

E & R AMENDMENTS TO LB 180

1           1.     Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           "Section 1. (1) A child under the age of twelve shall  
4 not be employed in detasseling.

5           (2) A child who is at least twelve years but less than  
6 sixteen years of age may be employed in detasseling if:

7           (a) The employment is outside of school hours during the  
8 month of June, July, or August;

9           (b) The employer of such child obtains the written  
10 consent of a parent of the child or a person standing in loco  
11 parentis to the child for the child to be so employed;

12           (c) The child is domiciled within seventy-five miles of  
13 the location where the labor is to be performed; and

14           (d) The child does not work more than forty-eight hours  
15 in any one week, nor more than eight hours in any one day, nor  
16 before the hour of 6 in the morning, nor after the hour of 8 in the  
17 evening if the child is under the age of fourteen, nor after the  
18 hour of 10 in the evening if the child is between the ages of  
19 fourteen and sixteen. Transportation time shall not be counted  
20 under this subdivision.

21           (3) Sections 48-302 and 48-310 do not apply to employment  
22 of a child in detasseling if the requirements of subsection (2) of  
23 this section are met.

24           (4) This section does not apply to a parent or a person

1 standing in loco parentis who employs and directly supervises his  
2 or her own child or a child in his or her custody in a business  
3 owned and operated by such parent or person standing in loco  
4 parentis.

5           Sec. 2.    (1) An employer who employs a child under  
6 sixteen years of age in detasseling shall provide at least two  
7 supervisors who are eighteen years of age or older at each location  
8 where detasseling is being performed by a child under sixteen years  
9 of age. The supervisors shall be capable of assisting with issues  
10 of health, safety, and wages, including bonuses and incentive  
11 payments.

12           (2) An employer who employs a child under sixteen years  
13 of age in detasseling shall provide the parents of such child with  
14 an information sheet defining the terms of employment, including,  
15 but not limited to, the availability of water and sanitary  
16 facilities on the job and wage, bonus, and incentive payment  
17 information. The information sheet shall set forth the name,  
18 address, and telephone number of the Division of Safety and Labor  
19 Standards of the Department of Labor for purposes of filing  
20 complaints concerning nonpayment of wages.

21           Sec. 3.    Section 48-301, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           48-301. For purposes of sections 48-302 to 48-313 and  
24 sections 1 and 2 of this act:

25           (1) Employment  ~~, employment~~ means ~~(1)~~ (a) service for  
26 wages or ~~(2)~~ (b) being under a contract of hire, written or oral,  
27 express or implied. Employment, other than detasseling, does not

1 include any employment for which the employer is not liable for  
2 payment of the combined tax or payment in lieu of contributions  
3 under section 48-648, 48-649, or 48-660.01; and

4 (2) Detasseling means the removal of weeds, off-type and  
5 rogue plants, and corn tassels in hand pollinating and in any other  
6 engagement in hand labor in the production of seed.

7 Sec. 4. Section 48-303, Revised Statutes Supplement,  
8 2000, is amended to read:

9 48-303. Except as otherwise provided in this section, an  
10 ~~An~~ employment certificate shall be approved only by the  
11 superintendent of the primary high school district in which the  
12 child resides or by a person authorized by him or her in writing  
13 or, when there is no superintendent, by a person authorized by the  
14 school district officers, except that no school district officer or  
15 other person authorized by this section may approve such  
16 certificate for any child then in or about to enter his or her own  
17 employment or the employment of a firm or corporation of which he  
18 or she is a member, officer, or employee or in whose business he or  
19 she is interested. If a child who resides in an adjoining state  
20 seeks to work in Nebraska, the Department of Labor may approve the  
21 employment certificate. The officer or person approving such  
22 certificate may administer the oath provided for therein or in any  
23 investigation or examination necessary for the approval thereof.  
24 No fee shall be charged for approving any such certificate or for  
25 administering any oath or rendering any services related thereto.  
26 The school board or board of education of each school district  
27 approving the employment certificate, or the department if the

1 department has approved the employment certificate, shall establish  
2 and maintain proper records where copies of all such certificates  
3 and all documents connected therewith shall be filed and preserved  
4 and shall provide the necessary clerical services for carrying out  
5 sections 48-302 to 48-313 and sections 1 and 2 of this act. The  
6 person who issued the employment certificate shall report to the  
7 ~~Department of Labor~~ department any complaint concerning the  
8 conditions of employment of a child for whom a certificate is in  
9 force. Upon receipt of the report, the ~~Department of Labor~~  
10 department shall make such investigation as it deems advisable to  
11 protect an individual child or to promote the youth-work program.

12           Sec. 5. Section 48-311, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           48-311. Whoever employs a child under sixteen years of  
15 age and whoever, having under his or her control a child under such  
16 age, causes or permits such child to be employed in violation of  
17 sections 48-302 to 48-313 and sections 1 and 2 of this act is  
18 guilty of a Class ~~V~~ II misdemeanor. Whoever continues to employ  
19 any child in violation of any of such sections, after being  
20 notified by an attendance officer or by the Department of Labor or  
21 by its assistants or employees, is, for every day thereafter that  
22 such employment continues, guilty of a Class ~~V~~ II misdemeanor.

23           The failure of an employer of child labor to produce,  
24 upon request of a person authorized to demand the same, any  
25 employment certificate or list required by such sections shall be  
26 prima facie evidence of the illegal employment of any child whose  
27 employment certificate is not produced or whose name is not listed.

1 Any corporation or employer retaining employment certificates in  
2 violation of such sections is guilty of a Class V II misdemeanor.

3 Every person authorized or required to sign any  
4 certificate or statement prescribed by such sections who knowingly  
5 certifies or makes oath to any material false statement therein or  
6 who violates any of the provisions of such sections is guilty of a  
7 Class V II misdemeanor.

8 Every person who refuses admittance to any person  
9 authorized to visit or inspect any premises or place of business  
10 under the provisions of such sections and to produce all  
11 certificates and lists he or she may have when demanded, after such  
12 person shall have announced his or her name and the office he or  
13 she holds and the purpose of his or her visit, or otherwise  
14 obstructs such persons in the performance of their duties  
15 prescribed by such sections is guilty of a Class V II misdemeanor.

16 Sec. 6. Section 48-446, Revised Statutes Supplement,  
17 2000, is amended to read:

18 48-446. (1) There is hereby created the Workplace Safety  
19 Consultation Program. It is the intent of the Legislature that  
20 such program help provide employees in Nebraska with safe and  
21 healthful workplaces.

22 (2) Under the Workplace Safety Consultation Program, the  
23 Department of Labor may conduct workplace inspections and  
24 consultations to determine whether employers are complying with  
25 standards issued by the federal Occupational Safety and Health  
26 Administration or the federal Mine Safety and Health Administration  
27 for safe and healthful workplaces. Workplace inspections and

1 safety consultations shall be performed by employees of the  
2 Department of Labor who are knowledgeable and experienced in the  
3 occupational safety and health field and who are trained in the  
4 federal standards and in the recognition of safety and health  
5 hazards. The Department of Labor may employ qualified persons as  
6 may be necessary to carry out this section.

7 (3) All employers shall be subject to occupational safety  
8 and health inspections covering their Nebraska operations.  
9 Employers shall be selected by the Commissioner of Labor for  
10 inspection on the basis of factors intended to identify the  
11 likelihood of workplace injuries and to achieve the most efficient  
12 utilization of safety personnel of the Department of Labor. Such  
13 factors shall include:

14 (a) The amount of premium paid by the employer for  
15 workers' compensation insurance;

16 (b) The experience modification produced by the  
17 experience rating system referenced in section 44-7524;

18 (c) Whether the employer is covered by workers'  
19 compensation insurance under section 48-146.01;

20 (d) The relative hazard of the employer's type of  
21 business as evidenced by insurance rates or loss costs filed with  
22 the Director of Insurance for the insurance rating classification  
23 or classifications applicable to the employer;

24 (e) The nature, type, or frequency of accidents for the  
25 employer as may be reported to the Department of Insurance, the  
26 Nebraska Workers' Compensation Court, or the Department of Labor;

27 (f) Workplace hazards as may be reported to the

1 Department of Insurance, the Nebraska Workers' Compensation Court,  
2 or the Department of Labor;

3 (g) Previous safety and health history;

4 (h) Possible employee exposure to toxic substances;

5 (i) Requests by employers for the Department of Labor to  
6 inspect their workplaces or otherwise provide consulting services  
7 on a basis by which the employer will reimburse the Department of  
8 Labor; and

9 (j) All other relevant factors.

10 (4) Hazards identified by an inspection shall be  
11 eliminated within a reasonable time as specified by the  
12 Commissioner of Labor.

13 (5) An employer who refuses to eliminate workplace  
14 hazards in compliance with an inspection shall be referred to the  
15 federal Occupational Safety and Health Administration or the  
16 federal Mine Safety and Health Administration for enforcement.

17 (6) At the discretion of the Commissioner of Labor,  
18 inspection of an employer may be repeated to ensure compliance by  
19 the employer, with the expenses incurred by the Department of Labor  
20 to be paid by the employer.

21 (7) The Commissioner of Labor shall adopt and promulgate  
22 rules and regulations establishing a schedule of fees for  
23 consultations and inspections. Such fees shall be established with  
24 due regard for the costs of administering the Workplace Safety  
25 Consultation Program. The cost of consultations and inspections  
26 shall be borne by each employer for which these services are  
27 rendered.

1           (8) There is hereby created the Workplace Safety  
2 Consultation Program Cash Fund. All fees collected pursuant to the  
3 Workplace Safety Consultation Program shall be remitted to the  
4 State Treasurer for credit to the fund and shall be used for the  
5 sole purpose of administering the program. Any money in the fund  
6 available for investment shall be invested by the state investment  
7 officer pursuant to the Nebraska Capital Expansion Act and the  
8 Nebraska State Funds Investment Act.

9           (9) Each employer provided a consultation or inspection  
10 by the Department of Labor shall retain up-to-date records for each  
11 place of employment as recommended by the inspection or  
12 consultation. The employer shall make such records available to  
13 the Department of Labor upon request to ensure continued progress  
14 of the employer's efforts to comply with the federal Occupational  
15 Safety and Health Administration or the federal Mine Safety and  
16 Health Administration standards.

17           (10) Any person who knowingly operates or causes to be  
18 operated a business in violation of recommendations to correct  
19 serious or imminent hazards as identified by the Workplace Safety  
20 Consultation Program shall be referred to the federal Occupational  
21 Safety and Health Administration or the federal Mine Safety and  
22 Health Administration.

23           (11) The Attorney General, acting on behalf of the  
24 Commissioner of Labor, or the county attorney in a county in which  
25 a business is located or operated may apply to the district court  
26 for an order against any employer in violation of this section.

27           (12) The Workplace Safety Consultation Program shall not

1 be construed to alter the duty of care or the liability of an owner  
2 or a business for injuries or death of any person or damage to any  
3 property. The state and its officers and employees shall not be  
4 construed to assume liability arising out of an accident involving  
5 a business by reason of administration of the Workplace Safety  
6 Consultation Program.

7 (13) Inspectors employed by the Department of Labor may  
8 inspect any place of employment with or without notice during  
9 normal hours of operation. Such inspectors may suspend the  
10 operation of equipment determined to constitute an imminent danger  
11 situation. Operation of such equipment shall not resume until the  
12 hazardous or unsafe condition is corrected to the satisfaction of  
13 the inspector.

14 (14) No person with a reasonable cause to believe the  
15 truth of the information shall be subject to civil liability for  
16 libel, slander, or any other relevant tort cause of action by  
17 virtue of providing information without malice on workplace hazards  
18 or the nature, type, or frequency of accidents to the Department of  
19 Insurance, the Nebraska Workers' Compensation Court, or the  
20 Department of Labor.

21 (15) Safety and health inspectors employed by the  
22 Department of Labor shall have the right and power to enter any  
23 premise, building, or structure, public or private, for the purpose  
24 of inspecting any work area or equipment. A refusal by the  
25 employer of entry by a safety and health inspector employed by the  
26 Department of Labor shall be a violation of this subsection. If  
27 the Commissioner of Labor finds, after notice and hearing, that an

1 employer has violated this subsection, he or she may order payment  
2 of a civil penalty of not more than one thousand dollars for each  
3 violation. Each day of continued violation shall constitute a  
4 separate violation.

5 (16) The Commissioner of Labor shall adopt and promulgate  
6 rules and regulations to carry out this section.

7 Sec. 7. Section 48-2111, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 48-2111. The commissioner shall serve notice of  
10 revocation on the contractor by mailing such notice by certified  
11 mail or any other manner of delivery by which the United States  
12 Postal Service can verify delivery to the address of the contractor  
13 or the contractor's registered agent listed in the application.  
14 Upon a showing of compliance with the application requirements set  
15 out in section 48-2105, the commissioner may temporarily reinstate  
16 the registration pending a hearing on the revocation. A  
17 registration revoked under this section shall not be permanently  
18 reinstated. To receive a new registration number, the contractor  
19 shall reapply to the commissioner.

20 Sec. 8. Section 48-2114, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 48-2114. (1) The commissioner shall issue a citation to  
23 a contractor when an investigation reveals that the contractor has  
24 violated:

25 (a) The requirement that the contractor be registered; or

26 (b) The requirement that the contractor's registration  
27 information be substantially complete and accurate.

1           (2) If a citation is issued, the commissioner shall  
2 notify the contractor ~~by certified mail~~ of the proposed  
3 administrative penalty, if any, by certified mail or any other  
4 manner of delivery by which the United States Postal Service can  
5 verify delivery. The administrative penalty shall be not more than  
6 five hundred dollars in the case of a first violation and not more  
7 than five thousand dollars in the case of a second or subsequent  
8 violation.

9           (3) The contractor shall have fifteen working days from  
10 the date of the citation or penalty to contest such citation or  
11 penalty. Notice of contest shall be sent to the commissioner who  
12 shall provide a hearing pursuant to the Administrative Procedure  
13 Act.

14           Sec. 9. The Revisor of Statutes shall assign sections 1  
15 and 2 of this act within sections 48-301 to 48-313, and any  
16 references to sections 48-302 to 48-313 shall be construed to  
17 include sections 1 and 2 of this act.

18           Sec. 10. Original sections 48-301, 48-311, 48-2111, and  
19 48-2114, Reissue Revised Statutes of Nebraska, and sections 48-303  
20 and 48-446, Revised Statutes Supplement, 2000, are repealed.

21           Sec. 11. Since an emergency exists, this act takes  
22 effect when passed and approved according to law."

23           2. On page 1, strike beginning with "48-302.01" in line  
24 1 through line 8 and insert "48-301, 48-311, 48-2111, and 48-2114,  
25 Reissue Revised Statutes of Nebraska, and sections 48-303 and  
26 48-446, Revised Statutes Supplement, 2000; to change provisions  
27 relating to child employment in detasseling, child employment

AM7108  
LB 180  
LSN-04-20

AM7108  
LB 180  
LSN-04-20

1 certificates, and worker safety programs; to define and redefine  
2 terms; to provide duties; to change penalties; to harmonize  
3 provisions; to provide a duty for the Revisor of Statutes; to  
4 repeal the original sections; and to declare an emergency.".