



**Hundredth Legislature - First Session - 2007
Committee Statement
LB 265**

Hearing Date: February 26, 2007
Committee On: Business and Labor

Introducer(s): (Business and Labor Committee)
Title: Change various provisions of the Employment Security Law

Roll Call Vote – Final Committee Action:

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

Vote Results:

6	Yes	Senators Cornett, Lathrop, McGill, Rogert, Wallman, White
	No	
	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Lori Thomas, Legal Counsel to Business and Labor Committee
John Albin

Representing:

Introducer
Nebraska Department of Labor

Opponents:

Representing:

Neutral:

Ron Sedlacek

Representing:

Nebraska Chamber of Commerce

Summary of purpose and/or changes: LB 265 was introduced on behalf of the Department of Labor and contains a number of provisions relating to the Unemployment Insurance (UI) Program, many of which are housekeeping measures. Sections 4 and 5 starting on page 14 contain the provisions necessary to keep Nebraska in conformity with Federal Law.

Section by Section Summary:

Section 1: amends §48-601 to include section 5 of this bill into the Employment Security Law.

Section 2: amends §48-602 on page 9 by changing the definition of wages. The term wages includes in-kind remuneration, such as housing and food in all types of employment, except

agriculture employment. The proposed changes would still exempt food or housing for agriculture employees, but “the cash value of commodities not intended for personal consumption by the worker and his or her immediate relative” would be taxed as wages.

Section 3: amends §48-606 to authorize the commissioner to establish a fee to recover the costs from an employer for payments for returned check charges and electronic payments not accepted.

Section 4: amends §48-612 to include reference to the new section 5 of this bill regarding federal confidentiality requirements and strikes existing confidentiality requirements.

Section 5: Is the new section of confidentiality requirements necessary to keep Nebraska in conformity with United States Department of Labor under 20 CFR 603. Section 5 is specifically modeled after 20 CFR 603.5

Subsection (1): Info obtained under 48-612 (1) may be disclosed under the following circumstances:

- a. For the presentation of an unemployment benefit claim or tax appeal.
 - b. For enforcement of the Worker’s Compensation Act, by the WCC
 - c. Precedent setting appeals and decisions re: Employment Security Law
 - d. In the performance of a public official’s official duties.
 - e. To an agent of a public official to whom the disclosure is permissible under (d).
 - f. For collecting statistical information by the Federal Bureau of Labor Statistics.
 - g. In response to a court order.
- 2) Info about an individual or employer obtained under 48-612 (1) may be disclosed to the following individuals:
- a. To an agent for the individual or employer when:
 - i. The agent has a written release or other evidence of authority to act
 - ii. An elected official who is performing constituent duties and has reasonable evidence they are authorized to seek the info.
 - iii. An attorney who has written evidence they are representing the individual or employer in Employment Security Law.
 - b. A third party or it’s agent carrying out the administration or evaluation of a public program, with written release from the individual or employer. Such release must contain the following:
 - i. Specifically identifying what is to be disclosed
 - ii. That state gov’t files will be accessed.
 - iii. Identifying the specific purpose for which the info is sought, and that the info will only be used for that specified purpose.
 - iv. Identify all the parties who may receive the information disclosed.
- 3) Information obtained pursuant to 48-612 (1) may be disclosed under the following circumstances:
- a. Info about an individual or employer shall only be disclosed to the respective individual or employer;

- b. To a local, state or fed gov't official. (Other than a clerk of court, attorney, or notary public who has the authority to obtain such information by subpoena); and
 - c. Disclosures to a federal official for purposes of unemployment compensation program oversight and audits.
- 4) If the disclosures are not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the cost of providing such info from the requesting individual or entity, unless the costs are nominal, or the governmental agency provides reciprocal services.
- 5) Imposes a Class II misdemeanor penalty for anyone who unlawfully rediscloses information obtained under subsection (1) or (2).

Section 6: amends 48-624 on pg 21, to strike the cap on the maximum weekly benefit amount. Because section 14 of the bill repeals the Commissioner's authority to impose an emergency solvency surcharge on the UTF, the cap on weekly benefits is no longer necessary.

Section 7: The changes on pages 22&23 are housekeeping measures. The changes on pgs. 25 and 26 address potential rate manipulation by positive balance employers who artificially move employees among various related companies in order to achieve lower rates than they would otherwise be entitled to.

The changes on page 27 are revenue neutral and would allow Nebraska employers with the best reserve account ratios (Category 1) to achieve a zero percent tax rate and redistribute the tax rates that would have been generated by those employers among higher rate categories.

Pages 29 regarding tax calculations are also housekeeping measures. On page 30 the amended language places a set date of October 31 for employers to cure any filing delinquencies and breaks out the definition of "standard rate".

Section 8: amends §48-652 to correct a date that was a mistake from LB 739 in 2005.

Section 9: The provisions on page 39 provide for administrative garnishments of wages to collect unemployment overpayments from individuals who obtained unemployment benefits through fraud.

Section 10: amends §48-664 on page 40 to provide that an employer who willfully refuses to repay unemployment taxes could be held personally liable for the payment of those taxes.

Sections 11 and 12: amends §48-665 are intended to make it easier to collect unemployment benefit overpayments from individuals who file for bankruptcy by replacing the statutory remedy of "setoff" with the common law "recoupment" remedy.

Section 13: Repealer.

Section 14: Outright repeals §48-649.01 which is the statutory authority for the commissioner to impose an emergency tax surcharge. The emergency tax surcharge is scheduled to sunset in 2009 under current statute.

Explanation of amendments, if any:

The committee amendments (AM 863) would become the bill. The committee amendments contain the provisions of LB 209, LB 226, LB 265, LB 432, and LB 543, as follows:

The provisions of **LB 209** (Business and Labor Committee), introduced at the request of the Department of Labor, and committee amendments to LB 209, would amend various sections to merge the Amusement Ride Fund, the Elevator Inspection Fund and the Conveyance Safety Fund into one cash fund – The Mechanical Safety Inspection Fund. LB 209 was amended into LB 543 by committee. (Sections 26, 27, and 31 of the committee amendments.)

The provisions of **LB 226** (Senator Cornett), introduced at the request of the Department of Labor, and committee amendments to LB 226, would amend sections 48-720, 48-722, 48-730, 48-731, 48-736 of the Boiler Inspection Act to allow the Department of Labor to contract with independent inspection agencies to complete the inspections required under the Act. (Sections 12-16 of the committee amendments.)

The provisions of **LB 265** (Business and Labor Committee), introduced at the request of the Department of Labor, and committee amendments to LB 265, would amend sections 48-601, 48-602, 48-606, 48-612, 48-624, 48-649, 48-652, 48-663.01, 48-664 of the Employment Security Act (Unemployment Insurance Program) by making numerous changes to the Act. The bill provides that wages for agriculture employees will include commodities not intended for personal consumption. The commissioner is authorized to charge a fee for returned checks. The bill brings Nebraska into conformity with Federal law regarding disclosure of confidential unemployment information. The current cap on weekly benefits is stricken and the authority to impose an emergency solvency surcharge is repealed. Changes are made to address potential rate manipulation by positive balance employers. Employers with the best reserve ratios would be allowed to receive a zero percent tax rate. The Department would be authorized to garnish wages to collect unemployment overpayments which were obtained through fraud. Employers who willfully refuse to pay unemployment taxes could be held personally liable. (Sections 2-11 of the committee amendments)

The provisions of **LB 432** (Senator Friend) and committee amendments to LB 432, would amend sections 20-113, 48-1001, 48-1002 to 48-1005, 48-1007 to 48-1010 of the Act Prohibiting Unjust Discrimination in Employment by renaming the Act to the Age Discrimination in Employment Act. The definition of employer is changed, and the act is expanded to include all individuals over the age of forty and to include employment agencies. The process for filing a complaint would be placed within the Act. (Sections 1 and 17 - 25 of the committee amendments.)

The provisions of **LB 543** (Senator Synoweicky) and committee amendments to LB 543 would amend sections 48-1809, 48-2501, 48-418, 48-2503, 48-2506, 48-2507, 48-2508, 48-2512 of the Conveyance Safety Act to merge the existing Elevator Code into the Conveyance Act. In

counties that have less than 100,000 inhabitants private residences would be exempt from inspection and licensing requirements for mechanics would not apply. (Sections 26-34 of the committee amendments.)

The committee amendments would provide, section by section, as follows:

AGE DISCRIMINATION IN EMPLOYMENT

Section 1 would amend section 20-113 of the Act Prohibiting Unjust Discrimination in Employment Because of Age to rename the Act to Age Discrimination in Employment Act. (Section 1 of LB 432)

UNEMPLOYMENT INSURANCE PROGRAM

Section 2 would amend 48-601 to include section 6 of this bill into the Employment Security Law. (Section 1 of LB 265 as introduced)

Section 3 would amend 48-602 to provide that “wages” for agriculture employees includes the cash value of commodities not intended for personal consumption by the worker and his or her immediate relative and would be taxed as such. (Section 2 of LB 265 as introduced)

Section 4 would amend 48-606 to authorize the commissioner to establish a fee to recover the costs from an employer for payments for returned check charges and electronic payments not accepted. (Section 3 of LB 265 as introduced)

Section 5 would amend 48-612 to include reference to the new section 6 of this bill regarding federal confidentiality requirements and strikes existing confidentiality requirements. (Section 4 of LB 265 as introduced)

Section 6 creates a new section of confidentiality requirements necessary to keep Nebraska in conformity with United States Department of Labor under 20 CFR 603. Section 6 is specifically modeled after 20 CFR 603.5

(1): Info obtained under 48-612 (1) may be disclosed under the following circumstances:

- a. For the presentation of an unemployment benefit claim or tax appeal.
- b. For enforcement of the Worker’s Compensation Act, by the WCC
- c. Precedent setting appeals and decisions re: Employment Security Law
- d. In the performance of a public official’s official duties.
- e. To an agent of a public official to whom the disclosure is permissible under (d).
- f. For collecting statistical information by the Federal Bureau of Labor Statistics.
- g. In response to a court order.

(2) Info about an individual or employer obtained under 48-612 (1) may be disclosed to the following individuals:

- a. To an agent for the individual or employer when:
 - i. The agent has a written release or other evidence of authority to act

- ii. An elected official who is performing constituent duties and has reasonable evidence they are authorized to seek the info.
- iii. An attorney who has written evidence they are representing the individual or employer in Employment Security Law.
- b. A third party or it's agent carrying out the administration or evaluation of a public program, with written release from the individual or employer. Such release must contain the following:
 - i. Specifically identifying what is to be disclosed
 - ii. That state government files will be accessed.
 - iii. Identifying the specific purpose for which the info is sought, and that the info will only be used for that specified purpose.
 - iv. Identify all the parties who may receive the information disclosed.

(3) Information obtained pursuant to 48-612 (1) may be disclosed under the following circumstances:

- c. Info about an individual or employer shall only be disclosed to the respective individual or employer;
- d. To a local, state or fed government official. (Other than a clerk of court, attorney, or notary public who has the authority to obtain such information by subpoena); and
- e. Disclosures to a federal official for purposes of unemployment compensation program oversight and audits.

(4) If the disclosures are not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the cost of providing such info from the requesting individual or entity, unless the costs are nominal, or the governmental agency provides reciprocal services.

(5) Imposes a Class II misdemeanor penalty for anyone who unlawfully rediscloses information obtained under subsection (1) or (2). (Section 5 of LB 265 as introduced)

Section 7 would amend 48-624 by striking the cap on the maximum weekly benefits. Because the bill (section 40) repeals the Commissioner's authority to impose an emergency solvency surcharge on the UTF, the cap on weekly benefits is no longer necessary. (Section 6 of LB 265 as introduced)

Section 8 would amend 48-649 of the Employment Security Law to address potential rate manipulation by positive balance employers who artificially move employees among various related companies in order to achieve lower rates than they would otherwise be entitled to; and would provide that employers with the best reserve account ratios (Category 1) can achieve a zero percent tax rate and redistribute the tax rates that would have been generated by those employers among higher rate categories. October 31 would become the set date for employers to

cure any filing delinquencies and the definition of “standard rate” would be placed in statute. (Section 8 of LB 265 as introduced)

Section 9 would amend 48-652 to correct a date that was a mistake from LB 739 in 2005. (Section 8 of LB 265 as introduced)

Section 10 would amend 48-663.01 to provide the department the authority to administratively garnish wages to collect unemployment overpayments from individuals who obtained unemployment benefits through fraud. (Section 9 of LB 265 as introduced)

Section 11 would amend 48-664 to provide that an employer who willfully refuses to repay unemployment taxes could be held personally liable for the payment of those taxes. (Section 10 of LB 265 as introduced)

BOILER INSPECTIONS

Section 12 would amend 48-720 to provide the following definitions:

- An Authorized Inspection Agency (AIA) means a private inspection company which is authorized to perform boiler inspections and is organized under the criteria set forth in NB-369, National Board Qualifications and Duties for AIA’s.
- “Department” means the Department of Labor (Section 1 of LB 226 as amended by committee)

Section 13 would amend 48-722 to provide the department the authority to contract with an authorized inspection agency to perform the inspections under the Act, and to provide that an authorized inspection agency shall indemnify and defend the department for any loss due to negligent or tortuous acts committed by the AIA. Special inspectors would be allowed to complete inspections for boilers operated at a public gathering. (Section 2 of LB 226 as amended by committee)

Section 14 would amend 48-730 to insert new language to codify the current practice of requiring a boiler to be reinspected when it is moved from one location to another. (Section 3 of LB 226 as amended by committee)

Section 15 would amend 48-731 to provide that the Commissioner may commission qualified employees of an authorized inspection agency to become special inspectors. The reporting and notification requirements would be updated to include special inspectors employed by an AIA. Where a boiler is defective or uninsurable immediate notification of the department would be required. AIAs would be required to maintain insurance coverage not less than one million dollars per occurrence for professional errors and omissions and not less than one million dollars for comprehensive and general liability. (Section 4 of LB 226 as amended by committee)

Section 16 would amend 48-736 to raise the penalty for violation of the Act from a Class V misdemeanor to a Class III misdemeanor. (Section 5 of LB 226 as amended by committee)

AGE DISCRIMINATION IN EMPLOYMENT

Section 17 would amend 48-1001 to name sections 48-1001 to 48-1010 the Age Discrimination in Employment Act. (Section 2 of LB 432)

Section 18 would amend 48-1002 to provide a definitional change to the term employer as being one who employs twenty or more employees. An employee would be further clarified as a person who works in each of twenty or more calendar weeks in the current or previous calendar year. (Section 3 of LB 432)

Section 19 would amend 48-1003 to provide reference to the Act and would expand the Act by making it applicable to the employment of any individual 40 years or older. (Section 4 of LB 432)

Section 20 would amend 48-1004 to provide an expansion of the act by making it unlawful for an employment agency to retaliate against a person who files an age discrimination charge under the Act. (Section 5 of LB 432)

Sections 21 and 22 would amend 48-1005 and 48-1007 to make technical changes. (Sections 6 and 7 of LB 432)

Section 23 would amend 48-1008 to provide reference to the Act. The time frame for the commission to initiate an action would be changed from thirty to sixty days and thus the filing of a civil suit by the aggrieved person would be delayed accordingly. New language regarding the filing process for complaints would be inserted as follows:

- Complaints must be made in writing.
- Complaints must be filed within 10 days of the filing of the charge.
- The respondent has 30 days in which to respond to the allegations.
- Failure to respond without good cause shall result in a mandatory reasonable cause finding against the respondent by the commission.
- Failure by the complainant to cooperate with the commission, except for good cause shown, shall result in dismissal of the complaint.
- The Commission may serve interrogatories and shall have access to any evidence or records of the person being investigated that relate to the unlawful employment practices covered under the Act.
- Where judicial enforcement is necessary, the commission may seek legal assistance from the Attorney General's office. (Section 8 of LB 432)

Sections 24 and 25 amend 48-1009 and 48-1010 to provide technical changes. (Sections 9 and 10 of LB 432)

MECHANICAL SAFETY INSPECTION FUND

Section 26 would enact a new section to create a new cash fund: The Mechanical Safety Inspection Fund. Future fees collected under the Nebraska Amusement Ride Act and the Conveyance Safety Act shall be placed in the Mechanical Safety Fund. All funds existing in the Elevator Inspection Fund and the Nebraska Amusement Ride Fund on January 1, 2008 would be transferred to the new fund. (Section 1 of LB 543 as amended by committee)

Section 27 would amend 48-1809 to provide that fees collected under the Nebraska Amusement Ride shall be placed in the Mechanical Safety Inspection Fund. (Section 2 of LB 543 as amended by committee)

CONVEYANCE SAFETY ACT

Section 28 would amend 48-2501 to include section 29 (44-418) within the Conveyance Safety Act. (Section 3 of LB 543 as amended by committee)

Section 29 would amend 48-418 to provide two alternative ways to become qualified to serve as the state elevator inspector, namely through five years experience in the installation, maintenance, and repair of elevators; or by certification as a qualified elevator inspector by an accredited association. These two qualifications are alternatives to the current qualification requirement of five years experience as a journeyman. The state elevator inspector currently serving shall continue to serve unless removed by the Commissioner. Reference to the elevator code would be stricken and “inspector” would be added to the list of individuals who are required to submit their social security number, which will be kept confidential. (Section 4 of LB 543 as amended by committee)

Section 30 would amend 48-2503 to refer to the state elevator inspector appointed under section 29 of this bill. (Section 5 of LB 543 as amended by committee)

Section 31 would amend 48-2506 to provide for the elimination of the Conveyance Inspection fund from LB 209. The current fee schedules for inspections would remain in effect unless changed by the Commissioner. (Section 6 of LB 543 as amended by committee)

Section 32 would amend 48-2507 to provide that the Conveyance Safety Act will not apply to the design of conveyances. Private residence conveyances would be inspected only if they were located in a county that has a population of more than one hundred thousand inhabitants. (Section 5 of LB 543 as originally introduced)

Section 33 would amend 48-2508 to specifically exempt conveyances in residences located in counties that have a population of one hundred thousand or less inhabitants from regulation under the Act. (Section 6 of LB 543 as originally introduced)

Section 34 would amend 48-2512 to state that the licensing requirements for mechanics (performing mechanical maintenance) are only applicable when the conveyance is located within counties with more than 100,000 inhabitants. (Section 8 of LB 543 as amended by committee)

MISCELLANEOUS PROVISIONS

Sections 35 would provide that changes to the Boiler Inspection Act include an emergency clause under Section 41. The sections regarding the Mechanical Safety Fund and the Conveyance Safety Act become operative on January 1, 2008. All other provisions included in the bill would become operative three calendar months after adjournment.

Sections 36-40 would provide for repealers of amendatory sections.

Section 41 would provide an emergency clause for the provisions pertaining to the Boiler Inspection Act. (LB 226)

Senator Abbie Cornett, Chairperson