I. INTRODUCTION

With the passage of Legislative Bill 757 ("L.B. 757") in 1993, the law of workers' compensation in Nebraska saw some dramatic alterations. Effective January 1, 1994, L.B. 757 brought changes in Nebraska's workers' compensation law regarding physician choice, the independent medical examiner system, vocational rehabilitation, lump sum settlements and the maximum weekly benefit. Entirely new law was additionally forged, providing for managed care plans, informal dispute resolution and safety committees. With L.B. 757 also came questions of the constitutionality of some of its provisions.

This article compares the law of workers' compensation in Nebraska prior to the passage of L.B. 757 with the new law and changes in the Rules of Procedure of the Nebraska Workers' Compensation Court. A discussion will also be presented regarding the states from which L.B. 757 and Nebraska's rules were patterned. Finally, the constitutionality of specific provisions of L.B. 757 will be addressed.

II. A COMPARISON: LAW BEFORE AND AFTER L.B. 757

A. PHYSICIAN CHOICE

1. Law Prior to L.B. 757

Prior to the passage of L.B. 757, an employee had the right to make both an initial and one alternate choice of physician.\(^1\) The ini-
tial and alternate choice of physician rule essentially allowed a dissatis-
ished employee to discontinue treatment and start again with a new
physician. Additionally, the only limitation upon the employee re-
garded the selection of a physician licensed in Nebraska.2

Both the initial and second physician chosen by the employee had
the power to make treatment referrals to another doctor.3 If the claim
was deemed compensable by the Court, the employer was required to
pay the medical expenses incurred due to all referrals.

Many employers disliked the initial and alternate choice of physi-
cian rule. Such a rule, it was argued, increased costs. It was also felt
that having an alternate choice of physician allowed an employee to
“doctor shop.” If, for example, the initial physician chosen felt the em-
ployee was physically able to return to work, the alternate choice of
physician rule allowed the employee to seek another physician willing
to keep her off work. Employees, however, enjoyed having control over
their treatment with the initial and alternate choice of physician rule.

2. Law After L.B. 757

With the changes of L.B. 757, an injured employee is limited to a
physician who has previously treated either the employee or an imme-
diate family member, and has records of such treatment.4 The pur-
pose behind L.B. 757 was to limit employees to initial treatment from
their family doctor.5 Recognizing that not all employees would have a

48-120. MEDICAL, SURGICAL, AND HOSPITAL SERVICES; EMPLOYER'S LIABILITY;
FEE SCHEDULE; PHYSICIAN, RIGHT TO SELECT; PROCEDURES; POWERS AND DUTIES;
COURT; POWERS. . . . The employee shall have the right to make the initial
selection of his or her physician from among all licensed physicians in the state
and shall have the right to make an alternative choice of physician if he or she
is not satisfied with the physician first selected. . . .

Id.


3. Id.

4. NEB. REV. STAT. § 48-120(2)(a) (Supp. 1993). Section 48-120(2)(a) provides in
relevant part:

48-120. MEDICAL, SURGICAL, AND HOSPITAL SERVICES; EMPLOYER'S LIABILITY;
FEE SCHEDULE; PHYSICIAN, RIGHT TO SELECT; PROCEDURES; POWERS AND DUTIES;
COURT; POWERS; DISPUTE RESOLUTION PROCEDURE; MANAGED CARE PLAN. . . .

(2)(a) The employee shall have the right to select a physician who has
maintained the employee's medical records prior to an injury and has a docu-
mented history of treatment with the employee prior to an injury or a physician
who has maintained the medical records of an immediate family member of the
employee prior to an injury and has a documented history of treatment with an
immediate family member of the employee prior to an injury. . . .

Id.

5. “Family doctor” is used generically in this article to describe a physician who
has previously treated the injured employee or her family members as described in Rule
50.A and is not intended to describe only those physicians engaged in a family practice.
Indeed, an injured employee may “designate” a specialist to be her physician for work-
related problems.
family doctor, an allowance was made for treatment from a family member's physician. Family member, as recognized by the statute, includes a spouse, children, parents, stepchildren, and stepparents of the employee. If an employee fails to exercise her right to select a physician, or if no physician meets the requirement of previous treatment of the employee or an immediate family member, then the employer has the right to select the physician.

Notice is a prerequisite to limiting an employee to a family physician, or a physician chosen by the employer. Pursuant to the notice requirement, the employer must give notice to the employee, either in writing or orally, of the right to select a physician who has previously treated either the employee or an immediate family member, and has records of such treatment. The Rules of the Workers' Compensation Court allow for notice to be given both prior to, or following an injury. If notice is given prior to an injury, it need not be given a second time, following the injury. If, prior to an injury; an employee was provided notice and selected a physician, then suffers an injury, the employer cannot limit the employee to the physician chosen prior to the injury, if no treatment has begun. Accordingly, an employee may change her designated physician both before and after the injury, as long as treatment has not yet commenced. If no notice is provided to the employee of the right to select a physician, the employee can choose any physician with whom to treat, and is not limited to their designated physician.

Acceptance of compensability is a second prerequisite to limiting an employee to a family physician, or a physician chosen by the employer. The Rules of the Workers' Compensation Court provide fourteen days in which to either accept or deny compensability, following notice to the employer of an employment related injury. If, within the fourteen days, no action is taken by the employer or insurer, or the claim is affirmatively denied, the employee is free to treat with any physician, without limitation to their designated doctor. However, there is no longer an initial and alternate choice of physician available. The employee is limited to a single choice of physician.

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9. Id. 50.C.2.
10. Id.
11. Id.
12. Id. 50.C.4. However, there is no longer an initial and alternate choice of physician available. The employee is limited to a single choice of physician.
14. Id.
of all medical services provided prior to the denial of compensability and the cost of treatment due to all referrals.\textsuperscript{15}

If an investigation of the injury is incomplete but the fourteenth day is approaching, employers have an incentive to initially accept the claim and control with whom the employee seeks treatment. No provision in the rules or statute suggest that initial acceptance, with subsequent denial, will permanently bind an employer.\textsuperscript{16} If, upon further investigation, it is determined the injury is not compensable and benefits are terminated, the employee is arguably free to discontinue treatment with the family physician and change doctors. The employer would only be liable for the expenses due to the change of physician if the compensation court later finds the employee's claim compensable.

Following the initial selection of a physician, either by the employee or employer, a change in physician can only occur if both the employee and the employer agree, or the change is ordered by the compensation court.\textsuperscript{17} If the employer agrees to the change in physician, the employer is responsible for payment of the medical expenses, pursuant to the Nebraska Fee Schedule. If a dispute arises over the proper medical or surgical care, both the statute and the court rules provide for submission of the dispute for informal dispute resolution.\textsuperscript{18}

L.B. 757 made no change to the prior law regarding the use or compensability of medical expenses following a referral. The amend-

\textsuperscript{15} Id. 50.A.4.b. The medical charges would still be subject to the Nebraska Fee Schedule as administered by the Workers' Compensation Court.

\textsuperscript{16} See Solheim v. Hastings Hous. Co., 151 Neb. 264, 37 N.W.2d 212 (1949) (indicating that the payment of benefits before an adjudication of the claim does not estop the employer from later contesting the compensability of the claim).


(6) The Nebraska Workers' Compensation Court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such changes is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

ment to section 48-120 of the Nebraska Revised Statutes still allows the physician selected by either the employee or employer to make referrals or request consultations.  

Physician choice was hotly debated on the floor of the legislature prior to the passage of L.B. 757. Ultimately, two amendments were adopted in an attempt to counter the effects caused by confining an employee to a designated physician, or a physician chosen by the employer. The first amendment added language allowing an employee to select a physician of her choice, if the insurer, risk management pool, or self-insured employer denied compensability. Pursuant to the amendment, an employee retains the right to select any physician if compensability is denied. For those employees involved in a managed care plan, a denial of compensability also frees the employee to select a physician of her choice, outside the managed care plan.

Because only a denial of compensability will trigger complete employee physician freedom of choice, the legislative floor debate centered on the definition of denial. First, it was noted that an individual in middle management with the employer could not make a decision on compensability. Pursuant to the statutory language, only the insurer, risk management pool, or self-insured employer have the authority to make binding decisions regarding acceptance or denial of the claim.

In an effort to define when a denial of compensability has occurred, the legislators offered various scenarios which an employee may face. It was recognized by the legislators that, following a work related accident, disputes may occur which do not constitute a denial. One example was the need of the insurer, risk management pool, or self-insured employer to obtain additional information, records, or reports. The legislators determined that if additional information was required to evaluate the employee's claim, no denial of compensability had occurred.

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20. See Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7033-54 (June 1, 1993); Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7213-19 (June 2, 1993).
   If compensability is denied by the insurer, risk management pool, or self-insured employer, (i) the employee shall have the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer shall be liable for medical, surgical, and hospital services subsequently found to be compensable.
Id.
23. See Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7033-54 (June 1, 1993).
The legislators also considered whether a denial of compensability had occurred when the insurer, risk management pool, or self-insured employer agreed that a work related accident had occurred, but disagreed on the reasonableness of medical treatment, whether maximum medical improvement had occurred, or the extent of disability. It was decided that such disputes did not rise to the level of a denial of compensability. In each situation, the insurer had accepted responsibility in some measure for the claim and had paid the employee benefits. Disputes over treatment, or the amount of benefits to which an employee was entitled, did not address a denial of compensability, but rather represented issues to be decided by the court. It was also determined that, in a litigated case, a general or specific denial in a formal pleading did not constitute a denial of compensability under the statutory language.

The only situation recognized by the legislators which rose to a denial of compensability, allowing the employee to seek treatment from a physician of her choice, was when the insurer, risk management pool, or self-insured employer denied that an accident occurred which arose out of and in the course of the employment. In such a situation, where the employee was paid no benefits, she was free to treat with any physician, without the limitation of a designated physician.

The second amendment adopted by the legislature regarding physician choice addressed disputes over the type of medical services to which an employee was entitled. Assume, for example, that the insurer, risk management pool, or self-insured employer accepted compensability, the employee sought treatment from a physician who had maintained their medical records or those of a family member, or began treatment with a physician chosen by the employer, the physician felt the employee was able to return to work and required no further treatment, but the employee disagreed and felt further medical care was needed. Under the adopted language, if the compensation court agreed that further treatment was warranted, the employee would be allowed to select a different physician in which to receive continued treatment, with the liability for payment of the medical expenses falling upon the employer.


If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services.

Id.
3. Constitutionality

As passed, no time limit was included within the parameters of the physician choice provisions of L.B. 757 in which an insurer, risk management pool, or self-insured employer was required to accept compensability. The enabling language included in L.B. 757 provided authority to the compensation court to establish a time frame and manner of regarding how and when an employee must be notified of their right to select a physician.25

As noted from the floor debate about physician choice, the Nebraska legislature specifically considered that the need of the insurer, risk management pool, or self-insured employer to conduct further investigation or obtain further information or reports did not constitute a denial of compensability.26 The implication of the floor debate is that initial limitation of an employee to treatment by their designated physician or a physician chosen by the employer is only dependent upon providing the employee notice of their right to choose a physician. If notice was provided to the employee, the only means by which an employee can change physicians is through consent of the employer, order of the court, or a denial of compensability. The employer’s further investigation by obtaining additional information or records is not a denial of compensability, sufficient to free the employee to change physicians.

Despite the legislative history discussing the denial of compensability, the compensation court, in promulgating the rules governing choice of physician, placed a fourteen day limit upon the insurer, risk management pool, or self-insured employer to affirmatively accept compensability, or free the employee to seek treatment from the physician of their choice.27 Accordingly, the fourteen day limitation regarding acceptance or denial of compensability may be in direct conflict with the legislature’s intent and may go beyond the enabling language contained in L.B. 757.

B. Managed Care Plan

1. Law Prior to L.B. 757

Prior to the passage of L.B. 757, no provisions existed for the certification and implementation of managed care plans.

26. Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7033-54 (June 1, 1993); Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7213-19 (June 2, 1993).
2. Law After L.B. 757

With the passage of L.B. 757, the framework for a new system of managed care plans was outlined. The statute and rules do not prohibit insurance companies from developing managed care plans, but rather specifically allow for insurance carrier involvement, pending the appropriate certification. The managed care plan system allows employers and insurance companies to devise managed health care programs, similar to a Health Maintenance Organization. The purpose behind the managed care plans is to make employee treatment more efficient and employer costs more manageable.

The managed care plan system includes the designated physician provision. If the employer properly notifies the employee of the right to select a physician who has previously treated either the employee or an immediate family member and has records of such treatment, then the employee maintains the right to treat with a family physician and need not enter the managed care plan. The only limitation upon an employee choosing to treat with their family physician, and not enter the managed care plan, is that any referrals made by the family physician must be into the managed care plan. The practical effect thus limits employees to treat with either a designated physician, or physicians within the managed care plan. The provision also contemplates more complex injuries will come within the umbrella of a managed care plan simply because referral(s) are likely.

Treatment within the managed care plan is only applicable if compensability was accepted by the employer. As with physician choice, an employee may receive treatment from any physician, without limitation to a designated physician, if compensability is denied. If the compensation court later finds the employee's claim compensable, the employer is responsible for the cost of all medical bills incurred thus far, including physicians outside the managed care plan and all referrals. Uncertainty remains concerning whether, once compensability has been adjudicated, an employer can then require the


31. Id.

32. Id.

employee to return to, or to enter the managed care plan for further treatment.

The rules provide employee physician choice within the managed care plan. Following an initial evaluation, an employee is allowed to choose which participating physician will act as the primary treating physician. Depending upon the injury, the employee may choose a medical doctor, chiropractor, podiatrist, osteopath or dentist as the treating physician. An employee dissatisfied with her treating physician must be allowed to change the primary physician at least once. Any change of treating physician must, however, remain within the managed care plan.

An employee may not be inconvenienced by her participation in a managed care plan. If the employee lives, or is employed, within a city of at least 5,000 people, both the evaluating and primary treating physicians must be located within thirty miles of the employee's home or job site. The employee may be required to travel up to sixty miles for an examination, if she neither lives nor works within a city of at least 5,000 people. Examination by a physician outside the managed plan may occur if no physician within the plan is available pursuant to the two above mileage requirements.

The Workers' Compensation Court has established extensive rules governing the application and certification of managed care plans. The plan must have contracted for at least twenty-two different health care services and providers, including specialists in hand and upper extremity surgery, neurosurgeons, chiropractors, podiatrists, osteopaths, dentists, dermatologists, ophthalmologists, optometrists, psychiatrists, and radiology services. Procedures for both peer review and internal dispute resolution must also be provided.

As of October 20, 1994, only five applications had been submitted to the compensation court requesting certification of a managed care plan. No determination has been made regarding whether the submitted plans are certifiable. The rigid standards which managed care plans must meet is likely one reason for the lack of additional applications to date.

34. Id. 53.E.3.
35. Id.
36. Id. 53.E.5.
37. Id.
38. Id. 53.E.7.
39. Id.
40. Id.
41. See id. 52, 53.
42. Id. 53.C.
43. Id. 53.G., 53.H.
3. **Influence of Other States**

The drafting of the Nebraska statutes and rules regarding managed care plans was largely patterned upon the workers' compensation law of Minnesota.\(^4^4\) The statutes of Oregon and New Jersey, along with the rules from Oregon, were also examined.\(^4^5\) Although Oregon was the pioneer of managed care plans, Nebraska drafters relied more upon modifications of the Oregon statutes, which Minnesota had adopted.

Due to the relatively recent adoption of managed care plans throughout the United States, it is too early to determine their impact upon state workers' compensation systems. For example, even the Oregon managed care statute was not passed until 1990.\(^4^6\) Oregon's corresponding rules and regulations governing managed care were not adopted until February 1, 1992.\(^4^7\) To date, Oregon's managed care organizations appear to have had at least some impact upon what treatment is determined reasonable and necessary.\(^4^8\)

When Minnesota decided to adopt a managed care system, it patterned its statutes upon a modified version of those in Oregon. The Minnesota managed care plan for workers' compensation took effect April 29, 1992.\(^4^9\) No cases have yet been decided by the Minnesota Workers' Compensation Court regarding disputes or issues within their managed care plan.

C. **Independent Medical Examiner System**

1. **Law Prior to L.B. 757**

Prior to the enactment of L.B. 757, an injured employee, if requested, was required to submit to an examination by a physician chosen by the employer.\(^5^0\) The only limitations surrounding the

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\(^4^4\) The managed care provisions of the Minnesota workers' compensation law are located at MINN. STAT. ANN. § 176.1351 (West 1993).

\(^4^5\) The managed care provisions of the Oregon and New Jersey workers' compensation laws, respectively, are located at OR. REV. STAT. § 656.260 (1993); 25 N.J. Reg. 2891-94.


\(^4^8\) See In re Harold Angell, No. 92-0551M, 1994 WL 70137, at *1-*2 (Or. Work. Comp. Bd. Mar. 3, 1994) (explaining that the claimant's treating physician recommended an anterior discectomy and interbody fusion at two levels. The managed care organization determined the proposed cervical surgery was not appropriate. The Oregon Workers' Compensation Board found the proposed surgery was not compensable, as the claimant failed to establish it was reasonable and necessary).

\(^4^9\) See MINN. STAT. ANN. § 176.1351 (West 1993).

\(^5^0\) See NEB. REV. STAT. § 48-134 (Reissue 1988). NEB. REV. STAT. § 48-134 provided:

48-134. Injured employee; physical examination; duty to submit. After an employee has given notice of an injury, as provided in section 48-133, and
examination, were that it be conducted by a licensed physician, at the employer's cost. Employers could additionally request repeat examinations “from time to time,” if the disability was ongoing. If an employee so desired, a physician chosen and paid for by the employee could be present during the examination. An employee's unreasonable refusal to submit to an examination could subject the employee to loss of benefits during the refusal period.

2. Law After L.B. 757

The provisions of L.B. 757 added to, rather than eliminated, the independent medical examiner provisions in place prior to its passage. The rights given to employers through section 48-134 of the Nebraska Revised Statutes were not expressly repealed by L.B. 757. Accordingly, employers today are still empowered to require an injured employee to submit to an examination by a physician of the employer's choice and at the employer's expense.

With the passage of L.B. 757, two supplemental means were included by which an opinion could be elicited from an independent medical examiner. The difference between the two additional options rests upon whether the parties agree on the physician who is to

from time to time thereafter during the continuance of his or her disability, he or she shall, if so requested by the employer or the insurance company carrying such risk, submit himself or herself to an examination by a physician or surgeon legally authorized to practice medicine under the laws of the state in which he or she practices, furnished and paid for by the employer, or the insurance company carrying such risk, as the case may be.

Id.

51. NEB. REV. STAT. § 48-134 (Reissue 1988).
52. Id.
53. Id.
54. See NEB. REV. STAT. § 48-134.01 (Supp. 1993). NEB. REV. STAT. § 48-134.01 now provides in relevant part:

48-134.01. INDEPENDENT MEDICAL EXAMINER SYSTEM; LIST OF HEALTH CARE PROVIDERS; DUTIES, FEE SCHEDULE; SELECTION OF EXAMINER; PROCEDURES BEFORE EXAMINER; FINDINGS; IMMUNITY. (1) The Nebraska Workers' Compensation Court may develop and implement an independent medical examiner system consistent with the requirements of this section. As part of such system, the compensation court by a majority vote of the judges thereof may create, maintain, and periodically validate a list of health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the compensation court finds most commonly used by injured employees. The compensation court may establish a fee schedule for services rendered by independent medical examiners and may adopt and promulgate any rules and regulations considered necessary to carry out the purposes of this section.

(2) An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner shall not be the employee's treating health care provider and shall not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid.
perform the independent medical exam. If the employer and employee agree upon a physician, the findings of the independent medical examiner are binding on both parties. Neither party will be allowed to challenge or disprove the opinions of the examiner.

To ensure that the employee is not coerced into agreeing to a binding medical opinion, the employer must provide written notice explaining: (1) the binding nature of the findings; (2) neither party will be allowed to challenge or disprove the findings; (3) neither party is required to agree upon an examiner; and (4) the compensation court will assign an examiner if requested to do so, whose findings are not binding. Although not required to do so, employers may use a notice form drafted by the compensation court.

L.B. 757 included enabling legislation, authorizing the Workers' Compensation Court to "develop and implement an independent medical examiner system." Under the independent medical examiner system, a list of examiners was created and maintained by the compensation court, by majority vote of the judges. When either party wishes to have a medical dispute submitted for an independent medical examination, but no agreement can be reached regarding the physician, the party may request the court assign an examiner from its list. Assignment by the compensation court is accomplished through a revolving selection process, based upon specialty and locality of the examiner. Opinions of the examiner, if no agreement is reached regarding the selection, are admissible at the workers' compensation hearing, but carry no greater weight than other evidence received from both parties.

(3) If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the compensation court shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including, but not limited to, whether the injured employee is able to perform any gainful employment temporarily or permanently, what physical restrictions, if any, would be imposed on the employee's employment, whether the injured employee has reached maximum medical improvement, the existence and extent of any permanent physical impairment, and the reasonableness and necessity of any medical treatment previously provided, or to be provided, to the injured employee.

Id.

55. NEB REV STAT § 48-134.06(6) (Supp. 1993).
56. NEB WORKERS COMP CT R P 67 C (1994).
57. Id. 67 F.
58. NEB REV STAT § 48-134.01(1) (Supp. 1993).
59. Id.
60. Id. § 48-134.01(3); NEB WORKERS COMP CT R P 63 (1994).
61. NEB WORKERS COMP CT R P 63 B (1994).
62. NEB REV STAT § 48-134.01(6) (Supp. 1993).
Although the weight to be given to the opinion of the examiner may differ, depending upon whether the selection was by agreement or assignment, some commonality of procedure does exist. To be a qualified medical examiner, the physician cannot be the employee's treating physician, shall have never treated the employee for the injury in question, and shall have never previously examined the employee at the request of any party, in regard to the claimed injury. Agreement, or the lack thereof, also does not change the responsibility of the employer to pay for the examination and report.

Whether to expand the existing independent medical examiner system brought much debate on the floor of the Nebraska Legislature. The independent medical examiner amendment was not felt to be a "core portion" of L.B. 757. Some legislators wished to strike the independent medical examiner section from L.B. 757, in hopes of further refining its parameters. These legislators were fearful that the existing amendment would circumvent the need for a workers' compensation court.

Although the independent medical examiner amendment was not stricken from the bill, prior to final passage it did undergo a metamorphosis of sorts. The amendment, when originally presented for floor debate, provided that if the parties could not agree upon an independent medical examiner, and the examiner was assigned by the court, a "rebuttable presumption" existed that the examiner's findings were correct. If either party wished to disprove the findings, additional evidence would be required, rebutting the examiner's findings. If the examiner was chosen by agreement between the parties, the originally proposed amendment still allowed for the findings to be binding. However, the parties were limited to choosing an examiner from the compensation court's list.

The purpose of the expansion of the independent medical examiner system was to eliminate "dueling doctors" and to promote settlements in contested cases. With increased settlements, litigation expenses would decrease, providing benefits to both employer and employee. In effect, the goal was to have an examiner who was truly independent and whose findings were objective.

The focus of the floor debate centered on the "rebuttable presumption" when no agreement could be reached regarding the examiner.
The concern was that allowing the findings to be rebuttably presumed correct would, in reality, place an *irrebuttable* presumption on the testimony, because the court would always place more weight upon the examiner's findings, and neither party would be successful in countering the findings with additional evidence. Some legislators went as far as to theorize that the independent medical examiner would in effect replace the need to have workers' compensation judges.

In an effort to compromise, the language allowing for a rebuttable presumption on findings of an examiner, when no agreement was reached between the parties, was stricken. In its place, language was adopted which provides that the findings are admissible into evidence, but are given no greater weight. This compromise provides little incentive for the parties to agree to an exam where the examiner's opinions will be binding, since non-binding opinions are also available through an examination paid for by the employer.

3. **Influence of Other States**

In drafting the independent medical examiner portions of L.B. 757, the statutes of Colorado, Maine and Oregon were reviewed. The independent medical examiner statute of Maine, effective January 1, 1993, most closely mirrors the provisions of L.B. 757. As with L.B. 757, the Maine statute provides for the creation of a list of independent medical examiners, from which the court will assign a physician if the parties are unable to agree upon a selection. Additionally, as with L.B. 757, if the parties agree to the selection of a medical examiner under the Maine statute, the examiner's findings are binding.

The most notable difference between Maine's statute and L.B. 757 is the weight to be given the examiner's findings when the examiner was not agreed upon. In Maine, if no agreement was reached, the examiner's findings must be adopted by the compensation court, unless the record includes *clear and convincing* evidence to the contrary. Similar to Maine's statute, Colorado's independent medical examiner statute states that the examiner's findings are binding, if chosen by mutual agreement of the parties, and must be adopted even if no

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68. NEB. REV. STAT. § 48-134.01 (Supp. 1993); ME. REV. STAT. ANN. tit. 39-A, § 312 (West Supp. 1993).


agreement had been reached, unless overcome by clear and convincing
evidence.\textsuperscript{71}

D. Vocational Rehabilitation

1. Law Prior to L.B. 757

Prior to the passage of L.B. 757, an injured employee was entitled
to vocational rehabilitation services, including retraining and job
placement, if the employee was unable to perform work for which she
had previous training or experience, or where the compensation court
found that the employee had suffered a reduction in earning power on
account of a compensable injury and determined that vocational reha-
bilitation would increase that earning capacity.\textsuperscript{72} If an employee's

\textsuperscript{71} See COLO. REV. STAT. § 8-42-107(8) (1994).

\textsuperscript{72} NEB. REV. STAT. § 48-162.01(3), 48-162.01(6) (Reissue 1988); Sidel v. Travelers
162.01 provided in full:

\textsc{48-162.01. Employees; restoration of injured employees to employ-
ment; compensation court; powers; duties.} (1) One of the primary purposes
of the Nebraska Workers' Compensation Act shall be restoration of the injured
employee to gainful employment. To this end the Nebraska Workers' Compen-
sation Court may employ one or more specialists in physical, medical, and voca-
tional rehabilitation to be appointed by the presiding judge. Salaries, other
benefits, and expenses incurred for purposes of vocational rehabilitation may
be paid from the Vocational Rehabilitation Fund created under section 48-
162.02.

(2) Such specialists shall continuously study the problems of rehabilita-
tion, both physical and vocational, and shall investigate and maintain a direc-
tory of all rehabilitation facilities, both private and public, which have been
approved by the Nebraska Workers' Compensation Court. The compensation
court shall approve as qualified such facilities, institutions, and physicians as
are capable of rendering competent rehabilitation services to seriously injured
employees. No facility or institution shall be considered as qualified unless it is
specifically equipped to provide rehabilitation services for persons suffering
from either some specialized type of disability or some general type of disability
within the field of occupational injury and is staffed with trained and qualified
personnel, and, with respect to physical rehabilitation, unless it is supervised
by a physician qualified to render such service. No physician shall be consid-
ered qualified unless he or she has had the experience and training specified by
the compensation court.

(3) An employee who has suffered an injury covered by the Nebraska
Workers' Compensation Act shall be entitled to prompt medical and physical
rehabilitation services. When as a result of the injury an employee is unable to
perform work for which he or she has previous training or experience, he or she
shall be entitled to such vocational rehabilitation services, including retraining
and job placement, as may be reasonably necessary to restore him or her to
suitable employment. If such services are not voluntarily offered and accepted,
the Nebraska Workers' Compensation Court or any judge thereof on its or his
or her own motion, or upon application of the employee or employer, and after
affording the parties an opportunity to be heard by the compensation court or
judge thereof may refer the employee to a qualified physician or facility for
evaluation and report of the practicability of, need for, and kind of service,
treatment, or training necessary and appropriate to render him or her fit for a
remunerative occupation, the costs of such evaluation and report involving
physical rehabilitation to be borne by the employer or his or her insurer, except
ability to perform work for which she had previous training or experience was an issue, often the employer and employee would retain their own vocational rehabilitation counselors to present evidence of loss of earning capacity or an appropriate rehabilitation plan. Because employers are required to pay temporary total disability benefits during the period of a vocational plan, employers would often argue rehabilitation was not necessary, or a shorter plan was appropriate. Employees, predictably, argued for longer plans, often involving a formal period of retraining. Nevertheless, the vocational plan was supposed to restore the worker to gainful employment and increase the worker's capacity to earn.

that the costs of such evaluation and report involving vocational rehabilitation shall be paid from the Vocational Rehabilitation Fund. When both physical or medical rehabilitation and vocational rehabilitation are involved, the costs may be apportioned by the compensation court between the employer and the Vocational Rehabilitation Fund. Upon receipt of such report, and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report, or such other physical or medical rehabilitation treatment or service he, she, or they may deem necessary, be provided at the expense of the employer or his or her insurer.

Vocational rehabilitation training, treatment, or service shall be paid from the Vocational Rehabilitation Fund.

(4) When physical or medical rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, either in or out of the State of Nebraska, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution and away from the employee's customary residence and whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Vocational Rehabilitation Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(5) The Nebraska Workers' Compensation Court may cooperate on a reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.

(6) Whenever the Nebraska Workers' Compensation Court or judge thereof determines that there is a reasonable probability that with appropriate training, rehabilitation, or education a person who is entitled to compensation for total or partial disability which is or is likely to be permanent may be rehabilitated to the extent that he or she will require less care and attendance or to the extent that he or she can become gainfully employed or increase his or her earning capacity and that it is for the best interests of such person to undertake such training, rehabilitation, or education, if the injured employee without reasonable cause refuses to undertake the rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under the provisions of subsection (3) of this section, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

NEB. REV. STAT. § 48-162.01 (Reissue 1988).
2. Law After L.B. 757

Despite the changes enumerated by L.B. 757, the purpose of the vocational rehabilitation provision remains the restoration of the injured employee to gainful employment. However, the provision indi-


48-162.01. Employees; rehabilitation services; directory of facilities, service providers, and counselors; fee schedule; rehabilitation plan; priorities; compensation court; powers; duties. (1) One of the primary purposes of the Nebraska Workers' Compensation Act shall be restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in physical, medical, and vocational rehabilitation to be appointed by the presiding judge. Salaries, other benefits, and expenses incurred for purposes of vocational rehabilitation may be paid from the Vocational Rehabilitation Fund created under section 48-162.02.

(2) Such specialists shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain directory of all rehabilitation facilities and individual service providers and counselors, both private and public, which have been approved by the Nebraska Workers' Compensation Court. The compensation court shall approve as qualified such facilities, institutions, physicians, and other individual service providers and counselors as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury and is staffed with trained and qualified personnel and, with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he or she has had the experience and training specified by the compensation court. No individual service provider or counselor shall be considered qualified unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act shall be entitled to prompt medical and physical rehabilitation services. When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including job placement and retraining, as may be reasonably necessary to restore him or her to suitable employment.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop a vocational rehabilitation plan. It shall be a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and
cating when vocational rehabilitation is appropriate was altered to include the term "suitable work" and to de-emphasize retraining. With the amendment, an injured employee is entitled to vocational

the vocational rehabilitation plan shall be paid by the employer or his or her insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It shall be a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the rehabilitation counselor to be unlikely to result in a job placement for the injured employee that is consistent with the priorities listed in this section. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

(a) Return to the previous job with the same employer;
(b) Modification of the previous job with the same employer;
(c) A new job with the same employer;
(d) A job with a new employer, or
(e) A period of formal retraining which is designed to lead to employment in another career field.

if physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' Compensation Court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a qualified facility, institution, physician, or other individual service provider for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her insurer.

Vocational rehabilitation training shall be paid from the Vocational Rehabilitation Fund.

(4) When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Vocational Rehabilitation Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(5) The Nebraska Workers' Compensation Court may cooperate on a reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.

(6) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (5) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

Id.
rehabilitation services, including job placement as a higher priority over formal retraining, if the employee is unable to perform “suitable work” for which she has previous training or experience.\textsuperscript{74}

The major changes of L.B. 757 include a provision that only one counselor may provide vocational rehabilitation services at a time.\textsuperscript{75} Moreover, only counselors certified by the Workers' Compensation Court are allowed to provide services.\textsuperscript{76} When developing a rehabilitation plan, the counselor must evaluate the case through a set of five priorities.\textsuperscript{77} Both the vocational rehabilitation plan and any opinion of the counselor regarding loss of earning capacity carry a \textit{rebuttable presumption} of correctness.\textsuperscript{78}

Pursuant to statute, a directory of individual counselors, certified based upon required educational and/or employment experience, is maintained by the compensation court.\textsuperscript{79} If an employee claims entitlement to vocational rehabilitation services, the employee and employer are to attempt to agree upon a vocational rehabilitation counselor, certified by the compensation court, to provide services.\textsuperscript{80} If an agreement cannot be reached, the compensation court is notified of the disagreement in writing, along with a request for the appointment of a counselor.\textsuperscript{81} A counselor is then appointed from the compensation court's directory, on a rotating basis.\textsuperscript{82} Communication between the vocational rehabilitation counselor and the parties, other than the employee, must be in writing.\textsuperscript{83}

The type of services appropriate to return the injured employee to suitable work is evaluated through the use of five priorities.\textsuperscript{84} A higher priority may only be chosen if the counselor has ruled out a lower priority.\textsuperscript{85} The priorities, in order from lowest to highest priori-
ity, include: (1) return to the previous job with the same employer; (2) modification of the previous job with the same employer; (3) a new job with the same employer; (4) a job with a new employer; and (5) a period of formal retraining which is designed to lead to employment in another career field. Although the opinions of the vocational rehabilitation counselor are rebuttably presumed to be correct, either party may retain their own specialist to provide rebuttal evidence. Like changing a physician, a request for a change of the vocational rehabilitation counselor, by either the employer or the employee, must be approved by the compensation court.

3. Influence of Other States

The statutes or rules of one state were not solely relied upon during the drafting of the vocational rehabilitation provisions of L.B. 757 or the corresponding rules. Statutes, rules and/or representatives of Maine, Oregon, Minnesota, Kansas, Georgia and Florida, as well as representatives from national and local rehabilitation organizations and providers were consulted. Prior to its repeal in 1991, the state of Maine had a similar vocational priority statute to the one ultimately passed in L.B. 757.

E. Lump Sum Settlements

1. Law Prior to L.B. 757

Obtaining approval of a lump sum settlement was a two-step process prior to the adoption of L.B. 757. First, an Application was submitted:

48-139. Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; submitted to district court; when; approval by courts; procedure; fees. Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability, under the Nebraska Workers' Compensation Act, shall be commuted to one or more lump-sum payments, such settlement or agreement therefor shall be submitted to the Nebraska Workers' Compensation Court, in the following manner. An application for the approval of such settlement, and a duplicate original of such application, both signed and verified by the both parties, shall be filed with the clerk of the Nebraska Workers' Compensation Court and shall be entitled the same as an action by such employee or dependents against such employer and shall contain a concise statement of the terms of the settlement sought to be approved, together with a brief statement of the

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88. Id. 43.B.
mitted to the Workers' Compensation Court. The purpose of submission of the settlement proposal to the compensation court was to ensure that the employee received all benefits to which she was entitled. Once the Application was approved by the compensation court, it was submitted along with an Order for approval from the state district court. The purpose of obtaining district court approval was to ensure that the employee understood the terms of the settlement, and was not being coerced.

2. Law After L.B. 757

Effective January 1, 1994, lump sum settlements no longer require state district court approval. Approval is still required, but
solely from the compensation court. The compensation court has promulgated rules regarding necessary contents of a lump sum settlement.92

F. INFORMAL DISPUTE RESOLUTION

1. Law Prior to L.B. 757

The Nebraska Workers' Compensation Act, prior to the adoption of L.B. 757, included no provisions for informal dispute resolution.

2. Law After L.B. 757

L.B. 757 provides for a procedure whereby disputes or controversies can be mediated on an informal basis. This procedure can be invoked by any of the parties, the compensation court on its own motion, or a supplier of any medical, surgical or hospital services.93 The na-

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48-168. Compensation court; rules of evidence; procedure; informal dispute resolution; procedure. . . .

(2)(a) The Nebraska Workers' Compensation court may establish procedures whereby a dispute may be submitted by the parties, by the supplier of medical, surgical, or hospital services pursuant to section 48-120, or by the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173. No settlement or agreement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement or agreement is in conformity with the Nebraska Workers' Compensation Act. . . .
ture of disputes subject to informal resolution include: (1) reasonableness and necessity of medical treatment; (2) application of the fee schedule; and (3) disagreements over a request for change of physician. Disputes regarding treatment in a managed care plan must first exhaust the internal dispute resolution process of the plan, prior to submission of the dispute to the court.

Discussions made during the informal dispute resolution process are deemed to be settlement negotiations, and cannot be considered admissions or used as evidence in compensation court. Any settlement or agreement reached through the informal dispute resolution process is only binding upon the parties if it is in conformity with the Workers' Compensation Act.

The compensation court has created a Medical Services Section to process requests for informal dispute resolution. Requests should be made in writing, and not through a formal motion.

G. SAFETY COMMITTEE

1. Law Prior to L.B. 757

The Nebraska Workers' Compensation Act, prior to the adoption of L.B. 757, included no provision requiring employers to establish safety committees.

2. Law After L.B. 757

Pursuant to the provisions of L.B. 757, effective January 1, 1994, all Nebraska employers subject to the Nebraska Workers' Compensation Act are required to establish a safety committee. Accordingly, employers with as few as one employee are subject to safety committee requirements. Failure by employers to establish a safety committee

NEB. REV. STAT. § 48-168(2)(a) (Supp. 1993). This is in addition to the informal dispute resolution procedure which must be in every certified managed care plan.
95. Id. 48.A.4.
98. NEB. REV. STAT. § 48-443(1) (Supp. 1993). The Federal Government is not included under the provisions of section 48-443. NEB. REV. STAT. § 48-443(1) now provides in relevant part:

48-443. SAFETY COMMITTEE; WHEN REQUIRED; MEMBERSHIP; EMPLOYEE RIGHTS AND REMEDIES. (1) Not later than January 1, 1994, every public and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

may subject the employer to payment of a penalty.\textsuperscript{99} The safety committee must in turn adopt and maintain an effective written injury prevention program.\textsuperscript{100}

The intent of L.B. 757 was to implement a skeletal framework regarding safety committees, and leave the promulgation of rules and regulations regarding establishment and implementation of the committees to the Commissioner of Labor.\textsuperscript{101} As of the writing of this article, the Department of Labor had not finalized regulations to implement sections 48-443 or 48-444 of the Nebraska Revised Statutes. Therefore, information provided regarding safety committees is based upon the rules and regulations as set forth in the Nebraska Department of Labor’s second draft of proposed regulations.

Each safety committee must be composed of an equal number of employees and employer representatives.\textsuperscript{102} Neither the second draft of the proposed regulations, nor the statutes, placed a maximum limit on the number of safety committee members. All employees must be provided an opportunity to become a safety committee member at least once every two years.\textsuperscript{103} Although L.B. 757 included no requirement forcing a safety committee to meet, the proposed rules and regulations state that committee members shall meet at least once during each three months of operation.\textsuperscript{104} If an employee raises a safety complaint prior to the next scheduled meeting, the committee members are to meet within a reasonable time to discuss the complaint.\textsuperscript{105}

Selection of employees for membership on the safety committee is controlled by whether employees are subject to a collective-bargaining agreement. If no collective-bargaining agreement exists, or if less than fifty percent of the employees are represented by one or more

\textsuperscript{99} \textit{NEB. REV. STAT.} \textsection 48-444 (Supp. 1993). \textit{NEB. REV. STAT.} \textsection 48-444 now provides:

\textsection 48-444. SAFETY COMMITTEE; FAILURE TO ESTABLISH; VIOLATION; PENALTY. If the Commissioner of Labor finds, after notice and hearing, that an employer has failed to establish a safety committee pursuant to section 48-443 within fifteen days after notification by the Commissioner of Labor of the obligation to do so, the Commissioner of Labor may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

\textit{Id.}

\textsuperscript{100} \textit{NEB. REV. STAT.} \textsection 48-443(1) (Supp. 1993).

\textsuperscript{101} \textit{See NEB. REV. STAT.} \textsection 48-445 (Supp. 1993). \textit{NEB. REV. STAT.} \textsection 48-445 now provides that "the Commissioner of Labor shall adopt and promulgate rules and regulations to carry out sections 48-443 and 48-444." \textit{Id.}

\textsuperscript{102} \textit{NEB. REV. STAT.} \textsection 48-443(2) (Supp. 1993); \textit{NEB. DEPT. OF LABOR SECOND DRAFT PROPOSED R. & REG. tit. 230, ch. 6, § 002(B).}

\textsuperscript{103} \textit{NEB. DEPT. OF LABOR SECOND DRAFT PROPOSED R. & REG. tit. 230, ch. 6, § 002(C).}

\textsuperscript{104} \textit{Id.} § 002(B).

\textsuperscript{105} \textit{Id.}
bargaining representatives, employee members of the committee are comprised of volunteers.\textsuperscript{106} If the number of volunteers exceeds the number of available slots, employee members are selected at random among the volunteers.\textsuperscript{107} Where the employees are represented by one or more bargaining units, or if more than fifty percent of the employees are represented by one or more bargaining representatives, such bargaining unit shall jointly designate the employee safety representatives.\textsuperscript{108} The names of the safety committee members must be posted and made available to all employees.\textsuperscript{109}

Upon its introduction in the legislative floor debate, the safety committee was described as "a consultation between the employers and the employees for training purposes, for the identification of unsafe working conditions, [and] the reviewing of safety manuals."\textsuperscript{110} The safety committee provision was looked upon as a win-win situation, benefiting both employers through lower workers' compensation insurance premiums and employees through safer worksites.

In an effort to exempt small businesses, an amendment was proposed wherein public and private employers with less than twenty-five employees would not be required to establish or maintain a safety committee if no workers' compensation claims had been filed regarding that employer in the previous three years. The amendment failed following discussion regarding the language of the bill and the fact that employers were not being burdened by the requirement of establishing a safety committee in their workplace.

The majority of the debate conducted on the floor of the Nebraska Unicameral regarded potential provisions to provide safety committees with more sanctioning power.\textsuperscript{111} Many legislators were concerned that employers would take no action on recommendations made by safety committees. One amendment proposed that if an employer unreasonably failed to implement a proposal of the safety committee the employer could be sued for damages. A second proposed amendment would have required reporting to the Occupational Safety and Health Administration ("O.S.H.A.") an employer's unreasonable refusal to implement safety committee recommendations. A third proposed amendment would have included language requiring safety committees to meet once per month. Another proposal would have removed employers from the exclusive remedy of the workers' compen-

\begin{itemize}
  \item \textsuperscript{106} Id. §§ 002(C)(1), 002(C)(3)(b).
  \item \textsuperscript{107} Id. § 002(C)(1).
  \item \textsuperscript{108} Id. §§ 002(C)(2), 002(C)(3)(a).
  \item \textsuperscript{109} Id. § 002(C).
  \item \textsuperscript{110} Floor debate on L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 3502 (April 19, 1993).
  \item \textsuperscript{111} See id. at 3502-12.
\end{itemize}
sation system if they failed to adopt and implement recommendations of the safety committee involving serious or imminent hazards. All proposed amendments failed.

3. Influence of Other States

Benefits enjoyed by the state of Oregon were seen as an incentive for implementation of safety committees in Nebraska. Some Nebraska legislators noted that because Oregon had adopted provisions for safety committees in their state, workers' compensation insurance premiums had correspondingly decreased. Other legislators voiced skepticism that Nebraska would not experience a similar reduction in premiums. In addition to safety committees, Oregon was believed to have a different level of bureaucratic oversight through a well-funded state O.S.H.A. program with strong enforcement mechanisms.

H. Other Significant Provisions

1. Maximum Weekly Benefit

Prior to January 1, 1994, the maximum weekly benefit which an injured employee could receive was $265.00.112 Commencing July 1, 1994, the maximum weekly benefit amount increased to $310.00.113 A supplemental increase to $350.00 will occur January 1, 1995.114 Beginning January 1, 1996, and continuing annually thereafter, the maximum weekly benefit will reflect the state average weekly wage.115

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48-121.01. Maximum and minimum weekly income benefit; amounts; Governor; power to suspend. (1)(a)(i) Commencing July 1, 1991, the maximum weekly income benefit under sections 48-121 and 48-122 shall be two hundred sixty-five dollars.

(ii) Commencing June 1, 1994, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred ten dollars.

(iii) Commencing January 1, 1995, the maximum weekly income benefit under sections 48-121 and 48-122 shall be three hundred fifty dollars.

(b) Commencing January 1, 1996, and each January 1 thereafter, the maximum weekly income benefit under sections 48-121 and 48-122 shall be one hundred percent, computed to the next higher whole dollar, of the state average weekly wage determined pursuant to section 48-121.02, except that for the purposes of calendar years commencing after 1996, the Governor may not later than November 15, 1996, and not later than each November 15 thereafter, conduct a public hearing after not less than thirty days' notice to consider whether he or she should issue an order to suspend the effectiveness of the change in the maximum weekly income benefit otherwise required by this subdivision for the ensuing calendar year.

113. Id. § 48-121.01(1)(a)(ii).

114. Id. § 48-121.01(1)(a)(iii).

115. Id. § 48-121.01(1)(b).
During legislative debate, it was estimated that approximately 330,000 Nebraska workers, or forty-eight percent, would experience an immediate monetary benefit if the maximum weekly benefit increased.\footnote{Floor debate L.B. 757, Neb. Unicameral, 93d Leg., 1st Sess., 7166 (June 2, 1993).} Although individuals making less than $9.95 per hour would not see an immediate economic benefit, presumptively a benefit would be experienced in the future following pay raises.

2. \textit{Intoxication}

The definition of intoxication was amended under L.B. 757 to include being under the influence of a controlled substance.\footnote{See Neb. Rev. Stat. § 48-151(8) (Supp. 1993). Neb. Rev. Stat. § 48-151(8) now provides in relevant part that “[i]ntoxication shall include, but not be limited to, being under the influence of a controlled substance not prescribed by a physician.”}

3. \textit{Toll Free Number}

Due to the many anticipated questions which both employees and employers may have regarding the changes contained in L.B. 757, the Nebraska Workers' Compensation Court has created an Information Services Section, which will eventually publish a bulletin and currently staffs a toll free number. Questions regarding legal, compliance, medical, rehabilitation and adjudication issues relating to workers' compensation will be answered by calling 1-800-599-5155 within the state of Nebraska, or 402-471-6468 in the Lincoln area or out of state.

III. \textbf{CONCLUSION}

Despite the reliance upon the statutes and rules of other states when drafting Legislative Bill 757 (“L.B. 757”), the ultimate law and rules adopted and promulgated are unique to Nebraska. Built into L.B. 757 was a provision to test its impact, through the completion of a cost-benefit analysis by the Director of Insurance and the Commissioner of Labor in 1997. The purpose of the analysis is to review...
the effectiveness of L.B. 757 in either controlling or reducing the cost of workers' compensation premiums. In light of these factors, only time will tell how L.B. 757 and the corresponding rules will be interpreted and what ultimate impact will be felt by employees and employers.

Labor Committee of the Legislature shall hold a public hearing on the study and shall submit a report to the Legislature by December 1, 1997. The Governor or the Legislature, by resolution, may require a similar study in 1999 and every two years thereafter.