

AMENDMENTS TO LB 588

(Amendments to E & R amendments, ER8094)

Introduced by Cornett, 45

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 48-120, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

5           48-120 ~~(1)~~ (1)(a) The employer is liable for all  
6 reasonable medical, surgical, and hospital services, including  
7 plastic surgery or reconstructive surgery but not cosmetic surgery  
8 when the injury has caused disfigurement, appliances, supplies,  
9 prosthetic devices, and medicines as and when needed, which are  
10 required by the nature of the injury and which will relieve pain  
11 or promote and hasten the employee's restoration to health and  
12 employment, and includes damage to or destruction of artificial  
13 members, dental appliances, teeth, hearing aids, and eyeglasses,  
14 but, in the case of dental appliances, hearing aids, or eyeglasses,  
15 only if such damage or destruction resulted from an accident which  
16 also caused personal injury entitling the employee to compensation  
17 therefor for disability or treatment, subject to the approval of  
18 and regulation by the Nebraska Workers' Compensation Court, not to  
19 exceed the regular charge made for such service in similar cases.

20           (b) Except as provided in section 2 of this act, the ~~The~~  
21 compensation court ~~may~~ shall establish schedules of ~~maximum~~ fees  
22 for such services. ~~If the compensation court establishes such a~~

1 ~~schedule, it shall publish and furnish such schedule to the public.~~  
2 The compensation court shall review such ~~schedule~~ schedules at  
3 least biennially and adopt appropriate changes when necessary. The  
4 compensation court may contract with any person, firm, corporation,  
5 organization, or government agency to secure adequate data to  
6 establish such fees. ~~The provider or supplier of such services~~  
7 ~~shall not collect or attempt to collect from any employer, insurer,~~  
8 ~~government, or injured employee or dependent or the estate of any~~  
9 ~~injured or deceased employee any amount in excess of the maximum~~  
10 ~~fee established by the compensation court for any such service. The~~  
11 compensation court shall publish and furnish to the public the fee  
12 schedules established pursuant to this subdivision and section 2 of  
13 this act. The compensation court shall may establish and charge a  
14 fee to recover the cost of published fee schedules. Notwithstanding  
15 any other provision of this section, the compensation court may  
16 exclude from the application of such schedules those services  
17 performed under a managed care plan certified pursuant to section  
18 48-120.02.

19 (c) Reimbursement for inpatient hospital services  
20 provided by hospitals located in or within fifteen miles of a  
21 Nebraska city of the metropolitan class or primary class and by  
22 other hospitals with fifty-one or more licensed beds shall be  
23 according to the Diagnostic Related Group inpatient hospital fee  
24 schedule established in section 2 of this act.

25 (d) A workers' compensation insurer, risk management  
26 pool, self-insured employer, or managed care plan certified  
27 pursuant to section 48-120.02 may contract with a provider or

1 provider network for medical, surgical, or hospital services. Such  
2 contract may establish fees for services different than the fee  
3 schedules established under subdivision (1)(b) of this section or  
4 established under section 2 of this act. Such contract shall be in  
5 writing and mutually agreed upon prior to the date services are  
6 provided.

7 (e) The provider or supplier of such services shall  
8 not collect or attempt to collect from any employer, insurer,  
9 government, or injured employee or dependent or the estate of any  
10 injured or deceased employee any amount in excess of (i) the fee  
11 established by the compensation court for any such service, (ii)  
12 the fee established under section 2 of this act, or (iii) the fee  
13 contracted under subdivision (1)(d) of this section.

14 (2) (a) The employee has the right to select a physician  
15 who has maintained the employee's medical records prior to an  
16 injury and has a documented history of treatment with the employee  
17 prior to an injury or a physician who has maintained the medical  
18 records of an immediate family member of the employee prior to an  
19 injury and has a documented history of treatment with an immediate  
20 family member of the employee prior to an injury. For purposes of  
21 this subsection, immediate family member means the employee's  
22 spouse, children, parents, stepchildren, and stepparents. The  
23 employer shall notify the employee following an injury of such  
24 right of selection in a form and manner and within a timeframe  
25 established by the compensation court. If the employer fails to  
26 notify the employee of such right of selection or fails to notify  
27 the employee of such right of selection in a form and manner and

1 within a timeframe established by the compensation court, then the  
2 employee has the right to select a physician. If the employee  
3 fails to exercise such right of selection in a form and manner and  
4 within a timeframe established by the compensation court following  
5 notice by the employer pursuant to this subsection, then the  
6 employer has the right to select the physician. If selection of the  
7 initial physician is made by the employee or employer pursuant to  
8 this subsection following notice by the employer pursuant to this  
9 subsection, the employee or employer shall not change the initial  
10 selection of physician made pursuant to this subsection unless such  
11 change is agreed to by the employee and employer or is ordered by  
12 the compensation court pursuant to subsection (6) of this section.  
13 If compensability is denied by the workers' compensation insurer,  
14 risk management pool, or self-insured employer, (i) the employee  
15 has the right to select a physician and shall not be made to  
16 enter a managed care plan and (ii) the employer is liable for  
17 medical, surgical, and hospital services subsequently found to be  
18 compensable. If the employer has exercised the right to select  
19 a physician pursuant to this subsection and if the compensation  
20 court subsequently orders reasonable medical services previously  
21 refused to be furnished to the employee by the physician selected  
22 by the employer, the compensation court shall allow the employee  
23 to select another physician to furnish further medical services.  
24 If the employee selects a physician located in a community not the  
25 home or place of work of the employee and a physician is available  
26 in the local community or in a closer community, no travel expenses  
27 shall be required to be paid by the employer or his or her workers'

1 compensation insurer.

2 (b) In cases of injury requiring dismemberment or  
3 injuries involving major surgical operation, the employee may  
4 designate to his or her employer the physician or surgeon to  
5 perform the operation.

6 (c) If the injured employee unreasonably refuses or  
7 neglects to avail himself or herself of medical or surgical  
8 treatment furnished by the employer, except as herein and otherwise  
9 provided, the employer is not liable for an aggravation of such  
10 injury due to such refusal and neglect and the compensation court  
11 or judge thereof may suspend, reduce, or limit the compensation  
12 otherwise payable under the Nebraska Workers' Compensation Act.

13 (d) If, due to the nature of the injury or its occurrence  
14 away from the employer's place of business, the employee or the  
15 employer is unable to select a physician using the procedures  
16 provided by this subsection, the selection requirements of this  
17 subsection shall not apply as long as the inability to make a  
18 selection persists.

19 (e) The physician selected may arrange for any  
20 consultation, referral, or extraordinary or other specialized  
21 medical services as the nature of the injury requires.

22 (f) The employer is not responsible for medical services  
23 furnished or ordered by any physician or other person selected  
24 by the employee in disregard of this section. Except as otherwise  
25 provided by the Nebraska Workers' Compensation Act, the employer is  
26 not liable for medical, surgical, or hospital services or medicines  
27 if the employee refuses to allow them to be furnished by the

1 employer.

2 (3) No claim for such medical treatment is valid and  
3 enforceable unless, within fourteen days following the first  
4 treatment, the physician giving such treatment furnishes the  
5 employer a report of such injury and treatment on a form prescribed  
6 by the compensation court. The compensation court may excuse the  
7 failure to furnish such report within fourteen days when it finds  
8 it to be in the interest of justice to do so.

9 (4) All physicians and other providers of medical  
10 services attending injured employees shall comply with all the  
11 rules and regulations adopted and promulgated by the compensation  
12 court and shall make such reports as may be required by it at  
13 any time and at such times as required by it upon the condition  
14 or treatment of any injured employee or upon any other matters  
15 concerning cases in which they are employed. All medical and  
16 hospital information relevant to the particular injury shall,  
17 on demand, be made available to the employer, the employee,  
18 the workers' compensation insurer, and the compensation court.  
19 The party requesting such medical and hospital information shall  
20 pay the cost thereof. No such relevant information developed in  
21 connection with treatment or examination for which compensation is  
22 sought shall be considered a privileged communication for purposes  
23 of a workers' compensation claim. When a physician or other  
24 provider of medical services willfully fails to make any report  
25 required of him or her under this section, the compensation court  
26 may order the forfeiture of his or her right to all or part of  
27 payment due for services rendered in connection with the particular

1 case.

2 (5) Whenever the compensation court deems it necessary,  
3 in order to assist it in resolving any issue of medical fact or  
4 opinion, it shall cause the employee to be examined by a physician  
5 or physicians selected by the compensation court and obtain from  
6 such physician or physicians a report upon the condition or matter  
7 which is the subject of inquiry. The compensation court may charge  
8 the cost of such examination to the workers' compensation insurer.  
9 The cost of such examination shall include the payment to the  
10 employee of all necessary and reasonable expenses incident to such  
11 examination, such as transportation and loss of wages.

12 (6) The compensation court shall have the authority  
13 to determine the necessity, character, and sufficiency of any  
14 medical services furnished or to be furnished and shall have  
15 authority to order a change of physician, hospital, rehabilitation  
16 facility, or other medical services when it deems such change is  
17 desirable or necessary. Any dispute regarding medical, surgical,  
18 or hospital services furnished or to be furnished under this  
19 section may be submitted by the parties, the supplier of such  
20 service, or the compensation court on its own motion for informal  
21 dispute resolution by a staff member of the compensation court or  
22 an outside mediator pursuant to section 48-168. In addition,  
23 any party or the compensation court on its own motion may  
24 submit such a dispute for a medical finding by an independent  
25 medical examiner pursuant to section 48-134.01. Issues submitted  
26 for informal dispute resolution or for a medical finding by an  
27 independent medical examiner may include, but are not limited

1 to, the reasonableness and necessity of any medical treatment  
2 previously provided or to be provided to the injured employee. The  
3 compensation court may adopt and promulgate rules and regulations  
4 regarding informal dispute resolution or the submission of disputes  
5 to an independent medical examiner that are considered necessary to  
6 effectuate the purposes of this section.

7 (7) For the purpose of this section, physician has the  
8 same meaning as in section 48-151.

9 (8) The compensation court shall order the employer to  
10 make payment directly to the supplier of any services provided  
11 for in this section or reimbursement to anyone who has made any  
12 payment to the supplier for services provided in this section. No  
13 such supplier or payor may be made or become a party to any action  
14 before the compensation court.

15 (9) Notwithstanding any other provision of this section,  
16 a workers' compensation insurer, risk management pool, or  
17 self-insured employer may contract for medical, surgical, hospital,  
18 and rehabilitation services to be provided through a managed care  
19 plan certified pursuant to section 48-120.02. Once liability for  
20 medical, surgical, and hospital services has been accepted or  
21 determined, the employer may require that employees subject to  
22 the contract receive medical, surgical, and hospital services in  
23 the manner prescribed in the contract, except that an employee  
24 may receive services from a physician selected by the employee  
25 pursuant to subsection (2) of this section if the physician so  
26 selected agrees to refer the employee to the managed care plan  
27 for any other treatment that the employee may require and if



1 the physician so selected agrees to comply with all the rules,  
2 terms, and conditions of the managed care plan. If compensability  
3 is denied by the workers' compensation insurer, risk management  
4 pool, or self-insured employer, the employee may leave the managed  
5 care plan and the employer is liable for medical, surgical, and  
6 hospital services previously provided. The workers' compensation  
7 insurer, risk management pool, or self-insured employer shall give  
8 notice to employees subject to the contract of eligible service  
9 providers and such other information regarding the contract and  
10 manner of receiving medical, surgical, and hospital services under  
11 the managed care plan as the compensation court may prescribe.

12 Sec. 2. (1) This section applies only to hospitals  
13 identified in subdivision (1)(c) of section 48-120.

14 (2) For inpatient discharges on or after January 1, 2008,  
15 the Diagnostic Related Group inpatient hospital fee schedule shall  
16 be as set forth in this section, except as otherwise provided in  
17 subdivision (1)(d) of section 48-120. Adjustments shall be made  
18 annually as provided in this section, with such adjustments to  
19 become effective each January 1.

20 (3) For purposes of this section:

21 (a) Current Medicare Factor is derived from the  
22 Diagnostic Related Group Prospective Payment System as established  
23 by the Centers for Medicare and Medicaid Services under the United  
24 States Department of Health and Human Services and means the  
25 summation of the following components:

26 (i) Hospital-specific Federal Standardized Amount,  
27 including all wage index adjustments and reclassifications;

1           (ii) Hospital-specific Capital Standard Federal Rate,  
2 including geographic, outlier, and exception adjustment factors;

3           (iii) Hospital-specific Indirect Medical Education Rate,  
4 reflecting a percentage add-on for indirect medical education costs  
5 and related capital; and

6           (iv) Hospital-specific Disproportionate Share Hospital  
7 Rate, reflecting a percentage add-on for disproportionate share of  
8 low income patient costs and related capital;

9           (b) Current Medicare Weight means the weight assigned  
10 to each Medicare Diagnostic Related Group as established by the  
11 Centers for Medicare and Medicaid Services under the United States  
12 Department of Health and Human Services;

13           (c) Diagnostic Related Group means the Diagnostic Related  
14 Group assigned to inpatient hospital services using the public  
15 domain classification and methodology system developed for the  
16 Centers for Medicare and Medicaid Services under the United States  
17 Department of Health and Human Services; and

18           (d) Workers' Compensation Factor means the Current  
19 Medicare Factor for each hospital multiplied by one hundred forty  
20 percent.

21           (4) The Diagnostic Related Group inpatient hospital  
22 fee schedule shall include at least thirty-eight of the most  
23 frequently utilized Medicare Diagnostic Related Groups for workers'  
24 compensation with the goal that the fee schedule covers at least  
25 ninety percent of all workers' compensation inpatient hospital  
26 claims submitted by hospitals identified in subdivision (1)(c) of  
27 section 48-120. Rehabilitation Diagnostic Related Groups shall not

1 be included in the Diagnostic Related Group inpatient hospital  
2 fee schedule. Trauma Diagnostic Related Groups as defined by the  
3 Centers for Medicare and Medicaid Services under the United States  
4 Department of Health and Human Services shall not be included  
5 within the Diagnostic Related Group inpatient hospital fee schedule  
6 until January 1, 2010.

7 (5) The Diagnostic Related Group inpatient hospital fee  
8 schedule shall be established by the following methodology:

9 (a) The Diagnostic Related Group reimbursement amount  
10 required under the Nebraska Workers' Compensation Act shall be  
11 equal to the Current Medicare Weight multiplied by the Workers'  
12 Compensation Factor for each hospital;

13 (b) The Stop-Loss Threshold amount shall be the  
14 Diagnostic Related Group reimbursement amount calculated in  
15 subdivision (5) (a) of this section multiplied by three;

16 (c) For charges over the Stop-Loss Threshold amount of  
17 the schedule, the hospital shall be reimbursed the Diagnostic  
18 Related Group reimbursement amount calculated in subdivision (5) (a)  
19 of this section plus sixty percent of the charges over the  
20 Stop-Loss Threshold amount; and

21 (d) For charges less than the Stop-Loss Threshold amount  
22 of the schedule, the hospital shall be reimbursed the lower of  
23 the hospital's billed charges or the Diagnostic Related Group  
24 reimbursement amount calculated in subdivision (5) (a) of this  
25 section.

26 (6) For charges for all other stays or services that are  
27 not on the Diagnostic Related Group inpatient hospital fee schedule

1 or are not contracted for under subdivision (1)(d) of section  
2 48-120, the hospital shall be reimbursed under the schedule of  
3 fees established by the compensation court pursuant to subdivision  
4 (1)(b) of section 48-120.

5 (7) Each hospital shall assign and include a Diagnostic  
6 Related Group on each workers' compensation claim submitted.  
7 The workers' compensation insurer, risk management pool, or  
8 self-insured employer may audit the Diagnostic Related Group  
9 assignment of the hospital.

10 (8) The chief executive officer of each hospital shall  
11 sign and file with the administrator of the compensation court by  
12 October 15 of each year, in the form and manner prescribed by the  
13 administrator, a sworn statement disclosing the Current Medicare  
14 Factor of the hospital in effect on October 1 of such year and each  
15 item and amount making up such factor.

16 (9) Each hospital, workers' compensation insurer, risk  
17 management pool, and self-insured employer shall report to the  
18 administrator of the compensation court by October 15 of each year,  
19 in the form and manner prescribed by the administrator, the total  
20 number of claims submitted for each Diagnostic Related Group and  
21 the number of times billed charges exceeded the Stop-Loss Threshold  
22 amount for each Diagnostic Related Group.

23 (10) The compensation court may add or subtract  
24 Diagnostic Related Groups in striving to achieve the goal of  
25 including those Diagnostic Related Groups that encompass at least  
26 ninety percent of the inpatient hospital workers' compensation  
27 claims submitted by hospitals identified in subdivision (1)(c) of

1 section 48-120. The administrator of the compensation court shall  
2 annually make necessary adjustments to comply with the Current  
3 Medicare Weights and shall annually adjust the Current Medicare  
4 Factor for each hospital based on the annual statement submitted  
5 pursuant to subsection (8) of this section.

6       Sec. 3. (1) Regarding payment of a claim for medical,  
7 surgical, or hospital services for a state employee under the  
8 Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

9       (2) For claims other than claims under subsection (1) of  
10 this section regarding payment of a claim for medical, surgical,  
11 or hospital services for an employee under the Nebraska Workers'  
12 Compensation Act:

13       (a) The workers' compensation insurer, risk management  
14 pool, or self-insured employer shall notify the provider within  
15 fifteen business days after receiving a claim as to what  
16 information is necessary to process the claim. Failure to notify  
17 the provider assumes the workers' compensation insurer, risk  
18 management pool, or self-insured employer has all information  
19 necessary to pay the claim. The workers' compensation insurer, risk  
20 management pool, or self-insured employer shall pay providers in  
21 accordance with section 48-120 and section 2 of this act within  
22 thirty business days after receipt of all information necessary to  
23 process the claim. Failure to pay the provider within the thirty  
24 days will cause the workers' compensation insurer, risk management  
25 pool, or self-insured employer to reimburse the provider's billed  
26 charges instead of the scheduled or contracted fees;

27       (b) If a claim is submitted electronically, the claim

1 is presumed to have been received on the date of the electronic  
2 verification of receipt by the workers' compensation insurer, risk  
3 management pool, or self-insured employer or its clearinghouse.  
4 If a claim is submitted by mail, the claim is presumed to have  
5 been received five business days after the claim has been placed  
6 in the United States mail with first-class postage prepaid. The  
7 presumption may be rebutted by sufficient evidence that the claim  
8 was received on another day or not received at all; and

9 (c) Payment of a claim by the workers' compensation  
10 insurer, risk management pool, or self-insured employer means  
11 the receipt of funds by the provider. If payment is submitted  
12 electronically, the payment is presumed to have been received on  
13 the date of the electronic verification of receipt by the provider  
14 or the provider's clearinghouse. If payment is submitted by mail,  
15 the payment is presumed to have been received five business days  
16 after the payment has been placed in the United States mail with  
17 first-class postage prepaid. The presumption may be rebutted by  
18 sufficient evidence that the payment was received on another day or  
19 not received at all.

20 Sec. 4. Section 48-121, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 48-121 The following schedule of compensation is hereby  
23 established for injuries resulting in disability:

24 (1) For total disability, the compensation during such  
25 disability shall be sixty-six and two-thirds percent of the wages  
26 received at the time of injury, but such compensation shall not be  
27 more than the maximum weekly income benefit specified in section

1 48-121.01 nor less than the minimum weekly income benefit specified  
2 in section 48-121.01, except that if at the time of injury the  
3 employee receives wages of less than the minimum weekly income  
4 benefit specified in section 48-121.01, then he or she shall  
5 receive the full amount of such wages per week as compensation.  
6 Nothing in this subdivision shall require payment of compensation  
7 after disability shall cease;\_-

8 (2) For disability partial in character, except the  
9 particular cases mentioned in subdivision (3) of this section,  
10 the compensation shall be sixty-six and two-thirds percent of the  
11 difference between the wages received at the time of the injury and  
12 the earning power of the employee thereafter, but such compensation  
13 shall not be more than the maximum weekly income benefit specified  
14 in section 48-121.01. This compensation shall be paid during the  
15 period of such partial disability but not beyond three hundred  
16 weeks. Should total disability be followed by partial disability,  
17 the period of three hundred weeks mentioned in this subdivision  
18 shall be reduced by the number of weeks during which compensation  
19 was paid for such total disability;\_-

20 (3) For disability resulting from permanent injury of  
21 the classes listed in this subdivision, the compensation shall be  
22 in addition to the amount paid for temporary disability, except  
23 that the compensation for temporary disability shall cease as  
24 soon as the extent of the permanent disability is ascertainable.  
25 For disability resulting from permanent injury of the following  
26 classes, compensation shall be: For the loss of a thumb, sixty-six  
27 and two-thirds percent of daily wages during sixty weeks. For the

1 loss of a first finger, commonly called the index finger, sixty-six  
2 and two-thirds percent of daily wages during thirty-five weeks. For  
3 the loss of a second finger, sixty-six and two-thirds percent of  
4 daily wages during thirty weeks. For the loss of a third finger,  
5 sixty-six and two-thirds percent of daily wages during twenty  
6 weeks. For the loss of a fourth finger, commonly called the little  
7 finger, sixty-six and two-thirds percent of daily wages during  
8 fifteen weeks. The loss of the first phalange of the thumb or of  
9 any finger shall be considered to be equal to the loss of one-half  
10 of such thumb or finger and compensation shall be for one-half of  
11 the periods of time above specified, and the compensation for the  
12 loss of one-half of the first phalange shall be for one-fourth of  
13 the periods of time above specified. The loss of more than one  
14 phalange shall be considered as the loss of the entire finger or  
15 thumb, except that in no case shall the amount received for more  
16 than one finger exceed the amount provided in this schedule for  
17 the loss of a hand. For the loss of a great toe, sixty-six and  
18 two-thirds percent of daily wages during thirty weeks. For the  
19 loss of one of the toes other than the great toe, sixty-six and  
20 two-thirds percent of daily wages during ten weeks. The loss of the  
21 first phalange of any toe shall be considered equal to the loss of  
22 one-half of such toe, and compensation shall be for one-half of the  
23 periods of time above specified. The loss of more than one phalange  
24 shall be considered as the loss of the entire toe. For the loss of  
25 a hand, sixty-six and two-thirds percent of daily wages during one  
26 hundred seventy-five weeks. For the loss of an arm, sixty-six and  
27 two-thirds percent of daily wages during two hundred twenty-five



1 weeks. For the loss of a foot, sixty-six and two-thirds percent of  
2 daily wages during one hundred fifty weeks. For the loss of a leg,  
3 sixty-six and two-thirds percent of daily wages during two hundred  
4 fifteen weeks. For the loss of an eye, sixty-six and two-thirds  
5 percent of daily wages during one hundred twenty-five weeks. For  
6 the loss of an ear, sixty-six and two-thirds percent of daily  
7 wages during twenty-five weeks. For the loss of hearing in one ear,  
8 sixty-six and two-thirds percent of daily wages during fifty weeks.  
9 For the loss of the nose, sixty-six and two-thirds percent of daily  
10 wages during fifty weeks.

11           In any case in which there is a loss or loss of use  
12 of more than one member or parts of more than one member set  
13 forth in this subdivision, but not amounting to total and permanent  
14 disability, compensation benefits shall be paid for the loss or  
15 loss of use of each such member or part thereof, with the periods  
16 of benefits to run consecutively. The total loss or permanent  
17 total loss of use of both hands, or both arms, or both feet,  
18 or both legs, or both eyes, or hearing in both ears, or of any  
19 two thereof, in one accident, shall constitute total and permanent  
20 disability and be compensated for according to subdivision (1) of  
21 this section. In all other cases involving a loss or loss of use  
22 of both hands, both arms, both feet, both legs, both eyes, or  
23 hearing in both ears, or of any two thereof, total and permanent  
24 disability shall be determined in accordance with the facts.  
25 Amputation between the elbow and the wrist shall be considered  
26 as the equivalent of the loss of a hand, and amputation between  
27 the knee and the ankle shall be considered as the equivalent of

1 the loss of a foot. Amputation at or above the elbow shall be  
2 considered as the loss of an arm, and amputation at or above the  
3 knee shall be considered as the loss of a leg. Permanent total  
4 loss of the use of a finger, hand, arm, foot, leg, or eye shall  
5 be considered as the equivalent of the loss of such finger, hand,  
6 arm, foot, leg, or eye. In all cases involving a permanent partial  
7 loss of the use or function of any of the members mentioned in  
8 this subdivision, the compensation shall bear such relation to the  
9 amounts named in such subdivision as the disabilities bear to those  
10 produced by the injuries named therein.

11 If, in the compensation court's discretion, compensation  
12 benefits payable for a loss or loss of use of more than one  
13 member or parts of more than one member set forth in this  
14 subdivision, resulting from the same accident or illness, do not  
15 adequately compensate the employee for such loss or loss of use  
16 and such loss or loss of use results in at least a thirty  
17 percent loss of earning capacity, the compensation court shall,  
18 upon request of the employee, determine the employee's loss of  
19 earning capacity consistent with the process for such determination  
20 under subdivision (1) or (2) of this section, and in such a case  
21 the employee shall not be entitled to compensation under this  
22 subdivision.

23 If the employer and the employee are unable to agree upon  
24 the amount of compensation to be paid in cases not covered by the  
25 schedule, the amount of compensation shall be settled according  
26 to sections 48-173 to 48-185. Compensation under this subdivision  
27 shall not be more than the maximum weekly income benefit specified

1 in section 48-121.01 nor less than the minimum weekly income  
2 benefit specified in section 48-121.01, except that if at the  
3 time of the injury the employee received wages of less than the  
4 minimum weekly income benefit specified in section 48-121.01, then  
5 he or she shall receive the full amount of such wages per week as  
6 compensation; and -

7 (4) For disability resulting from permanent disability,  
8 if immediately prior to the accident the rate of wages was fixed  
9 by the day or hour, or by the output of the employee, the weekly  
10 wages shall be taken to be computed upon the basis of a workweek of  
11 a minimum of five days, if the wages are paid by the day, or upon  
12 the basis of a workweek of a minimum of forty hours, if the wages  
13 are paid by the hour, or upon the basis of a workweek of a minimum  
14 of five days or forty hours, whichever results in the higher weekly  
15 wage, if the wages are based on the output of the employee; and -

16 (5) The employee shall be entitled to compensation  
17 from his or her employer for temporary disability while  
18 undergoing physical or medical rehabilitation and while undergoing  
19 vocational rehabilitation whether such vocational rehabilitation is  
20 voluntarily offered by the employer and accepted by the employee or  
21 is ordered by the Nebraska Workers' Compensation Court or any judge  
22 of the compensation court.

23 Sec. 5. Section 48-1,110, Revised Statutes Cumulative  
24 Supplement, 2006, is amended to read:

25 48-1,110 Sections 48-101 to 48-1,117 and sections 2 and  
26 3 of this act shall be known and may be cited as the Nebraska  
27 Workers' Compensation Act.

1                   Sec. 6. Sections 1, 2, 5, 6, and 7 of this act  
2 become operative three calendar months after adjournment of this  
3 legislative session. Sections 3, 4, and 8 of this act become  
4 operative on January 1, 2008.

5                   Sec. 7. Original sections 48-120 and 48-1,110, Revised  
6 Statutes Cumulative Supplement, 2006, are repealed.

7                   Sec. 8. Original section 48-121, Reissue Revised Statutes  
8 of Nebraska, is repealed.