



UNICAMERAL UPDATE

February 3, 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: February 3, 2012
RE: Nebraska 2012 Legislative Session, Week ending February 3, 2012

WEEK IN REVIEW

This was the 21st 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.

LB 1003, to raise the minimum required automobile liability insurance from \$25,000 and \$50,000 to \$50,000 and \$100,000, is set for hearing on February 6, 2012 (**IIAN Supports**). IIAN Legislative committee member Dan Loring will testify in support at the hearing.

LB 984, to increase requirements for uninsured and underinsured motor vehicle liability coverage, will also be heard on February 6. IIAN is monitoring this bill

Six WC Bills Heard On January 30

LB1151 (IIAN Neutral), by Omaha Senator Steve Lathrop, was heard before the Business & Labor Committee on January 30, 2012, along with five other Workers' Compensation bills. LB 1151 would eliminate a sunset provision under the Nebraska Workers' Compensation Act relating to mental stress/trauma first responder injuries. This bill is related to 2010 legislation (LB780) that was called the "mental-mental" bill, which was passed and signed, making mental injuries unaccompanied by a physical injury eligible for workers' compensation benefits if incurred by first responders – both volunteer and paid. Critics of LB780 said it was a first step in mandatory coverage for all mental injuries for every employee. The law contains no ceiling on claims or limits on duration of benefits. Under current law, the provisions in LB780 will expire June 30, 2014 – a sunset that was a key part of the compromise reached in 2010 before LB780 won approval by the full Legislature. Representatives from the insurance industry and the City of Omaha testified against the bill. **The other WC bills heard on January 30 were LB's: 738, 906, 909, 1008, and 1012** – the Committee took no immediate action on any of them. **See more complete bill descriptions below – bills are listed by number.**

Hearings For Health Insurance Exchange Bills Coming Up

IIAN supports both **LB 835** (Nordquist-Adopt the Nebraska Health Benefit Exchange Act), and **LB 838** (Pahls- Adopt the Nebraska Health Benefit Exchange Act). IIAN's Health Insurance Exchange Task Force and representatives of the other Nebraska agents' associations (NAHU, NAIFA, and PIA) will meet soon to prepare testimony for hearings before the Banking, Commerce, and Insurance Committee, tentatively scheduled for February 21, 2012.

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**
MONITOR

1/4/12 Introduction
1/6/12 Referred to Business and Labor Committee
1/23/12 Notice of hearing for January 30, 2012

Would increase burial expense benefits under the Nebraska Workers' Compensation Act from the current \$6,000 to \$10,000. According to the bill's sponsor, this amount was last raised in 1997. The National Council on Compensation Insurance, Inc. estimates an overall impact of 0.0% on system costs. In 2010, 19 deaths occurred on the job in Nebraska. In 2009, there were 16. In 2008, there were 16.

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
1/30/12 Notice of hearing for February 07, 2012

LB 835 Nordquist Adopt the Nebraska Health Benefit Exchange Act
SUPPORT

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
SUPPORT

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

SUPPORT

1/12/11 Notice of hearing for January 24, 2012

2/1/12 Placed on General File with AM1764

2/1/12 Banking, Commerce and Insurance AM1764 filed

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. **IAN attended hearing.**

LB 898 Fischer Redefine minitruck for vehicle titling, registration, and insurance statutes and rules of the road

MONITOR

1/9/12 Introduction

1/11/12 Referred to Transportation and Telecommunications Committee

1/23/12 Notice of hearing for January 31, 2012

LB906 Wallman Change death benefits under the Nebraska **Workers' Compensation Act**

MONITOR

1/11/12 Referred to Business and Labor Committee

1/23/12 Notice of hearing for January 30, 2012

Would increase workers' compensation burial benefits from the current \$6,000 limit to 13 times the state average weekly wage. For 2012, that total would be \$9,230. 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** **MONITOR**

1/11/12 Referred to Business and Labor Committee
1/23/12 Notice of hearing for January 30, 2012

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 930 **MONITOR** Brasch Allow operation of golf car vehicles on highways as prescribed
1/10/12 Introduction
1/12/12 Referred to Transportation and Telecommunications Committee
1/23/12 Notice of hearing for January 30, 2012

LB 943 **MONITOR** McCoy Adopt the Insured Homeowners Protection Act
1/11/12 Introduction
1/17/12 Referred to Banking, Commerce and Insurance Committee
1/17/12 Notice of hearing for January 24, 2012 – IIAN attended hearing.
2/1/12 Placed on **General File** with AM1763
2/1/12 Banking, Commerce and Insurance AM1763 filed

LB 984 **MONITOR** 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
1/30/12 Notice of hearing for February 06, 2012

LB 1003 Schumacher Change motor vehicle liability insurance and financial
SUPPORT responsibility requirements
1/17/12 Introduction
1/19/12 Referred to Banking, Commerce and Insurance Committee
1/30/12 Notice of hearing for February 06, 2012

LB 1008 Fulton Provide for utilization and treatment guidelines for medical
MONITOR services under the Nebraska **Workers' Compensation**
Act
1/7/12 Introduction
1/19/12 Referred to Business and Labor Committee
1/23/12 Notice of hearing for January 30, 2012

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

MONITOR

1/7/12 Introduction

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

1/23/12 **Notice of hearing for January 30, 2012**

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**

2/02/12 **Notice of hearing for February 13, 2012**

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**

1/23/12 **Notice of hearing for January 31, 2012**

2/02/12 Placed on **General File** with AM1790

2/02/12 Banking, Commerce and Insurance AM1790 filed

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

1/19/12 **Introduction**

1/25/12 **Referred to Banking, Commerce and Insurance Committee**

1/30/12 **Notice of hearing for February 07, 2012**

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

1/19/12 **Introduction**

1/23/12 **Referred to Banking, Commerce and Insurance Committee**

1/30/12 **Notice of hearing for February 07, 2012**

LB 1143 Cornett Change and eliminate provisions relating to stacking of insurance coverages

1/19/12 **Introduction**

1/23/12 Referred to Banking, Commerce and Insurance Committee

1/30/12 **Notice of hearing for February 06, 2012**

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

MONITOR

1/19/12

Introduction

1/23/12

Notice of hearing for January 30, 2012

Would eliminate a sunset provision under the Nebraska Workers' Compensation Act relating to mental stress/trauma first responder injuries. This bill is related to 2010 legislation (LB780) that was called the "mental-mental" bill, which was passed and signed, making mental injuries unaccompanied by a physical injury eligible for workers' compensation benefits if incurred by first responders – both volunteer and paid. Critics of LB780 said it was a first step in mandatory coverage for all mental injuries for every employee. The law contains no ceiling on claims or limits on duration of benefits. Under current law, the provisions in LB780 will expire June 30, 2014 – a sunset that was a key part of the compromise reached in 2010 before LB780 won approval by the full Legislature. Representatives from the insurance industry and the City of Omaha testified against the bill.

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