

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB158

Hearing Date: Monday March 02, 2015
Committee On: Business and Labor
Introducer: McCollister
One Liner: Deny compensation under the Nebraska Workers' Compensation Act in situations of false representation

Roll Call Vote - Final Committee Action:
Indefinitely postponed

Vote Results:

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

Verbal Testimony:

Proponents:

Senator John McCollister
Jerry Stilmock

Representing:

Introducer
Nebraskans for Workers' Compensation Equity & Fairness and Nebraska Federation of Independent Business

Opponents:

Todd Bennett
Steve Howard
Darcy Tromanhauser

Representing:

Nebraska Association of Trial Attorneys
Nebraska State AFL-CIO
Nebraska Appleseed

Neutral:

Representing:

Summary of purpose and/or changes:

LB 158 would, under the Workers' Compensation Act, deny benefits if an employee knowingly and willfully made false statements regarding his/her physical or medical condition in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment.

Under the Workers' Compensation Act, employees will receive benefits if injured on the job, unless the employer proves the injury was the result of the employee's willful negligence (?48-101). This section addresses a recent Nebraska Supreme Court decision, *Bassingier v. Nebraska Heart Hospital*, 282 Neb. 835 (2011). The court overruled its previous case, *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115 (1979), which authorized an affirmative misrepresentation defense.

Bassingier, a CNA, responded on the hospital's preemployment questionnaire that she had suffered one previous work-related back injury. However, she did not report another back injury sustained on the job for a different employer. The hospital hired Bassinger. Bassinger subsequently suffered a back injury while lifting a patient.

The hospital argued that the misrepresentation defense is supported by the Act because, "?48-102 creates an affirmative defense for injury caused by an employee's willful negligence." *Bassingier* 282 Neb. at 843. The court

disagreed, finding that the statute applied to an employee's willful negligence, not an applicant's.

The court found that the misrepresentation defense is not supported by the legislative intent of the Workers' Compensation Act. The Act sought to reduce litigation with a compromise of certain benefits, while limiting evidence of fault. Because of this broad goal, courts have liberally construed the Act. Further, the Workers' Compensation Court is one of limited jurisdiction, only granted authority per the Legislature, and cannot rule on equitable matters.

Similar legislation was introduced in previous years.

Burke Harr, Chairperson