

Business and Labor Committee January 28, 2019

M. HANSEN: Keenan, let me know when you're ready. Ready? All right. Good afternoon, everyone and welcome to the Business and Labor Committee. My name is Senator Matt Hansen. I represent the 26th Legislative District in northeast Lincoln and I serve as chair of this committee. We'll start off by having members of the committee and committee staff do self-introductions. And we'll start with the committee's right with Senator Chambers.

CHAMBERS: Ernie Chambers, District 11, Omaha.

CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, which is eastern Sarpy County, Bellevue, and Offutt.

B. HANSEN: Senator Ben Hansen, District 16, which includes Washington, Burt, and Cuming County.

TOM GREEN: Tom Green, legal counsel.

LATHROP: Steve Lathrop, District 12, which is Ralston and parts of southwest Omaha.

HALLORAN: Steve Halloran, which is District 33, Adams County and southern and western Hall County.

SLAMA: Julie Slama, District 1, which is southeast Nebraska, including Otoe, Johnson, Nemaha, Pawnee, Richardson Counties.

KEENAN ROBERSON: Keenan Roberson, committee clerk.

M. HANSEN: All right. Thank you. Also assisting the committee today are our committee pages, Hunter and Kaci. This afternoon we will be hearing five bills and we'll be taking them up in the order listed outside the room. On each of the tables in the back of the room you will find blue testifier sheets. If you are planning to testify today please fill out one and hand it to Keenan when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill you must testify during that-- testify in that position during a bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the yellow sheets in the back of a room. Also, I would like to note that it is our Legislature's policy that all letters for the record be received by the committee by 5:00 p.m. the business day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We'd ask if you do have handouts that you please bring nine copies and give them to the page. If you need additional copies the page can help you

make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement we will hear from supporters of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given an opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name and spelling them for the record. We'll be using a five-minute light system today. When you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on you'll be asked to wrap up your final thoughts. I would also like to remind everyone, including senators, to please turn off or silence your cell phones. With that, we'll begin today's hearing with LB102 and we welcome Senator Wayne.

WAYNE: Thank you, Chairman Hansen. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. This is a very simple bill. It is truly a cleanup bill. So those who may want to ask questions about how I want athletes to get paid, I defer to Senator Chambers. This bill was originally brought by Senator Chambers and I just saw a area that I can ride his

coattails by changing it from Big Twelve to Big Ten since we changed conferences. And with that, I'll answer any questions.

M. HANSEN: Thank you. Senator Chambers.

CHAMBERS: Rather than say "riding my coattails," see this is football language-- I handed off to Senator Wayne and he's going to carry it on for a touchdown.

M. HANSEN: Thank you, Senator. Are there any other questions for Senator Wayne? Seeing none, thank you.

WAYNE: Thank you.

M. HANSEN: All right. We will now move to testimony on LB102, starting with proponents. Are there any proponents for LB102? Seeing none, is there anybody who wishes to testify in opposition to LB102? Seeing none, is there anybody who wishes to testify neutral in LB102? Seeing none, Senator Wayne, would you like to close? Senator Wayne waives closing.

HALLORAN: Could I ask Senator Wayne-- I'm sorry, I didn't realize this was going to go so smoothly.

M. HANSEN: Senator Wayne, you've been requested to close anyway.

HALLORAN: Just a quick question, Senator. Are there any other states that have adopted this?

WAYNE: Yes. Not the exact language, but there are three or four different states who have in different conferences. And at the time when we were in the Big 12 we had Missouri and another state, I believe it was Kansas or Texas, that was a part of that. The key here is once more, in this case, Big Ten states adopt something similar then there'll be a resolution to the NCAA and go from there. Typically it how it was done, but we never had a majority in the Big 12 to do it. So it's kind of like you're a Convention of States. Once you get more people on board, then it'll trigger itself.

HALLORAN: But-- but to date there's no others in the Big Ten?

WAYNE: I don't believe there are any in the Big Ten, no.

M. HANSEN: Thank you, Senator.

HALLORAN: Thank you. That's all I have.

WAYNE: Thank you. Now may I?

M. HANSEN: Yes. Thank you. Thank you for being understanding. All right. With that, and I have one letter of the record. It's a letter from Director of Athletics, Bill Moos, in support of

LB102. With that, we will close the hearing on LB102 and woken up Senator Kolterman.

KOLTERMAN: Good afternoon, Chairman Hansen and members of Business and Labor Committee. I'm Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, I represent the 24th District in the Nebraska Legislature. I'm here today to introduce LB139, a bill which allows general contractors to make an informed decision before hiring individual independent contractors and to clarify workers' compensation coverage in the event of a claim by a subcontractor. As of now individual independent contractors are not required to carry workers' compensation insurance on themselves. If an individual independent contractor is injured while working for a general contractor, it's up to the Workers' Compensation Court to determine if the individual independent contractor was actually covered under a workers' comp policy. This leads to uncertainty as a determination of coverage may long after-- may come along after the hiring party purchases work comp insurance. This is-- this exposes a general contractor or agents who choose to purchase workers' comp coverage and their insurance carriers to hundreds of thousands, if not more, of dollars in unforeseen losses in premiums. LB139 seeks to remedy the issue. LB139 will add to the existing Department of Labor's contractor registration on-line database, a third option

when a contractor is registering with the department. As of now, an individual independent contractor is only required to select that they carry workers' compensation insurance or they're self-insured. The third option will be the contractor does not carry workers' compensation insurance. This provides clarity for workers' compensation coverage in two ways, by an individual independent contractor selecting themselves that they do not have insurance, this creates a new legal presumption that the contractor is not eligible for worker's compensation coverage in the event of a claim by the individual independent contractor. And parties that choose to hire an individual independent contractor will be able to consult the registration database prior to hiring and it will allow them to make an informed decision on whether or not to hire a specific, individual, independent contractor. We have worked closely with the Department of Labor and they will be able to collect and display on their Web site this information that allows for general contractors to make a more informed decision during their hiring process. With that, I would ask for your support and ask if you have any questions of me. I also have an attorney that deals with this that will be speaking, there will be insurance agents speaking. And I don't-- I don't know if the Department of Labor-- but, as I've said, we've worked closely with them, so.

M. HANSEN: Thank you, Senator. Are there questions from the committee? Senator Chambers.

CHAMBERS: I'd like to ask Senator Kolterman a question.

KOLTERMAN: Yes, sir.

CHAMBERS: First of all, welcome to the Business and Labor Committee. Seriously, though if an-- if an independent contractor is hired by a general contractor, the general contractor has to have workers' comp?

KOLTERMAN: Well, the general contractor, if they have more than one employee they have to carry workers' compensation insurance.

CHAMBERS: But the--

KOLTERMAN: But it doesn't necessarily have to insure independent contractors.

CHAMBERS: So if somebody is working for the independent contractor that person gets injured on the job may be-- have no recourse to anybody because the independent contractor does not have it. The general contractor's insurance does not cover the person.

KOLTERMAN: It's not intended to. You're correct.

CHAMBERS: So that person who is injured in that situation cannot get anything through workers' comp. Is that true?

KOLTERMAN: They, they can-- they can purchase a workers' compensation policy on their own if they choose to do so.

CHAMBERS: The worker?

KOLTERMAN: The worker can. But in many cases you're independent contractors that are maybe a one-person shop choose not to do so. All this does is spells out, by putting a third box on the, on the Web site, yes, I have it. If, if you're-- first of all, if you're a contractor you're required by statute to register as a contractor. So when you go to the Department of the Business and Lab-- Department of Labor Web site there's a place to check, yes, I do have workers' compensation. There's another place a check, no, I don't have workers' compensation, but I'm self-employed. And this one would say, no, we do not have our workers' compensation.

CHAMBERS: You mean self-insured?

KOLTERMAN: Well, that's, that's where the question arises.

CHAMBERS: OK.

KOLTERMAN: But there are many-- there are many independent contractors that now choose to carry workers' compensation specifically on themselves, but that's not mandated. They just--

CHAMBERS: I said I'd ask you a question. You answered it. Thank you.

KOLTERMAN: You're welcome. Thank you.

M. HANSEN: Thank you, Senators. Are there any other questions? Senator Crawford.

CRAWFORD: Thank you, Chairman Hansen. And thank you, Senator Kolterman. So can you give us an example of who would be checking this third box?

KOLTERMAN: Well, let's use it-- let's use some example. We've got a plumber that's a one-man shop. They do plumbing work for a lot of different people on their own. They own their own operation. But let's say we have a general contractor who's short on plumbers and they want to hire them as an independent contractor. There's nothing that prevents them from doing so. And what this would allow would be the general contractor to then go to the Web site and see, no, he doesn't carry workers' compensation. But he can make the decision whether or not he wants to hire that person or not. Another example of this would

be some-- and I'm looking at the trades because that's what I'm most familiar with, somebody like a drywaller. If there's a shortage of drywallers and you go out and hire an independent contractor to come in and, and, and they know they're a 1099 employee and they're working for you, there's no presumption that they're going to provide workers' compensation.

CRAWFORD: Thank you.

KOLTERMAN: It just clarifies a situation. Does-- it really doesn't take away from their ability to purchase if they choose to purchase or whether the contractor wants to take on their liability. That could happen as well, by contract. They could choose to, to insure them, but we're saying that all needs to be worked out ahead of time. That's why we-- if we have this box there we're going to presume that they don't have work comp because they have to check it.

CRAWFORD: OK. Thank you.

KOLTERMAN: You're welcome.

M. HANSEN: Thank you, Senators. Any other questions? Seeing none, thank you, Senator Kolterman. All right. We will move to testimony in LB139. We'll take starting with proponents.
Welcome.

MICHAEL O'HARA: Hello. I'm Michael O'Hara, Michael, M-i-c-h-a-e-l, O'Hara, O--H-a-r-a. I'm appearing as a proponent for LB139. I'm an attorney and a registered lobbyist for the Independent Insurance Agents of Nebraska and I'm appearing for them. I want to start by thanking Senator Kolterman for introducing the bill and the Department of Labor for being willing to meet with us multiple times to hear our concerns and see if we could address them. This-- LB139 addresses a recurring problem that the independent insurance agents have and that is when they're trying to sell insurance to people who want to buy it, to know correctly what's the scope of coverage. What it does is clarify the scope of coverage, who is, who isn't covered. The act is very narrow. It deals solely with construction trades. So if you're an independent contractor in any area other than the construction trades, this doesn't apply to you. That means there are about 16,000 independent contractors that are covered and about a little over half of them are actually the people covered by this bill. The problem is those that choose what they are allowed by statute to choose to go bare--not buy insurance--and the person who's engaging them has no real way to know whether that is or isn't in place. And if it's not in place they should-- the general contractor might choose to purchase insurance or choose to hire someone else. So part of the idea of LB139 is to

correct an information failure in the market and create a market pressure to encourage people to buy insurance. And either that would be the independent contractor who is an individual--and it's solely sole proprietors--and they would buy the insurance on themselves or they would work with someone who did buy the insurance ahead of time. It's a rather narrow legal issue and it is intended to prevent the problem of having workers or having persons who are compensated, might be employees, not clearly identified. LB139 would address that and try to prevent it, increasing those that are independent contractors that are sole proprietors to buy insurance, create a pressure-- market pressure for those to insure-- only hire people who are insured. And in the insurance industry they have an auditing process to discover who is and who isn't an employee. And it would improve those audits because we would more frequently discover who was actually in a context that might be an employee. Central to it is it creates a presumption. Legally a presumption proves something. Presumptions can be irrebuttable or rebuttable. This is a rebuttable presumption. Therefore, the law, the ten-point test of who's an employee, who's an independent contractor is still in place. The question is, who's going to have to prove one of those ten points if you are operating as a separate business? That's one of the ten issues. If you check this box

you're helping prove you are operating as a separate business. It doesn't address the other nine points, it doesn't remove the ten-point test. It makes clear who's covered, who's not covered, and that will facilitate increasing people choosing to be covered. On the-- this type of transaction is a different transaction is a different type of transaction that would motivate the presumption that already exists in the law. The presumption in the law is, if you're compensated, you're likely an employee. And then use the ten-point test to decide if you are or aren't. That is in a transaction that historically has been abusive, where persons who really were employers forced upon people who really were employees contracts that said, they're not an employee, it's an independent contractor. That's where that presumption comes from. This presumption is coming from the other direction. In a transaction with the state you will report what you are. So there's no commercial pressure on you and you're the sole proprietor, independent contractor in the construction trades. You're just going to report what you are or aren't doing. I want to address two types of concerns that have been coming up. One is on the presumption, which is on page 2 of the bill-- actually, first page of the bill on line 19. The verb is "may be" and this is one way that you can rebut presumption. You might ask yourself, who would ever, as an

insurer, come in after an injury and say you're covered. Well, there are basically three categories. And it might help if you draw yourself a picture. Draw yourself a square and divide it vertically in three pieces. One is employer with worker's comp, and there will be one side. And the other is employer with self-insurance. And a self-insurer might extend coverage to a very good independent contractor. The third group is solo and that's who we're looking at. They own their own business and we can divide that three ways. The bottom part would be they're classified as an employee of Mr. O'Hara with workers' comp--

M. HANSEN: Mr. O'Hara, you have a red light, so if you could wrap up.

MICHAEL O'HARA: Right. And the top one is, they've chosen to go bare. And now we know they've chosen to go bare. So the only thing you're looking at, of all the potential employees is one little set. If you have any questions, I'll be glad to answer them. Sorry I ran long.

M. HANSEN: Not a problem. Thank you. Are there questions? Seeing none--

MICHAEL O'HARA: Thank you very much.

M. HANSEN: Thank you for your time. All right. Are there any other proponents for LB139? Civil Grant. Thank you. Welcome.

TOM CHAMPOUX: Senator Hansen-- thank you. Senator Hansen and members of the committee, thank you for, for hearing us out on this. I'd like to thank Senator Kolterman for putting forth LB139 as well. My name's Tom Champoux, with UNICO Group, Inc., here in Lincoln, Nebraska. Tom is T-o-m, last name is spelled C-h-a-m-p-o-u-x. I'm the president of UNICO Group, Inc. And I'd like to talk about what distortions that, that exist because of the way things are currently set up. Right now insurance carriers are including the payrolls of independent contractors. Whether they're, they're deemed to be an employee by the ten-point test or an independent contractor, insurance carriers are saying, we're going to include all of that payroll into what's charged for workers' compensation premiums for, for these contractors. And so this is driving premiums up for, for these, for our contractors in the state of Nebraska. Another thing that this causes is it's difficult to bid a job as a contractor if you don't know what your ultimate costs are going to be. And this is creating unexpected costs for, for our contractors out there. It, it was explained at audit times, if there is not insurance for someone who doesn't have to have insurance as an individual independent contractor, the general contractor is

getting stuck with that cost. Whether or not it would ultimately have led to a claim as determined by whether they're an employee or an independent contractor, it matters not to the insurance carriers. They're charging them for that payroll of that employee. Or-- yes, of that employee. This is leading to unexpected claims for contractors, things they didn't foresee coming because they didn't deem this person as an employee. And it's also leading to claim situations and rising premiums for contractors who didn't think that this, this payroll was going to be included in their workers' compensation premiums. With that, I'm more than happy to answer any questions.

M. HANSEN: Thank you, Mr. Champoux. Senator Lathrop.

LATHROP: So you just mentioned two things in his justification for this. One is the premiums. And I understand your group is-- are you in, in insurance.

TOM CHAMPOUX: I'm an insurance agent, independent insurance agent.

LATHROP: And so what you're telling us is that if I'm a general contractor and say I'm building an office building and I'm bringing in a plumber and I'm bringing in these various contractors, if there's a one-man shop that shows up and they're

listed here your general contractor will have that person included as an employee.

TOM CHAMPOUX: Yes, absolutely. Their payroll will be included whether they truly or not an employee.

LATHROP: OK. And what you want to do is devise some way of excluding these independent contractors from the general contractor's liability.

TOM CHAMPOUX: What we're trying to do is give the general contractor the ability to see ahead of time whether or not this independent contractor has workers' compensation coverage. So they know how to bid a job. They know whether they're going to get stuck with that claim or not.

LATHROP: Just as an aside, do you think it's-- like we're taking their word for it, right?

TOM CHAMPOUX: Yeah.

LATHROP: So this guy is going to come and he's going to be registered as a contractor and now they're going to ask him, do you have insurance or don't you?

TOM CHAMPOUX: Yes.

LATHROP: Right. So the first thing that I would note about your bill is that we're going to take their word for it. It may or may not be true. But generally where this is a problem in the, in the, in the employment setting or in the contractor setting is if a person gets hurt the Workers' Compensation Court will do a ten-point test that you made reference to, to determine I may have somebody working for me that I call an independent contractor. In fact, in every respect I treat him like an employee. I just don't want to bother with covering him for work comp and unemployment and a variety of other things that costs more money, so I just call him an independent contractor. Right?

TOM CHAMPOUX: Yes.

LATHROP: And our friends over at the Department of Labor, when we tried to get ahead of that practice, went out and just registered these people as independent contractors rather than enforcing the misclassification bill. Right? So they go out-- somebody makes a complaint. The Department of Labor goes out and they may register 25 drywallers all at once as independent contractors, even though as a practical matter they're employees.

TOM CHAMPOUX: And we have seen that problem in the insurance world. Absolutely, that's true. What we're trying to clarify

here with this bill, in my opinion, is the difference between the two. At least the employer or the general contractor knows ahead of time whether this is truly an independent contractor and whether they have workers' compensation insurance coverage.

LATHROP: OK. And I don't have a problem to the extent this helps them establish a fair premium. What I do have a problem with-- and let me give you a hypothetical to illustrate the point because it's something that the-- that I've seen the carpenters dealing with. You'll have one person that shows up on the job who is-- they might call themselves a broker. In reality they're an employer of 25 drywallers. And you, you talked to the drywallers and all of them-- none of them are employees of that person who says I'm just a broker. They are all taking orders from that person. You know you go through the ten-point test and, by God, they call them all independent contractors. But they're really employees because they follow that person from job to job. Is, is this going to make it easier for that person who claims all of his employees are independent contractors to get out from under his obligation to cover folks for work comp benefits?

TOM CHAMPOUX: I absolutely don't see it that way.

LATHROP: I'm just trying to understand your bill or the purpose and I want to be clear or, or, ensure that the record is clear that we're not changing the ten-point test. If you have somebody that comes along and they are calling all their employees independent contractors and even if they're registered and even if they're on this list that the Work Comp Court will still, on a case by case basis, determine if someone is in fact an employee and then the employer's going to be responsible for it.

TOM CHAMPOUX: It is my understanding that that ten-point test is still going to be in place. It will still determine whether someone is an employee or an independent contractor, absolutely. What you described happening as far as people calling their employees independent contractors, absolutely we've run into that problem. The roofing industry seems to have at least a lot of it.

LATHROP: A lot of it is roofing and drywall.

TOM CHAMPOUX: Yeah. And-- well, that's not what we want to have happen. We want to have these people be insured if they're truly employees and the ten-point test is absolutely going to continue to exist. I mean, that's my understanding.

LATHROP: So to be clear, to be clear this only affects the calculation of premiums and does not affect liability as it currently exists in the workers' compensation statutes.

TOM CHAMPOUX: That's my understanding.

LATHROP: OK.

TOM CHAMPOUX: What this is going to do is clarify who the insurance carriers are going to-- how much their premium they're going to charge, because we definitively know who's an independent contractor and [INAUDIBLE.]

LATHROP: But see, when you say definitely, that's where-- that's where I'm getting a little uneasy, because you create a presumption and you say it definitively tells us who is and who isn't. And that's inconsistent with the concept of the ten-point test established by our court for determining who's an independent contractor from who's an employee.

TOM CHAMPOUX: Yeah. And that's a good point. You're spot on with that. The ten-point test will still exist. This is going to allow people to take a look at a registry and see if an independent contractor-- an individual independent contractor has workers' compensation coverage or do they not. So we can price a bid accordingly and know what we're dealing with, if

we're going to have to include that payroll in the general's payroll. Does that help?

LATHROP: OK. OK. So just to be perfectly clear and perhaps to belabor the point, because it's important to me, is that this affects premiums but does not affect liability in any respect.

TOM CHAMPOUX: That's my understanding.

LATHROP: OK. Thank you.

M. HANSEN: Thank you, Senator Lathrop. Senator Ben Hansen had a question.

B. HANSEN: So maybe I could shoot off of Senator Lathrop's questioning here. This almost makes it a little more clear to determine who isn't an independent contractor. One of the points of the ten points is to have your own insurance. This kind makes it a little more clear from the Department of Labor's standpoint who, who is and who is not an independent contractor, because this is one of the points and they have it in writing now. They kind of put it in pencil, one of the purposes as well.

TOM CHAMPOUX: Absolutely.

B. HANSEN: Yeah. Because it says: purchase your equipment; make your own hours. You can take orders from somebody still, but

then you still have to do all these other points along with it, so. I just want to make sure that's also kind of one of the benefits I think of having this, is that it clarifies the Department Labor standards for determining who is and who isn't an independent contractor. [INAUDIBLE] premium stuff.

M. HANSEN: Thank you, Senator Hansen. Are there questions?
Senator Crawford.

CRAWFORD: Thank you, Senator Hansen. And thank you for being here to testify. So I don't understand how it would impact your--
- reduce your premiums without reducing your liability. So I guess I'm still-- have similar concerns with Senator Lathrop's concerns about what it does in terms of liability for a worker.

TOM CHAMPOUX: OK. So individual independent contractors don't have to carry workers' compensation on themselves in Nebraska. If they truly are that, then a general contractor does not have to include their payroll in what drives their workers' compensation premiums.

CRAWFORD: But they, but they do sometimes now because they're worried that they're not-- they won't-- they will be liable for them--

TOM CHAMPOUX: Yes.

CRAWFORD: -- with the ten-point test.

TOM CHAMPOUX: So the insurance carrier is saying, whether they meet this ten-point test or not, we're going to charge you for that, that person's payroll. Does that help?

CRAWFORD: Correct. But then you're saying this will cause them to not pay for that liability. I guess I'm-- but then on the other hand you're saying it doesn't change the liability. So I don't know how those two could both be true.

TOM CHAMPOUX: Yeah. As far as liability goes for workers' compensation, that's determined by this ten-point test. My point is that the insurance carriers at the end of the day don't care whether they're going to have the liability or not. They're going to charge a premium for that. And for those times that they're deemed an employee, they're going to pay, you know, for the claims in those particular cases. But you're also dealing with a whole bunch of truly independent contractors then who are causing premiums to rise and there's never going to be a claim paid out of that, if that, if that helps clear that one up. Did that help?

CRAWFORD: Thank you.

LATHROP: So I was-- I thought we had it worked out before you answered Senator Hansen's question. And this does not affect the ten-point test in any respect. Is that true?

TOM CHAMPOUX: That's as I understand it, yes.

LATHROP: This is purely to assist underwriting as they try to establish my premium as a general contractor for who is going to be insured.

TOM CHAMPOUX: Yes.

LATHROP: It may turn out that the contractor ends up liable for that person if they don't have the coverage they claimed or if the ten-point test says they're actually an employee of the contractor.

TOM CHAMPOUX: That is correct.

LATHROP: Okay. That's all I got.

M. HANSEN: Thank you. Any further questions from the committee? Seeing none, thank you for testifying.

TOM CHAMPOUX: Thank you.

M. HANSEN: All right. We'll take any future-- any more proponents on LB139.

RYAN STEELE: Chairman, members of committee, my name is Ryan Steele, that's R-y-a-n S-t-e-e-l-e. I am president of a company called Precision Enterprise and also a member of the Metro Omaha Builders Association. My company is a general contractor so a lot of questions just came up. So kind-- I'm not sure where I want to start here exactly. But I guess what I'm going to do is just go ahead and start with a little bit of a story here of how this affected me and my company. Last year I spent about two month process going back and forth with my workers' compensation company during the audit process. And one of the big issues that we went back and forth with had to do with this issue that we're talking about. And what happened for my company was, they were trying to hit me up with a handful of independent contractors, the premiums, because my insurance company decided that they were going to go ahead and start charging that. The frustrating part for me was, they didn't tell me that a year ago when I renewed my policy. Okay? So there was absolutely no notice of that at all. I just found out that this was a problem and all of a sudden they wanted to hit me for that. We worked through it all and they didn't charge me, but I was looking at a \$30,000 additional premium. And they didn't charge me and ultimately I ended up switching insurance companies, because I'm not going to deal with them on that. But the new company still is going to

charge me for it anyway. They made it very clear up front, which I think is fine because in my business when I bid a job for somebody I tell them what I'm going to do, I do what I'm going to do. I say what I'm going to do and I do it. And if there's additional charges I have to tell people that upfront. I can't tell them that on the backside. OK? That's just good business. What I see this doing is, this is, this is evening the playing field. And I think that's already been mentioned. II think that's what he was trying to say is that we're trying to even up the playing field and know upfront what our costs are. The situation I ran into-- you're absolutely right, drywall, roofing, those are your two number one industries who have problems with that. But I ran into it with just small guys. I've got a painter, for example. I've got a mason that I use. I've got a guy that does some flooring on occasion for me. These are all independent guys that work as a one-man operation. I'm heavy-- heavily into a lot of remodels where a little one-man guy is perfect for what I need. OK? These guys, they have brought all their own tools. They meet the requirements as an independent contractor. They send me a bill. OK? They give me an estimate upfront. So it's all contractual stuff. This is not a situation where I'm dealing with employees. These are individual independent contractors. And because these guys by state law are

not required to carry workman's comp they look at me like I'm absolutely crazy when I told them they need to go out and buy a workman's comp policy or I am not going to use them anymore. This is not employ them, this is, I'm no longer going to contract with you. You have to go out and buy a policy. And I went back and forth with them because they wanted to sit here and tell me, well, the state law I'm not required to do this. And I'm telling, you are telling me something that I already know. OK. So these guys have had to go out and buy what's called a ghost policy. OK. And a ghost policy is essentially something where they go out and they purchase this policy and then they exclude themselves from that policy. This is costing these guys \$1,000 to \$1,200 is what I'm being told and they think it's absolutely ridiculous and so do I. I want to make it really clear, because I don't think any of, of these guys have said this already. I don't think anybody in this room probably cares if an insurance company makes another nickel of profit, because I've had plenty of experience with insurance companies that are-- that is not-- that is not positive. Everybody is here right now with these insurance guys, OK, and I came with these guys. They are all here to take this problem off the table, which is actually taking money out of the insurance company's pocket because no longer can they try to hit somebody like myself with

additional premiums nor can they sell these bogus policies called ghost policies that doesn't benefit anybody but an insurance company. They are the only ones to benefit from this. I mean, who wouldn't-- I mean, sign me up for writing policies to people that I know I'm never going to pay a claim on. I mean, that's, that's 100 percent profit, you know. I, I, I would start an insurance company tomorrow if I could sell a bunch of those. You know, so from my perspective this thing does nothing but clarifies the problems that we have. There's a lot of people-- I know there's somebody here on behalf MOBA, the Metro Omaha Builders Association. These are all peop-- all of us support this and we need to see this problem go away. And I think that's what this is trying to do. Any questions?

M. HANSEN: Any questions from anybody?

LATHROP: None from me.

M. HANSEN: Okay. Thank you. Are there any other proponents for LB301?

JAY BUCHANAN: Chairman Hansen, members of the committee, my name is Jay Buchanan. My wife and I own a company in Omaha called Signature Electric.

M. HANSEN: Could you please spell your last name, please?

JAY BUCHANAN: B-u-c-h-a-n-a-n, Buchanan.

M. HANSEN: Thank you.

JAY BUCHANAN: My wife and I own a electrical contracting business in Omaha. In fact, we're in Senator Lathrop's district. We've been there for 43 years. We are-- I am representing not only our company, but the Associated Builders and Contractors, the Cornhusker Chapter here in Nebraska, which, which has over 100 contractors of all sorts, styles, and persuasions in virtually every district in the state of Nebraska. We are a proponent of this bill because it simply levels the playing field and adds transparency. In my business I'm responsible for the well-being of 55 people, employees. From time to time we use sub-tier subcontractors with an agreement. It's a nine-page legal agreement which specifies responsibilities for that sub-tier contractor. These are bona fide sub-tier subcontractors and we use them for-- rarely, but we use them for specialized, unique specialties that we cannot provide. So we reach out to the community and, and enter into an agreement. After a bid has been achieved we incorporate it into our business plan. We ask the partner, the contracting partner to provide all kinds of documentation to protect our company, our employees, our clients, as well as make sure that they're fiduciary and take

responsibility for their employees. It's an administration obligation, it's our responsibility. This helps add clarity on the database to make sure that the people that we're selecting have the right credentials and insurance to be able to protect their company, their clients, us, and their employees. We are-- the association is a strong proponent of this. Again, for, for the reasons of transparency and levels the playing field. And that's the sum of my argument today and presentation. Any question I can answer, I'd be happy to answer those. Thank you.

M. HANSEN: Thank you. Are there any other opponent wish to testify? Proponents, excuse me.

JUSTIN BRADY: Vice Chair Hansen and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Home Builders Association of Lincoln as well as the Metro Omaha Builders Association in support of LB139. I mean, you've heard it before but the discussions that the two groups had about it was the transparency, transparency for generals to see who they may or may not contract with, but also that transparency that they can at least have some of the similar knowledge that the insurance companies were looking at when they're trying to come in on premiums. And so without going back through some of the

discussions you've already had and be respectful of your time, I'll stop there and try to answer any questions.

M. HANSEN: Any questions. No? Thank you.

JUSTIN BRADY: Thank you.

M. HANSEN: Are there any other proponents wishing testifying? OK. Are there any opponents wishing to testify? Anybody wish to testify in a neutral capacity?

LORRA O'BANION: Good afternoon, Senator Hansen, of course he's not here, and members of the committee. My name is Lorra O'Banion, that's L-o-r-r-a O-'-B-a-n-i-o-n, and I'm the legal counsel for the Nebraska Workers' Compensation Court. We're not here to encourage policy one way or the other but rather to provide some information about how this legislation could have an impact on litigation filed in a Workers' Compensation Court and the broader system of enforcement when workers' compensation insurance is not in place. Our concern is that the presumption created in LB139 would be binding on the Workers' Compensation Court and others beyond the contractor registration system. As we know, LB139 in Section 1(b) states that when a contractor registers there may be a self-declaration as to whether the contractor is not required to carry and does not carry workers'

compensation insurance pursuant to the Nebraska Workers' Compensation Act. Section 1(c) then creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage. And these provisions are the focus of my comments today and how they would impact the statutes and the Workers' Compensation Act. Of course, we talked a little bit before or the other testifiers have talked about self-employment. Of course, self-employment is a person who is in business without any employees and he or she could decide whether or not to carry workers' compensation insurance, but that coverage for a self-employed person is not man-- mandatory. However, if that person hires any employees, workers' compensation coverage is generally required. And the broader issue that LB139 seeks to address has been a vexing one in workers' compensation circles for many years. On the one hand, you have employers who wish to evade workers' compensation responsibilities and may try to characterize their employees as independent contractors. And on the other hand, you have workers' compensation insurers who are wishing to maximize their premium collection or who are uncertain as to the employment status of the workers and may designate legitimate independent contractors as employees. Our understanding is that at the outset, outset of a workers' compensation policy the amount of premium is paid by the

employer on an estimated projected payroll. At the end of the policy period, the final premium is then determined by an audit of actual payroll. In those audits, the insurers assess whether they-- there were any uninsured subcontractors and charge a premium for those who aren't true independent contractors. If the employer is not monitoring whether insurance is in place for those subcontractors, this may result in an additional unanticipated premium for those subcontractors which is what many of the proponents have described. It is our understanding that this is the issue that the registration seeks to address. We just want to point out that LB139 as it is written may be in direct conflict with 48-- Section 48-116 which provides that employers shall not engage in any scheme, artifice, or device to avoid responsibility for workers' compensation coverage. And that if an employee of a subcontractor is insured and insurance is not in place, the general and the subcontractor shall be jointly and severally liable to the employee leaving the general and the subcontract to work out who is ultimately liable for the benefits. An example of when this statute is used is in the construction industry. Hypothetically, what we would see happening is that an individual, individual contractor would check the box and say I am not required to carry workers' compensation insurance and I don't have workers' compensation

insurance is then hired by a general contractor with that knowledge, of course. The contractor-- independent contractor then says, oh, this job is too big for me. I need to hire somebody else. And that's-- and then that new hire then is injured on the job. Typically what would happen is maybe that new hire determines that they're not getting any benefits. And then they call the Workers' Compensation Court and say I was injured on the job, am not receiving any benefits, aren't I entitled to any benefits? Typically, a compliance examiner of the court will then investigate to determine whether or not there's workers' compensation insurance. In this specific example, they probably would not find coverage. A letter would be written to the supposed employer. And they would say-- the employer would probably respond saying I checked the box that I'm not required to carry workers' compensation insurance and that I don't have workers' compensation insurance. I apologize. My light has just turned red. So if anybody has any questions, I'd be happy to answer them.

B. HANSEN: Yes, Senator Lathrop.

LATHROP: Thank you for your testimony. And I want to make sure I understand it. So you, you've heard the testifiers that have

come before us today indicate that from a liability point of view and a statutory employer, which is the 48-116, right?

LORRA O'BANION: Correct.

LATHROP: That they are-- that they are not attempting to change liability under 48-116. They're not attempting to change liability, but they do want to make sure that the contractors that are purchasing workers' compensation insurance aren't paying for people who are honest to God independent contractors.

LORRA O'BANION: Sure.

LATHROP: And by that I mean somebody that would fall outside and be identified as an independent contractor after going through the ten-point test. It sounds to me like the court has a concern that this may be affecting the liability questions in addition to legislating in the area of premium determination.

LORRA O'BANION: That's correct. I think what we're saying is this could, this, the LB193-- LB139 as it is written, you know, it's not clear that it's not binding in the workers' compensation world. I understand that the, you know, the evils that it's trying to correct, evils, but again it's not clear. It doesn't say that this only affects the premiums and it doesn't protect the ten-point test in the Workers' Compensation Court.

It also may impede enforcement actions which the Workers' Compensation Court does have under 48-145.01 where if the compliance examiner of the court is unsuccessful in getting an employer to find workers' compensation insurance then they could refer it on to the Attorney General's Office. Again in that-- in that example, what would happen is either a complaint would be filed in the district court or a motion for order to show cause would be filed in Workers' Compensation Court to determine why there's no coverage. And then the Assistant Attorney General would be faced with, again, a defense that I checked the box and I'm not required to carry workers' compensation insurance and I don't have workers' compensation insurance. And, you know, does that end there? So of course that's what our concern is, is, is this binding on the Workers' Compensation Court? Will it negatively affect the enforcement actions under which the Workers' Compensation Court is charged under the workers' compensation--

LATHROP: Do you have proposed language to clarify this?

LORRA O'BANION: We do not. You know, I think the presumption language is probably the part that is most, that most affects what would happen in the workers' compensation world.

LATHROP: If that read it creates a presumption for purposes of pol-- premium determination, would that resolve your concerns?

LORRA O'BANION: Maybe.

B. HANSEN: Any--

LATHROP: That's all the questions I have. Thanks.

B. HANSEN: Any other questions? Yes, Senator Crawford.

CRAWFORD: Thank you. So you don't have language to-- thank you--

B. HANSEN: No problem.

CRAWFORD: --Vice Chair Hansen and thank you for being here to share your-- what you-- how you see impact enforcement in the courts. Would you be-- you don't have language with you today, but are you willing to work with Senator Kolterman on language that might address that? Or do you think that fundamentally putting this kind of mechanism in place in the statute makes it difficult to address the enforcement issues and liability issues you're discussing?

LORRA O'BANION: Well, we don't want to take a position on, on how the policy should be created. But I don't think we would be opposed to working with Senator Kolterman. But definitely, I

think the court has done that in the past with other legislation. But I guess I would have to consult with the presiding judge of the court and the administrator of the court-

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CRAWFORD: Sure.

LORRA O'BANION: --before I can give you a definitive answer.

CRAWFORD: Thank you.

B. HANSEN: Any other questions? Thank you very much for coming up. Thank you. Anybody else wanting to testify in a neutral capacity? All right. Senator Kolterman, would you like to close?

KOLTERMAN: Yeah. Thank you. Interesting conversation. I want to make a couple of things clear. First of all, the ten-point test does not go away. We're not trying to eliminate that. We're not trying to change any of that. That stays in place. Whether you have to do that for 25 employees or 1 employee, that will stay in place. The ghost policies, those are being sold on a regular basis. And that's a place where an insurance company can make a lot of money and never have to pay a claim. What we're in for-- I take exception to the fact that 48-116-- it's not our intent to take the-- take the liability away. Having been in the business and understanding how these policies work for many

years, what happens is if you have a true independent contractor they're willing to go through that ten-point test. And we have many independent contractors that, that maybe will hire on with a contractor knowing that, I know that I'm not going to have worker's compensation. I'm willing to go through that test. I carry my own personal liability. I provide all my own tools and I'm not going to go back to that person for a claim. And that happens all the time. What we're trying to do with this bill is set up parameters where a general contractor can go to the Web site, the Department of Labor Web site and they can sit, they can look at that Web site and it says, well, this guy's got worker's comp so there is a presumption that they've got worker's comp. That could change over the years, but you know they could cancel it in the middle of a policy period and that might not be accurate either. There's another box that says, I don't choose to carry workers' compensation but I'm going to self-insure. That's for someone like-- I'm just going to use an example, the Kiewits of the world. They self-insure. A lot of your trucking companies self-insure simply because they're big enough they can take on the risk and they can pay the claims, buy their own reinsurance and the whole nine yards. The third one is, the box that just merely says, I, as a contractor-- I'm already registering as a contractor. I, as a contractor, choose

not to carry workers' compensation because I'm an infinite contractor and they check that box. Does that necessarily mean that, that premium is not going to be included? No, it really doesn't. But a what-- what it does do, it allows a contractor that's hiring them as a sub to form a dialogue that says, you know, there's some risk here that I could end up paying premiums-- paying premiums on you. Are you willing to-- are you willing to sign a contract on my behalf that says I do not carry workers' compensation, I'm an independent contractor, and I meet the ten-point test? That happens today. There are people that are independent contractors that sign additional contracts, but at least this starts the dialogue. It says, no, we don't have-- I don't have work comp. We haven't-- we have nothing now that says that. I don't believe this presumes any liability whatsoever. What it does do, it starts the dialogue and it makes, makes the insurance companies aware of the fact that, he said he didn't have insurance. But sometimes a general says, well, I'm going to take him on anyway and I'm going to pay that premium. But at least they can make that decision on their own or they can negotiate farther with that independent contractor. So that's, that's what we're attempting to do with this bill and that's why we went to the Department of Labor. We also, we talked to the Workers' Compensation Court. But, quite honestly,

I was surprised they came in a-- well, they came in a neutral position but it sounded pretty negative to me. But irregardless of that, we're more than happy to work with them if we can clear that up. But our intent really is to make sure that the public is paying-- the contractors are paying for what they actually should be paying for. If there's a-- if there is a sub that says he's independent and he's truly independent or she's truly independent, that's all lined up already. We're not trying to change any of that whatsoever. So with that, I'd try to answer any questions you might have.

B. HANSEN: Yes, Senator Crawford.

CRAWFORD: Thank you, Vice Chair Hansen. And thank you, Senator Kolterman. Can you explain how this bill eliminates the ghost policy problem?

KOLTERMAN: It probably doesn't. I think you're still going to see the ghost policies sold. I was not aware that under ghost policy you can exclude yourself. I was under the impression that if you buy a ghost policy it auto-- you're covered-- you've protected yourself and it's based on premiums. So that's-- that was a new twist to me. I know that corporate officers can exclude themselves from workers' compensation, but-- and I know farmers are not required to carry workers' compensation. But

even there today we're seeing a lot of farm-- farmers that employ individuals carry workers' compensation. I think if we had it our way everybody should be-- if-- whether they're an independent contractor or not they ought to be carrying a work comp policy because it is a very broad policy and it takes care of a lot of the problems that exist today. So what we're just trying to do is make it-- give another tool to those that are contractors or place they can go and check whether or not they have coverage or don't have coverage. It's-- it's simple as that.

CRAWFORD: Thank you.

B. HANSEN: Yes.

LATHROP: Just briefly, Senator Kolterman, you were here during the questioning I had for Mr. Champoux?

KOLTERMAN: Yes.

LATHROP: And it's also your intent and your understanding that your bill affects how premiums are calculated but would not affect the statutory employer, Section 48-116, or any of the liability issues as they are handled traditionally by the Workers' Compensation Court.

KOLTERMAN: Yes, correct. Absolutely.

LATHROP: OK. It's all I have.

KOLTERMAN: Thank you.

B. HANSEN: Thank you, Senator Kolterman. Appreciate it.

KOLTERMAN: Thank you.

B. HANSEN: We do have one letter to read for the record in support of LB139. It's on behalf of the Nebraska Cooperative Council. Now we'll close the hearing on LB139. We will now open a hearing on LB301. It's all yours.

LOWE: Thank you, Vice Chairman Hansen and members of the Business and Labor Committee. It's good to be back. My name is John Lowe, that's J-o-h-n L-o-w-e, and I represent District 37. Today I am here to introduce LB301, which was brought to me by the Governor. This bill attempts to transfer three programs from the Department of Labor to the Fire Marshal. The programs covered are the Boiler Inspect-- Inspection Act, the Nebraska Amusement Ride Act, and the Conveyance Safety Act. Transfer from the Department of Labor to the Fire Marshal will result in ten positions being removed from the department and directly transferred to the Fire Marshal. This bill is here today for

efficiency and better servant-- service to the state. Right now there's a lot of overlap during inspections dealing with these programs. This overlap results in two different state agencies setting up two different inspections. This can lead to delays and confusion. I know this because I've been in business and I've had to wait for two separate state inspectors to come at different times and they set up maybe a eight-hour time period that you need to wait for them to show up. I am happy to answer any questions you may have. But there is a lot of experts behind me who could probably do a lot better job than I can. Thank you.

B. HANSEN: Any questions at all? Thank you, Senator Lowe.

Anybody wishing to--

LOWE: I may have to leave because I have another bill that's been ready to start.

B. HANSEN: All right. Thank you. Anybody wishing to testify as a proponent? Hello.

JOHN ALBIN: Good afternoon, Senator Hansen, members of the Business and Labor Committee. For the record, my name is John Albin, J-o-h-n A-l-b-i-n, Commissioner of Labor, and I'm appearing here today as-- in support of LB301. I first want to thank Senator Lowe for introducing this legislation on behalf of

the Governor. LB301 transfers and consolidates all life safety inspections administered by the Department of Labor, which includes the conveyance, amusement ride, and boiler inspection programs to the State Fire Marshal's Office. Fire safety codes are adopted by reference in the Primary Elevator Inspection Code, A17.1 and apply to elevators and boilers. There can be and have been differing interpretations of those fire safety code provisions as applied to conveyances and boilers by inspectors from the two respective agencies. You can only imagine the frustration of a building owner when a conveyance or boilers has been passed for inspection by one of the two agencies but is cited as being out of compliance by the second agency.

Fortunately, that has not occurred often in recent years due to the cooperation of the State Fire Marshal's agency and the Department of Labor, but it has occurred. Consolidating the inspection programs [INAUDIBLE] the Fire Marshal's agency will create a single chain of command and allow building owners to contact a single agency should they have a question or if an issue arises. LB301 does not change or diminish any of the safety standards applicable to conveyances, amusement rides, or boilers. LB301 really consolidates the inspection authority into a single agency. The same conveyances, amusement rides, and boilers will be inspected by the same code standards under LB301

as they are under current law by inspectors who are highly qualified. The state will continue to be responsible for verifying that all conveyances, amusement rides, and boilers continue to be inspected on an annual basis. LB301 provides for the transfer of these programs to the State Fire Marshal on July 1, 2019. This date was selected in order to have a clean transfer of the cash funds at the start of the next biennium budget cycle. Department of Labor has worked closely with the State Farm Marshal to ensure this legislation works for both agencies. As proposed, LB301 is a straight transfer bill with a net fiscal impact of zero dollars. I anticipate that once the programs have run under a single agency for a while efficiencies will be discovered which can save money in future budget cycles. However, for the upcoming budget cycle we're anticipating that the transfers will be revenue neutral. In addition to the transfer, LB301 also contains some minor housekeeping amendments that either codify current practices or bring code definitions into conformity with national standards, but do not make substantive changes. And with that, I would be happy to answer any questions you might have.

M. HANSEN: Any questions? Yes, Senator Chambers.

CHAMBERS: I'm just curious. Did you request that this transfer occur or it was decided and then you were told to come testify?

JOHN ALBIN: No, this was a Department initiative. In fact, Senator, I don't think it occurred during the four years that you were out, but we've had similar proposals in the past in both 2006 and 2013. So this is definitely a department initiative.

CHAMBERS: Thank you.

B. HANSEN: I had a question. So you're presuming to get rid of ten positions you said, roughly?

JOHN ALBIN: Yes.

B. HANSEN: And then will the State Fire Marshall have to hire on approximately about ten more people then?

JOHN ALBIN: The bill transfers those employees directly to the State Fire Marshal.

B. HANSEN: [INAUDIBLE.] I didn't know if they were going to get rid of them and hire all new people or switch [INAUDIBLE].

JOHN ALBIN: No, it's a straight transfer and actually physical relocation involves one employee because many of the elevator

inspector or the elevator inspection office is officed out of the State Office Building in Omaha. So it just changes the name of the tenant and there is only one employee from the boiler program that's at the Department of Labor's offices here, so they'll move over to the State Fire Marshal's Office. All the inspectors are home based these days, so most of them don't even have a physical office other than a small space in their home.

B. HANSEN: Right. Thank you very much.

JOHN ALBIN: Thank you.

B. HANSEN: Are there-- are there any other proponents to this bill?

CHRISTOPHER CANTRELL: Good afternoon, Chairperson Hansen and members of the Business and Labor Committee. My name is Christopher Cantrell, C-h-r-i-s-t-o-p-h-e-r C-a-n-t-r-e-l-l and I am the Governor's nominee for State Fire Marshal. I'm here to testify in support of LB301. I want to thank Senator Lowe for introducing this bill. LB301 would transfer the duties and functions for the Boiler Inspection Act, the Nebraska Amusement Ride Act, and the Conveyance Safety Act from the Department of Labor to the Nebraska State Fire Marshal. This transfer includes all staff, materials, and funding needed to administer these

programs and is fiscally neutral. One of the primary functions of the State Fire Marshal agency is to ensure public safety through code inspection programs. The safety inspection programs being transferred from the Labor Department similarly utilize code inspections to help ensure public safety. I fully support the transfer of these three code inspection programs to the State Fire Marshal agency. The transfer these programs to the State Fire Marshal agency will allow Nebraska business owners and citizens to have a more efficient and effective interaction with state government. And having these vital safety programs administered by one agency will allow us to begin exploring opportunities for a more effective and streamlined approach to all our code safety inspections resulting in increased efficiencies for both the Fire Marshal agency and for regulated businesses which we inspect. Thank you for your time and attention. I'll answer any questions that you may have.

M. HANSEN: All right. Thank you for your testimony. Are there questions? Senator Chambers.

CHAMBERS: Mr. Cantrell, when-- if you meet a stranger-- let's say you were at a gathering of people and not everybody knew everybody and you were introduced as Christopher Cantrell, has

anybody ever asked you or made any comments about somebody of your name during a period in history?

CHRISTOPHER CANTRELL: No.

CHAMBERS: OK. I was just curious. I go way back.

LATHROP: I do have a question.

M. HANSEN: All right. Thank you, Senator Chambers. Senator Lathrop.

LATHROP: I have a question for you and it relates to these inspections whether they're done for a boiler, an elevator, or an amusement ride, the people who are having the inspection done pay a fee. Is that true?

CHRISTOPHER CANTRELL: Yes. These are all fee-funded programs.

LATHROP: OK. And do the fees that go into the program people pay, do any of them go into the General Fund?

CHRISTOPHER CANTRELL: No, they do not.

LATHROP: And what's done with the fees that are collected for the inspections?

CHRISTOPHER CANTRELL: There are two separate cash funds. One is the Boiler Inspection Program Cash Fund and the other is the Mechanical Safety Cash Fund, which is where the amusement ride and conveyance inspection fees go. So those are remitted to those funds, are used exclusively for the administration and enforcement activities by those respective agencies. And then I believe the rest are invested in accordance with the investment act-- I'm not sure with the name of the act is.

LATHROP: Is any of it spent on training the people that are doing these inspections?

CHRISTOPHER CANTRELL: Yes. That would be considered part of the administration of the acts.

LATHROP: So what's the policy relative to training, for example, an amusement ride inspector?

CHRISTOPHER CANTRELL: I guess I'm not sure what you're asking with the policy--

LATHROP: Are you sending these people and getting them certified to inspect the devices that they are sent out to inspect?

CHRISTOPHER CANTRELL: Yes, sir. Yes, sir. There's a national program called NAARSO, which we send our inspectors to and have them tested, too.

LATHROP: What's the NAARSO stand for?

CHRISTOPHER CANTRELL: National Association of Amusement Ride Safety Officials.

LATHROP: OK. So is Nebraska a member of that group?

CHRISTOPHER CANTRELL: I guess I would have to verify that-- actually, yes, we are. We are. Our chief amusement ride inspector is. It's the only way to sit for the exam and to become certified is to be a member agency.

LATHROP: Is he certified?

CHRISTOPHER CANTRELL: He's a Level 2, yes, sir.

LATHROP: And are all the people that inspect amusement rides certified?

CHRISTOPHER CANTRELL: We have three out of four of our inspectors that are certified as Level 1's and one is not certified but he does not inspect amusement rides, he's a conveyance inspector.

LATHROP: So once we-- you're talking about having some economies by virtue of having all of these things under one roof.

CHRISTOPHER CANTRELL: That's correct.

LATHROP: Right? And I just want to make sure that the people that are doing the inspections are qualified, that we're spending the money on getting them the training they need to remain or have some level of certification.

CHRISTOPHER CANTRELL: That is correct.

LATHROP: OK. That will happen.

CHRISTOPHER CANTRELL: Yes, sir.

LATHROP: Okay. It's all I got.

M. HANSEN: Thank you, Senator Lathrop. Any other questions? Senator Chambers again.

CHAMBERS: When it mentioned in your statement that the staff would be transferred, does that mean the same number of people when they're under your division would be doing this work as currently is the case?

CHRISTOPHER CANTRELL: That's correct.

CHAMBERS: OK.

M. HANSEN: Thank you, Senator. Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. Do you feel you have enough inspectors for amusement rides? And the reason I ask specifically for that is, you may find yourself at the peak season of carnivals and state fairs or county fairs or you may have a county fair in the Panhandle on August 1st start their county fair, but then you may have someone in the eastern part of the state, Lancaster County, start the same day. Is-- do you feel you have enough inspectors to compensate for hundred million miles for them to make it from one end of the state to the other?

CHRISTOPHER CANTRELL: Well, we do have-- in certain instances we do have conflicts with our schedule. One of the things we've done to help with that is to subcontract with some nationally recognized-- with nationally certified organizations to help us out in those instances. But that's-- we did that for the first time last year. So we do our best to make sure that everyone's needs are met in a timely manner.

HALLORAN: OK. Thank you.

M. HANSEN: Thank you, Senator. Any other questions? Senator Hansen.

B. HANSEN: Just kind of a mundane question. So now with the change in definition to boilers, that was one of the changes?

CHRISTOPHER CANTRELL: That's correct.

B. HANSEN: What will happen now? Will they still be required to be inspected since we have a change in federal definition now?

CHRISTOPHER CANTRELL: Well, the definition was to remove the two words "under vacuum." The definition of a boiler will be "an item under pressure." Currently, it reads "item under pressure" or "vacuum." What we're doing is removing the words "or vacuum." Typically vacuum boilers are inherently safe when they fail. Water boils at a lower temperature at the lower the vacuum or the higher the vacuum is. So a breach in the pressure boundary of the boiler at that point would actually raise the boiling temperature that would be required. So, you know, currently out of the I believe the 63-member states of the National Water Boiler Pressure Vessel Inspectors we are one of two states that had the words "or vacuum," there so we're going to remove those. And I think that removes anywhere from 20 to 30 boilers from our inspection rolls out of 10,500.

B. HANSEN: So there will be some boilers now that aren't being inspected anymore?

CHRISTOPHER CANTRELL: That's correct.

B. HANSEN: OK.

M. HANSEN: Senator Hansen. Any further questions? Senator Chambers.

CHAMBERS: Is there a requirement that a residential boiler be inspected, for example, if there're radiators? Is there a requirement or it's up to the homeowner to determine whether or not to have it inspected?

CHRISTOPHER CANTRELL: There are no state requirements. We currently exempt boilers in private residences and in apartment complexes with four or fewer units.

CHAMBERS: And why would that exemption exist, if you know?

CHRISTOPHER CANTRELL: Typically, that is because of, I believe, past legislative rulings and because the boilers and equipment in homes is of a low enough energy that it's not-- they're not typically seen as a hazard to the general public.

CHAMBERS: OK. OK.

M. HANSEN: Thank you, Senator. Any other questions? Seeing none, thank you, Mr. Cantrell.

CHRISTOPHER CANTRELL: Thank you, Senator Hansen, committee members.

M. HANSEN: All right. We'll take our next testifier on LB301.

CHAMBERS: I just have one question. If I happen to have a fire could I request you personally to come?

CHRISTOPHER CANTRELL: You could, but there's a bunch of better people in the state than me.

CHAMBERS: Oh, he's so nice. OK. Thank you.

M. HANSEN: Thank you. Hi. Welcome.

JOSH JOSOFF: Thank you, Chairman Hansen and members of the Business and Labor Committee. My name is Josh Josoff, J-o-s-h J-o-s-o-f-f and I am the union business manager for the elevator constructors in the state of Nebraska. I represent the vast majority of people that work on elevators and so I want to keep my testimony to the Conveyance Safety Act, which pertains to the elevator inspection portion. We are in favor of moving this over to the boiler or I mean to the State Fire Marshal's Office. And one of our reasons behind it, right in the name of the-- of our

bill the Conveyance Safety Act it's-- it has to do with safety-- it's public safety. And we feel the State Fire Marshal's Office has a more narrowed focus on public safety than maybe the responsibilities of the Department of Labor, which just has a vast more responsibilities. And so we think it would be better suited to move the program under there.

M. HANSEN: All right. Thank you for your testimony. Are there questions? Senator Chambers.

CHAMBERS: Did your union or anybody associated with it request this transfer or just how did it come about, if you know?

JOSH JOSOFF: So we have in the past and it's been blocked in the past. It has come up this time I believe through-- from the Department of Labor. And I'm not exactly sure whose idea it was, but we've always been in favor of doing this but-- it --it-- we have failed in the past to do that.

CHAMBERS: OK. Thank you.

M. HANSEN: Thank you, Senator Chambers. Any other questions? Seeing none, thank you for your time, Mr. Josoff.

JOSH JOSOFF: Thank you.

M. HANSEN: All right. We'll take any other proponents on LB301.

STEVE SIMPSON: Thank you, Senator Hansen and members of the Business and Labor Committee. My name is Steve Simpson, S-t-e-v-e S-i-m-p-s-o-n, and I work for the International Union of Elevator Constructors at the international level and we support this bill. This is how it is done in many other states. The State Fire Marshal is in charge of the elevator, not only inspections but keep in mind under the Conveyance Safety Act, this also covers the licensing of the elevator mechanics. It also covers not just public safety, but the safety of the elevator constructors themselves as they are out on the jobs working on these conveyances and making sure that they are in the right spot. And, and, and working on something that we don't know that somebody else tampered with. Somebody else may have put a jumper in when they shouldn't have put a jumper in, overridden a safety item, that sort of thing. We feel as though this is a proper move. We think that simply the Fire Marshal is a safety or-- a safety arm to the government and we believe that this should fall under their purview. That's all I have, if anybody has any questions.

M. HANSEN: Thank you. Are there questions for Mr. Simpson? Seeing none, thank you for your testimony. OK. Are there any other proponents of LB301? Seeing none, is there anybody wishes to testify in opposition to LB301? Seeing none, is there anybody

who wishes to testify in a neutral capacity on LB301? Seeing none, Senator Lowe, would you like to close?

LOWE: I will keep this very brief, Senator Hansen. Thank you for coming back and hearing the rest of this. Senator Hansen, you did a nice job before. Thank you for allowing me to bring this bill before this committee and be back in Business and Labor. And thanks for the testifiers that spoke up in favor of this bill and bringing it together finally after all these years. Being in business, it's tough waiting on two different inspectors, especially from where they're from your state, the same state and you have to wait for them to show up. And once they do, being in the business that I was in, I had the State Fire Marshal come in and inspect and I had to make sure the doors were unlocked and proper and everything was ready and marked as an exit. And then the state health inspector would come in and say, this door has to be locked at all times. Well, you're contradicting. It's nice to be under one, one agency now where you're following the guides of one person and you know exactly where to go. So thank you for allowing me to bring LB301 before this committee. This will help out many people. Thank you very much.

M. HANSEN: Thank you, Senator Lowe. Senator Chambers, one more time.

CHAMBERS: Did you say you might have to leave early when you first came up?

LOWE: I-- my other bill was up, but my aide carried it for me.

CHAMBERS: And things were going so well here you decided you'd go ahead and sit it out and see how it goes?

LOWE: I like this committee.

CHAMBERS: That's all I have.

M. HANSEN: All right. Seeing no other questions, thank you, Senator Lowe. And I will read into the record we have one letter of support from Michael Halpin of the Elevator Industry Work Preservation Fund. And with that, we'll close the hearing on LB301 and move to our next hearing which is on LB306 and Senator Crawford.

CRAWFORD: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d. I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. LB306 is a bill about supporting family caregivers, which I'm happy to bring

before you today. According to the AARP, 65 million Americans are acting as caregivers and 10 percent of those or about 6.5 million have reported that caregiving responsibilities have led them to quit their jobs. Under current Nebraska statute employees who leave work due to family caregiving demands are not able to collect unemployment benefits that they have earned through their years in the workforce. LB306 makes a simple addition to the definition of quote good clock-- good cause unquote for leaving a job under employment security law to allow caregivers who are seeking to rejoin the labor force to be eligible for unemployment benefits. The bill would qualify caring for a family member with a serious health condition as a good cause for leaving employment which would enable workers who have left work due to family caregiving demands to collect unemployment benefits while they look for that-- a next job. Caregiving usually in-- involves time off from work to provide hands-on care for an elderly, ailing, or disabled family member, such as help with bathing, eating, and giving medication. AARP reports that one in four middle-aged and older workers have been a family caregiver and that 73 percent of those family caregivers are employed outside of the home. A worker may have, have to quit his or her job to care for a parent or spouse with a terminal illness, Alzheimer's, or dementia and may not have

funds to fall back on until he or she is able to find a new job. And the impacts can be devastating. Family caregivers who leave the workforce to care for a parent lose on average \$304,000 in wages and benefits over their lifetime. This can have a disparate, disparate impact on low wage workers who are less likely to have savings enough to withstand periods away from work or to be able to afford professional care for their family member. Additionally, the sacrifices associated and caregiving fall disproportionately on women who tend to live longer and provide informal care in multiple roles. An estimated 66 percent of caregivers are female. For low-wage workers, particularly women, who can't afford to pay for care for a loved one with substantial caregiving needs, this may require the difficult choice of leaving a job to care for a sick or disabled family member. Providing this temporary safety net will allow these caregivers some security while they seek to return to the work force. Under current statute, workers who leave their jobs voluntarily are not eligible for unemployment benefits unless they can demonstrate they left work for a good cause. Leaving work for compelling family caregiving needs is not currently included in the list of reasons considered good cause for leaving employment, rendering these workers unable to utilize unemployment funds which they've earned through years of work.

Twenty-four other states have modernized their unemployment laws to recognize compelling family reasons as a good cause for quitting a job. Of our neighbors, Colorado and Kansas have laws that provide protection for those leaving work due to caregiving or family emergencies, respectively. The definition of "serious health condition" in the bill mirrors the definition used in the federal FMLA for consistency and simplicity for HR departments. By adding caregiving for a family member with a serious health condition to the reasons which are considered good for leaving employment we can help to ease the burden shouldered by Nebraskans who are looking to reenter the workforce after a period of caregiving. Chances are that many of us in this room will face family caregiving demands at some point in our lives if we have not already. The change in the good cause definition and LB306 will help provide a safety net which could allow caregivers to put food on the table while they look for their next job. Supporting our care-- caregivers benefits all of us. While Nebraska caregivers and their families shoulder significant financial burdens, they provide an estimated \$2.5 billion annually in uncompensated care work. With that, I'm happy to try to answer any questions that you have. Thank you.

M. HANSEN: Thank you, Senator Crawford. Are there questions from the committee? Seeing none, thank you.

B. HANSEN: Can I have one question?

M. HANSEN: Of course. Senator Hansen.

B. HANSEN: So we see the, the fiscal note on this. What, what is the employer's responsibility in pay out of claims, do you know?

CRAWFORD: So the bill also provides that the employer will not be required to be the-- a payer of these claims.

B. HANSEN: OK. And can you think of any other options that there might be rather than forcing employers to pay for an employee voluntarily leaving?

CRAWFORD: So this is set up so that the employer is not paying for that employee leaving, but they are considered a good cause leave.

B. HANSEN: OK. Thank you.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator. Senator Lathrop.

LATHROP: Maybe I can ask a couple of questions just so that I understand. The money that would be paid to people who leave employment to take care of a family member, that would be paid from the Unemployment Compensation Fund?

CRAWFORD: Correct.

LATHROP: And are you telling us that that wouldn't affect my experience or my rating as an employer?

CRAWFORD: Well, the-- it would not count against your rating as an individual person leaving. Is that what you're asking?

LATHROP: No, the employer. So the employer-- if an employer has a lot of unemployment--

CRAWFORD: I mean, it wouldn't count against the employer's experience rating. Correct.

LATHROP: Pardon me?

CRAWFORD: It would not count against your experience rating.

LATHROP: OK. So my premiums don't change if employees take advantage of this and it's paid from the employment-- Unemployment Compensation Fund.

CRAWFORD: Correct.

LATHROP: Gotcha. One other thing. It's possible for them to take advantage of the Family Medical Leave Act so they can have their job held for them and while they leave under this bill if passed

they would be entitled to unemployment compensation during that period?

CRAWFORD: That would not be my understanding. My understanding would be this is if you actually have to quit your job for caregiving responsibilities. And as well as with other unemployment insurance, you're only eligible for this when you are seeking a new job. So this would be if you have to quit one job and get a different kind of job because of your caregiving responsibilities or if you have to quit your job and you have a temporary time when you're out of work providing caregiving and then you're ready to get back to the workforce then you could be qualified for unemployment.

LATHROP: And you make a good point, which is in order to collect unemployment compensation you've got to be ready, willing, and able--

CRAWFORD: Correct.

LATHROP: -- to maintain employment. And so you contemplate this bill would apply to the circumstance where I leave because I can't do the nightshift because I've got to be home with my mother. But as soon as I leave and I go to try to find something on the day shift I would be entitled to these benefits?

CRAWFORD: As long as you're following those requirements with unemployment insurance of seeking work and having contact, seeking work.

LATHROP: OK got it. Thank you, Senator Crawford.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator Lathrop. Any other questions?
Senator Halloran.

HALLORAN: Thank you, Senator Hansen. Senator Crawford, thanks for bringing this bill. Cared for my-- my wife and I care for my mother for nine years, so I have a lot of empathy for people that are-- fall under those circumstances. And while it may seem-- and it may not-- it's not just may not seem, in fact, it's not as serious for the employer to find a new employee, but it is a serious concern. Clearly, they're not paying for it out of pocket. The unemployment insurance is, is, is doing the compensation here. But at times with low unemployment is-- it's no small issue at times for an employer to fill in a spot that someone vacates, particularly with unemployment the levels that it is. I'm not sure how you fix that. I mean, that's the overarching economy issue, but I just wanted to be on record that it's, it's not just the monetary cash that they don't have

to pay to do this, it is at some level not the hardship the family is going through--I'm not trying to make that comparison--but at some level it is a hardship for employers to find new employees to take that spot. Don't know how to fix that, but I just wanted it on the record that that's, that is a hardship for them as well.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator. Any other questions? Seeing none, thank you, Senator Crawford and we'll invite up our first proponent testifier for LB306.

TERRY STREETMAN: Thank you very much. My name is Terry Streetman, T-e-r-r-y S-t-r-e-e-t-m-a-n, I'm here on behalf of the Alzheimer's Association Nebraska Chapter. I want to thank you, the Chair and the committee, on behalf of all of Nebraska's Alzheimer's and dementia caregivers. In 2018, 82,000 caregivers provided more than \$1.8 billion dollars' worth of uncompensated care to the 34,000 Nebraskans over the age of 65 living with Alzheimer's disease. Approximately 25 percent of these dementia caregivers are sandwich generation, meaning they care not only for an aging parent but also a child under 18. They provide assistance with everyday tasks ranging from managing finances and coordinating doctor's visits to basic functions like

dressings, bathing, eating, and using the restroom. Caregiving often has an impact on caregivers' employment and income. As we've heard-- bless you-- 57 percent of caregivers say they've had to go in late, leave early, or take time off of work because of their caregiving responsibilities. More than one in six had to leave work entirely, either to become a caregiver or because of an increase of the burden of their caregiving duties.

Alzheimer's care contributors lose over \$15,000 in annual income from reducing or quitting work due to caregiving demands. For those caregivers forced to leave work, their financial situation can become very difficult. In 2016, dementia caregivers reported spending more than \$10,000 per year out-of-pocket on expenses for their loved ones ranging from food to adult diapers. Because of these expenses, nearly half of care contributors say they had to spend from their savings or retirement funds. Thirteen percent had to raise money by selling personal belongings such as a car or a home. Nearly a third reported eating less due to the caregiving-related costs. These responsibilities are taxing and they also take a toll on caregiver health. Nationwide, 35 percent of dementia caregivers report their health has gotten worse due to their responsibilities and the physical and emotional impact of caregiving for Alzheimer's and other dementias resulted in an estimated \$11.4 billion in increased

caregiver health costs in 2017. Having the option of collecting unemployment benefits once caregiving responsibilities have concluded would mean a much needed financial light at the end of the tunnel for these caregivers who are providing an important service to their loved ones and to our already overburdened health care systems. I urge the committee to advance LB306 and help Nebraska's caregivers get back on their feet as they reenter the workforce. I'd be happy to ans-- answer any questions.

M. HANSEN: Thank you. Are there questions from the committee? Seeing none, thank you for your testimony.

TERRY STREETMAN: Thank you very much.

M. HANSEN: Hi.

JINA RAGLAND: Hi there. Good afternoon, Senator, Senators. Chair Hansen and members of the Business and Labor Committee, my name is Jina Ragland, and that is J-i-n-a R-a-g-l-a-n-d. I'm here today testifying on behalf of AARP Nebraska in support of LB306. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families and those 50-plus. Family caregivers play a central role in the lives of older people and

those with disabilities. Increasingly, older adults or others with chronic or disabling conditions rely on family members to provide the care they need. More than 90 percent of older people receiving care in the community rely on unpaid family care, either alone or in combination with paid help, with two-thirds receiving all their care from family members. Caring for an older relative or friend is now the new normal of family caregiving in the United States. As Senator Crawford mentioned earlier, the average family caregiver in the U.S. today is a 49-year-old woman who works outside the home and spends the equivalent of an additional half-time job providing unpaid care to her mother for nearly five years. Family caregiving concerns do and will continue to have an increasing impact on both employees and workplaces because of the aging of the population and the labor force. Older workers, those most likely to have eldercare responsibilities, are an increasing population and proportion of the work force and many will need to work longer to prepare for retirement. Eldercare responsibilities fall largely not only on women but also on our low-wage workers. One study found that families living below the federal poverty level are more than twice as likely as higher income workers to provide more than 30 hours a week of unpaid assistance to parents or an in-law. Recent research finds that more than one

in six or 17 percent of Americans who work at full-time or part-time jobs provide care and assistance for an older family member or friend. Fifty-four percent of those working caregivers are women while men make up 46 percent of the work force of eldercare responsibilities. More than one in five workers between the ages of 45 and 64, the highest percentage of any age group, report being caregivers typically for an aging parent. While many families face work-family conflict, workers with eldercare responsibilities generally experience it differently than those with childcare responsibilities. What makes eldercare especially challenging is that both its onset and its duration often are unpredictable. When an older person becomes ill, roles, relationships, and expectations within the family change. Evidence suggests that more family caregivers are assisting older, older family members or friends with higher rates of disability than in the past and are more likely to be providing hands-on or often physically demanding and intimate personal help with activities such as bathing or using the toilet. Eldercare may rise-- arise gradually from chronic degenerative conditions such as multiple sclerosis, Parkinson's disease, or Alzheimer's disease. But very often the need for long-term supports and services arises abruptly as the result of an accident or an acute health crisis, such as a broken hip or a

stroke. Suddenly an adult child is thrown into the world of caregiving with little preparation or time to make choices. The financial impact on working caregivers who leave the labor force due to caregiving demands can be severe. It was also mentioned previously that family caregivers age 50 and older who leave the workforce to care for a parent lose on average nearly \$304,000 in wages and benefits over their lifetime. According to a 2009 caregiving study nearly 68 percent of family caregivers of adults age 50 and older report making accommodations at work. Workers with eldercare responsibilities report the kinds of workplace effects that open up employees to discrimination. Sixty-four percent report commonly arriving late, leaving early, or having to take off during the day to provide care. Seventeen percent report taking a leave of absence and 9 percent report reducing work hours from full- to part-time. An estimated 10 percent of these family caregivers quit their jobs to give care or choose early retirement. Nebraskans want to and do work, but oftentimes they have no other choice but to quit and provide care to their loved one. The unpredictability of eldercare and its enormous financial costs often add to the strain of family caregiving and keeping a job. We also want you to keep in mind the cost savings to the state by these caregivers providing this uncompensated care. The result of that is allowing loved ones to

age in place at lower levels of care, saving the state significant sums of money, keeping people out of higher, more expensive levels of care and institutions. As both the work force and the Nebraska population age, the workplace will include more employees who need to combine eldercare responsibilities with the jobs-- with the jobs upon which their economic futures depend. Where would we be and where will we be without our growing population of those 200,000 uncompensated caregivers? Those caregivers are estimated to be providing 182 million hours of care that's valued at \$2.5 billion annually. Thank you for the opportunity to comment on this important legislation. We would ask you for your support to advance the bill and I'd be happy to answer any questions.

M. HANSEN: Thank you. Are there questions from the committee?
Senator Chambers.

CHAMBERS: I appreciate the work AARP and the Alzheimer's Association does do. Is there a difference between aging and elderly or are the terms used interchangeably?

JINA RAGLAND: Thank you, Senator. I would say they were used interchangeably, as I've obviously done in my testimony.

CHAMBERS: So then an aging parent could be looking after an elderly child.

JINA RAGLAND: That's correct. And that happens very often and will continue to happen more and more often.

CHAMBERS: Thank you.

JINA RAGLAND: Thank you.

M. HANSEN: Thank you, Senator Chambers. Any other questions? Seeing none, thank you for your testimony, Ms. Ragland. We'll take any other proponents of LB306. Seeing none, is there anybody who wishes to testify in opposition to B306?

RON SEDLACEK: Good afternoon. Chairman Hansen, members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. Try to design-- redesign my testimony a bit and not be redundant. There's some background information I was going to share with you about unemployment comp in our employment security law. It is an insurance program that is aimed for those who have strong work histories and who become unemployed through no fault of their own. And it was established, obviously, for those who are laid off and looking for a new job. And the benefits are paid from the trust fund

that's established and supported by a special tax on employers. There are no deductions that are taken from an employee's paycheck for unemployment insurance, it's fully employer funded. So from that angle the state chamber supports the system in maintaining the integrity and solvency of the trust fund as it is funded exclusively by employers. And it's a program with specific, intended beneficiaries and it's supposed to be for temporary relief while unemployed. We do not believe it was the intention of the system to make benefits available to anyone who is currently not available to obtain suitable employment. Claimants are required under the law to meet specific eligibility standards relating to attachment to the work force, wages earned, circumstances of separation, and then readiness and ability to return to work and continued efforts to find new employment. So Nebraska's current voluntary quit provisions do disqualify an individual who quits to care for an ailing family member. And that's why, of course, why we have this legislation. And while we do recognize there's-- and I'm sure many of our members would be sympathetic and certainly I am to the potential adverse effect on someone going through trying times to care for a family member with a serious health condition, it's also necessary to recognize that there's other programs. We have the Family Medical Leave Act. A number of employer-based policies or

programs that are already in existence for this purpose, and that Nebraska's unemployment compensation law requires those collecting benefits to actively look for a job, which seems that it would be quite difficult to do if the claimant is not seeking new employment to, to care for a family member. So as the bill is drafted it-- an employee-- an employee who voluntarily quits and attempts to avail themselves of the coverage of benefits would likely be unsuccessful if they are not available for work. Under the law, the claimant in order to continue eligibility must make at least five contacts a week and they must be willing to accept an offer of-- for suitable employment. And if they refuse, then that's a disqualification. So if a claimant and-- had a part-time job and they have part-time benefits established, they could continue with part-time work, but a full-time claimant who is seeking part-time could not accept part-time because that again would be disqualification. So I'm not sure how this meshes. So that's what happens in a number of states that have enacted this type of legislation. There's quite often a lot of hoops to jump through and they find out they're disqualified anyway because then being able to requalify or defined to accept suitable work because they're caring for the family member, the reason why there is separation in the first place. Secondly, some states that have attempted this required

employees first to jump through a number of hoops. And that would be to, to, to make a concerted effort to work with the employer in order to accommodate the care before quitting and then must be shown then by whatever administrative tribunal there is in order to qualify for benefits. So it's not as straightforward as the legislation is currently drafted. And for these and other reasons we would at this time enter opposition to the legislation. I'd be happy to entertain any questions.

M. HANSEN: Thank you. Are there questions from the committee?
Senator Chambers.

CHAMBERS: Mr. Sedlacek, are you here on behalf of business and industry or the chambers of commerce? I wasn't sure what you said.

RON SEDLACEK: Oh, I'm here on behalf of the Nebraska Chamber of Commerce and Industry.

CHAMBERS: Both of them?

RON SEDLACEK: Well that's the-- that's the full name.

CHAMBERS: OK. Now if a person were to try to take advantage of this opportunity, from what source would the money come that would go to that person?

RON SEDLACEK: That-- the funds would be drawn from the Unemployment Insurance or Employment Security Trust Fund.

CHAMBERS: But it's not an individual company or business.

RON SEDLACEK: Well, they've contributed to that fund. That's what funds the fund are the employer taxes.

CHAMBERS: Well, the amount that they would contribute for one employee wouldn't be sizable, would it?

RON SEDLACEK: It depends upon if you're a negative balance employer or a positive balance employer. So it does vary on the tax rates, depending upon your past experience.

CHAMBERS: Excuse me. Which category would most of your members fall into?

RON SEDLACEK: That's a good question. I don't know the answer directly as percentagewise. You have to kind of take a look at it by industry. I would say probably the majority are positive balance employers, but when you look at construction and some seasonal work and so forth, those are generally negative balance employers.

CHAMBERS: And, generally, when you come out I don't ask you these kind of questions, but this is a unique set of

circumstances. How many members roughly are in these organizations combined, since you're speaking for both of them?

RON SEDLACEK: Well, let's just-- no, I'm speaking for just one, Chamber of Commerce and Industry.

CHAMBERS: How many members comprise the chamber?

RON SEDLACEK: Probably someplace in the neighborhood of 2,000 or greater members.

CHAMBERS: So it's for all of Nebraska, not just Lincoln or just Omaha?

RON SEDLACEK: That's correct. Yes, sir.

CHAMBERS: Is there a board or an organization of these members who determine what position the organization will take on legislation?

RON SEDLACEK: Yes, Senator.

CHAMBERS: How many members are in that group?

RON SEDLACEK: Well, we have a review process. We have a labor relations council and they meet and establish policy.

CHAMBERS: How many are on that council?

RON SEDLACEK: Oh, that, that, it's up-- it's open to the membership so it can, it can vary, depending upon who's all attending at that time.

CHAMBERS: From 1 to 1,000?

RON SEDLACEK: Well, there's never been a thousand, but--

CHAMBERS: But there could be--

RON SEDLACEK: Theoretically.

CHAMBERS: -- since it's open to the membership.

RON SEDLACEK: Correct.

CHAMBERS: So there is nothing in the organization that establishes who shall be a member of this particular council that determines these policy statements?

RON SEDLACEK: The council meetings are always open to members.

CHAMBERS: And there's-- there-- here's what I'm trying to get at.

RON SEDLACEK: They're not appointed members, if that would help.

CHAMBERS: Is an announcement made that there's going to be a meeting to try to take a position and just whomsoever will may

come and then they take a vote of those people who are present or is there a structure already comprising a certain number of designated persons?

RON SEDLACEK: A little bit of a hybrid. The-- when-- as a member of the organization you can indicate what councils, essentially committees, that you would be interested in becoming a member of.

CHAMBERS: Which, which committee determined the position on this specific bill?

RON SEDLACEK: Well, it's reviewed by the Labor Relations Committee Council.

CHAMBERS: How many were--

RON SEDLACEK: But then a recommendation then is made to the board of directors.

CHAMBERS: How many are--

RON SEDLACEK: So the board of directors makes the policy.

CHAMBERS: How many were on that initial group?

RON SEDLACEK: Well, this has been a longstanding policy over the years in regard to voluntary quits and the use of funds for that particular purpose.

CHAMBERS: So the membership changes?

RON SEDLACEK: Membership changes, yes.

CHAMBERS: And anybody can be a member who volunteers?

RON SEDLACEK: Of the council, that's correct.

CHAMBERS: Well, as they say, cutting to the chase, how many people-- did this group meet, whoever they are, and review this bill or did you recommend to them based on the policies in the past what position they should take?

RON SEDLACEK: Yeah, it's based on our written policies in the past, Senator. That's correct.

CHAMBERS: So you didn't really need to have a meeting to make a determination on this bill.

RON SEDLACEK: Not for this particular bill.

CHAMBERS: Are you the one then who made the determination that it probably would be a bill that they would oppose?

RON SEDLACEK: Not me alone, no.

CHAMBERS: You and who else?

RON SEDLACEK: Well, the staff and the policy in the past. That's correct, sir.

CHAMBERS: How many teeth does a chicken have?

RON SEDLACEK: I don't have any idea.

CHAMBERS: Neither do I, but this is as hard as pulling teeth from a chicken if a chicken has teeth. All I'm trying to find out is how the chambers of commerce decided on the position you're representing here today. Who told you to come here and speak against this bill? Was there a person?

RON SEDLACEK: Not a particular person, Senator.

CHAMBERS: A robot.

RON SEDLACEK: Not a particular robot, no, sir.

CHAMBERS: An avatar?

RON SEDLACEK: No, sir.

CHAMBERS: A group of people told you to come and do this?

RON SEDLACEK: We look at past policy and make decisions based on that. If we don't have a policy, we obviously will discuss that with our councils prior to doing so.

CHAMBERS: But we went through all that and that wasn't helpful and now I'm asking you. You are here today, correct? You, you actually are a person there, not an image like "beam me down, Scotty." You are Mr. Sedlacek, the real Mr. Sedlacek. And you-- somebody told you to come here. True or false?

RON SEDLACEK: I was not instructed or ordered become. We, again, base this upon our policies of the past, Senator.

CHAMBERS: You made the decision to come here today and speak against this bill. Correct?

RON SEDLACEK: A group--

CHAMBERS: Don't take it as accusatory. Either--

RON SEDLACEK: I know, but--

CHAMBERS: If it's legitimate--

RON SEDLACEK: It was not-- it's not unilateral.

CHAMBERS: Say it again.

RON SEDLACEK: It is not a unilateral decision on my part.

CHAMBERS: Then if there was somebody else, who else was it?

RON SEDLACEK: When we meet together as staff-- those whose policy-- we discuss our past policy.

CHAMBERS: Who comprises the staff? Does the whole-- the-- does the umbrella organization have an identifiable staff who work to carry out the day-to-day activities of the organization?

RON SEDLACEK: Yes.

CHAMBERS: Is that what you mean by staff? How many people comprise that staff?

RON SEDLACEK: In our situation there's about four of us.

CHAMBERS: So then it shouldn't be hard for you to tell me. Now these four got together and decided--

RON SEDLACEK: Including me.

CHAMBERS: Say it again.

RON SEDLACEK: Including me.

CHAMBERS: There are three plus you make four. So the four musketeers got together and decided that you should come and take this position.

RON SEDLACEK: Correct.

CHAMBERS: This is a different kind of a proposal, isn't it, where a person would be in this, this set of circumstances, not able to work, but would derive benefits from this fund that is not taking anything directly from any of your members? This is a unique situation, isn't it?

RON SEDLACEK: Well, the fund is funded by our members.

CHAMBERS: But this is a unique situation, isn't it? No member is going to be harmed by this or diminished at all by this program being carried out. Isn't that true? Which members' contribution to the fund is going to increase as a result of this program if it takes effect?

RON SEDLACEK: It'll have an overall effect on the balance in the trust fund.

CHAMBERS: Which members are likely to have to contribute?

RON SEDLACEK: Well, all members contribute. So if there's a depletion of the fund and if there's a necessity to make up for that depletion, it's spread out.

CHAMBERS: Are you familiar with-- excuse me. Are you familiar with any of the members? I don't mean individually, but the companies, firms, establishments, partnerships, whatever who comprise the overall organization. Are you familiar with some of who those are?

RON SEDLACEK: Could you repeat that, Senator? I'm not sure I--

CHAMBERS: I can't. No, that was spontaneous.

RON SEDLACEK: OK. I'm not sure I follow that question.

CHAMBERS: Are you aware of any businesses by name or firms, partnerships, limited partnerships, are you aware of any of those by name that actually belong to your organization?

RON SEDLACEK: Yes.

CHAMBERS: Is Scrooge in Marley one of them?

RON SEDLACEK: I haven't seen them on the membership roster.

CHAMBERS: But they could be.

RON SEDLACEK: Back in the 1800s, it was before our time.

CHAMBERS: But they could be.

RON SEDLACEK: They could have been.

CHAMBERS: Mr. Sedlacek, do you feel at all uncomfortable having probably exerted a good amount of influence on the position being taken here today given the circumstances of the nature of this program?

RON SEDLACEK: Do I feel--

CHAMBERS: Mr. Sedlacek, how old are you?

RON SEDLACEK: I'm in my 60s now.

CHAMBERS: I'm in my 80s now and I don't have as much trouble comprehending questions put to me as you seem to have. Are-- let me put it like this so it won't be you. Are you aware that any one of us at any time could reach a stage of mental deterioration or failure where we would no longer be able to take care of ourselves and our affairs and a family member would be the one who would do that in order that we not have to go to an institution, a nursing home, assisted living facility? Are you aware that that could happen to you or to me?

RON SEDLACEK: Yeah, I'm very aware, Senator. In fact, my mother--
- I had that-- I was in a position to care for her.

CHAMBERS: And yet you are the one who helped spearhead coming
here today to take this position?

RON SEDLACEK: I don't know about spearhead, but I'm here.

CHAMBERS: OK. That's all I have. Thank you.

M. HANSEN: Thank you, Senator Chambers. Senator Lathrop.

LATHROP: You mentioned in your testimony that there are other
programs but, in fact, the Family Medical Leave Act doesn't
compensate anybody, does it?

RON SEDLACEK: That's correct.

LATHROP: What the Family Medical Leave Act says is that if I
left to take care of a sick family member or if I had a medical
condition myself that my job would be left open for a period of
time assuming a qualified employer.

RON SEDLACEK: That's correct.

LATHROP: OK. So that's not providing any kind of substitution
for the income that one loses when they leave to take care of a

family member or when they're sick themselves. Is that also true?

RON SEDLACEK: The law doesn't provide that. That's correct.

LATHROP: OK. And so the bill before us is a way to tap into the Unemployment Compensation Fund if you have to leave an employer to go care for a family member. True?

RON SEDLACEK: That's correct.

LATHROP: And Senator Crawford has indicated that this doesn't count against any one employer's experience but rather just simply it's a draw against the fund.

RON SEDLACEK: That's correct.

LATHROP: OK. If we are in a period of recession, some employers may have to pay more because the fund is getting low and they change the, the amount that has to be withheld.

RON SEDLACEK: Correct.

LATHROP: But other than that, it's not affecting the particular employer of the person who leaves to go care for their mom or dad or whoever it is.

RON SEDLACEK: That's right.

LATHROP: OK. And it seems to me this is a pretty small group because, if I understand correctly, if I left my employer to go care for my mother I don't get compensation unless or until: a) I have to have a qualifying event-- leaving to take care of a family member, as that term is defined; and b) I now have to be looking for work.

RON SEDLACEK: That's right.

LATHROP: Right? So it's not the person who is leaving to take care of mom while they're taking care of mom they get unemployment compensation benefits and they don't have to work or look for work. It's the person who leaves because the terms and conditions of the particular employment are inconsistent with taking care of mom.

RON SEDLACEK: Possibly. It doesn't say. It doesn't say and that's the issue. In many ways there can be an accommodation made by an employer. You know, for example, let's say if you had shift work, and you had mentioned that before.

LATHROP: Right. Let's say I'm working the night shift.

RON SEDLACEK: Can I work a different shift or is there availability for a different shift?

LATHROP: So let me ask this question.

RON SEDLACEK: And that's part of the-- and that's part of the regulation in, in some states, the minority of states that have this provision.

LATHROP: OK. But you and I can agree that if I have to be able to-- I have to be ready, willing, and able to take suitable work and I have to make five contacts a week and I do those things and I can't find work that's suitable, then I would be able to collect under this bill. Those-- that's the criteria.

RON SEDLACEK: As long as long as you-- as long as you maintain that eligibility, that's correct. And that's why I was kind of surprised when I looked at the fiscal note, I mean, just short of half a million.

LATHROP: It seems high.

RON SEDLACEK: No, I thought it seemed low, actually.

LATHROP: I can't-- I can't imagine that there's going to be all that many people that qualify that may leave to take care of mom, but can still go look for other suitable work.

RON SEDLACEK: And that's what I had--

LATHROP: That's a pretty narrow group I think.

RON SEDLACEK: I have the same feeling, exactly, because I thought the fiscal note probably would come out higher than it actually has. But looking at the, the situation where there's-- if, if you're, if you're going to leave and you have those conditions, it's really going to be difficult to maintain eligibility.

LATHROP: It depends.

RON SEDLACEK: Yeah.

LATHROP: So let's say that hypothetically that I'm a traveling salesperson and I'm selling photocopying machines all over the Midwest and I have a six-state territory. And, generally, when I leave the house on Sunday night or Monday morning I don't get back till Friday. Now that person isn't going to be able to care for mom or dad or an ailing family member. Would you agree with that, other than maybe on the weekends? And so that's a job that won't work or it's inconsistent with the care a loved one needs, qualifying care. Would you agree? But if I could-- if I have family members that are going to watch mom during the day, I'm going to watch her at night, all I need is a daytime job in

town. Then I'd be able to collect under this, assuming I'm looking for that daytime job.

RON SEDLACEK: I, I believe so. I think so.

LATHROP: You mentioned that some other states have a process whereby you try to first work it out with your employer, make some accommodation.

RON SEDLACEK: Correct.

LATHROP: If that were incorporated into this bill, would you have a different position?

RON SEDLACEK: I can't make that decision here, but I could certainly take it back for discussion.

LATHROP: Yeah, I think that would be, would be helpful I think to Senator Crawford to see if there's some way to move forward without-- with your support or at least without your opposition. That's all I have, Mr. Chairman.

M. HANSEN: Thank you, Senator Lathrop. Senator Chambers again.

CHAMBERS: Mr. Sedlacek, I listen carefully when people speak. I take you seriously when you come because you have come to many hearings, not just at this-- for this committee but others down

through the years, committees of which I'm a member. It seems to me through that back and forth between you and me, you carry or wield quite a bit of weight in determining when you're going to appear to oppose a bill. So now why all of a sudden do you lack that ability to make a determination as to whether or not a change proposed for this bill would make any difference in modifying that position? Would it modify your attitude toward the bill, because you brought it up? It seems to me--

RON SEDLACEK: I don't make those decisions unilaterally, Senator.

CHAMBERS: Well, let me finish. It seems to me since you brought it up you were indicating there are states that have bills of this kind and they are less onerous, if that's the way you view this bill, suggesting that if the same approach were taken by this bill you would have less opposition to it.

RON SEDLACEK: No, actually, I am-- what I was doing is explaining that there are other states that have legislation in regard to this, but that they have other bells and whistles, so to speak, or other qualifying factors to consider.

CHAMBERS: I understand that. And the question if I understood--

RON SEDLACEK: But I don't--

CHAMBERS: -- Senator Lathrop is-- if, if consideration were given to that approach in this bill, would that moderate, modify, or maybe even remove your opposition? You are the primary force behind the position that your organization took on this bill, from what I gathered during our exchange. You wield a lot of influence and you've been with them decades, haven't you?

RON SEDLACEK: I've been with them for decades, yes.

CHAMBERS: Yes. And they would bow to recommendations that you make. And I know that. I'm asking you in the form of questions rather than just making assertions, but there are assertions I can make about how your organizations and the element of it that you represent function. I study my opponents and you are often on the other side of a bill. So you could make that determination right here and you could take it back to that staff or wherever you pretend to talk to and tell them, this modification if made will remove our opposition to this bill. You could do that. I'm not going to put you on the spot and have you do it. But I want you to know that I know. So when we have a conversation other than here you're aware that I might not be quite as dumb as you think that I am. Because of my advanced age, I'm what's called an octogenarian now and we're not supposed to be able to follow a complex argument. We're not able

to remember the 20th step. After having gone from 1 through 20 we can't remember the first 1, 2, 3 through 19. But I assure you that I remember and I feel so strongly about this that we'll have a conversation about it, so I don't have to take any more of the time of the committee. But think about what I'm saying because you are a good man. You want to be a good man. And as you and I approach the end of the trail, there may be something after this where we're going to have to give account. And I don't want your account to be out of balance when that time comes for you.

RON SEDLACEK: Thank you.

CHAMBERS: That's all that I had.

M. HANSEN: Thank you, Senator Chambers. I, I, I would have a couple questions. So just kind of trying to clarify your opposition to this bill, you started off by kind of critiquing this program as being one that you don't think many individuals would qualify for because they do have to actively be seeking work once they leave. Is that correct?

RON SEDLACEK: Yes, sir.

M. HANSEN: And then you're also critiquing the program as being probably unduly expensive.

RON SEDLACEK: It's not a-- not, not the direct expense on each and every-- it would, it would certainly have some impact.

M. HANSEN: Sure.

RON SEDLACEK: At least the fiscal note shows about a half a million impact, a little less, \$400-and some thousand, if I recall. The, the concern is--and again it just goes back to the policy as to-- we've got to continue to keep the insurance program for those who quit through no fault of their own and not have a number of exceptions and for this, for this, for this, etcetera. And as they-- as they pile up, then it becomes-- it becomes more serious.

M. HANSEN: So it is-- I guess kind of stepping back, I just wanted to clarify your remarks. So is the fact that Senator Crawford's bill is pretty limited and does apply to only people who have left a job and are still doing the other things they have to do for employment, actively seek work-- you mentioned the five times a week and all that. That's actually probably something that you are supportive of, it's just the underlying concept of voluntarily leaving a job. Is that correct?

RON SEDLACEK: That's correct.

M. HANSEN: OK. Thank you. Seeing no questions, thank you for your testimony.

RON SEDLACEK: Thank you.

M. HANSEN: All right. We'll take our next testifier on LB306.

BOB HALLSTROM: Chairman Hansen, members of the committee my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the National Federation of Independent Business in opposition to LB306. I have also been authorized by Mr. Jim Otto to put forth the opposition of Nebraska Retail Federation for this bill as well. To save some time for the committee and get into any questions that you may have, my written testimony is pretty similar to Mr. Sedlacek's oral testimony, even though we did not coordinate our remarks to that effect. I would note on page 2, I have indicated the, the other states' alternatives that even where in some cases they have had this compelling medical reason exception for voluntary leaves and good cause, that they do also have more stringent requirements with regard to the indication that if an employee leaves employment rather than accepting a leave of absence, for example, or fails to take advantage of reasonable alternatives or accommodations, that is - the leave is then deemed to be without good cause. So those are certainly some issues that I think could be taken into

consideration in looking at this bill. With that-- and I would note Senator Halloran's point is spot on, particularly with regard to smaller employees-- employers without discounting at all the hardships that families go through that there are issues regarding having to find a replacement employee, things of that nature that go right along with some of our concerns on a similar issue which is paid family medical leave that we may have some opportunities to talk to the committee about at some point in this session as well. So I'd be happy to address any questions that you may, may have.

M. HANSEN: Thank you. Are there questions for Mr. Hallstrom?
Senator Chambers.

CHAMBERS: Mr. Hallstrom, I'm not going to ask you all the questions that I asked Mr. Sedlacek, but when I see him I expect you to be sure-- up shortly. And if I see you, I expect him shortly after you. So you two are kind of like a tandem, aren't you? I don't mean you coordinate. You made it clear that you don't coordinate

BOB HALLSTROM: Yes, sir.

CHAMBERS: In the sense that you both follow basically the same approach because of the nature of the organizations you represent.

BOB HALLSTROM: Correct. And I think you've referred to us as Frank and Jesse James on occasion, but that's a different matter for a different day.

CHAMBERS: I didn't say at this time though, did I?

BOB HALLSTROM: No, you didn't.

CHAMBERS: But because of that I don't have a lot of questions. But I'm going to ask you, do you see where this program or do you believe that if this program were to be put in place by the Legislature it would affect the bottom line of any one of your organizations substantially?

BOB HALLSTROM: I would say, Senator, only in an indirect measure which would be to the effect that Mr. Sedlacek also addressed, it comes ultimately-- you know, somebody has to pay for it ultimately. If it's paid up front, out of the trust fund as to not hit an employer directly. Now as that trust fund goes down if we run into recessionary times, as I think Senator Lathrop might have mentioned, then there will be a day of reckoning that, that all employers are going to have to pay slightly

higher rates for having paid what I think the fiscal note estimated \$400,000 for this particular program.

CHAMBERS: Each member would pay that much?

BOB HALLSTROM: Collectively.

CHAMBERS: And how many members are there roughly?

BOB HALLSTROM: Members of my organization are probably about 4,500. That's the National Federation of Independent Business. But there are many, many more employers in the state than that, Senator.

CHAMBERS: So make it \$100 a member or less?

BOB HALLSTROM: If our members were paying all of it.

CHAMBERS: A hundred dollars or less. I, I, I'd kick in--

BOB HALLSTROM: Four thousand into four hundred thousand would be a thousand dollars apiece, but we wouldn't be paying for all of it.

CHAMBERS: And that's not a-- that's a drop in the bucket. Here's what I'm trying to get to. This program is so unique. It is a societal program, that I'd venture to say if you polled your members they would love to be in a position to sponsor a program

that would somewhat humanize their image. And they'd rather do that than have their representatives come here and say, no matter how essential the program how small a burden it might be on the membership at large, because of policy statements in the past that will be in a knee-jerk fashion objected to just like everything else. I think instead of you two assuming so much responsibility on some of these unique-type programs it might be a good idea to poll some of your members and see what they would want their image to be with reference to a program like this. And now I'm not jesting.

BOB HALLSTROM: Yeah, and, Senator, I would-- I would say for the record that is exactly how NFIB-- we're probably a little bit unique in terms of the manner in which we establish positions. Our organization does not have a state of Nebraska board of directors, if you will. We send out a state ballot each and every year that contains four to five questions on issues that we either anticipate are going to come up before the Legislature or that have been before the Legislature in the past. We have asked, perhaps not specifically on compelling medical health reasons, but voluntary leaves and good cause for different types of situations that might come about. And that's what our membership has told us over, over time.

CHAMBERS: Did you put that as one of several questions or that was a discrete question of its own?

BOB HALLSTROM: Have not done it as specifically, Senator, as to the compelling medical reasons but there have been different issues in the past that have had voluntary leave associations, domestic abuse, things of that nature that the Legislatures adopt over time. So we have asked our members those types of generalized questions with regard to allowing for voluntary leave with good cause.

CHAMBERS: Well, with this self-contradictory question I'll be through. I'm not telling you and wouldn't presume to tell you how to conduct your affairs. But I think it might be a wise idea to poll them on this specific issue by itself.

BOB HALLSTROM: Certainly, Senator.

CHAMBERS: And I'm through. Thank you.

BOB HALLSTROM: Thank you.

CHAMBERS: And if Mr. Sedlacek is here, then tell him and if he's not here pass it on to him.

BOB HALLSTROM: And I will soon-- I may testify first on the next bill of this nature so.

CHAMBERS: Thank you, Jesse.

M. HANSEN: Thank you.

CHAMBERS: You brought it up.

M. HANSEN: Thank you, Senator Chambers. I would have a question.

BOB HALLSTROM: Yes, sir.

M. HANSEN: So in your testimony you referenced some other state examples, including not requiring the employee take or be offered a leave of absence or something of that nature. Would language to that effect, if adopted, change your position on the bill?

BOB HALLSTROM: I don't-- I can't tell you today that it would change our position, but I certainly would look at that and visit with our membership to the extent I can on, on short notice. We normally go through the balloting process. But we certainly can, can try to get something of that nature. And I think the, the states-- there were two states, Maryland, New York, California was the third one that even in those states they have some of these types of caveats, if you will, that constitute without good cause unless you jump through those hoops.

M. HANSEN: OK. Thank you.

BOB HALLSTROM: OK.

M. HANSEN: Any other questions? Seeing none, thank you.

BOB HALLSTROM: Thank you.

M. HANSEN: Is there anybody else who wishes to speak in opposition to LB306? Seeing none, does anybody wish to testify in neutral on LB306? Seeing none, Senator Crawford, you're welcome to close.

CRAWFORD: Thank you. I'd like to thank those who came to testify today. I just want to respond to a couple of the comments in the opposition testimony. Mr. Sedlacek mentioned that one of the concerns of the Nebraska Chamber of Commerce is the integrity of the Unemployment Insurance Act. And his, his concern is that it's not intended for those who are not available for work and it's intended for those who leave through no fault of their own. I just want to remind the members that this is only-- this does only applica-- apply to those who are in some way seeking work, so it does not violate that principle. And, and, in fact, back to the fiscal note, a 100 people supposed-- leave for caregiving responsibilities, but this would only apply to those-- the part of the 100 who is able to look for and seek a new job at that

time, so I think that would be lower than that. And the second is really a definition of what "through no fault of their own" means. This bill contends that family caregiving is an example of something that happens to someone through no fault of their own. And so because it occurs-- happens to someone through no fault of their own it just-- you should be justified as a good cause leave. And that is something like a policy decision for our committee for the body to decide if through no-- if family caregiving is appropriate-- a justification for someone to take unemployment insurance which is intended for somebody who has to leave through no fault of their own. I do think that we would expect business opposition to any new reason-- any-- that's added to unemployment insurance. It's a new liability for them to address. And so I expect there would be some opposition to those, those. And then I think the policy question that we have to decide is do we feel like it's an appropriate protection for our workers? We feel like it's an appropriate policy decision for our state to make. As they noted they've opposed other new reasons that we have added to our legislation in the past. Things like domestic violence and that's a case that we had similar opposition testimony but we decided as a body, no, that's an important reason for someone to leave through no cause of their own and have decided in those-- in that case, as one

example, to pass a policy despite initial business opposition. I think an interesting conversation about the accommodation question, my understanding from the first testifier was this would be added regulation that might be of concern. And from the second testifier that it would be-- business testifier that it could be a positive addition to the bill. So I'm willing to talk to the committee about what we think about that. Is-- there is that balance between adding that standard to make, make it more clear someone's leaving through no fault of their own versus the added regulation if you're adding new steps that someone has to prove or the employer has to document would be adding those steps when one would expect someone who is leaving and still seeking work would try to make accommodations in their current job. So I'm happy to talk to the committee about their sense of what is-- which is the appropriate policy decision to make. And with that I'm happy to answer any other questions.

M. HANSEN: Thank you. Are there questions of Senator Crawford?
Senator Halloran.

HALLORAN: Senator Hansen. Real quick, Senator Crawford. The leave from work is, is based upon serious health conditions of family members?

CRAWFORD: Correct.

HALLORAN: And I understand the serious health condition definition by-- as it's stated in the bill, 29 U.S.C., Section 2611. I understand those conditions. I guess my question is, is there, is there anything we can put in the bill that would say, for lack of a better term, a medical note from a doctor? My human nature says I should trust people, they would not abuse something. But, but, I've been, I've been disappointed before with people disappointed me on their good, good human nature. So my question is, is can we put something in here that says, in effect, a serious medi-- health condition as noted and authorized from a medical doctor?

CRAWFORD: I think that's often part of the regulation component that would be tied to the bill. I think that part of that is-- I'm trying to recall if that's in that specific definition of health condition itself. But I have no opposition to the fact that someone would have to demonstrate that health condition.

HALLORAN: OK. OK, thank you.

M. HANSEN: Thank you, Senator Halloran. Senator Hansen.

B. HANSEN: I think that was a question I kind of had, too, is what constitutes somebody being able to not care for themselves. I don't know what kind of specificity, like whether it is

Alzheimer's or whether it is someone who broke their leg and needed help, you know, and how we determine that and who determines that I guess is kind of the question I had, too.

CRAWFORD: Sure. And, and that's why we use the same definition that's used for the Family Leave Act, so that employers are used to dealing with that situation, used to what documentation they require for their situation. This then uses that same definition so that the similar documentation, similar policies can be put in place by the departments to understand what it is that-- what the conditions are under which they would expect someone to have to leave. And just to clarify again, this is not the same as, as family leave because in the case of family leave you're expecting to come back to your same job. And this is a case where for some reason it is apparent that you are not able to have this job but you would be willing and able to have a different job or you may have to leave your job temporarily and quit for a short-- for a short time period and then this would pick up when you were ready to on ramp back on to the workforce.

B. HANSEN: OK. And, again, just personally I really like the intent of this bill. I think the more we keep people at home, take care of their family, less burden it puts on even us as a state to some extent, on Medicaid or being in a retirement home

or hospice care. And so I really like the intent. This comes from playing a little bit of devil's advocate a little bit here. As more of a business owner how this would affect me, because I have multiple businesses. And if I have multiple employees leave, like Senator Halloran echoing what he said about it is sometimes tough to find another employee when someone can't. So there is some burden on the employee. But whether this is the government's role and to, to play a part in that and forcing the employee-- employer to do something you know is to be determined yet I guess in this bill. And but what--

CRAWFORD: So I just want to comment and respond to the one comment. We already have people who are leaving their job for caregiving responsibilities. So if, if, if there is-- if you have a family member with that kind of a need and you have to leave your job, then we already have-- that's already a situation we're going to have to replace that employer-- employee, excuse me.

B. HANSEN: And just a couple of things with the bill. What constitutes-- it says individual spouse or domestic partner. What determines a domestic partner? Is that in the-- because that's-- that was added in new. Is that someone who like just lives with you currently or is their civil union a part of it?

Or is there-- I'm trying to determine what would make a domestic partner.

CRAWFORD: I'm assuming we have, we have used that term in many of our laws. So I'm assuming it's fairly well established by the courts in terms of what that means.

B. HANSEN: I figured it would be, I just didn't know for sure to kind of clarify that. And I think that's all the questions I had.

M. HANSEN: Thank you.

B. HANSEN: Thank you, Senator.

CHAMBERS: I'm going to refer to your new member as Hansen number two. And I take offense at one thing he did. You haven't been here long enough to use the term "devil's advocate." That term is reserved for me and you haven't earned the right to use it yet. So I just thought I'd make that clear.

B. HANSEN: I'm working on it. Sorry.

M. HANSEN: Thank you, Senators Chambers-- Senator Chambers. Any other questions from the committee? Seeing none, thank you, Senator Crawford.

CRAWFORD: Thank you.

M. HANSEN: Before we close the hearing, I'll read in a couple letters, three letters. We have a letter of support from: John Antonich of NAPE/AFSCME Local 61; a letter in support from Susan Martin of the Nebraska State AFL-CIO; and a letter of support from Scout Richters of the ACLU of Nebraska. And with that, we'll close the hearing on LB306, which will take us to the next bill, which is mine. So I will turn it back over to our Vice Chair, Senator Hansen.

B. HANSEN: Welcome Senator Hansen.

M. HANSEN: Thank you, Senator Hansen.

B. HANSEN: We will hear-- that sounded weird. We will hear your opening statement.

M. HANSEN: Appreciate. All right. Good afternoon, Vice Chair Hansen and fellow members of the Business and Labor Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB359, which I introduced on be-- behalf of the Department of Labor. It is the annual cleanup bill from the department. It does a variety of different mechanisms and changes to the law, which I can briefly summarize. LB359 amends

the Unemployment Trust Fund calculation process. It gives the Commissioner of Labor administrative authority to adjust the combined tax rate to keep the Unemployment Trust Fund balance within the target range. It also updates Nebraska Department of Labor accounting processes. LB359 also makes the position of Meatpacking Worker Bill of Rights [SIC] coordinator as a Commissioner appointee rather than a Governor appointee and expands the message-- methods of service for wage payment collection citations. Testifying immediately after me today will be the Department of Labor, who could better explain the details and reasons behind these specific changes. And with that, I will end my opening and ask the committee to consider LB359.

B. HANSEN: Any questions? Thank you, Senator Hansen.

M. HANSEN: Thank you.

B. HANSEN: We will hear any proponent-- proponents on the bill, please.

JOHN ALBIN: Vice Chair Hansen, members of the Business and Labor Committee, for the record my name is John Albin, J-o-h-n A-l-b-i-n, I'm the Commissioner of Labor appearing here today in support of LB359. I would like to thank Senator Hansen for introducing LB359 on behalf of the department. LB359 primarily

updates language in statute, but also contains two minor substantive changes. Nebraska and every other state that I'm aware of deposits recoveries of overpayments to unemployment benefits to the benefit sub account or the unemployment compensation account and offsets those recoveries against future draws from the Federal Unemployment Trust Fund. However, 48-621 says that they are first deposited to another sub account, the clearing count, and then moved to the federal account before they can be drawn down into the benefit account for the payment of benefits. The amendments at page 2 of LB359 would codify current practice through a direct deposit to the-- into the benefit account and bring Nebraska into line with other states. The amendment at page 4 merely moves language from Section 48-652 to place in the statutes where it can be more logically found. The amendments on page 6 address an issue that arises when the department contracts to perform studies for other state agencies or outside entities. The department can't pay the expenses of those projects from federal funds, so we need a revolving fund to draw from while awaiting payment. This amendment would specifically authorize the department to use the Employment Security Special Contingent Fund as a revolving fund to pay the expenses from while we await payment. The amendments at page 8 and 9 of LB359 are a couple of

housekeeping date changes and a recognition that it's really department staff rather than the worker training board members who prepare the board's annual report. The board has never had a dedicated staff, as the various board support functions are part of a shared duties of several department staff. The changes on page 11 are substantive and do not represent huge policy changes. The Department of Labor used the statutory formula passed by this Legislature in I believe 2005 to set the annual combined rate for employers. As part of the calculation the department considers all combined taxes paid through the third calendar quarter of the calendar year. Each employer files quarterly wage reports and makes quarterly tax payments, and since several of you are business members you're familiar with the process. The department has a pending regulation that would allow employers to provide hours worked by their employees on a court-- on their quarterly wage reports to pay their employees-- to pay their unemployment taxes on an annual basis instead of a quarterly basis. In order to avoid the possibility that the delayed payments would cause an unintended change in the rate setting process during the first year of implementation, this change would allow the department to include those taxes the cooperating employers would have paid in those three quarters in the rate computation process. Under the statutory formula, when

the account-- amount available for the payment of benefits is 1.1 percent or more of the total wages paid in the state, the Unemployment Fund is considered overfunded under that statutory formula. And the next year's tax rate is set as a reduced rate in order to bring the fund back within the target range of 85/100ths percent to 100 percent of covered wages. The formula does a good job of rebuilding the trust fund when it goes below the target range as is evidenced by the outstanding performance of the fund during the Great Recession. However, the formula does not bring the trust fund balance down fast enough when the trust fund is overfunded. The department has been at a reduced rate schedule for the last six years and will probably remain at a reduced rate until the next recession, whenever that is. The amendment at page 12 of LB359 gives the Commissioner the ability to administratively adjust the yield factor to a lower rate on the schedule during the annual rate-setting process to help bring the fund within the target range if the fund is overfunded as determined by the statutory formula. The final two changes at pages 16 and 17 of LB359 expand the methods of service of wage payment and collection citations to include all recognizable methods of service under Chapter 25, Article 5, such as personal service, resident service, and certified mail service and makes the position of the Meatpacking Workers Bill of Rights

coordinator a Commissioner appointee rather than a Governor appointee. That concludes my testimony and I'll be happy to answer any questions.

B. HANSEN: Senator Lathrop.

LATHROP: John, I just have a question about the percentage that's withheld. So we put money into the Unemployment Trust Fund. And then when it gets to a place we sort of stop or we get a smaller withholding from employers?

JOHN ALBIN: Yes. Yes.

LATHROP: Is the amount that we need to withhold or that we want in the account before that's triggered change under this bill?

JOHN ALBIN: No.

LATHROP: OK. This-- that's all the same.

JOHN ALBIN: That's all--

LATHROP: Because you said something about how well we did during the Great Recession.

JOHN ALBIN: And we did.

LATHROP: I remember-- I remember that. I was involved in that, because we did take some federal dollars to shore that account up and we had a lot of employers who were not happy with their withholding rates during the Great Recession.

JOHN ALBIN: We did not take federal dollars to withhold ours. We were solvent throughout. What happened was that the amount of-- the trust fund formula is a set up or the funding formula is set up as a pay-as-you-go-plan and it's really pay-as-you-went because we set the rates to recover the same amount of taxes we paid the year before. So we went from some very low benefit payment amounts. We were typically in the \$100 million a year range and in the Great Recession we went up to \$200 million. And under the formula, that basically required you to double your rate for the following year to try and recover that \$200 million. So it wasn't federal funds, but there were some drastic increases during that time period to cushion that blow.

LATHROP: But the amount that-- before we trigger the lower rate, that that isn't changing, right?

JOHN ALBIN: That does not change. We're still using a formula that we came up with in conjunction with, with Professor Goss at the-- everything for below .85 percent is considered a error. There's an increased rate, and that did happen during the Great

Recession, and everything 1 percent or more triggers a reduced rate. And that will continue under this bill.

LATHROP: OK. When you said Professor Goss that, that sounds like something that's happened not that long ago. When did those-- when did those percentages change?

JOHN ALBIN: Actually, the-- there weren't percentages until Senator Cunningham brought the bill, I believe our bill was in 2004.

LATHROP: OK.

JOHN ALBIN: I could be wrong in that year. And up until then it was kind of whatever the Commissioner and the Governor thought would be the appropriate rate for the next year, which was a lot of guesswork on our part. And we want-- and everybody would come to us and say, well, you could-- you could have got just this much or late or you should have gone this much more. And so we said let's put it in statute. We'll all agree upon what that appropriate range is.

LATHROP: And that was done in '04?

JOHN ALBIN: I believe that was '04.

LATHROP: OK. That's what I wanted to know. I just want to make sure we don't go down-- because the thing about that Unemployment Trust Fund is it hits employers at the worst time. Business is low, they've got more unemployed employees or former employees, and then they're asked to pay more money when business is tighter.

JOHN ALBIN: Yeah. And that is another reason that in this bill the commissioner can only do the reduced rate if the trust fund is by statutory formula overfunded. It would not be available to a commissioner if it was underfunded.

LATHROP: OK. Thanks, John.

B. HANSEN: Any other questions? Thank you.

JOHN ALBIN: Thank you.

B. HANSEN: Anybody else wishing to testify? OK. Hearing none, is there anybody wishing to testify in opposition to the bill? Hearing none, is there anyone wishing to testify in a neutral capacity to the bill? Hearing none, do you wish to close, Senator Hansen?

M. HANSEN: Thank you, all. Please advance LB359. Any questions?

B. HANSEN: Thank you. OK. That will close the hearing on LB359
and that will close the Business and Labor meeting today.