



## **UNICAMERAL UPDATE**

**January 20, 2012**

**Bob Hoppe**, Legislative Committee Chairman \* **Phil Winkelmann**, IIANPAC/InsurPac Chairman  
**Carol McClelland**, Executive Director \* **Jim Cavanaugh**, Legislative Representative

**From:** James P. Cavanaugh, Legislative Representative  
**Date:** January 20, 2012  
**RE:** Nebraska 2012 Legislative Session, Week ending January 20, 2012

### **WEEK IN REVIEW**

Today was the eleventh day of the 60-day 2012 legislative session. This week the legislature conducted half day floor debate on 2011 carryover bills and half day committee hearings on new bills. New bill introduction concluded on Thursday, January 19.

On Tuesday January 17, Senator Schumacher introduced **LB 1003**, to raise the minimum required automobile liability insurance from \$25,000 and \$50,000 to \$50,000 and \$100,000. The bill is **identical to LB 196** (Lathrop, Change liability insurance and financial responsibility requirements for motor vehicles) introduced last year (**IIAN Supports**).

Also on Tuesday, Senator Krist introduced **LB 984, Increase requirements for uninsured and underinsured motor vehicle liability coverage.**

**IIAN's Legislative committee will meet on January 25 to determine positions on bills introduced in 2012, and plan for bill hearings.**

### **Health Insurance Exchange Bills Introduced**

On Thursday, January 5, 2012, members of IIAN's Health Insurance Exchange Task Force met with representatives of the other Nebraska agents' associations (NAHU, NAIFA, and PIA) and were briefed by Senator Nordquist's staff on **LB 835** (Nordquist-Adopt the Nebraska Health Benefit Exchange Act). I also met with Senator Pahl's staff and was briefed on **LB 838** (Pahl's-Adopt the Nebraska Health Benefit Exchange Act). We met again with the other agents associations on January 20, 2012, to prepare for a meeting with the Nebraska Insurance Director on January 26 to provide feedback regarding how an Exchange should operate.

The latest issue of the Unicameral Update can be found at: <http://update.legislature.ne.gov/>.  
To review the full text of bills, please look on the unicameral website <http://www.nebraskalegislature.gov>.

Please call or e-mail me at any time if you have any questions. My contact information is:

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## **2012 BILLS OF INTEREST**

- LB 738          Gloor          Change burial expense benefits under the Nebraska **Workers' Compensation Act**  
1/4/12          Introduction  
**1/6/12          Referred to Business and Labor Committee**  
Would increase burial expense benefits under the Nebraska Workers' Compensation Act from the current \$6,000 to \$10,000.
- LB 748          Fischer        Eliminate provisions relating to denial of motor vehicle registration or operator's license to a person with outstanding arrest warrants  
1/4/12          Introduction  
1/6/12          Referred to Transportation and Telecommunications Committee  
**1/10/12        Notice of hearing for January 17, 2012**
- LB 758          Avery          Change provisions relating to gifts given by a lobbyist or principal  
1/4/12          Introduction  
1/6/11          Referred to Government, Military and Veterans Affairs Committee  
**1/11/11        Notice of hearing for January 19, 2012**
- LB 803          Lautenbaugh    Require presentment of an operator's license and proof of insurance to a peace officer by a driver involved in an accident and mandate  
1/5/12          Introduction  
1/9/12          Referred to Transportation and Telecommunications Committee  
**1/17/12        Notice of hearing for January 24, 2012**
- LB 810          Gloor          Prohibit insurance policy provisions relating to fees for dental services  
1/5/12          Introduction  
**1/9/12          Referred to Banking, Commerce and Insurance Committee**
- LB 835**          Nordquist      Adopt the Nebraska Health Benefit Exchange Act  
1/5/12          Introduction  
**1/09/12        Referred to Banking, Commerce and Insurance Committee**  
1/17/12        Conrad name added
- LB 838**          Pahls          Adopt the Nebraska Health Benefit Exchange Act  
1/5/12          Introduction  
**1/09/12        Referred to Banking, Commerce and Insurance Committee**
- LB 876          Wallman        Change insurance policy, subscriber contract, and other policy provisions relating to mammography  
1/6/12          Introduction  
1/10/12        Referred to Banking, Commerce and Insurance Committee  
**1/12/11        Notice of hearing for January 23, 2012**

LB882 Nordquist Require certain cancer treatment insurance coverage  
Oral chemotherapy treatments would be mandated in insurance coverage. Critics of such mandates note they often increase insurance rates and lessen the availability of plans for both employees and employers.

**LB 887** Pahls Change provisions relating to insurance  
1/12/11 **Notice of hearing for January 24, 2012**

88-page omnibus Department of Insurance bill relating to insurance. The bill would amend several provisions, including fees, confidential and privileged information, merger and acquisition, registration, transactions, domestic insurers, examination, confidential information, rules and regulations, coverages, construction, court orders, purpose, applicability, exemptions, recommendations, powers and duties, and special purpose financial captive insurers. The bill would also authorize supervisory colleges and provide powers for the Director of Insurance. Provisions also address continuing education requirements.

LB906 Wallman Change death benefits under the Nebraska **Workers' Compensation Act**  
1/11/12 **Referred to Business and Labor Committee**

Would increase burial benefits from the current reasonable expense of burial, not to exceed \$6,000, to 13 times the state average weekly wage. The bill also provides that if there is no spouse, child or other dependent entitled to benefits, \$25,000 would go to the personal representative of the estate of the deceased.

LB909 Lautenbaugh Provide an employer defense under the **Nebraska Workers' Compensation Act**  
1/11/12 **Referred to Business and Labor Committee**

Would reinstate the right of an employer to maintain a defense to a claim for workers' compensation benefits based upon an employee's or job applicant's misrepresentation of their medical condition. The bill would make it "willful negligence" for an employee at the time of applying for employment, to have knowingly made false statements about his or her physical condition in an employment application or pre-employment questionnaire. The bill was introduced in response to the Nebraska Supreme Court's recent ruling, in the case of *Bassinger vs. Nebraska Heart Hospital*, that workers' compensation benefits may not be denied to an employee who failed to disclose prior work injuries in a pre-employment screening. The ruling reversed long standing precedent that had allowed employers to raise a common-law defense against employees or job applicants who misrepresented their medical condition to employers.

**LB 984** Krist Increase requirements for uninsured and underinsured  
motor vehicle liability coverage  
1/12/12 Introduction  
1/17/12 **Referred to Banking, Commerce and Insurance Committee**

**LB 1003** Schumacher Change motor vehicle liability insurance and financial  
responsibility requirements  
1/17/12 Introduction

**1/19/12**            **Referred to Banking, Commerce and Insurance Committee**

LB 1008          Fulton            Provide for utilization and treatment guidelines for medical services under the Nebraska **Workers' Compensation Act**

1/7/12            Introduction

**1/19/12**            **Referred to Business and Labor Committee**

Would provide for utilization and treatment guidelines for medical services under the Nebraska Workers' Compensation Act in order to avoid overutilization or unnecessary treatment. The intent of the bill is to better ensure that an injured employee receives the appropriate treatment for workplace injuries and enable the employee's prompt return to work.

LB 1012          Lautenbaugh    Change medical treatment and temporary disability provisions under the Nebraska **Workers' Compensation Act**

1/7/12            Introduction

**1/19/12**            **Referred to Business and Labor Committee**

Would amend the medical treatment and temporary disability provisions under the Nebraska Workers' Compensation Act. The Nebraska Supreme Court (*Hofferber v. Hastings Utilities*) noted that it did not have the authority to address an employee's entitlement to workers' compensation benefits even when the employee refused to cooperate with medical care provided by the employer and workers' compensation insurer and engaged in abusive and vulgar behavior towards representatives of the employer and insurer. The bill would grant the court authority or require the court to adjust temporary disability benefits for injured workers under the following circumstances: during periods of incarceration; when an employee has been terminated for cause or voluntarily resigned, which would prevent the employee from complying with light-duty restrictions that the employer would otherwise have accommodated; when an employee unreasonably fails to comply with medical or surgical treatment provided by the employer or workers' compensation insurer; and when the employee refuses to comply with workplace accommodations provided by the employer.

LB 1054          McCoy            Exempt ancillary product contracts from state insurance laws and authorize the sale of such contracts in conjunction with motor vehicle service contracts

1/18/12            Introduction

**1/20/12**            **Referred to Banking, Commerce and Insurance Committee**

LB 1064          Fulton            Permit the procurement of sickness and accident insurance from a non-admitted insurer under the Surplus Lines Insurance Act

1/18/12            Introduction

**1/20/12**            **Referred to Banking, Commerce and Insurance Committee**

LB 1100          Wightman        Create a legislative advisory committee to study and report regarding health care services and health care insurance

**1/19/12**            **Introduction**

LB 1129          Coash            Provide requirements for insurance coverage of autism spectrum disorders

**1/19/12**            **Introduction**

LB 1143      Cornett      Change and eliminate provisions relating to stacking of insurance coverages  
                  **1/19/12      Introduction**

LB 1151      Lathrop      Eliminate a sunset provision under the Nebraska **Workers' Compensation** Act relating to certain first responder injuries  
                  **1/19/12      Introduction**

### **2011 BILLS OF INTEREST – CARRIED OVER TO 2012 SESSION**

Of special interest are **LB 196** (Lathrop) – **Change liability insurance and financial responsibility requirements for motor vehicles**, regarding doubling the motor vehicle financial responsibility limits (**IIAN Supports**), and **LB's 204** (Nordquist) **Create the Nebraska Insurance Choices Exchange TaskForce** (**IIAN Supports**), **409** (Utter) **Provide for the retention of insurance proceeds by a county or municipality** to repair or demolish damaged property (**IIAN Opposes**), and **693** (Carlson) Adopt the **Alcoholic Liquor Liability Act** (**IIAN is Neutral**). None of these bills were named "Priority" bills in 2011.

LB71            Pahls            Change the definition of trustee under the Burial Pre-Need Sale Act.  
                  1/6/11            Referral  
                  1/10/11          Referred to Banking, Commerce and Insurance Committee  
                  1/10/11          **Notice of hearing for January 18, 2011**

LB153          Lathrop          Change reimbursement for medical services under the Nebraska **Workers' Compensation** Act.  
Proposes to amend reimbursement for medical services under the Nebraska Workers' Compensation Act and to subject such services to the medical fee schedule. Under current law, reimbursement for medical services may not exceed the "regular charge made for such service in similar cases".  
                  1/7/11            Introduction  
                  1/11/11          Referred to Business and Labor Committee  
                  2/7/11            **Notice of hearing for February 14, 2011**

LB184          Smith            Change interest rate provisions under the Nebraska **Workers' Compensation** Act to require interest be paid at the "judgment rate" on any workers' compensation award from which an appeal is taken and no reduction in benefits obtained. Current law requires interest to be paid at the rate of 14% (the same rate as delinquent real estate taxes) on any award from which an appeal is taken that is not revised in favor of the employer. Most other judgments entered by courts of this state accrue interest at the "judgment rate."  
                  1/7/11            Introduction  
                  1/11/11          Referred to Business and Labor Committee  
                  2/28/11          **Notice of hearing for March 7, 2011**

**LB196**          Lathrop          **Change liability insurance and financial responsibility requirements for motor vehicles.**  
**SUPPORT**  
                  1/7/11            Introduction  
                  1/11/11          Referred to Banking, Commerce and Insurance Committee

**1/25/11 Notice of hearing for February 1, 2011**

On **February 1, 2011 Dan Loring testified for IAN in favor of LB196**, which would double the current minimum motor vehicle liability limits under the financial responsibility law. Also testifying in support were the Nebraska Truckers Association, Nebraska Association of Financial Advisors, and Nebraska Association of Trial Attorneys. Opposed were Nebraska Insurance Information Services, and Nebraska Insurance Federation.

LB240 Nordquist **Create the Nebraska Insurance Choices Exchange Task Force SUPPORT**

Would be charged with overseeing the establishment of a health insurance exchange as required by the federal health care reform law. The bill calls for the task force to be created by July 1. The task force would be charged with facilitating the purchase and sale of qualified health plans in the state's individual and small group markets, while evaluating the establishment of a small business health options program exchange to assist qualified small employers in facilitating the enrollment of their employees in qualified health plans. The task force would develop recommendations to ensure that the health insurance exchange will reduce health care costs, reduce the number of uninsured individuals, and provide a transparent marketplace, among other things. The task force would submit a report, with recommendations, to the Legislature on or before December 31, 2011.

1/11/11 Introduction

1/13/11 Referred to Banking, Commerce and Insurance Committee

1/26/11 **Notice of hearing for February 14, 2011**

LB245 Carlson Provide for release of employee medical records as prescribed under the Nebraska **Workers' Compensation Act**.

As proposed, an employee must provide a patient waiver, entitling the employer or its insurer to obtain all of its employee's previous hospital and medical records, with the exception of hospital and medical records pertaining to the employee's previous treatment for sexual abuse, HIV, reproductive health conditions, mental health conditions unless seeking benefits for mental health injuries or alcohol or controlled substance abuse. Failure to do so would suspend the running of the 30-day period within which to pay benefits for the purpose of potential penalties arising under current law.

1/11/11 Introduction

1/13/11 Referred to Business and Labor Committee

2/28/11 **Notice of hearing for March 7, 2011**

LB262 Lathrop Eliminate certain labor provisions regarding health and Safety

1/11/11 Introduced

1/13/11 Referred to Business and Labor Committee

1/14/11 Notice of hearing for January 24, 2011

2/24/11 Placed on **General File with AM163**

LB272 Fulton Provide for confidentiality and limited access to first-injury reports under the Nebraska **Workers' Compensation Act**.

Would provide for confidentiality and limited access to first-injury reports under the WC Act, and help prevent abuse by trial lawyers who communicate with employees following the filing of the first report of injury.

1/11/11 Introduction

1/13/11 Referred to Business and Labor Committee

3/7/11 **Notice of hearing for March 14, 2011**

LB280           Lathrop           Adopt the Discretionary Clause Prohibition Act and create an unfair insurance trade practice. The purpose of the Act would be to assure that health insurance benefits and disability income protection coverage are contractually guaranteed and to avoid the conflict of interest that occurs when the health carrier or insurer responsible for providing benefits has discretionary authority to decide what benefits are due. The bill would provide that no policy, contract, certificate, or agreement offered or issued in this state providing for disability income protection coverage may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to determine eligibility to receive benefits. Violation of the Act would be considered an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

1/11/11

Introduction

1/13/11

Referred to Banking, Commerce and Insurance Committee

1/26/11

**Notice of hearing for February 15, 2011**

LB291           Nelson           Change periodic payment modification provisions under the Nebraska **Workers' Compensation** Act.

Addresses the Court of Appeals' decision in the case of *Daugherty v. County of Douglas* 18 Neb. App. 228 (2010). In that case, the court determined that the modification of a workers' compensation award may not be applied retroactively. LB291 would provide greater flexibility and fairness for both employers and employees in cases where an increase or decrease in compensation is warranted, but the filing of an application is delayed. The legislation would grant the Workers' Compensation Court discretion to require payment of an overpayment by an employee when no further benefits are payable, but requires mandatory reimbursement of the overpayment by the employee in cases in which future income benefits are due. In addition, an employer would be required to reimburse the employee for underpayments resulting from a modification, regardless of whether future benefits are due.

1/12/11

Introduction

1/14/11

Referred to Business and Labor Committee

3/7/11

**Notice of hearing for March 14, 2011**

LB322           Cornett           Provide requirements for prescription drug insurance.

1/12/11

Introduction

1/14/11

Referred to Banking, Commerce and Insurance Committee

1/26/11

**Notice of hearing for February 14, 2011**

LB341           Smith           Include benefits under the Nebraska **Workers' Compensation** Act as income for support payments. Would address the argument that an out-of-state order issued under the Uniform Interstate Family Support Act is not valid unless it is registered in the state of Nebraska. LB341 would make Nebraska law consistent with respect to the treatment given to out-of-state orders issued under the Income Withholding for Child Support Act.

1/12/11

Introduction

1/14/11

Referred to Business and Labor Committee

2/28/11

**Notice of hearing for March 7, 2011**

LB346           Conrad           Authorize contempt powers for Nebraska **Workers' Compensation** Court.

The court, which hears cases dealing with work-related injuries and illnesses, also would be able to levy sanctions against parties in a case. The bill is in response to a ruling by the

Nebraska Supreme Court last year that said the Legislature failed to give the court such powers when it created the court.

1/12/11 Introduction  
1/14/11 Referred to Business and Labor Committee  
2/7/11 **Notice of hearing for February 14, 2011**

LB348 Lautenbaugh Change employer liability provisions under the Nebraska **Workers' Compensation Act.**

Would require a personal injury to be the "prevailing factor" of any resulting disability or condition, in order to be compensable. Under current law, the injury must only be a "contributing factor." As a result, employees who have preexisting injuries or who have experienced the deteriorating effects of aging can have a minor injury result in additional disability, all of which becomes the obligation of the current employer.

1/13/11 Introduction  
3/7/11 **Notice of hearing for March 14, 2011**

LB371 Schumacher Provide for an unfair insurance trade practice relating to public officials.

1/13/11 Introduction  
1/18/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 15, 2011**

LB409 Utter **Provide for the retention of insurance proceeds by a county or municipality to repair or demolish damaged property.**

**OPPOSE**  
1/13/11 Introduction  
1/18/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 14, 2011**  
3/8/11 Placed on **General File** with AM577  
3/8/11 Banking, Commerce and Insurance AM577 filed

LB478 McCoy Adopt the Nebraska Insurance Claims Fraud Prevention Act.

1/18/11 Introduction  
1/20/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 22, 2011**

LB493 Pahls Provide dependent health insurance up to age twenty-six.

1/18/11 Introduction  
1/20/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 15, 2011**

LB506 Wallman Change definitions of wages for the Nebraska **Workers' Compensation Act.**

Would provide workers' compensation death benefits for the dependents of a retired worker who died as the result of an occupational disease, under the contract for hire in force when the retired worker was last employed by the employer found liable for the occupational disease.

1/18/11 Introduction  
1/20/11 Referred to Business and Labor Committee  
2/7/11 **Notice of hearing for February 14, 2011**

LB514 Christensen Provide for recovery for unreasonable delay or denial of an insurance claim.

Would provide that if a plaintiff's recovery awarded was unreasonably delayed or denied, the court may allow an additional recovery amount of up to one times the recovery and reasonable attorney's fees as liquidated damages. The provision would apply only to property and casualty insurance.

1/18/11 Introduction  
1/20/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 14, 2011**

LB515 Christensen Adopt the Federal Health Care Nullification Act and provide a civil right of action and criminal penalties relating to enforcement.

1/18/11 Introduction  
1/20/11 Referred to Judiciary Committee  
2/24/11 Notice of hearing for **March 17, 2011**

**LB551** Schilz **Change the Burial Pre-Need Sale Act. MONITOR**

1/19/11 Introduction  
1/21/11 Referred to Banking, Commerce and Insurance Committee

LB578 Haar Require proof of financial responsibility from persons operating pipelines.

1/19/11 Introduction  
1/20/11 Sullivan name added  
1/21/11 Referred to Natural Resources Committee  
2/1/11 Notice of hearing for **February 9, 2011**

LB643 Lautenbaugh Provide additional public records that may be withheld

1/19/11 Introduction  
1/26/11 Referred to Government, Military and Veterans Affairs Committee  
2/16/11 Notice of hearing for **March 10, 2011**

LB678 Lathrop Prohibit insurance discrimination based on race, creed, national origin, or religion.

1/19/11 Introduction  
1/21/11 Referred to Banking, Commerce and Insurance Committee  
1/26/11 **Notice of hearing for February 15, 2011**

LB693 **MONITOR** Carlson Adopt the Alcoholic Liquor Liability Act.

1/19/11 Introduced  
1/21/11 Referred to Judiciary Committee  
2/16/11 Notice of hearing for **March 3, 2011**

LR30 Campbell Provide for continuation of the Health Care Reform Implementation and Oversight Committee.

1/14/11 Introduction  
1/14/11 Laid Over  
1/14/11 Speaker's announcement  
1/19/11 Referred to Executive Board Committee  
1/26/11 **Notice of hearing for February 17, 2011**

