

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 963

Introduced by Brewer, 43; Geist, 25; Gragert, 40; Lowe, 37; McDonnell, 5;
Wishart, 27.

Read first time January 13, 2020

Committee:

1 A BILL FOR AN ACT relating to workers' compensation; to amend section
2 71-7104, Reissue Revised Statutes of Nebraska, and section
3 48-101.01, Revised Statutes Cumulative Supplement, 2018; to change
4 provisions relating to personal injuries of first responders and
5 frontline state employees; to provide a means of demonstrating a
6 prima facie case of personal injury; to provide duties for the
7 Critical Incident Stress Management Program and the Department of
8 Health and Human Services; to require reimbursement for training as
9 prescribed; to provide and eliminate definitions; and to repeal the
10 original sections.

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

1 Section 1. Section 48-101.01, Revised Statutes Cumulative
2 Supplement, 2018, is amended to read:

3 48-101.01 (1) The Legislature finds and declares:

4 (a) The occupations of first responders are recognized as stressful
5 occupations. Only our nation's combat soldiers endure more stress.
6 Similar to military personnel, first responders face unique and uniquely
7 dangerous risks in their sworn mission to keep the public safe. They rely
8 on each other for survival to protect the communities they serve;

9 (b) On any given day, first responders can be called on to make life
10 and death decisions, witness a young child dying with the child's grief-
11 stricken family, make a decision that will affect a community member for
12 the rest of such person's life, or be exposed to a myriad of communicable
13 diseases and known carcinogens;

14 (c) On any given day, first responders protect high-risk individuals
15 from themselves and protect the community from such individuals;

16 (d) First responders are constantly at significant risk of bodily
17 harm or physical assault while they perform their duties;

18 (e) Constant, cumulative exposure to horrific events make first
19 responders uniquely susceptible to the emotional and behavioral impacts
20 of job-related stressors;

21 (f) Trauma-related injuries can become overwhelming and manifest in
22 post-traumatic stress, which may result in substance use disorders and
23 even, tragically, suicide; and

24 (g) It is imperative for society to recognize occupational injuries
25 related to post-traumatic stress and to promptly seek diagnosis and
26 treatment without stigma. This includes recognizing that mental injury
27 and mental illness as a result of trauma is not disordered, but is a
28 normal and natural human response to trauma, the negative effects of
29 which can be ameliorated through diagnosis and effective treatment.

30 (2) ~~(1)~~ Personal injury includes mental injuries and mental illness
31 unaccompanied by physical injury for an employee who is a first responder

1 or frontline state employee if such first responder or frontline state
2 employee establishes, through a mental health professional:

3 (a) ~~That Establishes, by a preponderance of the evidence, that the~~
4 employee's employment conditions causing the mental injury or mental
5 illness were extraordinary and unusual in comparison to the normal
6 conditions of the particular employment; and

7 (b) ~~The Establishes, by a preponderance of the evidence, the medical~~
8 causation between the mental injury or mental illness and the employment
9 conditions by medical evidence.

10 (3) The employee bears the burden of establishing the matters
11 described in subsection (2) of this section by a preponderance of the
12 evidence.

13 (4) A first responder may establish prima facie evidence of a
14 personal injury that is a mental injury or mental illness if the first
15 responder:

16 (a) Presents evidence that the first responder underwent a mental
17 health examination upon entry into such service or subsequent to such
18 entry and before the onset of the mental injury or mental illness and
19 such examination did not reveal the mental injury or mental illness for
20 which the first responder seeks compensation;

21 (b) Presents testimony or an affidavit from a mental health
22 professional stating the first responder suffers from a mental injury or
23 mental illness; and

24 (c) Prior to the employment conditions which caused the mental
25 injury or mental illness, had participated in resilience training and
26 updated the training at least annually thereafter.

27 (5) ~~(2)~~ For purposes of this section, mental injuries and mental
28 illness arising out of and in the course of employment unaccompanied by
29 physical injury are not considered compensable if they result from any
30 event or series of events which are incidental to normal employer and
31 employee relations, including, but not limited to, personnel actions by

1 the employer such as disciplinary actions, work evaluations, transfers,
2 promotions, demotions, salary reviews, or terminations.

3 (6)(a) The Department of Health and Human Services shall reimburse a
4 first responder for the cost of annual resilience training not reimbursed
5 by the first responder's employer. The department shall pay reimbursement
6 at a rate determined by the Critical Incident Stress Management Program
7 under section 71-7104. Reimbursement shall be subject to the annual limit
8 set by such program under section 71-7104.

9 (b) To obtain reimbursement under this subsection, a first responder
10 shall submit an application to the Department of Health and Human
11 Services on a form and in a manner prescribed by the department.

12 (7) The Department of Health and Human Services shall maintain and
13 annually update records of first responders who have completed annual
14 resilience training.

15 (8) (3) For purposes of this section:

16 (a) First responder means a sheriff, a deputy sheriff, a police
17 officer, an officer of the Nebraska State Patrol, a volunteer or paid
18 firefighter, or a volunteer or paid individual licensed under a licensure
19 classification in subdivision (1) of section 38-1217 who provides medical
20 care in order to prevent loss of life or aggravation of physiological or
21 psychological illness or injury;

22 (b) Frontline state employee means an employee of the Department of
23 Correctional Services or the Department of Health and Human Services
24 whose duties involve regular and direct interaction with high-risk
25 individuals;

26 (c) High-risk individual means an individual in state custody for
27 whom violent or physically intimidating behavior is common, including,
28 but not limited to, a committed offender as defined in section 83-170, a
29 patient at a regional center as defined in section 71-911, and a juvenile
30 committed to the Youth Rehabilitation and Treatment Center-Kearney or the
31 Youth Rehabilitation and Treatment Center-Geneva; ~~and~~

1 (d) Mental health professional means:

2 (i) A practicing physician licensed to practice medicine in this
3 state under the Medicine and Surgery Practice Act;

4 (ii) A practicing psychologist licensed to engage in the practice of
5 psychology in this state as provided in section 38-3111 or as provided in
6 similar provisions of the Psychology Interjurisdictional Compact;

7 (iii) A physician assistant licensed under the Medicine and Surgery
8 Practice Act who has proof of current certification in a psychiatric or
9 mental health specialty;

10 (iv) An advanced practice registered nurse licensed under the
11 Advanced Practice Registered Nurse Practice Act who has proof of current
12 certification in a psychiatric or mental health specialty;

13 (v) A person licensed as a mental health practitioner under the
14 Mental Health Practice Act; or

15 (vi) A clergy member of a recognized denomination who can provide
16 documentation of completion of a generally recognized clinical pastoral
17 education program which includes a practicum or of current or recent
18 membership in the American Association of Pastoral Counselors or an
19 equivalent organization;

20 (e) Resilience training means training that meets the guidelines
21 established by the Critical Incident Stress Management Program under
22 section 71-7104 and that teaches how to adapt to, manage, and recover
23 from adversity, trauma, tragedy, threats, or significant sources of
24 stress; and

25 (f) ~~(d)~~ State custody means under the charge or control of a state
26 institution or state agency and includes time spent outside of the state
27 institution or state agency.

28 Sec. 2. Section 71-7104, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 71-7104 There is hereby created the Critical Incident Stress
31 Management Program. The focus of the program shall be to minimize the

1 harmful effects of critical incident stress for emergency service
2 personnel, with a high priority on confidentiality and respect for the
3 individuals involved. The program shall:

4 (1) Provide a stress management session to emergency service
5 personnel who appropriately request such assistance in an effort to
6 address critical incident stress;

7 (2) Assist in providing the emotional and educational support
8 necessary to ensure optimal functioning of emergency service personnel;

9 (3) Conduct preincident educational programs to acquaint emergency
10 service personnel with stress management techniques;

11 (4) Promote interagency cooperation;~~and~~

12 (5) Provide an organized statewide response to the emotional needs
13 of emergency service personnel impacted by critical incidents; ~~-~~

14 (6) Develop guidelines for resilience training for first responders
15 under section 48-101.01;

16 (7) Set reimbursement rates for resilience training under section
17 48-101.01; and

18 (8) Set an annual limit on the hours or quantity of resilience
19 training for which reimbursement is required under section 48-101.01.

20 Sec. 3. Original section 71-7104, Reissue Revised Statutes of
21 Nebraska, and section 48-101.01, Revised Statutes Cumulative Supplement,
22 2018, are repealed.