



## LB 553 – Require Uninsured Individual Independent Contractors to File a Non-Election of Workers’ Compensation Coverage

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**Sponsor:** Senator John Lowe, Senators Kolterman, Lindstrom, Krist, Harr, McCollister, and Brewer added

**Committee:** Business & Labor

**Date of Hearing:** February 27, 2017

**IIAN Position:** **Proactive Support**

**Purpose:** Requires individual independent contractors (IC’s) who do not insure themselves for workers’ compensation, to file a written non-election of workers’ compensation coverage with the Nebraska Workers’ Compensation Court. The nonelection form shall include an acknowledgement stating that the individual signing the form understands that he or she is not electing workers’ compensation coverage. For purposes of the bill, the IC must be an individual employer, partner, limited liability company member, or self-employed person who is actually engaged in his/her business and does not elect to bring himself or herself under the Workers’ Compensation Act as currently prescribed in statute (48-115, Sec. 10). An IC could elect to be covered under the Act at any time by filing a written notice of termination of nonelection with the Workers’ Compensation Court, and purchasing valid workers’ compensation coverage on him/herself.

**Background:** Today an IC is not required to insure him/herself for Workers’ Compensation, and is not automatically a covered employee of another employer.

- If an uninsured IC is injured while contracted to work for a third hiring party, it is increasingly common for that IC to make a claim against the hiring party and its Workers’ Compensation insurer anyway.
- Because of the real possibility that the Workers Compensation Court could determine – sometimes years after the issuance of the hiring party’s policy - that the IC was actually an employee, and make the hiring party and its insurer liable for Workers Compensation losses, much uncertainty and risk is created.
- This exposes hiring parties who purchase Workers’ Compensation coverage and their insurance carriers, to hundreds of thousands – if not millions – of dollars in unanticipated losses and premiums.

Because of this very real exposure:

- insurers routinely pay such claims without testing the legal standing of the IC with the Workers’ Compensation Court due to the potential cost of litigation, and
- require their insured parties who hire IC’s to obtain proof of coverage from each IC, or in the absence of proof, may and do charge the insured hiring party additional premium to cover the IC, either at the beginning of a policy period, or at the end of a policy period on audit.

**The Solution:** LB 553 will clear up this uncertainty by requiring an independent contractor who is an individual employer, partner, limited liability company member, or self-employed person and does not elect to bring himself or herself under the Workers’ Compensation Act, to file a written non-election of workers’ compensation coverage with Nebraska Workers’ Compensation Court.

**Advantages:** LB 553 will bring more clarity to the Workers' Compensation Insurance market. It will create a more certain legal status for individual independent contractors (IC's) in relation to Workers' Compensation benefits. In addition, it will allow the IC to decide whether or not to secure Workers' Compensation coverage in the future.

**The three main advantages to consumers will be:**

- 1) Hiring parties that utilize the services offered by independent contractors will not have the uncertainty of unanticipated insurance claims/costs.
- 2) Individual independent contractors will be certain of his/her covered status and be in a position to decide whether or not to purchase Workers' Compensation coverage in the future.
- 3) Consumers, insurance carriers, and those who utilize the services of independent contractors will have more certainty about Workers' Compensation insurance cost and coverage.