

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB276

Hearing Date: Monday February 23, 2015
Committee On: Business and Labor
Introducer: Harr
One Liner: Exempt certified independent contractors from the Nebraska Workers' Compensation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Bloomfield, Chambers, Ebke, Harr, Johnson, McCollister
Nay:		
Absent:		
Present Not Voting:	1	Senator Crawford

Verbal Testimony:

Proponents:

Senator Burke Harr
Senator Mark Kolterman
James Cavanaugh
Ron Sedlacek
Thomas M. Farrell
Andy Bassett
Gale Squier
Don Wisnieski
Jim Dobler
Korby Gilbertson

Representing:

Introducer
Self
Independent Insurance Agents of Nebraska
Nebraska Chamber of Commerce
Independent Insurance Agents of Nebraska
Independent Insurance Agents of Nebraska
Nebraska Independent Insurance Association
Nebraska State Home Builders Association
Professional Insurance Agents
HBAL/MOBA Coalition

Opponents:

Greg Coffey
John E. Corrigan
Frank Velinsky

Theodore D. Fraizer

Representing:

Nebraska Association of Trial Attorneys
Nebraska State AFL-CIO
Nebraska Chapter Home Care Association of America;
Caretech, Inc.
American Insurance Association

Neutral:

Bob Hallstrom

Richard Reiser
Glenn Morton

Representing:

Nebraskans for Workers' Compensation Equity & Fairness
Nebraska Trucking Association
Nebraska Workers' Compensation Court

Summary of purpose and/or changes:

Sec. 1. exempts certified independent contractors from the Nebraska Workers' Compensation Act and precludes them from obtaining any benefits under the Act. To become a certified independent contractor, a person must apply to the Department of Labor and complete an application, questionnaire and pay a fee as determined by the Department.

Any person who knowingly provides false information on an application or questionnaire is guilty of a Class II misdemeanor. Any person who requires his/her employee to falsify information for the purpose of that employee gaining status as a certified independent contractor is guilty of a Class II misdemeanor.

A certified independent contractor may elect to be bound by the Act at any time.

Sec. 2. excludes certified independent contractors from the Act.

Sec. 3. excludes services performed by a certified independent contractor from being included in the term "employer" and from being liable to pay workers' compensation as outlined in the Act.

Sec. 4. adds section 1 to the Act.

Explanation of amendments:

The committee amendment changes where individuals must apply for certification to the Workers' Compensation Court rather than the Department of Labor. The amendment limits the requirement of who must apply for certification to individuals working within the construction industry. It also outlines the procedures for certification, recertification, appeals, and certificate revocation.

Details:

Sec. 1. exempts certified independent contractors working within the construction industry from the Nebraska Workers' Compensation Act and prohibits them from obtaining any benefits under the Act. To become a certified independent contractor, a person working within the construction industry must apply to the administrator of the Nebraska Workers' Compensation Court and complete an application, questionnaire and pay a fee as determined by the Compensation Court.

In determining whether an applicant is qualified to be a certified independent contractor, the administrator will consider the common law 10-point test. A certificate remains in effect for two years, then the individual must reapply.

If the administrator denies an individual's application, the applicant may request a reconsideration by the Court within 30 days after notice of the denial.

A certificate may be revoked by the administrator if: (1) requested; (2) the individual provided false information on the application or questionnaire; (3) the administrator determines the individual is no longer qualified to be certified; (4) or the individual elects to bring himself or herself within the provisions of the Act by obtaining coverage.

Failure to apply for certification or denial or revocation of certification does not create a presumption that the individual is an employee, unless that person has elected to bring himself or herself within the provisions of the Act.

Any person who knowingly provides false information on an application or questionnaire is guilty of a Class IV misdemeanor. Any person who requires his/her employee to falsify information for the purpose of that employee gaining status as a certified independent contractor is guilty of a Class IV misdemeanor.

A certified independent contractor may elect to be bound by the Act at any time. Such election automatically terminates certification. Notification of such election must be given to the administrator.

The Compensation Court may promulgate rules and regulations.

Sec. 2. excludes certified independent contractors from the Act.

Sec. 3. excludes services performed by a certified independent contractor from being included in the term "employer"

and from being liable to pay workers' compensation as outlined in the Act.

Sec. 4. adds section 1 to the Act.

Sec. 5. permits fees collected pursuant to obtaining certification as an independent contractor to be credited to the Compensation Court Cash Fund.

Sec. 6. repealer.

Burke Harr, Chairperson