



**Ninety-Ninth Legislature - Second Session - 2006**  
**Committee Statement**  
**LB 1237**

---

**Hearing Date:** January 30, 2006  
**Committee On:** Business and Labor

**Introducer(s):** (Cunningham, Baker, Burling, Combs, Engel, Erdman, Kremer, Preister, Raikes, Redfield)

**Title:** Change provisions of the Nebraska Workers' Compensation Act and the Workplace Safety Consultation Program

---

**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
- 

**Vote Results:**

6	Yes	Senators Cunningham, Combs, Burling, Kremer, Preister and Schimek
0	No	
0	Present, not voting	
1	Absent	Senator Chambers

---

**Proponents:**

Senator Doug Cunningham  
 Bob Hallstrom  
  
 Richard Reiser  
  
 Bryce Wendland  
 Dallas Jones  
  
 Korby Gilbertson  
  
 Ron Sedlacek  
 Charles Burhan  
 Jennifer Tronc  
 Don Cleasby

**Representing:**

Introducer  
 Nebraskans for Workers' Comp Equity & Fairness/ National Federation of Independent Business  
 Nebraskans for Workers' Comp Equity & Fairness  
 Schneider Electric – Square D  
 Nebraskans for Workers' Comp Equity & Fairness  
 Property Casualty Insurers Association of America/ Tyson Foods, Inc.  
 Nebraska Chamber of Commerce  
 Liberty Mutual Insurance  
 Liberty Mutual Insurance  
 Property Casualty Insurers Assoc. of America

**Opponents:**

Michael Dowd  
 Scott Daugherty

**Representing:**

AFL-CIO  
 Self

---

Marvin Sheldon, Jr.  
Ted Buri  
Steve Howard  
Shannon Anderson  
Lee Loudon  
Julie Shipman-Burns  
Jim Sheard  
Jack McCarthy  
Tom Jenkins  
Robert Moodie  
Ken Mass

Self  
NAPE/AFSCME Local 61  
Nebraska AFL-CIO  
Alegent Health/ Nebraska Hospital Association  
Nebraska Association of Trial Attorneys  
Nebraska Association of Trial Attorneys  
Teamsters Local 554  
Nebraska Medical Association  
Blue Cross/Blue Shield of Nebraska  
Nebraska Association of Trial Attorneys  
Nebraska State AFL-CIO

**Neutral:**

Dick Johnson  
Laura Peterson

Jack Mills

Glenn Morton

**Representing:**

Associated Builders & Contractors  
Department of Administrative Services &  
Administration  
Nebraska Intergovernmental Risk Management  
Association  
NE Workers' Compensation Court

---

**Summary of purpose and/or changes:** LB 1237, as introduced, offered several changes to the workers' compensation system as follows: it provided that the schedule of fees would be based on the fees paid by the state's health insurance program; a managed care plan could provide less than the full package of services and was required to educate all participants on topics prescribed by the court; an employee under a managed care plan would be required to use the physicians within the plan unless the employer refused liability for the claim; the insurer was to pay or deny a claim for payment within thirty days after receipt of the physician's report of injury and treatment if all of the mandatory data elements were included on the form prescribed by the court; and standards for return-to-work coordination services were to be set by the court and include job analysis, job modification and assessments and the coordination of case management with the treating physician. The bill also provided funding for the Workplace Safety Consultation Program by means of grants issued for safety inspections, safety education and training, and for such other safety measures that would assist in reducing workplace injuries.

After months of meetings and negotiations for workers' compensation reform, a consensus could not be reached with all the parties in order to advance the workers' compensation reform package. Therefore, the Chairperson offered LB 1237, designated as the committee's priority bill, to the committee members for other bills. Two bills were proposed, LB 230, sponsored by Senator Redfield, and LB 415, sponsored by Senator Combs. Both bills were introduced last session and advanced to General File. Although both bills advanced 5 for, 1 against, and 1 not voting, the committee thought that the bills when combined offered a compromise.

One issue addressed in the original bill, preventing balanced billing by providers, was deemed important by the committee and remains in the amendment offered to the bill. The issue is whether a provider of medical, surgical, or hospital services may bill the injured employee for services rendered under the Workers' Compensation Act to which the provider was not paid by the payor. The committee determined that balanced billing should not be permitted. Therefore,

changes to section 48-120 are offered under this amendment that are similar to the original bill to address this concern by stating that the fee allowed by the provider is the lower of the fee established or allowed by the compensation court, or the provider's actual charge, and that the provider shall not attempt to collect any amount over the allowable fee from the employee or the employee's representative.

**Explanation of amendments, if any:**

AM2728 TO LB 1237:

*Sec. 1:* Amends 48-120 to prevent providers from billing an employee for those amounts not allowed by the workers' compensation fee schedule. The recommended changes on page one are to strike the last line in the first paragraph that refers to regular charges, and insert into the second paragraph that "[t]he allowable fee for any such service shall be that fee established by the compensation court or the provider's actual charge, whichever is lower. On page two, starting on line eight, it currently states that the provider cannot collect from the employee or the employee's representative any amount in excess of the maximum fee established by the compensation court. The recommended change is to strike "maximum" and insert the word allowable. With the changes, the provider will be reimbursed for the fee allowed by the compensation court, or the provider's actual charge, whichever is lower.

*Sec. 2:* New language from LB 415. It provides that any information available by electronic means as to the employee's identity, past or present medical condition, the extent of the injury, and benefits paid is confidential and not open to public inspection or copying except as provided within this new provision and as necessary for the compensation court to administer and enforce the Act.

Such information is confidential unless:

- (1) the employee or the employee's attorney or agent may obtain the record with written authorization from the employee;
- (2) the employer, workers' compensation insurer, risk management pool or third-party administrator shall have access to said information, as well as their attorney or authorized agent so long as they have written authorization;
- (3) the information is used for state or federal investigations or examinations or for the state or federal government for statistical information;
- (4) it is a pleading filed in a compensation court or exhibit offered and received into evidence by the compensation court; or
- (5) a request identifies an employer and asks for information as to the number and nature of injuries without revealing specific information as to the identity of the employee or the nature of the disability of the employee.

*Sec. 3:* 48-1,110; adds this new provision to the Nebraska Workers' Compensation Act.

*Sec. 4:* New language from LB 230 to provide that all employees pay their fair share of legal expenses if the employee is represented by legal representation. It provides that if an employee who is not a member of a labor organization, chooses to have legal representation from the labor organization in any grievance or legal action, the employee shall reimburse the labor

organization for his or her pro rata share of the actual legal fees and court fees and costs incurred by the labor organization in the representation of the employee.

*Sec. 5:* Section 4 is to be assigned within sections 48-209 to 48-236.

*Sec. 6:* Original section 48-120 and 48-1110 are repealed.

---

**Senator Douglas Cunningham, Chairperson**