

# One Hundred Third Legislature - First Session - 2013

## Introducer's Statement of Intent

### LB307

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**Chairperson: Senator Steve Lathrop**

**Committee: Business and Labor**

**Date of Hearing: March 18, 2013**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

**LB 307** is designed, in part, to address the Court of Appeals decision in the case of *Daugherty v. County of Douglas*, 18 Neb.App. 228 (2010), in which the Court confirmed that the modification of a workers' compensation award may not be applied retroactively. The legislation provides, in a case in which the parties cannot agree on the ground of increase or decrease in disability, that a modification of the workers compensation award is effective as of the date that the increase or decrease actually occurred. **LB 307** would also eliminate the requirement that an application for modification, in cases in which the parties cannot agree, may only be filed after six months from the date of the original agreement or award of benefits.

**LB 307** would also grant authority for the Workers' Compensation Court to terminate compensation otherwise payable under the Workers' Compensation Act when (a) an injured employee unreasonably fails to comply with medical or surgical treatment provided by the employer or (b) when an injured employee, without reasonable cause, refuses to undertake or cooperate with a physical, medical, or vocational rehabilitation program determined by the compensation court to be suitable for the employee, or refuses to be evaluated or cooperate in the evaluation required by the Act. In both instances, **LB 307** would establish a rebuttable presumption that the employee's disability would have been reduced, or his or her condition would have been improved, if the employee had complied with the medical or surgical treatment furnished by the employer or undertaken or cooperated with the physical, medical, or vocational rehabilitation program or evaluation. These provisions are designed to overrule the Supreme Court decision in the case of *Hofferber v. Hastings Utilities*, 282 Neb. 215 (2011).

**LB 307** further provides that (a) an injured employee's refusal to perform work which meets temporary restrictions imposed by the treating physician creates a rebuttable presumption that the employee is ineligible to receive temporary disability benefits; and (b) in cases where the injured employee is incarcerated following conviction for a misdemeanor or felony, the employer or insurance carrier may terminate the employee's temporary disability payments

during the period of incarceration, and the maximum period for which benefits would otherwise be payable is not extended due to termination of temporary disability payments during the period of incarceration.

Finally, **LB 307** would override the doctrine of "beneficent purposes," to eliminate the liberal construction of the Workers' Compensation Act in favor of employees.

**Principal Introducer:** \_\_\_\_\_

**Senator John E. Nelson**