other associations of  
7 persons engaged in the business of the construction, alteration,  
8 repairing, dismantling, or demolition of buildings, roads, bridges,  
9 viaducts, sewers, water and gas mains, streets, disposal plants,  
10 water filters, tanks and towers, airports, dams, levees and canals,  
11 water wells, pipelines, transmission and power lines, and every other  
12 type of structure, project, development, or improvement coming within  
13 the definition of real property and personal property, including such  
14 construction, repairing, or alteration of such property to be held  
15 either for sale or rental. Contractor also includes any subcontractor  
16 engaged in the business of such activities and any person who is  
17 providing or arranging for labor for such activities, either as an  
18 employee or as an independent contractor, for any contractor or  
19 person. Contractor does not include an individual or an entity  
20 performing work on a contract for the State of Nebraska or performing  
21 work on a federal-aid or state-aid project of a political subdivision  
22 in which the state makes payments to the contractor on behalf of the  
23 political subdivision;

24                   (2) Owner means a person (a) who has an interest in any  
25 real property improved, (b) for whom an improvement is made, or (c)

1 who contracted for an improvement to be made. Owner includes a  
2 person, an entity, or any political subdivision of this state. Owner  
3 does not include the State of Nebraska;

4 (3) Owner's representative means an architect, an  
5 engineer, or a construction manager in charge of a project for the  
6 owner or such other contract representative or officer as designated  
7 in the contract document as the party representing the owner's  
8 interest regarding administration and oversight of the project;

9 (4) Real property means real estate that is improved,  
10 including private and public land, and leaseholds, tenements, and  
11 improvements placed on the real property;

12 (5) Receipt means actual receipt of cash or funds by the  
13 contractor or subcontractor; ~~and~~

14 (6) Subcontractor means a person or an entity that has  
15 contracted to furnish labor or materials to, or performed labor or  
16 supplied materials for, a contractor or another subcontractor in  
17 connection with a contract to improve real property. Subcontractor  
18 includes materialmen and suppliers. Subcontractor does not include an  
19 individual or an entity performing work as a subcontractor on a  
20 contract for the State of Nebraska or performing work on a federal-  
21 aid or state-aid project of a political subdivision in which the  
22 state makes payments to the contractor on behalf of the political  
23 subdivision; and -

24 (7) Substantially complete means the stage of a  
25 construction project when the project, or a designated portion

1 thereof, is sufficiently complete in accordance with the contract so  
2 that the owner can occupy or utilize the project for its intended  
3 use.

4           Sec. 6. Section 45-1203, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           45-1203 (1) When a contractor has performed work in  
7 accordance with the provisions of a contract with an owner, the owner  
8 shall pay the contractor within thirty days after receipt by the  
9 owner or the owner's representative of a payment request made  
10 pursuant to the contract.

11           (2) When a subcontractor has performed work in accordance  
12 with the provisions of a subcontract and all conditions precedent to  
13 payment contained in the subcontract have been satisfied, the  
14 contractor shall pay the subcontractor and the subcontractor shall  
15 pay his, her, or its subcontractor, within ten days after receipt by  
16 the contractor or subcontractor of each periodic or final payment,  
17 the full amount received for the subcontractor's work and materials  
18 based on work completed or service provided under the subcontract for  
19 which the subcontractor has properly requested payment, if the  
20 subcontractor provides or has provided satisfactory and reasonable  
21 assurances of continued performance and financial responsibility to  
22 complete the work.

23           (3) The owner or the owner's representative shall release  
24 and pay all retainage for work completed in accordance with the  
25 provisions of the contract within forty-five days after the project,

1 or a designated portion thereof, is substantially complete. When a  
2 subcontractor has performed work in accordance with the provisions of  
3 a subcontract and all conditions precedent to payment contained in  
4 the subcontract have been satisfied, the contractor shall pay all  
5 retainage due such subcontractor within ten days after receipt of the  
6 retainage.

7           Sec. 7. Section 45-1204, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           45-1204 When work has been performed pursuant to a  
10 contract, ~~a party an owner, a contractor, or a subcontractor~~ may only  
11 withhold payment:

12           ~~(1) For retainage, in an amount not to exceed the amount~~  
13 ~~specified in the contract, if applicable, until the work is~~  
14 ~~substantially complete;~~

15           (1) For retainage, in an amount not to exceed the amount  
16 specified in the applicable contract, which shall not exceed a rate  
17 of ten percent. If the scope of work for the contractor or  
18 subcontractor from which retainage is withheld is fifty percent  
19 complete and if the contractor or subcontractor has performed work in  
20 accordance with the provisions in the applicable contract, no more  
21 than five percent of any additional progress payment may be withheld  
22 as retainage if the contractor or subcontractor provides or has  
23 provided satisfactory and reasonable assurances of continued  
24 performance and financial responsibility to complete the work;

25           (2) Of a reasonable amount, to the extent that such

1 withholding is allowed in the contract, for any of the following  
2 reasons:

3 (a) Reasonable evidence showing that the contractual  
4 completion date will not be met due to unsatisfactory job progress;

5 (b) Third-party claims filed or reasonable evidence that  
6 such a claim will be filed with respect to work under the contract;  
7 or

8 (c) Failure of the contractor to make timely payments for  
9 labor, equipment, subcontractors, or materials; or

10 (3) After substantial completion, in an amount not to  
11 exceed one hundred twenty-five percent of the estimated cost to  
12 complete the work remaining on the contract.

13 Sec. 8. Any individual, partnership, firm, limited  
14 liability company, corporation, or company may bring an action to  
15 recover any damages caused to such person or entity by a violation of  
16 the Nebraska Construction Prompt Pay Act. In addition to an award of  
17 damages, the court may award a plaintiff reasonable attorney's fees  
18 and costs as the court determines is appropriate.

19 Sec. 9. Section 45-1205, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 45-1205 Except as provided in section 45-1204, if a  
22 periodic or final payment to (1) a contractor is delayed by more than  
23 thirty days after receipt of a properly submitted periodic or final  
24 payment request by the owner or owner's representative or (2) a  
25 subcontractor is delayed by more than ten days after receipt of a

1 periodic or final payment by the contractor or subcontractor, then  
2 the remitting party owner, contractor, or subcontractor shall pay the  
3 contractor or subcontractor interest due until such amount is paid,  
4 beginning on the day following the payment due date at the rate of  
5 one percent per month or a pro rata fraction thereof on the unpaid  
6 balance. Interest is due under this section only after the person  
7 charged the interest has been notified of the provisions of this  
8 section by the contractor or subcontractor. Acceptance of progress  
9 payments or a final payment shall release all claims for interest on  
10 such payments.

11           Sec. 10. Section 48-126.01, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           48-126.01 (1)(a) In determining the compensation to be  
14 paid any member of the military forces of this state, any member of a  
15 law enforcement reserve force, ~~any member of a volunteer fire~~  
16 ~~department in any rural or suburban fire protection district, city,~~  
17 ~~village, or nonprofit corporation, or~~ any member of the Nebraska  
18 Emergency Management Agency, any city, village, county, or  
19 interjurisdictional emergency management organization, or any state  
20 emergency response team, ~~or any member of a volunteer emergency~~  
21 ~~medical service,~~ which military forces, law enforcement reserve  
22 force, ~~fire department, or~~ emergency management agency, organization,  
23 or team, ~~or volunteer emergency medical service~~ is organized under  
24 the laws of the State of Nebraska, or any person fulfilling  
25 conditions of probation, or community service as defined in section

1 29-2277, pursuant to any order of any court of this state who shall  
2 be working for a governmental body, or agency as defined in section  
3 29-2277, pursuant to any condition of probation, or community service  
4 as defined in section 29-2277, for injuries resulting in disability  
5 or death received in the performance of his or her duties as a member  
6 of such military forces, reserve force, ~~department,~~ agency,  
7 organization, or team, ~~or service~~, or pursuant to an order of any  
8 court, the wages of such a member or person shall be taken to be  
9 those received by him or her from his or her regular employer, and he  
10 or she shall receive such proportion thereof as he or she is entitled  
11 to under the provisions of section 48-121.

12 (b) If ~~such a~~ member or person under subdivision (1)(a)  
13 of this section is not regularly employed by some other person, for  
14 the purpose of such determination, it shall be deemed and assumed  
15 that he or she is receiving income from his or her business or from  
16 other employment equivalent to wages in an amount one and one-half  
17 times the maximum ~~compensation rate for total disability.~~ weekly  
18 income benefit specified in section 48-121.01.

19 (c) If the wages received for the performance of duties  
20 as a member of such military forces, reserve force, ~~department,~~  
21 agency, organization, or team, ~~or service~~ exceed the wages received  
22 from a regular employer, such member shall be entitled to a rate of  
23 compensation based upon wages received as a member of such military  
24 forces, reserve force, ~~department,~~ agency, organization, or team.  
25 ~~or service.~~

1           (2) In determining the compensation rate to be paid any  
2 member of a volunteer fire department in any rural or suburban fire  
3 protection district, city, village, or nonprofit corporation or any  
4 member of a volunteer emergency medical service, which fire  
5 department or emergency medical service is organized under the laws  
6 of the State of Nebraska, for injuries resulting in disability or  
7 death received in the performance of his or her duties as a member of  
8 such fire department or emergency medical service, it shall be deemed  
9 and assumed that his or her wages are in an amount one and one-half  
10 times the maximum weekly income benefit specified in section  
11 48-121.01 or the wages received by such member from his or her  
12 regular employment, whichever is greater. Any member of such  
13 volunteer fire department or volunteer emergency medical service  
14 shall not lose his or her volunteer status under the Nebraska  
15 Workers' Compensation Act if such volunteer receives reimbursement  
16 for expenses, reasonable benefits, or a nominal fee, a nominal per  
17 call fee, a nominal per shift fee, or combination thereof. It shall  
18 be conclusively presumed that a fee is nominal if the fee does not  
19 exceed twenty percent of the amount that otherwise would be required  
20 to hire a permanent employee for the same services.

21           Sec. 11. Section 48-139, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           48-139 (1)(a) Whenever an injured employee or his or her  
24 dependents and the employer agree that the amounts of compensation  
25 due as periodic payments for death, permanent disability, or claimed

1 permanent disability under the Nebraska Workers' Compensation Act  
2 shall be commuted to one or more lump-sum payments, such settlement  
3 shall be submitted to the Nebraska Workers' Compensation Court for  
4 approval as provided in subsection (2) of this section if:

5 (i) The employee is not represented by counsel;

6 (ii) The employee, at the time the settlement is  
7 executed, is eligible for medicare, is a medicare beneficiary, or has  
8 a reasonable expectation of becoming eligible for medicare within  
9 thirty months after the date the settlement is executed;

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

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

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

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

24 (2)(a) An application for an order approving a lump-sum  
25 settlement, signed and verified by both parties, shall be filed with

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

14 (b) If the compensation court finds such lump-sum  
15 settlement is made in conformity with the compensation schedule and  
16 for the best interests of the employee or his or her dependents under  
17 all the circumstances, the compensation court shall make an order  
18 approving the same. If such settlement is not approved, the  
19 compensation court may dismiss the application at the cost of the  
20 employer or continue the hearing, in the discretion of the  
21 compensation court.

22 (c) Every such lump-sum settlement approved by order of  
23 the compensation court shall be final and conclusive unless procured  
24 by fraud. Upon paying the amount approved by the compensation court,  
25 the employer (i) shall be discharged from further liability on

1 account of the injury or death, other than liability for the payment  
2 of future medical, surgical, or hospital expenses if such liability  
3 is approved by the compensation court on the application of the  
4 parties, and (ii) shall be entitled to a duly executed release. Upon  
5 filing the release, the liability of the employer under any  
6 agreement, award, finding, or decree shall be discharged of record.

7 (3) If such lump-sum settlement is not required to be  
8 submitted for approval by the compensation court, a release shall be  
9 filed with the compensation court in accordance with this subsection  
10 that is signed and verified by the employee and the employee's  
11 attorney. ~~Such release shall be a full and complete discharge from~~  
12 ~~further liability for the employer on account of the injury,~~  
13 ~~including future medical, surgical, or hospital expenses, unless such~~  
14 ~~expenses are specifically excluded from the release.~~ The release  
15 shall be made on a form approved by the compensation court and shall  
16 contain a statement signed and verified by the employee that:

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

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

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

24 (iii) The right to receive future medical, surgical, and  
25 hospital services as provided in section 48-120, unless such services

1 are specifically excluded from the release; and

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

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

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

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

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

1 surgical, or hospital expenses, unless such expenses are specifically  
2 excluded from the release, and the court shall enter an order of  
3 dismissal with prejudice as to all rights waived in the release.

4 ~~(4)~~-(5) The fees of the clerk of the compensation court  
5 for filing, docketing, and indexing an application for an order  
6 approving a lump-sum settlement or filing a release as provided in  
7 this section shall be fifteen dollars. The fees shall be remitted by  
8 the clerk to the State Treasurer for credit to the Compensation Court  
9 Cash Fund.

10 Sec. 12. Section 48-601, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 48-601 Sections 48-601 to 48-671 and sections 13 to 24 of  
13 this act shall be known and may be cited as the Employment Security  
14 Law.

15 Sec. 13. Sections 13 to 24 of this act create the short-  
16 time compensation program.

17 Sec. 14. For purposes of sections 13 to 24 of this act:

18 (1) Affected unit means a specified plant, department,  
19 shift, or other definable unit which includes three or more employees  
20 to which an approved short-time compensation plan applies;

21 (2) Commissioner means the Commissioner of Labor or any  
22 delegate or subordinate responsible for approving applications for  
23 participation in a short-time compensation plan;

24 (3) Health and retirement benefits means employer-  
25 provided health benefits and retirement benefits under a defined

1 benefit plan, as defined in section 414(j) of the Internal Revenue  
2 Code, or contributions under a defined contribution plan, as defined  
3 in section 414(i) of the Internal Revenue Code, which are incidents  
4 of employment in addition to the cash remuneration earned;

5 (4) Short-time compensation means the unemployment  
6 benefits payable to employees in an affected unit under an approved  
7 short-time compensation plan, as distinguished from the unemployment  
8 benefits otherwise payable under the Employment Security Law;

9 (5) Short-time compensation plan means a plan submitted  
10 by an employer, for written approval by the commissioner, under which  
11 the employer requests the payment of short-time compensation to  
12 workers in an affected unit of the employer to avert layoffs;

13 (6) Unemployment compensation means the unemployment  
14 benefits payable under the Employment Security Law other than short-  
15 time compensation and includes any amounts payable pursuant to an  
16 agreement under any federal law providing for compensation,  
17 assistance, or allowances with respect to unemployment; and

18 (7) Usual weekly hours of work means the usual hours of  
19 work for full-time or part-time employees in the affected unit when  
20 that unit is operating on its regular basis, not to exceed forty  
21 hours and not including hours of overtime work.

22 Sec. 15. An employer wishing to participate in the short-  
23 time compensation program shall submit a signed written short-time  
24 compensation plan to the commissioner for approval. The commissioner  
25 shall develop an application form to request approval of a short-time

1 compensation plan and an approval process. The application shall  
2 include:

3 (1) The affected unit or units covered by the plan,  
4 including the number of full-time or part-time employees in such  
5 unit, the percentage of employees in the affected unit covered by the  
6 plan, identification of each individual employee in the affected unit  
7 by name, social security number, and the employer's unemployment tax  
8 account number, and any other information required by the  
9 commissioner to identify plan participants;

10 (2) A description of how employees in the affected unit  
11 will be notified of the employer's participation in the short-time  
12 compensation plan if such application is approved, including how the  
13 employer will notify those employees in a collective-bargaining unit  
14 as well as any employees in the affected unit who are not in a  
15 collective-bargaining unit. If the employer will not provide advance  
16 notice to employees in the affected unit, the employer shall explain  
17 in a statement in the application why it is not feasible to provide  
18 such notice;

19 (3) A requirement that the employer identify the usual  
20 weekly hours of work for employees in the affected unit and the  
21 specific percentage by which their hours will be reduced during all  
22 weeks covered by the plan. An application shall specify the  
23 percentage of reduction for which a short-time compensation plan  
24 application may be approved which shall be not less than ten percent  
25 and not more than sixty percent. If the plan includes any week for

1 which the employer regularly provides no work due to a holiday or  
2 other plant closing, then such week shall be identified in the  
3 application;

4 (4)(a) Certification by the employer that, if the  
5 employer provides health and retirement benefits to any employee  
6 whose usual weekly hours of work are reduced under the program, such  
7 benefits will continue to be provided to employees participating in  
8 the short-time compensation program under the same terms and  
9 conditions as though the usual weekly hours of work of such employee  
10 had not been reduced or to the same extent as other employees not  
11 participating in the short-time compensation program.

12 (b) For defined benefit retirement plans, the hours that  
13 are reduced under the short-time compensation plan shall be credited  
14 for purposes of participation, vesting, and accrual of benefits as  
15 though the usual weekly hours of work had not been reduced. The  
16 dollar amount of employer contributions to a defined contribution  
17 plan that are based on a percentage of compensation may be less due  
18 to the reduction in the employee's compensation.

19 (c) Notwithstanding subdivisions (4)(a) and (b) of this  
20 section, an application may contain the required certification when a  
21 reduction in health and retirement benefits scheduled to occur during  
22 the duration of the plan will be applicable equally to employees who  
23 are not participating in the short-time compensation program and to  
24 those employees who are participating;

25 (5) Certification by the employer that the aggregate

1 reduction in work hours is in lieu of layoffs, temporary or permanent  
2 layoffs, or both. The application shall include an estimate of the  
3 number of employees who would have been laid off in the absence of  
4 the short-time compensation plan;

5 (6) Certification by the employer that the short-time  
6 compensation program shall not serve as a subsidy of seasonal  
7 employment during the off-season, nor as a subsidy of temporary part-  
8 time or intermittent employment;

9 (7) Agreement by the employer to: Furnish reports to the  
10 commissioner relating to the proper conduct of the plan; allow the  
11 commissioner access to all records necessary to approve or disapprove  
12 the plan application and, after approval of a plan, to monitor and  
13 evaluate the plan; and follow any other directives the commissioner  
14 deems necessary for the agency to implement the plan and which are  
15 consistent with the requirements for short-time compensation plan  
16 applications;

17 (8) Certification by the employer that participation in  
18 the short-time compensation plan and its implementation is consistent  
19 with the employer's obligations under applicable federal and state  
20 laws;

21 (9) The effective date and duration of the plan that  
22 shall expire not later than the end of the twelfth full calendar  
23 month after the effective date;

24 (10) Certification by the employer that it has obtained  
25 the written approval of any applicable collective-bargaining unit

1 representative and has notified all affected employees who are not in  
2 a collective-bargaining unit of the proposed short-time compensation  
3 plan;

4 (11) Certification by the employer that it will not hire  
5 additional part-time or full-time employees for the affected unit  
6 while the short-time compensation plan is in effect; and

7 (12) Any other provision added to the application by the  
8 commissioner that the United States Secretary of Labor determines to  
9 be appropriate for purposes of a short-time compensation program.

10 Sec. 16. (1) The commissioner shall approve or disapprove  
11 a short-time compensation plan in writing within thirty days after  
12 its receipt and promptly communicate the decision to the employer. A  
13 decision disapproving the plan shall clearly identify the reasons for  
14 the disapproval. The disapproval shall be final, but the employer  
15 shall be allowed to submit another short-time compensation plan for  
16 approval not earlier than forty-five days after the date of the  
17 disapproval.

18 (2)(a) A short-time compensation plan will only be  
19 approved for a contributory employer that (a) is eligible for  
20 experience rating under subdivision (4)(a) of section 48-649, (b) has  
21 a positive balance in the employer's experience account, (c) has  
22 filed all quarterly reports and other reports required under the  
23 Employment Security Law, and (d) has paid all obligation assessments,  
24 contributions, interest, and penalties due through the date of the  
25 employer's application.

1           (b) A short-time compensation plan will only be approved  
2 for an employer liable for making payments in lieu of contributions  
3 that has filed all quarterly reports and other reports required under  
4 the Employment Security Law and has paid all obligation assessments,  
5 payments in lieu of contributions, interest, and penalties due  
6 through the date of the employer's application.

7           Sec. 17. (1) A short-time compensation plan shall be  
8 effective on the date that is mutually agreed upon by the employer  
9 and the commissioner, which shall be specified in the notice of  
10 approval to the employer. The plan shall expire on the date specified  
11 in the notice of approval, which shall be either the date at the end  
12 of the twelfth full calendar month after its effective date or an  
13 earlier date mutually agreed upon by the employer and the  
14 commissioner.

15           (2) If a short-time compensation plan is revoked by the  
16 commissioner under section 18 of this act, the plan shall terminate  
17 on the date specified in the commissioner's written order of  
18 revocation.

19           (3) An employer may terminate a short-time compensation  
20 plan at any time upon written notice to the commissioner. Upon  
21 receipt of such notice from the employer, the commissioner shall  
22 promptly notify each member of the affected unit of the termination  
23 date.

24           (4) An employer may submit a new application to  
25 participate in another short-time compensation plan at any time after

1 the expiration or termination date.

2           Sec. 18. (1) The commissioner may revoke approval of a  
3 short-time compensation plan for good cause at any time, including  
4 upon the request of any of the affected unit's employees. The  
5 revocation order shall be in writing and shall specify the reasons  
6 for the revocation and the date the revocation is effective.

7           (2) The commissioner may periodically review the  
8 operation of each employer's short-time compensation plan to assure  
9 that no good cause exists for revocation of the approval of the plan.  
10 Good cause shall include, but not be limited to, failure to comply  
11 with the assurances given in the plan, unreasonable revision of  
12 productivity standards for the affected unit, conduct or occurrences  
13 tending to defeat the intent and effective operation of the short-  
14 time compensation plan, and violation of any criteria on which  
15 approval of the plan was based.

16           Sec. 19. (1) An employer may request a modification of an  
17 approved plan by filing a written request with the commissioner. The  
18 request shall identify the specific provisions proposed to be  
19 modified and provide an explanation of why the proposed modification  
20 is appropriate for the short-time compensation plan. The commissioner  
21 shall approve or disapprove the proposed modification in writing  
22 within thirty days after receipt and promptly communicate the  
23 decision to the employer.

24           (2) The commissioner may approve a request for  
25 modification of the plan based on conditions that have changed since

1 the plan was approved if the modification is consistent with and  
2 supports the purposes for which the plan was initially approved. A  
3 modification does not extend the expiration date of the original  
4 plan, and the commissioner shall promptly notify the employer whether  
5 the plan modification has been approved and, if approved, the  
6 effective date of the modification.

7 (3) An employer is not required to request approval of a  
8 plan modification from the commissioner if the change is not  
9 substantial, but the employer must report every change to the plan to  
10 the commissioner promptly and in writing. The commissioner may  
11 terminate an employer's plan if the employer fails to meet this  
12 reporting requirement. If the commissioner determines that the  
13 reported change is substantial, the commissioner shall require the  
14 employer to request a modification to the plan.

15 Sec. 20. An individual is eligible to receive short-time  
16 compensation with respect to any week only if the individual is  
17 monetarily eligible for unemployment compensation, not otherwise  
18 disqualified for unemployment compensation, and:

19 (1) During the week, the individual is employed as a  
20 member of an affected unit under an approved short-time compensation  
21 plan, which was approved prior to that week, and the plan is in  
22 effect with respect to the week for which short-time compensation is  
23 claimed;

24 (2) Notwithstanding any other provisions of the  
25 Employment Security Law relating to availability for work and

1 actively seeking work, the individual is available for the  
2 individual's usual hours of work with the short-time compensation  
3 employer, which may include, for purposes of this section,  
4 participating in training to enhance job skills that is approved by  
5 the commissioner such as employer-sponsored training or training  
6 funded under the federal Workforce Investment Act of 1998, 29 U.S.C.  
7 2801 et seq.; and

8 (3) Notwithstanding any other provision of law, an  
9 individual covered by a short-time compensation plan is deemed  
10 unemployed in any week during the duration of such plan if the  
11 individual's remuneration as an employee in an affected unit is  
12 reduced based on a reduction of the individual's usual weekly hours  
13 of work under an approved short-time compensation plan.

14 Sec. 21. (1) The short-time compensation weekly benefit  
15 amount shall be the product of the regular weekly unemployment  
16 compensation amount for a week of total unemployment multiplied by  
17 the percentage of reduction in the individual's usual weekly hours of  
18 work.

19 (2) An individual may be eligible for short-time  
20 compensation or unemployment compensation, as appropriate, except  
21 that no individual shall be eligible for combined benefits in any  
22 benefit year in an amount more than the maximum entitlement  
23 established for regular unemployment compensation, nor shall an  
24 individual be paid short-time compensation benefits for more than  
25 fifty-two weeks under a short-time compensation plan.

1           (3) The short-time compensation paid to an individual  
2 shall be deducted from the maximum entitlement amount of unemployment  
3 compensation established for that individual's benefit year.

4           (4) Provisions applicable to unemployment compensation  
5 claimants shall apply to short-time compensation claimants to the  
6 extent that they are not inconsistent with short-time compensation  
7 provisions. An individual who files an initial claim for short-time  
8 compensation benefits shall receive a monetary determination.

9           (5) The following provisions apply to individuals who  
10 work for both a short-time compensation employer and another employer  
11 during weeks covered by the approved short-time compensation plan:

12           (a) If combined hours of work in a week for both  
13 employers does not result in a reduction of at least ten percent, or,  
14 if higher, the minimum percentage of reduction required to be  
15 eligible for a short-time compensation, of the usual weekly hours of  
16 work with the short-time employer, the individual shall not be  
17 entitled to short-time compensation;

18           (b) If the combined hours of work for both employers  
19 results in a reduction equal to or greater than ten percent, or, if  
20 higher, the minimum percentage reduction required to be eligible for  
21 short-time compensation, of the usual weekly hours of work for the  
22 short-time compensation employer, the short-time compensation payable  
23 to the individual is reduced for that week and is determined by  
24 multiplying the weekly unemployment benefit amount for a week of  
25 total unemployment by the percentage by which the combined hours of

1 work have been reduced by ten percent, or, if higher, the minimum  
2 percentage reduction required to be eligible for short-time  
3 compensation, or more of the individual's usual weekly hours of work.  
4 A week for which benefits are paid under this subdivision shall be  
5 reported as a week of short-time compensation; and

6 (c) If an individual worked the reduced percentage of the  
7 usual weekly hours of work for the short-time compensation employer  
8 and is available for all his or her usual hours of work with the  
9 short-time compensation employer, and the individual did not work any  
10 hours for the other employer, either because of the lack of work with  
11 that employer or because the individual is excused from work with the  
12 other employer, the individual shall be eligible for short-time  
13 compensation for that week. The benefit amount for such week shall be  
14 calculated as provided in subsection (1) of this section.

15 (6) An individual who is not provided any work during a  
16 week by the short-time compensation employer, or any other employer,  
17 and who is otherwise eligible for unemployment compensation shall be  
18 eligible for the amount of unemployment compensation to which he or  
19 she would otherwise be eligible.

20 (7) An individual who is not provided any work by the  
21 short-time compensation employer during a week, but who works for  
22 another employer and is otherwise eligible, may be paid unemployment  
23 compensation for that week subject to the disqualifying income and  
24 other provisions applicable to claims for regular compensation.

25 Sec. 22. Short-time compensation shall be charged to the

1 employer's experience account in the same manner as unemployment  
2 compensation is charged. Employers liable for payments in lieu of  
3 contributions shall have short-time compensation attributed to  
4 service in their employ in the same manner as unemployment  
5 compensation is attributed.

6           Sec. 23. An individual who has received all of the short-  
7 time compensation or combined unemployment compensation and short-  
8 time compensation available in a benefit year shall be considered an  
9 exhaustee for purposes of extended benefits under section 48-628.02  
10 and, if otherwise eligible under such section, shall be eligible to  
11 receive extended benefits.

12           Sec. 24. (1) The department shall not use General Funds  
13 to implement the short-time compensation program. The department  
14 shall use any and all available federal funds to implement the short-  
15 time compensation program, including, but not limited to, federal  
16 funds distributed to the state under sections 903(c), 903(d), 903(f),  
17 and 903(g) of the federal Social Security Act, as amended.

18           (2) The department shall submit an annual report to the  
19 Governor and electronically to the Legislature on the short-time  
20 compensation program trends, including the number of employers filing  
21 short-time compensation program plans, the number of layoffs averted  
22 through the use of the short-time compensation program, the amount of  
23 short-time compensation program benefits paid, and other information  
24 pertinent to the short-time compensation program.

25           Sec. 25. There is hereby appropriated (1) \$1,797,999 from

1 Federal Funds for FY2014-15 and (2) \$1,576,853 from Federal Funds for  
2 FY2015-16 to the Department of Labor, for Program 31, to aid in  
3 carrying out the provisions of Legislative Bill 961, One Hundred  
4 Third Legislature, Second Session, 2014.

5 There is included in the appropriation to this program  
6 for FY2014-15 \$1,797,999 and for FY2015-16 \$1,576,853 Federal Funds  
7 distributed to the state under sections 903(c), 903(d), 903(f), and  
8 903(g) of the federal Social Security Act, as amended, which shall  
9 only be used to implement the provisions of Legislative Bill 961, One  
10 Hundred Third Legislature, Second Session, 2014.

11 The Department of Labor shall submit a schedule of  
12 proposed expenditures of the appropriation of sections 903(c),  
13 903(d), 903(f), and 903(g) funds made pursuant to this section for  
14 administrative purposes for fiscal years beginning on or after July  
15 1, 2007, to the Legislature as a part of the regular budget  
16 submission process. All provisions of subsection (2) of section  
17 48-621 except subdivision (2)(a)(i) shall apply to this appropriation  
18 of sections 903(c), 903(d), 903(f), and 903(g) funds.

19 The Commissioner of Labor shall submit an annual report  
20 to the Governor, the Speaker of the Legislature, and the chairpersons  
21 of the Appropriations Committee and the Business and Labor Committee  
22 of the Legislature describing expenditures made pursuant to this  
23 section. The report submitted to the committees and the Speaker of  
24 the Legislature shall be submitted electronically.

25 Sec. 26. Sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,

1 22, 23, 24, and 28 of this act become operative on October 1, 2016.  
2 The other sections of this act become operative three calendar months  
3 after the adjournment of this legislative session.

4           Sec. 27. Original sections 44-2825, 45-1201, 45-1202,  
5 45-1203, 45-1204, 45-1205, 48-126.01, and 48-139, Reissue Revised  
6 Statutes of Nebraska, are repealed.

7           Sec. 28. Original section 48-601, Reissue Revised  
8 Statutes of Nebraska, is repealed.