



LB 276 – Require Uninsured Independent Contractors To Become Certified – Workers’ Comp

Sponsor: Senator Burke Harr, Senator Mark Kolterman added **Committee:** Business & Labor
Date of Hearing: February 23, 2015 **IIAN Position:** Proactive Support
Advanced to General File: April 9, 2015

Purpose: Requires independent contractors who are not insured for workers’ compensation, to apply for certification of independent contractor status by the regulatory agency (e.g, the Nebraska Workers’ Compensation Court). The certified independent contractor would not be entitled to any benefits under a worker’s compensation policy under the Nebraska Workers’ Compensation Act, but could elect to be covered under the Act at any time (thus revoking certification).

Background: The contractor/subcontractor relationship is prevalent in multiple industries, and especially in the construction industry. **While independent contractors or independent subcontractors are a recognized business model, they are not recognized or defined in the Nebraska Workers Compensation Act.** The Nebraska Workers Compensation Court has determined that “**employers are not required to provide coverage for independent contractors” based on the principle that they are not “employees”**; however – unlike certain classes of employees - **independent contractors are not defined in statute as being exempt from the Act.**

The primary complication comes into play when an independent contractor is uninsured for workers compensation and is injured on the job site of the hiring general contractor/agent, but makes a claim against the hiring general contractor/agent anyway. **The Workers Compensation Court applies an arbitrary test to decide whether or not at the time of injury, the uninsured independent contractor was really an “employee” of the hiring general contractor/agent** - regardless of their contractual relationship, or any written statement by the independent contractor - **and those deemed by the court to be “employees” are granted workers compensation benefits.**

The Problem : Not only can a hiring general contractor/agent (and its insurance carrier) be **held responsible to pay any work related injuries of an independent contractor**, but is also **subject to paying often substantial additional insurance premium – retroactively** - for uninsured independent contractors on its workers compensation policy annual audits.

The Solution: Creating the Certified Independent Contractor status will add clarity and reduce ambiguity in the law, and help resolve issues that have plagued contractors and insurance carriers alike. **LB 276 would greatly reduce:**

- **Substantial unanticipated loss and insurance premiums for hiring agents and their insurers**
- **Employee-vs- independent contractor misclassification and uncertainty about coverage**

Bill History: At IIAN’s request, LB 276 was introduced by Business & Labor Committee Chairman Burke Harr of Omaha, **to address the growing problem of independent contractors who do not insure themselves for workers compensation.** Based on input from IIAN members last year, a member task force chaired by Steve Mason of Lincoln, worked over the past summer and fall to research and develop bill language.

Hearing Testimony: On Monday, February 23, 2015, IIAN members Tom Farrell, Andy Bassett, Gale Squier, along with IIAN Legislative Representative Jim Cavanaugh, testified in the Business and Labor Committee in **support of LB276** (Harr – Exempt certified independent contractors from the Nebraska Workers' Compensation Act). Also testifying in support were the PIA, the Nebraska Home Builders Association and the Nebraska Chamber of Commerce. Several letters of support from insurance companies were also submitted. Testifying opposed were the AFL-CIO, NATA, and the Nebraska Trucking Association.

Advanced To General File: **After weeks of negotiation on a final committee amendment, and grassroots support from IIAN members, on April 9 the Business & Labor Committee advanced LB 276 to General File on a unanimous 6-0 vote.** In a compromise, the bill was amended to apply only to construction work.

Carry Over To 2016 Session: Since it is not a “Priority”, LB 276 will most likely be carried over to the 2016 session for consideration by the full legislature. In the interim, IIAN will work with senators and stakeholders on possible improvements.

Bill Points (including committee amendment AM972):

- Certification would be regulated by the Nebraska Workers’ Compensation Court
- Includes 11 points for the administrator of the Court to consider for determination of whether an applicant is qualified to be certified
- Original certification will be in effect for two years; renewal application must be filed
- Certification may be revoked during term by independent contractor or Court administrator. Names grounds for revocation.
- Includes an appeal procedure for applications which are denied/revoked
- Any person who provides false information on an application, and any person who requires an employee to provide false information, is guilty of a Class IV misdemeanor
- A certified independent contractor may elect to be covered under the Workers’ Compensation Act at any time (automatically terminates certification)
- Failure to apply or denial/revocation of certification will not create a presumption that the applicant is an “employee” for purposes of the Workers’ Compensation Act