

BUSINESS AND LABOR  
COMMITTEE

NEBRASKA LEGISLATURE

SUMMARY OF 2012 LEGISLATION

One Hundred Second Legislature  
Second Session

Senator Steve Lathrop, Chair  
Senator Tanya Cook, Vice-Chair  
Senator Brad Ashford  
Senator Tom Carlson  
Senator Norm Wallman  
Senator Burke Harr  
Senator Jim Smith

Molly Burton, Legal Counsel  
Kate Wolfe, Committee Clerk

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## **SUMMARY OF BILLS ENACTED IN 2012**

**LB 738 (Gloor)** Increases amount for workers' compensation burial expenses

The current compensation for burial expenses for a work related fatality through workers compensation insurance is \$6,000, paid to dependents. LB 738 raised the amount to \$10,000.

**LB 911 (Lathrop)** Clarify use of a fund under the Employment Security Law

LB 911 clarifies that the Nebraska Training and Support Trust Fund can support training program grants for nonprofit employers.

**LB 959 (Janssen)** Provides employers with immunity when giving employment references

LB 959 provides for absolute civil immunity for current and previous employers providing dates of employment, pay level, job description, and wage history information to prospective employers. Creates a rebuttable presumption of good faith on the part of the employer providing information concerning job performance and evaluation to a prospective employer. Defines actual malice as providing information knowing it to be false or with reckless disregard as to its truth or falsity.

AM 2010 replaced the bill . AM 2010 allows a current or former employer to provide certain information to a prospective employer upon written consent of the prospective employee. Information that may be provided includes: employment date and duration, pay rate and wage history, job description and duties, most recent written performance evaluation, attendance information, drug and alcohol test results, threatening or harassing behavior, and whether the employee is eligible for rehire. An employer providing this information pursuant to a written consent shall be immune from civil liability and presumed to be acting in good faith. The good faith presumption may be rebutted upon a showing by a preponderance of the evidence that the information was false and known to be false or the employer acted with malice or reckless disregard for the truth.

AM 2685 further required that previous employment evaluations must have been provided to the employee during the course of employment.

**LB 997 (Wightman)** Change safety standards for high-voltage lines

LB 997 amends the high voltage safety statutes by requiring qualified and authorized individuals, as determined by the owner of the high voltage conductors, to manipulate the lines when accommodating oversized loads on public highways. LB 997 further requires permits for slow moving oversized loads to include written proof that the relevant utility has been notified.

AM 1885 removes the written notice requirement for permits and, instead, requires the applicant to affirm under oath that they have contacted the relevant utility. AM 1885 additionally allows electric power districts to address issues of authority to manipulate lines between districts by contract.

**LB 1005 (Lambert)** Adds definition fo the Emergency Responder Job Protection Act

Include members of emergency management teams to the protections afforded in the Emergency Responder Job Protection Act.

**LB 1058 (Carlson)** Makes changes to employment security law

Amends section 48-632 by requiring employers to provide the Department of Labor with information regarding an employee's eligibility for unemployment benefits within 7 days after the mailing or electronic transmission of the department's request for the information. Failure to provide the requested information within 7 days will result in forfeiture of appeal rights. This codifies existing state regulation. Clarifies that an employer's experience account will not be charged if the employer complied with section 48-632 and it is determined that the individual's separation from employment was voluntary and without good cause. Amends section 48-655 to clarify language regarding the Commissioner's ability to recover a benefit overpayment by set-off against a person's federal income tax refund. Currently, DOL can only obtain a set-off in instances of fraud. This would allow a set-off in any circumstance where there is an overpayment and wages were not accurately reported. Provides for a 15% penalty, in addition to the repayment of benefits, for individuals who willfully fail to disclose amounts earned or information that would have disqualified the individual from receiving benefits. This penalty is a federal conformity requirement. Amends the New Hire Reporting Act's definition of rehire by clarifying that a temporary layoff is less than 60 days. This change is required to comply with federal regulatory changes. LB 1058 additionally repeals 48-633, which provides for appeal tribunals. This is also a federal conformity requirement. Federal law requires state employees to conduct unemployment benefit hearings, so the appeal process cannot be contracted out.

The committee amendment increases from 7 to 10 days the time period required to respond to the department.

**LB 1072 (Business and Labor)** Provide for payment of claims against the state

LB 1072 is introduced by the Business and Labor Committee at the request of the Department of Administrative Services, Risk Management Division. This bill introduces the claims against the State that are required by statute to be reviewed by the Legislature. The State Risk Manager submitted the following claims against the State and certain write-offs for the Legislature's review and the appropriation of funds.

LB 1072 includes the claims approved by the State Claims Board or those claims that have been settled and court ordered. LB 1072 additionally includes agency write-off requests.  
\$275,000.00 for Miscellaneous Claim Number 2012-11722, against Secretary of State John Gale, pay to American Civil Liberties Union, out of the General Fund.  
\$267,737.62 for Tort Claim Number 2004-00646, against the Department of Correctional Services, pay to Barber and Barber, P.C., L.L.O., out of the General Fund.  
\$227,500.00 for Tort Claim Number 2011-10813, against the State of Nebraska, pay to Jenny L. Ternus and Eugene G. Schumacher, out of the State Insurance Fund.

**AGENCY WRITE OFF REQUESTS:**

\$2,683.98 for Request Number 2012-11617, made by the Military Department.  
\$136,153.13 for Request Number 2012-11660, made by the Department of Roads.  
\$21,233.05 for Request Number 2012-11705, made by the Lottery Division of the Department of Revenue.  
\$17,746.65 for Request Number 2012-11707, made by the Department of Motor Vehicles.  
\$3,664,786.12 for Request Number 2012-11708, made by the Department of Health and Human Services.  
\$7,503.05 for Request Number 2012-11716, made by the Department of Administrative Services.  
\$101,737.13 for Request Number 2012-11726, made by the State Treasurer.  
\$215.33 for Request Number 2012-11762, made by the Supreme Court.  
\$10,557.36 for Request Number 2012-11831, made by the Department of Insurance.

AM 2358 amends the denied claims in LB 1073 and AM 1782 into LB 1072:

\$72,325.05 for Miscellaneous Claim Number 2011-11204, against the Department of Health and Human Services, made by Better Living Counseling Services, Inc.  
\$77,275.62 for Miscellaneous Claim Number 2012-11510, against the Department of Health and Human Services, made by R&F Hobbies, Inc., dba. Prince of the Road,  
\$108,588.53 for Miscellaneous Claim Number 2012-11679, against the Department of Health and Human Services, made by Pathfinder Support Services, Inc.,  
\$11,522.72 for Miscellaneous Claim Number 2012-11744, against the Department of Health and Human Services, made by Wesley Center Crisis Nursery,  
\$1,232.33 for Miscellaneous Claim Number 2012-11745, against the Department of Health and Human Services, made by Apex Therapy Services,  
\$12,193.14 for Miscellaneous Claim Number 2012-11746, against the Department of Health and Human Services, made by Beneficial Behavioral Health Services, Inc.,  
\$102,725.94 for Miscellaneous Claim Number 2012-11747, against the Department of Health and Human Services, made by Epworth Village,  
\$33,748.45 for Miscellaneous Claim Number 2012-11748, against the Department of Health and Human Services, made by Panhandle Mental Health Center,

\$27,232.13 for Miscellaneous Claim Number 2012-11749, against the Department of Health and Human Services, made by NorthStar Services,  
\$5,133.82 for Miscellaneous Claim Number 2012-11750, against the Department of Health and Human Services, made by Family Resources, Inc.,  
\$35,483.53 for Miscellaneous Claim Number 2012-11752, against the Department of Health and Human Services, made by Compass,  
\$109,761.13 for Miscellaneous Claim Number 2012-11753, against the Department of Health and Human Services, made by Good Life Counseling and Support, L.L.C.,  
\$14,278.75 for Miscellaneous Claim Number 2012-11754, against the Department of Health and Human Services, made by Good Life Counseling and Support, L.L.C.,  
\$88,800.53 for Miscellaneous Claim Number 2012-11755, against the Department of Health and Human Services, made by Mid-Plains Center for Behavioral Healthcare Services, Inc.,  
\$182,716.98 for Miscellaneous Claim Number 2012-11756, against the Department of Health and Human Services, made by South Central Behavioral Services,  
\$19,366.25 for Miscellaneous Claim Number 2012-11757, against the Department of Health and Human Services, made by Better Living Counseling Services, Inc.,  
\$36,929.04 for Miscellaneous Claim Number 2012-11758, against the Department of Health and Human Services, made by Grace Children's Home,  
\$77,546.76 for Miscellaneous Claim Number 2012-11759, against the Department of Health and Human Services, made by Christian Heritage Children's Home,  
\$25,896.51 for Miscellaneous Claim Number 2012-11760, against the Department of Health and Human Services, made by Nebraska Foster and Adoptive Parent Association,  
\$257,795.95 for Miscellaneous Claim Number 2012-11763, against the Department of Health and Human Services, made by Family Skill Building Services, L.L.C.,  
\$16,659.01 for Miscellaneous Claim Number 2012-11764, against the Department of Health and Human Services, made by Midwest Special Services,  
\$421.07 for Miscellaneous Claim Number 2012-11767, against the Department of Health and Human Services, made by Nebraska Children's Home Society,  
\$5,815.15 for Miscellaneous Claim Number 2012-11768, against the Department of Health and Human Services, made by Cedars Youth Services,  
\$17,863.48 for Miscellaneous Claim Number 2012-11769, against the Department of Health and Human Services, made by Indiana Developmental Training Center of Lafayette L.L.C.,  
\$68,951.38 for Miscellaneous Claim Number 2012-11770, against the Department of Health and Human Services, made by Building Blocks for Community Enrichment,  
\$20,645.45 for Miscellaneous Claim Number 2012-11771, against the Department of Health and Human Services, made by Mark of Honor Youth Lodge, Inc.,  
\$16,704.36 for Miscellaneous Claim Number 2012-11772, against the Department of Health and Human Services, made by Mosaic,  
\$87,270.30 for Miscellaneous Claim Number 2012-11782, against the Department of Health and Human Services, made by Norfolk Group Home, Inc.,  
\$8,187.76 for Miscellaneous Claim Number 2012-11783, against the Department of Health and Human Services, made by Children's Square USA,  
\$37,163.72 for Miscellaneous Claim Number 2012-11794, against the Department of Health and Human Services, made by Behavioral Health Specialists, Inc.,  
\$5,885.57 for Miscellaneous Claim Number 2012-11797, against the Department of Health and Human Services, made by Heartland Boys Home, L.L.C.,  
\$1,689.97 for Miscellaneous Claim Number 2012-11798, against the Department of Health

and Human Services, made by Harvest Haven Group Homes, L.L.C.,  
\$16,986.79 for Miscellaneous Claim Number 2012-11828, against the Department of Health and Human Services, made by Human Services, Inc.,  
\$899.75 for Miscellaneous Claim Number 2012-11830, against the Department of Health and Human Services, made by Mercy Medical Center,  
\$63,735.00 for Miscellaneous Claim Number 2012-11842, against the Department of Health and Human Services, made by OMNI Behavioral Health,  
\$12,416.61 for Miscellaneous Claim Number 2012-11854, against the Department of Health and Human Services, pay to Apex Foster Care, Inc.,  
\$6,933.14 for Miscellaneous Claim Number 2012-11863, against the Department of Health and Human Services, pay to St. Monica's Home,  
\$402,019.17 for Miscellaneous Claim Number 2012-11882, against the Department of Health and Human Services, pay to BSM Inc., dba McConaughy Discovery Center,  
\$5,302.03 for Miscellaneous Claim Number 2012-11895, against the Department of Health and Human Services, pay to Central Mediation Center,  
\$1,224.00 for Miscellaneous Claim Number 2012-11896, against the Department of Health and Human Services, pay to Women In Community Service - WICS Residence for Girls,  
\$4,948.65 for Miscellaneous Claim Number 2012-11897, against the Department of Health and Human Services, pay to Child Saving Institute,  
\$17,883.32 for Miscellaneous Claim Number 2012-11898, against the Department of Health and Human Services, pay to Community Action Partnership of Western Nebraska,  
\$114.10 for Miscellaneous Claim Number 2012-11899, against the Department of Health and Human Services, pay to Myhanh Che,  
\$136,258.51 for Miscellaneous Claim Number 2012-11900, against the Department of Health and Human Services, pay to Heartland Family Service,  
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\$952.96 for Miscellaneous Claim Number 2012-11911, against the Department of Health and Human Services, pay to Donald Tuggle,  
\$810.26 for Miscellaneous Claim Number 2012-11946, against the Department of Health and Human Services, pay to Rick Michaelsen,  
\$8,146.69 for Miscellaneous Claim Number 2012-11947, against the Department of Health and Human Services, pay to Northeast Nebraska Juvenile Services,  
\$4,695.00 for Miscellaneous Claim Number 2012-11948, against the Department of Health and Human Services, pay to Dr. John Meidlinger.

**SUMMARY OF BILLS HELD IN COMMITTEE AND INDEFINITELY POSTPONED AT  
SESSION END**

**LB 113 (Dubas)** Prohibit job discrimination based upon credit history

**Section 1:** amends the intent and policy of the Fair Employment Practice Act to include discrimination based on an applicant's or employee's credit history or report unless the information directly relates to a bona fide occupational qualification for employment.

**Section 2:** makes it an unlawful employment practice under the Fair Employment Practice Act to discriminate against an applicant or employee based on information contained in a credit report, unless the information relates to a bona fide occupational qualification for employment.

**LB 141 (Lautenbaugh)** Provide for public records that may be withheld

LB 141 amends public records law by allowing the records custodian to withhold from the public, records relating to initial traffic accident reports and workers' compensation first injury reports.

**LB 153 (Lathrop)** Change reimbursement for medical services under the Nebraska Workers' Compensation Act

LB 153 amends section 48-120 by removing language stating that payment for medical services shall not "exceed the regular charge made for such service in similar cases." This language is replaced with language that reimbursement for medical services shall be in accordance with the fee schedules established by the court or, if applicable, the Diagnostic Related Group inpatient hospital fee schedule.

**LB 184 (Smith)** Change interest rate provisions under the Nebraska Workers' Compensation Act

LB 184 amends section 48-125 pertaining to late payments and penalties for workers' compensation benefits. LB 184 would change the interest rate calculation from the 14% percent interest employed in section 45-104.01 to the rate calculation provided in section 45-103.

Situations when an attorney fee is awarded include: when the trial court's ruling denying benefits is overturned on appeal, when an employees award is increased on appeal, when an

employer appeals, but does not receive a reduction in the benefit award, or when an employer fails to pay benefits when no reasonable controversy existed. When attorney's fees are awarded, interest on the final award is assessed. Interest attaches to the award at 14%, pursuant to section 45-104.01. Section 45-103 provides an interest rate formula as follows: 2% above the bond investment yield, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of the entry of the judgment. The state court administrator publishes the rates. Currently, the interest rate is 2.193%. The highest the rate has been is 10.51% in April of 1989.

**LB 189 (Council)** Adopt the Criminal Offender Employment Act

**Section 1:** creates the Criminal Offender Employment Act.

**Section 2:** intent language stating that criminal offenders should be provided an opportunity to gain public employment.

**Section 3:** definitional section, defining moral turpitude, otherwise qualified, and public employment.

**Section 4:** prohibits initial employment applications to have a question concerning the applicant's criminal record. For employment purposes, a conviction may not be an automatic bar to employment and may only be considered once a candidate is selected as a finalist. Prohibits selected records from being disseminated including those for arrest and misdemeanor convictions not involving moral turpitude.

**Section 5:** employment may be rejected and an employee may be suspended or terminated under the following circumstances: 1) for a misdemeanor conviction involving moral turpitude or a felony conviction, and it directly relates to the employment, (2) for a conviction that does not involve moral turpitude or is not related to the employment, the employer may reject employment if it is believed that the applicant has not been sufficiently rehabilitated. Creates a presumption of rehabilitation upon completion of probation or parole or 3 years after imprisonment without a subsequent conviction. Reason for rejection shall be given if based in whole or in part on a conviction.

**Section 6:** provides that the Act does not apply to law enforcement.

**Sections 7-9:** amend statutory sections concerning the tax commissioner, fire departments, and civil service employment to hire in accordance with this Act.

**Section 10:** repealer.

**LB 245 (Carlson)** Provide for release of employee medical records as prescribed under the Nebraska Workers' Compensation Act

LB 245 amends section 48-146.02 of the Workers' Compensation Act by requiring employees to provide an insurer with a patient waiver. Section 48-146.02 gives a three-judge panel

jurisdiction to hear claims against an insurer for not complying with the Workers' Compensation Act. These situations include: failing to promptly investigate claims, refusing to pay benefits without a reasonable investigation, or paying less than what is owed. Failure to comply with the act may result in the insurer's loss or suspension of its ability to write or provide workers' compensation insurance. The court administrator may request the Attorney General to file a show cause motion against the insurer. Burden is placed on the insurer to show why the panel should not take action pursuant to section 48-146.02.

The waiver required under LB 245 gives the insurer access to the employee's previous medical records. Access is not permitted for records pertaining to sexual abuse, HIV, reproductive health, and mental health conditions (that are not associated with the benefit claim). Failing to provide a waiver tolls the 30 day injury notice requirement under section 48-125. Section 48-125 provides a 50% waiting time penalty for payments made after the 30 day notice requirement.

LB 245 provides immunity for medical providers that release records pursuant to the waiver.

### **LB 263 (Lathrop)** Eliminate the Nebraska Worker Training Board

LB 263 was introduced at the request of the Department of Labor. It repeals the Nebraska Worker Training Board. Consisting of seven members appointed by the Governor, the board was created in 1994. The board reviews applications for the use of monies credited to the Nebraska Training and Support Trust Fund. Approved programs include those designed to support private and public job training programs intended to train, retrain, or upgrade work skills of existing Nebraska workers, train new employees of expanding Nebraska businesses, and recruit workers to Nebraska.

### **LB 272 (Fulton)** Provide for confidentiality and limited access to first-injury reports under the Nebraska Workers' Compensation Act

LB 272 prevents the public from inspecting first injury reports filed with the workers' compensation court, unless a certain exception applies. The exceptions include: 1) when the requestor is the injured employee, (2) when the requestor is the employer or insurer, (3) when the requestor is authorized by the insurer or third-party administrator who is involved in administering the claim, (4) when the report will be used for an investigation or to compile statistical information, (5) when it will be used to identify the number of injuries associated with a particular employer, (6) when it is ordered by a court.

### **LB 288 (Mello)** Adopt the Small Business Regulatory Flexibility Act

**Section 1:** creates the Small Business Regulatory Flexibility Act.

**Section 2:** definitional section. Defines adverse economic impact, agency, rule or regulation, and small business.

**Section 3:** requires agencies to solicit public comment from small business that may be

adversely affected by a proposed rule or regulation. Notice must be posted on the agency's website. Notice includes information regarding: the subject matter of the proposed rule or regulation, the potential adverse economic impact, and the time and place for public comment and the method of such comment may be submitted. If an agency has knowledge that a particular business may be impacted, the agency must electronically notify and post notice on its website.

**Section 4:** requires agencies to consider any public comment from small businesses before adopting a proposed rule or regulation. Agencies must consider ways to reduce the economic impact on small business including: establishing less stringent compliance or reporting requirements, establishing less stringent deadlines for compliance, simplifying compliance, establishing performance standards, and exempting small businesses.

**Section 5:** an aggrieved small business may seek judicial review of agency compliance with the act.

**LB 291 (Nelson)** Change periodic payment modification provisions under the Nebraska Workers' Compensation Act

LB 291 amends section 48-141 pertaining to modification of lump-sum settlement payments. Current law provides that if parties do not agree on a modification, a request for modification may be made after 6 months of the date of the agreement. LB 291 removes this provision.

LB 291 adds a new provision to section 48-141. The new section clarifies that modifications ordered when the parties do not agree are effective as of the date of the increase or decrease of disability. Additionally, if an overpayment of income benefits has occurred and no other such benefits are due, the court may order repayment. If there is an overpayment, but further income benefits are due, the court shall shorten the period of future payments and/or reduce future payments. If an underpayment is found, the court shall order a payment.

**LB 341 (Smith)** Include benefits under the Nebraska Workers' Compensation Act as income for support payments

The primary purpose of LB 341 is to make sure child support obligations from other states are garnished from workers' compensation benefits. Currently, benefits can be garnished pursuant to the Income Withholding for Child Support Act. However, before the employer can garnish an outstate (or foreign) support order, it must first be filed with the clerk of the district court. Additionally, workers' compensation insurers are not included in the definition of employer for purposes of the Income Withholding for Child Support Act. LB 341 adds such insurers to the employer definition.

LB 341 adds the Uniform Interstate Family Support Act to the list of statutory references applicable to income withholding under the Nebraska Workers' Compensation Act. While the Uniform Interstate Family Support Act has a registration procedure for foreign support orders, it also requires an employer who has received a copy of a foreign income withholding order, to treat the order as if it had been issued by a Nebraska court.

**LB 346 (Conrad)** Authorize contempt powers for Nebraska Workers' Compensation Court

Amends section 48-152 by granting the Workers' Compensation Court authority to issue contempt orders.

**LB 348 (Lautenbaugh)** Change employer liability provisions under the Nebraska Workers' Compensation Act

LB 348 would amend section 48-101, defining compensable personal injury for workers' compensation purposes, to only include those injuries where the accident or occupational disease was the prevailing factor or cause. LB 348 defines prevailing factor as the primary factor which causes the injury and resulting disability.

**LB 416 (Wallman)** Change firefighter hour and schedule provisions

**Section 1:** strikes language permitting fire chiefs to fill temporary firefighter vacancies. Adds situations where a firefighter may work during off duty hours to include cases of job related training, maintenance of minimum staffing levels, or other job related duties.

**Section 2:** repealer.

**LB 472 (Karpisek)** Adopt the Nebraska Workers Adjustment and Retraining Notification Act

**Section 1:** creates the Nebraska Workers Adjustment and Retraining Notification Act.

**Section 2:** outlines the purpose of the act to require prior notification of large-scale layoffs so that employees can take advantage of services and find employment. Advance notice also assists the government to respond to employees' needs. The act provides more protection than the federal Workers Adjustment and Retraining Notification Act.

**Section 3:** definitional section. Defines affected employees as those reasonable expected to experience an employment loss as a consequence of a mass layoff, worksite closing, or transfer of operations. Commissioner means the Commissioner of Labor and department means the Department of Labor. Employment loss means a mass layoff exceeding four months, but does not include loss due to discharge for cause or voluntary discharge. Clarifies that an employment loss does not include reassignment to a different location as long as certain conditions are met. Employer includes a business that employs 25 full or part-time employees. Mass layoff means a reduction in workforce that is not the result of a worksite closing or transfer and results in employment loss of 25 or more employees or one-third or more of the workforce. Transfer of operations means removal of all or almost all of a worksite to a new location located 50 miles or more away and that results in employment loss of 25 or more employees or one-half or more of the workforce. Worksite closing means the permanent or temporary shutdown that will result in employment loss of 25 or more employees.

**Section 4:** prohibits a mass layoff, worksite closing, or transfer of operations unless 60 days prior the employer provides written notice to: affected employees, representatives of affected employees, the commissioner, local workforce investment boards, and the local mayor. Prohibits a mass layoff, worksite closing, or transfer of operations that will result in 250 or more employment losses unless notice is given 120 days prior to the order. Notice may be sent to an employee's last known address or may be included in an employee's paycheck.

**Section 5:** notice shall contain statements regarding: (1) the reasons for the layoff, worksite closing, or transfer of operations, (2) benefits, pay, and other terms and conditions of employment, (3) the number of affected employees and the date of the proposed layoff, (4) employee rights.

**Section 6:** requires the department to establish a rapid response team to assist employers and employees and provide information about dislocated worker programs.

**Section 7:** clarifies that the act does not apply to a temporary facility or completion of a specific project. Clarifies that the notice provisions do not apply when the employer sought capital in order to postpone the layoff or if the layoff is caused by a disaster.

**Section 8:** allows the department to promulgate rules and regulations. Requires complaints to be filed within 180 days of an alleged violation. Defines the department's authority when investigating complaints. A complainant may not file suit until 180 days after filing of the complaint and a request to withdraw the complaint is provided to the department.

**Section 9:** provides a cause of action. Employers may be liable for double back pay, the value of benefits, other economic damages and exemplary damages, and reasonable attorney's fees and costs.

**Section 10:** allows the Attorney General, commissioner, and the affected political subdivision to bring suit. Details the civil penalties associated with violations.

**Section 11:** permits the department to have a lien upon the business revenue for the employer's liability.

**Section 12:** permits the Attorney General to petition for a restitution order.

**Section 13:** prohibits any waiver of the rights enumerated in the act unless the employee receives his/her entitled wages and value of benefits that the employee would have been entitled to receive during the notification period. Severance payments cannot be used to offset a damages award when the amount is less than the value of entitled wages and benefits or paid pursuant to contractual obligations.

**Section 14:** sets three year statute of limitations.

**LB 506 (Wallman)** Change definitions of wages for the Nebraska Workers' Compensation Act

Amends section 48-126 by adding a recompensation rate for death benefits for dependents of a retiree who died as a result of an occupational disease at the rate under the contract in force at the time of retirement.

**LB 517 (Christensen)** Repeal the Conveyance Safety Act and adopt the Elevator Inspection Act

**Section 1:** creates the Elevator Inspection Act.

**Section 2:** defines elevator for purposes of the act.

**Section 3:** allows the commissioner to appoint a state elevator inspector with approval of the governor. Sets the qualifications for the state elevator inspector. Allows the commissioner to appoint a deputy elevator inspector.

**Section 4:** requires the state elevator inspector to inspect or cause to be inspected all freight and passenger elevators at once per year.

**Section 5:** allows the commissioner and the state elevator inspector to enter any building for the purpose of inspecting elevators.

**Section 6:** after inspection and receipt of the inspection fee, the owner shall receive a certificate of inspection to be posted in or near the elevator.

**Section 7:** the act shall not apply to: elevators under the jurisdiction of the federal government, elevators used for agricultural purposes, and elevators in private residences.

**Section 8:** requires the state elevator inspector to investigate elevator accidents.

**Section 9:** requires the state elevator to keep records of the owners of elevators, a description of the elevator, and the dates of inspection.

**Section 10:** allows an owner to comply with the act by using an insurance inspection. The owner must provide a certificate of inspection and insurance coverage. Owner may comply with the act if an inspection is obtained pursuant to a city ordinance which meets the standards of the Nebraska Elevator Code.

**Section 11:** requires the state elevator inspector to notify an owner of any defects or unsafe conditions.

**Section 12:** allows the commissioner to establish inspection fees. Sets maximum fees for certain elevators and special inspections.

**Section 13:** fees collected must be credited to the Mechanical Safety Inspection Fund.

**Section 14:** violations amount to a Class V misdemeanor.

**Section 15:** allows the commissioner to promulgate rules and regulations including a Nebraska Elevator Code.

**Section 16:** makes technical changes to comport with the bill.

**Section 17:** sets an operative date of January 1, 2012.

**Section 18:** repealer.

**Section 19:** outright repeals the Conveyance Safety Act.

**LB 530 (Council) Adopt the Employee Credit Privacy Act**

**Section 1:** creates the Employee Credit Privacy Act.

**Section 2:** definitional section defining: credit history, credit report, employee, employer, and marketable assets.

**Section 3:** prohibits employers from discrimination based on an applicant's or employee's credit history or report. Discrimination includes: failing to hire, recruit, discharge, any inquiry of credit history, and obtaining or ordering a report. The prohibition does not include situations where there is an established bona fide occupational requirement. Bona fide occupational requirement includes instances where (1) state or federal law require bonding or other security, (2) the position's duties include signatory power over marketable assets of one hundred dollars or more per transaction, (3) the position is a managerial position involving setting the direction or control of the business, or (4) an administrative rule or regulation from either the United States Department of Labor or Nebraska Department of Labor applies.

**Section 4:** prohibits employer retaliation if an individual files a complaint, assists with an investigation, or opposes a violation of the act.

**Section 5:** prohibits an employer from requiring an employee to waive any right pursuant to the act.

**Section 6:** provides a cause of action including costs and attorney fees.

**Section 7:** clarifies that the act does not supersede the federal Fair Credit Reporting Act.

**LB 586 (Lathrop) Deny payment of certain claims against the state**

For the 2011 legislative session, there were no requests to review denied claims.

**LB 588 (Nordquist) Change the Conveyance Safety Act**

**Section 1:** makes technical changes to comport with the bill.

**Section 2:** changes the name of the Conveyance Advisory Committee to the Conveyance Committee.

**Section 3:** adds to the committee a labor representative involved in the elevator industry. Once members of the general public's terms have expired, directs the governor to appoint members from different counties to represent urban, suburban, and rural interests.

**Section 4:** directs the committee to promulgate rules for safety codes and licensure. Allows the committee to recommend legislative changes to the Commissioner of Labor.

**Section 5:** creates a new section directing the committee promulgate rules for state standards and to include certain national regulations and standards. Allows the committee to grant an exception to the standards.

**Section 6:** requires the committee to establish a schedule of licensure, permit, and inspection fees.

**Section 7:** adds platform lifts and stairway chair lifts to the act's applicability. Removes conveyances located in private residences in Douglas, Sarpy or Lancaster counties from the act's applicability.

**Section 8:** removes conveyances located in private residences in Douglas, Sarpy or Lancaster counties from the act's applicability. Clarifies that the act does not apply to stairway chair lifts, platform lifts, or elevators installed in private residences.

**Section 9:** makes licensure requirement to wire, replace, remove or dismantle an existing conveyance statewide.

**Section 10-14:** makes technical changes to comport with the act.

**Section 15:** repealer.

**Section 16:** outright repeals section 48-2509 requiring the commissioner to promulgate rules and regulations for the act.

## **LB 593 (Carlson) Change provisions of the Boiler Inspection Act**

**Section 1:** adds "special inspector" to the definitional section of the Boiler Inspection Act.

**Section 2:** directs the commissioner to employ rather than appoint a state boiler inspector.

**Section 3:** inspections are to be performed by special inspectors rather than the state boiler inspector.

makes technical changes to comport with the bill and allows the commissioner to waive the inspection requirement for antique engines with a boiler if a nonprofit association certifies

that: the association contracts with an authorized agency to perform inspections, the boilers have been inspected and certified as safe, a copy of the inspection report has been provided to the commissioner, and the boiler owner has paid the certificate of inspection fee.

Compliance with the act is not necessary if: an annual inspection is made pursuant to an ordinance with equal safety standards, a certificate of inspection is filed with the commissioner and the fee is paid, and the inspector holds a commission from the National Board of Boiler and Pressure Vessel Inspectors.

Allows boilers owned by the state and political subdivisions to be inspected by the state boiler inspector rather than a special inspector.

**Section 4:** clarifies that boiler inspectors employed by the state, but not the commissioner, have the right to enter buildings to ensure compliance with the act.

**Section 5:** makes changes to how certificate of inspections are received. The state boiler inspector shall issue certificates when a copy of the inspection report and payment is received.

**Section 6:** makes technical changes to comport with the bill.

**Section 7:** adds potable hot water heaters, pool heaters, and spa heaters installed in single-family residences and apartment houses with four or less units to the list of vessels that are not covered by the act.

**Section 8:** adds inspection fees to the list of rules and regulations that may be promulgated by the commissioner.

**Section 9:** requires a permit for the state boiler inspector before installing a boiler.

**Section 10:** requires companies and agencies authorized to perform inspections to monthly submit a copy of all performed inspections.

**Section 11:** makes technical changes to comport with the bill.

**Section 12:** increases the penalty for violations from a Class III misdemeanor to a Class I misdemeanor.

**Section 13:** makes technical changes to comport with the bill.

**Section 14:** sets an operative date of January 1, 2012.

**Section 15:** repealer.

**Section 16:** outright repeals section 48-733 pertaining to inspection fees. Fees are now covered under Section 8.

**LB 594 (Carlson)** Change the Nebraska Amusement Ride Act and the Conveyance Safety Act and outright repeal the acts in 2013

**Section 1:** makes technical changes to section 48-1802.

**Section 2:** requires the commissioner to promulgate rules concerning the annual certification of amusement ride inspectors.

**Section 3:** clarifies that in order to operate an amusement ride, the owner must show that the ride was inspected by an individual holding a current certificate to inspect such rides. Declares that as of January 1, 2012, the State will not inspect amusement rides.

**Section 4:** makes technical changes to the Nebraska Amusement Ride Act to comport with the bill.

**Section 5:** allows the commissioner to establish rules and regulations concerning the fees for annual certification of amusement ride inspectors.

**Section 6:** makes technical changes the Conveyance Safety Act to comport with the bill.

**Section 7:** adds “qualified elevator inspector” to the definitional section of the Conveyance Safety Act. An inspector means an individual who has been issued a license by the commissioner.

**Section 8:** allows the commissioner to promulgate rules and regulations without public hearing for effectuating the purpose of the act. The rules include: methods of testing and inspecting; construction and installation of new conveyances; fee schedules for licenses, permits and certificates, and; inspections performed by the state elevator inspector.

**Section 9:** removes application of the act to conveyances installed in private residences located in Douglas, Sarpy, and Lancaster counties.

**Section 10:** removes application of the act to conveyances installed in private residences located in Douglas, Sarpy, and Lancaster counties.

**Section 11:** requires owners to receive a permit from the commissioner before installing a conveyance.

**Section 12:** requires elevator mechanics in Douglas, Sarpy, and Lancaster counties to be licensed by the state. Clarifies that a license is not required for: persons working under the direct supervision of a licensed mechanic, a person performing nonmechanical maintenance, or for persons dismantling a conveyance located in a building scheduled to be demolished. Removes language that the mechanic and owner must comply with applicable fire and safety codes.

**Section 13:** the state elevator inspector and deputy inspector will be hired by the commissioner rather than appointed. Allows the commissioner to contract with elevator inspectors. The contracts must state that: 1) inspections must be performed by qualified inspectors and conducted in the same manner as the state elevator inspector, 2) an indemnification clause for the department, and 3) that the contractor has the requisite insurance.

**Section 14:** defines qualified elevator inspector. Prior to receiving a qualified elevator inspector license, an individual must submit evidence of the requisite insurance coverage and pay the licensure fee as set by the commissioner.

**Section 15:** the owner, not the state elevator inspector, must ensure that conveyances are inspected annually. If the state elevator inspector does not perform an inspection, the inspector must provide him/her with a written inspection report.

**Section 16:** an owner may use its insurance company's inspection report to comply with the act. A copy of the report must be provided and the certificate of inspection fee must be paid. An owner may also comply with the act if the conveyance was inspected pursuant to an ordinance that requires at least the same inspection standards as required under the act. The owner must provide the inspection report and pay the certificate of inspection fee.

**Section 17:** allows an owner to request a special inspection from the state. The owner must pay a fee and pay travel costs before he/she receives a certificate of inspection.

**Section 18:** directs the commissioner to issue a certificate of inspection once the fee has been paid and she has received the inspection report with proof that any noted defects were repaired.

**Section 19:** makes technical changes to comport with the bill.

**Section 20:** inspectors must notify the owner and the state elevator inspector (if not inspected by the state elevator inspector) of any defects or unsafe conditions.

**Section 21:** changes the criminal violation from a Class II to a Class I misdemeanor.

**Section 22:** removes Department of Labor's enforcement of the Nebraska Amusement Ride Act.

**Section 23:** as of January 1, 2013, the Mechanical Safety Inspection Fund will be repealed and any funds remaining will be transferred to the general fund.

**Section 25:** sets operative dates of the bill: Sections 1 to 5 and 25 become operative on January 1, 2012; Sections 6 to 21, 24, 26 and 29 become operative July 1, 2011; and Sections 22, 23, 27 and 28 become operative January 1, 2013.

**Section 26:** repealer.

**Section 27:** repealer.

**Section 28:** outright repeals the Nebraska Amusement Ride Act and Conveyance Safety Act.

**LB 640 (Cornett)** Clarify that a city of the first class may negotiate with its firefighters regarding retirement benefits

**Section 1:** allows cities of the first class to negotiate and agree to firefighter retirement benefits that are more favorable than required by *Neb. Rev. Stat.* §§16-1020 to 16-1042.

**Section 2:** repealer.

**LB 674 (Harr)** Prohibit or restrict certain electronic monitoring of employees by employers

LB 674 requires employers who utilize electronic monitoring to provide notice to employees. Employers are required to post a notice indicating the types of electronic monitoring and contact information for the Department of Labor so that an employee may complain if the employer is improperly monitoring. The posting satisfies the notice requirement. An employer is not required to give prior written notice if he/she believes that an employee is violating the law, legal rights of others, or is creating a hostile work environment. The notice requirement does not apply to criminal investigations. Obtained information may only be used in disciplinary proceedings if done so within 10 days.

LB 674 creates civil penalties for failure to provide notice. First offense results in a \$100 fine and second and subsequent offenses result in a \$500 offense. Fines for unlawful using information for disciplinary purposes may result in a \$5,000 fine.

**LB 791 (Mello)** Adopt the Shared Work Unemployment Compensation Program

LB 791 creates a shared work unemployment program. This program is an alternative to layoffs for employers facing a temporary downturn in business. It allows employers to divide available hours of work among a group of employees instead of implementing a full layoff. These employees may then receive partial unemployment insurance benefits while working reduced hours. At least 9 states have established shared work programs.

**LB 846 (Sullivan)** Requires employers to maintain employee emergency contact information

LB 846 requires employers to maintain employee's primary and secondary emergency contact information. If an employee is injured, the employer must make a reasonable effort to contact the provided emergency contact.

**LB 866 (Haar)** Prohibit employment discrimination against unemployed applicants

LB 866 prohibits employers from discriminating against unemployed job applicants.

**Details:**

**Section 1:** creates the Nebraska Fair Employment Opportunity Act.

**Section 2:** definitional section. Defines for purposes of the Act: (1) Commission, (2) employer, (3) employment agency, (4) person, and (5) status as unemployed.

**Section 3:** makes it an unlawful employment practice for employers to: (1) refuse to consider or offer employment based on unemployment status, (2) to post employment openings that disqualifies or discriminates against an unemployed person, or, (3) to direct an employment agency to discriminate.

Makes it an unlawful employment practice for employment agencies to: (1) refuse to consider or refer an individual based upon unemployment status, (2) to deter or limit unemployed individuals from employment information or employment, or (3) publish job advertisements that disqualifies or discriminates against an unemployed person.

Prohibits discrimination against employees who come forward with violations of the Act. (i.e. whistle blowers).

Provides that it is not a violation of the act to consider unemployment status if recent employment in a similar position is a bona fide occupational qualification.

**Section 4:** provides a complaint process with the Equal Opportunity Commission for any alleged violation of the Act. (These cases will be similar to those currently investigated by the commission pursuant to the Fair Employment Practice Act which prohibits employment discrimination based upon age, race, disability, religion, national origin, or marital status.)

**Section 5:** violations result in civil penalties of \$1,000 for the first offense, \$5,000 for a second offense, and \$10,000 for subsequent offenses. Includes procedural due process notice provisions.

**Section 6:** authorizes the commission to promulgate rules.

**Sections 7 & 8:** makes technical changes to comport with the Act.

**Section 9:** repealer.

**LB 906 (Wallman)** Increases amount for workers' compensation burial expenses

LB 906 would replace the \$6,000 burial expense benefit in worker's compensation cases with a formula that multiplies the decedent's average weekly wage by 13. LB 906 also provides a \$25,000 benefit to the decedent's estate when there is no spouse, child, or other dependent entitled to benefits.

**LB 909 (Lautenbaugh)** Provides for misrepresentation defense

LB 909 would add to the Workers' Compensation Act, an employer defense of willful negligence of obtaining employment by knowingly making false statements regarding his/her physical condition.

**LB 1008 (Fulton)** Provides for utilization and treatment guidelines

LB 1008 directs the Workers' Compensation Court to develop, by rule, evidence-based utilization and treatment guidelines to be used in the delivery of "reasonable" medical, surgical, and hospital services as defined by section 48-120. Services that are not covered by the adopted treatment guidelines will not be considered unless primary approval is received by the court or insurer. The court may hire a medical director and may establish, by rule, a review process for insurer denied payment of services. The court must annually review the guidelines.

**LB 1012 (Lautenbaugh)** Creates rebuttable presumptions in favor of the employer when the employee does not follow recommended treatment or vocational rehabilitation

LB 1012 would allow the workers' compensation court to terminate benefits if the employee unreasonably refuses recommended treatment or rehabilitation. LB 1012 additionally creates a rebuttable presumption that an employee is ineligible for temporary disability benefits if he or she refuses offered accommodated work that meets the treating physician's work restrictions. Employees terminated for cause or who voluntarily resigns and the employer would have accommodated temporary imposed restrictions would be ineligible for temporary disability benefits. Employees who are subsequently incarcerated are not eligible for temporary disability benefits.

**LB 1073 (Business and Labor)** Deny payment of certain claims against the state

The provisions of LB 1073 were amended into LB 1072.

**LB 1151 (Lathrop)** Removes sunset for mental only injuries

LB 1151 removes the June 30, 2014, sunset provision that was included in LB 780. LB 780 allows first responders to receive workers' compensation benefits for mental injuries. Before this legislation, mental injuries could only be claimed if accompanied by a corresponding physical injury.

**LB 1152 (Lathrop)** Provide job training programs for recipients of unemployment insurance benefits

LB 1152 would allow the Nebraska Department of Labor to use the Nebraska Training and Support Trust Fund to support training programs for those receiving unemployment benefits.



## SUMMARY OF BILLS ON GENERAL FILE

**LB 262 (Lathrop)** Eliminate certain labor provisions regarding health and safety

LB 262 is introduced on behalf of the Department of Labor ("DOL"), and would repeal the requirement that businesses, subject to workers' compensation, have safety committees. Other health and safety statutes as well as the Worker Safety Consultation Program would also be repealed.

According to DOL, it is proposing to repeal certain statutes primarily because OSHA has taken over enforcement.

**Section 1:** amends section 44-3,158 to remove the notation of the safety committee requirement.

**Section 2:** amends section 48-144.03 to remove the notation of the safety committee requirement.

**Section 3:** repeals the following statutes:

48-801: requires manufacturing plants to have sufficient restrooms for employees with separate restrooms for each gender. (Enacted 1911)

48-402: requires manufacturing plants to provide separate dressing rooms for women. (Enacted 1911)

48-403: requires manufacturing plants emitting dust, fumes, etc., to have a fan or similar mechanical device to remove the impurities. (Enacted 1911)

48-404: requires manufacturing plants to be kept clean and free from offensive smell or byproducts in the form of waste and to have proper ventilation. (Enacted 1911)

48-405: requires blowers on grinding machines or wheels. (Enacted 1911)

48-406: requires grinding wheels to only be used at recommended speeds and to not be used if cracked or defective. (Enacted 1911)

48-407: requires grinding wheels to have a hood. (Enacted 1911)

48-408: requires certain size of suction pipe on grinding wheels. (Enacted 1911)

48-409: plant operators must provide guards, screens, etc. to protect workers from injury caused by belts, wheels, saws, molten metal, etc. (Enacted 1911)

48-410: any machine that revolves at high speeds must be screened. (Enacted 1919)

48-411: woodworking machinery must have requisite safety appliances. (Enacted 1919)

48-412: authorizes the Commissioner of Labor to promulgate regulations for sections 48-401 to 48-424. (Enacted 1919)

48-413: allows DOL to have a building code and requires DOL to have an advisory committee regarding codes. (Enacted 1929)

48-414: allows DOL to inspect businesses for safety code violations. (Enacted 1919)

48-415: allows individuals to challenge the validity of a safety code regulation. (Enacted 1929)

48-416: allows appeals of decisions made pursuant to 48-415. (Enacted 1929)

48-417: where high pressure currents are used, signs or indicator lamps must be used. (Enacted 1919)

48-419: when multiple boilers deliver to a common main, each boiler must have its own shutoff valve. (Enacted 1919)

48-420: requires certain factories to have fireproof stairways, chutes or toboggans and one automatic fire escape. (Enacted 1919)

48-421: requires plants to report work-related fatalities and accident to DOL in a certain amount of time. (Enacted 1911)

48-422: provides a cause of action if a plant violates 48-401 to 48-424. (Enacted 1919)

48-423: removes assumption of risk as a defense to a cause of action. (Enacted 1919)

48-424: violation of section 48-801 to 48-423 is a Class II misdemeanor. (Enacted 1919)

48-425: scaffolding, hoists, cranes, etc. used to work on houses, buildings, bridges, etc. must be constructed safely. (Enacted 1911)

48-426: requires certain walls to have a load bearing structure. Requires floors to support a live load of 50 pounds for each square foot of floor surface. (Enacted 1911)

48-427: owners of buildings other than private barns and private residences must post the load limits for each floor of the building during construction. (Enacted 1911)

48-428: requires DOL to inspect scaffolds when a report is received. (Enacted 1911)

48-429: requires a scaffold below a scaffold that is a certain height. (Enacted 1911)

48-430: contractors and owners are required to have either temporary or completed flooring installed to within two stories of where construction work is being completed. (Enacted 1911)

48-431: during construction, shafts used for hoisting materials must be surrounded by a barrier or railing. (Enacted 1911)

48-432: for hoisting machines that are not hand-powered, the owner or contractor must set up a system of signals to be used during the machine's operation. (Enacted 1911)

48-433: the person preparing the plans for buildings subject to 48-425 to 48-435 must provide for the permanent structural features required by those sections in the plans. Failure to do so is a Class IV misdemeanor. (Enacted 1911)

48-434: violation of 48-425 to 48-432 is a Class II misdemeanor. (Enacted 1911)

48-435: assumption of risk cannot be used as a defense. (Enacted 1911)

48-436: defines high voltage as 750 volts either between two conductors, or between conductor and ground. Defines authorized and qualified person to include utility employees. (Enacted 1911)

48-437: only employees that are authorized and qualified may do any type of work near high voltage conductors. (Enacted 1969)

48-438: no work can be done within 10 feet of overhead high voltage conductors, unless there is adequate protection for workers. (Enacted 1969)

48-439: requires warning signs on cranes, derricks or other devices that are capable of vertical, lateral, swinging motion. (Enacted 1969)

48-440: requires notification if performing work within 10 feet of a high voltage conductor. (Enacted 1969)

48-441: specifies that sections 48-436 to 48-442 do not apply to authorized and qualified individuals as defined by 48-436. (Enacted 1969)

48-442: violation of 48-436 to 48-442 is a Class V misdemeanor. (Enacted 1969)

48-443: requires employers subject to workers compensation to have safety committees. (Enacted 1993)

48-444: the Commissioner of Labor may fine an employer up to \$1000 for not having a safety committee. (Enacted 1993)

48-445: provides DOL authority to promulgate safety committee regulations. (Enacted 1993)

48-446: establishes the Workplace Safety Consultation Program. (Enacted 1993)

**Explanation of amendments:**

AM 163 removes repeal of sections 48-436 through 48-442 pertaining to voltage lines; section 48-443 through 445 pertaining to safety committees, and; section 48-446 pertaining to the Workplace Safety Consultation Program.