

TWENTY-FOURTH DAY - FEBRUARY 12, 2013

LEGISLATIVE JOURNAL

**ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION**

TWENTY-FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Tuesday, February 12, 2013

PRAYER

The prayer was offered by Senator Wallman.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Carlson presiding.

The roll was called and all members were present except Senator Christensen who was excused; and Senators Adams, Ashford, Lautenbaugh, Murante, and Sullivan who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-third day was approved.

PRESENTED TO THE GOVERNOR

Presented to the Governor on February 11, 2013, at 12:10 p.m. were the following: LBs 1, 2, 16, 30e, 35e, 72, 87, 91, 100e, 102, 111e, 112, 113, 125e, 146e, and 155.

(Signed) Jamie Kruse
Clerk of the Legislature's Office

MESSAGE FROM THE GOVERNOR

February 11, 2013

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bill 125e was received, signed, and delivered to the Secretary of State earlier today.

Sincerely,
 (Signed) Dave Heineman
 Governor

AMENDMENTS - Print in Journal

Senator Lautenbaugh filed the following amendment to LB21:
 AM191

1 1. Strike original section 1 and insert the following
 2 sections:
 3 Section 1. Section 48-125, Revised Statutes Cumulative
 4 Supplement, 2012, is amended to read:
 5 48-125 (1)(a) Except as hereinafter provided, all amounts
 6 of compensation payable under the Nebraska Workers' Compensation
 7 Act shall be payable periodically in accordance with the methods
 8 of payment of wages of the employee at the time of the injury or
 9 death. Such payments shall be sent directly to the person entitled
 10 to compensation or his or her designated representative except as
 11 otherwise provided in section 48-149.

12 (b) Fifty percent shall be added for waiting time for all
 13 delinquent payments after thirty days' notice has been given of
 14 disability or after thirty days from the entry of a final order,
 15 award, or judgment of the Nebraska Workers' Compensation Court,
 16 except that for any award or judgment against the state in excess
 17 of one hundred thousand dollars which must be reviewed by the
 18 Legislature as provided in section 48-1,102, fifty percent shall be
 19 added for waiting time for delinquent payments thirty days after
 20 the effective date of the legislative bill appropriating any funds
 21 necessary to pay the portion of the award or judgment in excess of
 22 one hundred thousand dollars.

23 (2)(a) Whenever the employer refuses payment of
 1 compensation or medical payments subject to section 48-120, or when
 2 the employer neglects to pay compensation for thirty days after
 3 injury or neglects to pay medical payments subject to such section
 4 after thirty days' notice has been given of the obligation for
 5 medical payments, and proceedings are held before the compensation
 6 court, a reasonable attorney's fee shall be allowed the employee
 7 by the compensation court in all cases when the employee receives
 8 an award. Attorney's fees allowed shall not be deducted from
 9 the amounts ordered to be paid for medical services nor shall
 10 attorney's fees be charged to the medical providers.

11 (b) If the employer files an appeal from an award of a
 12 judge of the compensation court and fails to obtain any reduction
 13 in the amount of such award, the Court of Appeals or Supreme Court
 14 shall allow the employee a reasonable attorney's fee to be taxed as
 15 costs against the employer for such appeal.

16 (c) If the employee files an appeal from an order of
 17 a judge of the compensation court denying an award and obtains
 18 an award or if the employee files an appeal from an award of a
 19 judge of the compensation court when the amount of compensation due
 20 is disputed and obtains an increase in the amount of such award,
 21 the Court of Appeals or Supreme Court may allow the employee a
 22 reasonable attorney's fee to be taxed as costs against the employer
 23 for such appeal.

24 (d) A reasonable attorney's fee allowed pursuant to this
 25 subsection shall not affect or diminish the amount of the award.

26 (3) When an attorney's fee is allowed pursuant to this
 27 section, there shall further be assessed against the employer an
 1 amount of interest on the final award obtained, computed from the
 2 date compensation was payable, as provided in section 48-119, until
 3 the date payment is made by the employer, at a rate equal to the
 4 rate of interest ~~allowed per annum under section 45-104.01, as~~
 5 provided in section 45-103, as such rate may from time to time be
 6 adjusted by the Legislature. Interest shall apply only to those
 7 weekly compensation benefits awarded which have accrued as of the
 8 date payment is made by the employer. If the employer pays or
 9 tenders payment of compensation, the amount of compensation due is
 10 disputed, and the award obtained is greater than the amount paid
 11 or tendered by the employer, the assessment of interest shall be
 12 determined solely upon the difference between the amount awarded
 13 and the amount tendered or paid.

14 Sec. 2. Section 4 of this act becomes operative on June
 15 30, 2014. The other sections of this act become operative on their
 16 effective date.

17 Sec. 3. Original section 48-125, Revised Statutes
 18 Cumulative Supplement, 2012, is repealed.

19 2. Renumber the remaining section accordingly.

Senator Lautenbaugh filed the following amendment to LB21:
 AM192

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

3 Section 1. Section 48-144.01, Reissue Revised Statutes of
 4 Nebraska, is amended to read:

5 48-144.01 (1) In every case of reportable injury arising
 6 out of and in the course of employment, the employer or workers'
 7 compensation insurer shall file a report thereof with the Nebraska
 8 Workers' Compensation Court. Such report shall be filed within ten
 9 days after the employer or insurer has been given notice of or has
 10 knowledge of the injury.

11 (2) For purposes of this section:

12 (a) Reportable injury means an injury or diagnosed
 13 occupational disease which results in: (i) Death, regardless of
 14 the time between the death and the injury or onset of disease;
 15 (ii) time away from work; (iii) restricted work or termination of

16 employment; (iv) loss of consciousness; or (v) medical treatment
17 other than first aid;

18 (b) Restricted work means the inability of the employee
19 to perform one or more of the duties of his or her normal
20 job assignment. Restricted work does not occur if the employee
21 is able to perform all of the duties of his or her normal
22 job assignment, but a work restriction is assigned because the
23 employee is experiencing minor musculoskeletal discomfort and for
1 the purpose of preventing a more serious condition from developing;

2 (c) Medical treatment means treatment administered by a
3 physician or other licensed health care professional; and

4 (d) First aid means:

5 (i) Using a nonprescription medication at nonprescription
6 strength. For medications available in both prescription and
7 nonprescription form, a recommendation by a physician or other
8 licensed health care professional to use a nonprescription
9 medication at prescription strength is not first aid;

10 (ii) Administering tetanus immunizations. Administering
11 other immunizations, such as hepatitis B vaccine and rabies
12 vaccine, is not first aid;

13 (iii) Cleaning, flushing, or soaking wounds on the
14 surface of the skin;

15 (iv) Using wound coverings, such as bandages and gauze
16 pads, and superficial wound closing devices, such as butterfly
17 bandages and steri-strips. Using other wound closing devices, such
18 as sutures and staples, is not first aid;

19 (v) Using hot or cold therapy;

20 (vi) Using any nonrigid means of support, such as elastic
21 bandages, wraps, and nonrigid back belts. Using devices with rigid
22 stays or other systems designed to immobilize parts of the body is
23 not first aid;

24 (vii) Using temporary immobilization devices, such as
25 splints, slings, neck collars, and back boards, while transporting
26 accident victims;

27 (viii) Drilling of a fingernail or toenail to relieve
1 pressure or draining fluid from a blister;

2 (ix) Using eye patches;

3 (x) Removing foreign bodies from the eye using only
4 irrigation or a cotton swab;

5 (xi) Removing splinters or foreign material from areas
6 other than the eye by irrigation, tweezers, cotton swabs, or other
7 simple means;

8 (xii) Using finger guards;

9 (xiii) Using massages. Using physical therapy or
10 chiropractic treatment is not first aid; and

11 (xiv) Drinking fluids for relief of heat stress.

12 (3) An employee has the right, prior to an injury, to
13 elect that the report filed with the Nebraska Workers' Compensation
14 Court under this section be kept confidential and not open to

15 public inspection or copying, except as otherwise provided in this
16 section and as necessary for the compensation court to administer
17 and enforce other provisions of the Nebraska Workers' Compensation
18 Act. An election, once made, shall remain in effect notwithstanding
19 any change in employment by such employee, until and unless the
20 election is revoked by the employee. An election or revocation
21 shall be made in a form and manner established by the compensation
22 court. The compensation court shall deny any request to inspect
23 or copy the report for which an election has been made under
24 this section unless: (a) The requester is the employee who is
25 the subject of the report or an attorney or authorized agent of
26 that employee. An attorney or authorized agent of the employee
27 shall provide a written authorization for inspection or copying
1 from the employee if requested by the compensation court; (b)
2 the requester is the employer, workers' compensation insurer, risk
3 management pool, or third-party administrator that is a party to
4 the report or an attorney or authorized agent of such party. An
5 attorney or authorized agent of a party shall provide a written
6 authorization for inspection or copying from the party if requested
7 by the compensation court; (c) the requester is (i) an attorney or
8 an authorized agent of an insurer or a third-party administrator
9 who is involved in administering any claim for insurance benefits
10 related to any injury of the employee whose report is filed
11 with the compensation court or (ii) an attorney representing a
12 party to a lawsuit filed by or on behalf of the employee whose
13 report is filed with the compensation court. An attorney or
14 authorized agent of such insurer or third-party administrator or
15 an attorney representing a party to such a lawsuit shall provide a
16 written authorization for inspection or copying from the insurer,
17 third-party administrator, or party, as applicable, if requested by
18 the compensation court; (d) the report will be used for the purpose
19 of state or federal investigation or examinations or for the state
20 or federal government to compile statistical information; (e) the
21 report requested is sought for the purpose of identifying the
22 number and nature of any injuries to any employees of an employer
23 identified in the request and the compensation court is able to and
24 does redact any information revealing the identity of the employee
25 prior to releasing the report; (f) the report requested is a
26 pleading filed with the compensation court or an exhibit submitted
27 with a pleading filed with the compensation court; (g) release of
1 the report is ordered by a court of competent jurisdiction; or
2 (h) a revocation of such election has been made by the employee
3 in a form and a manner established by the compensation court. Any
4 request to inspect or copy a report pursuant to this section shall
5 be submitted to the compensation court on a form prescribed by the
6 compensation court.

7 Sec. 2. Section 4 of this act becomes operative on June
8 30, 2014. The other sections of this act become operative on their
9 effective date.

- 10 Sec. 3. Original section 48-144.01, Reissue Revised
 11 Statutes of Nebraska, is repealed.
 12 2. Renumber the remaining section accordingly.

Senator Lautenbaugh filed the following amendment to LB21:
 AM193

- 1 1. Strike original section 1 and insert the following
 2 sections:
 3 Section. 1. No compensation shall be allowed if, at the
 4 time of or in the course of entering into employment or at the time
 5 of receiving notice of the removal of conditions from a conditional
 6 offer of employment: (1) The employee knowingly and willfully
 7 made a false representation as to his or her physical or medical
 8 condition; (2) the employer relied upon the false representation
 9 and the reliance was a substantial factor in the hiring; and (3) a
 10 causal connection existed between the false representation and the
 11 injury.
 12 Sec. 2. Section 48-1,110, Revised Statutes Cumulative
 13 Supplement, 2012, is amended to read:
 14 48-1,110 Sections 48-101 to 48-1,117 and section 1 of
 15 this act shall be known and may be cited as the Nebraska Workers'
 16 Compensation Act.
 17 Sec. 3. Section 5 of this act becomes operative on June
 18 30, 2014. The other sections of this act become operative on their
 19 effective date.
 20 Sec. 4. Original section 48-1,110, Revised Statutes
 21 Cumulative Supplement, 2012, is repealed.
 22 2. Renumber the remaining section accordingly.

COMMUNICATION ON LB125

February 12, 2013

The Honorable John Gale
 Secretary of State
 2300 State Capitol
 Lincoln, NE 68509

Dear Mr. Secretary:

Inasmuch as the Governor signed LB125e into law on February 11, 2013, with the effective date of February 12, 2013, I am forwarding you a copy of the map which changes provisions relating to boards of education of Class V school districts. Affixed to the map is a declaration indicating certification that the map is true and accurate as enacted by LB125 which was passed by the 2013 Nebraska Legislature.

Please do not hesitate to contact my office if you should have any questions or need additional information.

Sincerely,
(Signed) Patrick J. O'Donnell
Clerk of the Legislature

cc: Dave Phipps
Douglas County Election Commissioner

NOTICE OF COMMITTEE HEARING
Transportation and Telecommunications

Room 1113

Tuesday, February 19, 2013 1:30 p.m.

Randall Peters - Department of Roads
John (Jack) Hynes - Board of Public Roads Classifications and Standards
Mick Syslo - Board of Public Roads Classifications and Standards
LB158
LB386
LB387
LB623

(Signed) Annette Dubas, Chairperson

MOTION - Approve Appointment

Senator Avery moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 422:

Nebraska Tourism Commission
Tony Moody

Voting in the affirmative, 33:

Avery	Dubas	Johnson	McCoy	Schumacher
Bloomfield	Gloor	Karpisek	Mello	Seiler
Campbell	Haar, K.	Kintner	Nelson	Smith
Carlson	Hansen	Kolowski	Nordquist	Wallman
Cook	Harms	Krist	Pirsch	Wightman
Crawford	Harr, B.	Larson	Price	
Davis	Howard	Lathrop	Scheer	

Voting in the negative, 0.

Present and not voting, 10:

Bolz	Chambers	Conrad	Janssen	Schilz
Brasch	Coash	Hadley	McGill	Watermeier

Excused and not voting, 6:

Adams	Christensen	Murante
Ashford	Lautenbaugh	Sullivan

The appointment was confirmed with 33 ayes, 0 nays, 10 present and not voting, and 6 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 31. Read. Considered.

SENATOR GLOOR PRESIDING

LR31 was adopted with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 94. Placed on General File.

LEGISLATIVE BILL 340. Placed on General File.

LEGISLATIVE BILL 499. Placed on General File.

LEGISLATIVE BILL 322. Indefinitely postponed.

(Signed) Tom Carlson, Chairperson

Education

LEGISLATIVE BILL 262. Placed on General File with amendment.

AM138

- 1 1. On page 3, line 17, strike "January 1, 2009", show as
- 2 stricken, and insert "February 1, 2013".

(Signed) Kate Sullivan, Chairperson

NOTICE OF COMMITTEE HEARING
Appropriations

Room 1524

Monday, February 25, 2013 1:30 p.m.

LB194
LB195
LB196
LB197
LB198
LB199
LB200
LB130
LB286
LB629

(Signed) Heath Mello, Chairperson

AMENDMENT - Print in Journal

Senator Dubas filed the following amendment to LB250:
AM194

- 1 1. On page 11, line 7; and page 12, line 18, strike "the"
- 2 and insert "an".
- 3 2. On page 11, line 8; and page 12, line 19, after the
- 4 period insert "The director shall designate an implementation date
- 5 which is on or before January 1, 2015.".

GENERAL FILE

LEGISLATIVE BILL 88. Committee AM137, found on page 370 and considered on page 421, was renewed.

Senator McGill offered the following amendment to the committee amendment:

AM216

(Amendments to Standing Committee amendments, AM137)

- 1 1. On page 1, strike beginning with "and" in line 9
- 2 through "limits" in line 10, show as stricken, and insert "except
- 3 as to construction on farms for farm purposes".
- 4 2. On page 2, lines 4 through 8, strike the new matter;
- 5 and strike beginning with "A" in line 8 through line 10 and show as
- 6 stricken.

The McGill amendment was adopted with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

The committee amendment, as amended, was adopted with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

SENATOR CARLSON PRESIDING

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 38. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 283. Title read. Considered.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 11 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 616. Title read. Considered.

Advanced to Enrollment and Review Initial with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 628. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 337. Title read. Considered.

Committee AM107, found on page 378, was adopted with 33 ayes, 0 nays, 11 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 9 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 426. Title read. Considered.

Committee AM26, found on page 379, was adopted with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 117. Title read. Considered.

Advanced to Enrollment and Review Initial with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 165. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 484. Title read. Considered.

SENATOR COASH PRESIDING

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 398. Title read. Considered.

Advanced to Enrollment and Review Initial with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

COMMITTEE REPORTS

General Affairs

LEGISLATIVE BILL 259. Placed on General File.

LEGISLATIVE BILL 273. Placed on General File.

(Signed) Russ Karpisek, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Cole, Charles - Boiler Safety Code Advisory Board - Business and Labor
Eberspacher, Kurt - Boiler Safety Code Advisory Board - Business and Labor

Fisher, Darrell E. - Public Employees Retirement Board - Nebraska Retirement Systems

Kasl, Martin - Boiler Safety Code Advisory Board - Business and Labor

Stewart, Kenneth - Boiler Safety Code Advisory Board - Business and Labor

(Signed) John Wightman, Chairperson
Executive Board

UNANIMOUS CONSENT - Add Cointroducer

Senator Ashford asked unanimous consent to add his name as cointroducer to LB613. No objections. So ordered.

VISITORS

Visitors to the Chamber were Don Young and Ralph Allen from Lincoln.

The Doctor of the Day was Dr. Roger Meyer from Utica.

ADJOURNMENT

At 11:03 a.m., on a motion by Senator Bolz, the Legislature adjourned until 9:00 a.m., Wednesday, February 13, 2013.

Patrick J. O'Donnell
Clerk of the Legislature