

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Business and Labor Committee March 25, 2019

**M. HANSEN:** All right. Good afternoon, and welcome, everyone. All right. Good afternoon, and welcome to the Business and Labor Committee. My name is Senator Matt Hansen and I represent the 26th Legislative District in northeast Lincoln and I serve as the Chair of this committee. We'll start off today with our having introductions of our committee members and committee staff starting on our right with Senator Slama.

**SLAMA:** Julie Slama, District 1, Otoe, Nemaha, Johnson, Pawnee, and Richardson counties.

**HALLORAN:** Steve Halloran, District 33, Adams, and southern and western part of Hall County.

**LATHROP:** Steve Lathrop, District 12, that's Ralston and parts of southwest Omaha and Douglas County.

**TOM GREEN:** Tom Green, legal counsel.

**CRAWFORD:** Good afternoon, Sue Crawford, District 45, which is eastern Sarpy County.

**M. HANSEN:** In the back.

**KEENAN ROBERSON:** Keenan Roberson, committee clerk.

**M. HANSEN:** All right. Thank you all. Also assisting our pa-- today are our committee pages, Hunter and Kaci. This afternoon, we'll be hearing three appointments and four 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'll find white testifier sheets. If you're planning to testify today, please fill one out and give it to the page who will give 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 in that position during that bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out the white sheets in the back of the room. I'd also like to note the Legislature's policy that all letters for the record must 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 will ask that if you do have any handouts, that you please bring nine copies and give them to the page. But if you need additional copies, the page will help you

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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, followed by those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given the 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 up, we'll ask that you wrap up your final thoughts. Finally, I'd like to remind that everyone, including senators, to please turn off your cell phones and put them on vibrate. With that, we'll begin today's hearings with appointments to the Boiler Safety Code Advisory Board and we'll look them up. Scott Hollman, our first appointee. Hi, welcome. Please introduce yourself and your case for being appointed to the board.

**SCOTT HOLLMAN:** My name is Scott Hollman, S-c-o-t-t H-o-l-l-m-a-n. I learned of the opening on the State Boiler Safety Advisory Board. I currently work for Cleaver Brooks. Previously, in a capacity of quality assurance manager and then currently as an interim director of operations. With my involvement in boilers, this position or appointment is very important to me and to further serve this great state of Nebraska.

**M. HANSEN:** All right. Thank you. Any questions from committee members? All right. So I would have one. So you're a new appointment. Correct?

**SCOTT HOLLMAN:** Yes.

**M. HANSEN:** So in your experience working with a private company, have you had much interaction kind of from the business perspective to the, the State Advisory Board?

**SCOTT HOLLMAN:** We do interact with Chris Cantrell, the state boiler inspector.

**M. HANSEN:** Sure.

**SCOTT HOLLMAN:** He conducts our audits for ASME certification as well as National Board certification. And then I've attended his state boiler inspection-- like meetings.

**M. HANSEN:** All right.

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**SCOTT HOLLMAN:** I'm sorry, was that--

**M. HANSEN:** That's what I was looking for. Just kind of--

**SCOTT HOLLMAN:** OK. Yeah.

**M. HANSEN:** --your perspective. Any other questions? Seeing none, thank you for coming down.

**SCOTT HOLLMAN:** Thank you.

**M. HANSEN:** All right. Following this, we will invite up any proponents to Mr. Hollman's appointment. Seeing none, any opponents? Seeing none, you're in the clear. All right. Any in the neutral capacity? All right with that, we'll close the, the-- that appointment hearing. And we'll move on to our next appointment hearing which is a reappointment of Steven Bley. And we'll welcome up Mr. Bley.

**STEVEN BLEY:** Hi.

**M. HANSEN:** Welcome.

**STEVEN BLEY:** Thank you.

**M. HANSEN:** Go ahead.

**STEVEN BLEY:** Steven Bley, S-t-e-v-e-n B-l-e-y. I've served two previous terms on the State Boiler Safety Code Advisory Board. I have been representing the owners of boilers in the state of Nebraska as an employee of the Omaha Public Power District. We have boilers of all shapes and sizes, have a lot of experience with those. Registered professional engineer in the state of Nebraska. You know, specialized in boiler issues my entire career. So I feel that I am well-versed to represent the people of Nebraska and the owners of boilers.

**M. HANSEN:** All right. Thank you very much. Questions from committee members? So this will be your appointment to your third term on the board then?

**STEVEN BLEY:** Correct.

**M. HANSEN:** Is there any particular accomplishment or undertaking of your board tenure that you're proud of or like to share?

**STEVEN BLEY:** I would, I would say it's just good to be part of the process. We bounce ideas off of each other when there are changes to

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the Nebraska Boiler Act. It's just a rewarding thing to be part of the process.

**M. HANSEN:** All right. Thank you very much. Seeing no questions from committee members, thank you for coming down. All right with that, we'll move to see if there's any proponents to the appointment? Seeing none, any opponents to the appointment? Seeing none, anybody wishing to testify in neutral? All right. We'll close that appointment hearing, and we'll move on to the appointment hearing of Thomas Phipps.

**THOMAS PHIPPS:** Thomas Phipps, P-h-i-p-p-s. I currently am the public safety representative of the State Boiler Board. I am the current chief mechanical inspector with the city of Omaha. I am the city-- also the city boiler's inspec-- boiler inspector. I carry a national board commission for that particular thing and I am seeking my third term on, on the State Advisory Board.

**M. HANSEN:** All right. Questions from committee members? Seeing, seeing none from other members, I would just ask the same question. You know, in your first two terms, is there anything you're particularly proud of that you've accomplished or worked on?

**THOMAS PHIPPS:** I believe it's similar to what Steven said is, when we updated the code to bring it up to current code compliance with National Board and with other entities such as ASME.

**M. HANSEN:** Great. Thank you. Seeing no other questions, thank you for coming down. We'll move on to proponents of Mr. Phipps? Seeing none, any opponents? Seeing none, any in the neutral? All right with that, we will close our hearings on the three appointments for today. Thank you all three gentlemen for coming down and for your willingness to serve. And with that, we'll move on to the hearing for LB19, Senator Briese. And we'll let the record know that Senator Ben Hansen has joined us. When you're ready.

**BRIESE:** OK. Well, thank you and good afternoon, Chairman Hansen and members of the Business and Labor Committee. I'm Tom Briese, T-o-m B-r-i-e-s-e. I represent the 41st District. I'm here to present for your consideration my LB19. This is a bill to provide a measure of confidentiality for first injury reports on private citizens filed with the Nebraska Workers' Compensation Court. Nebraska Revised Statute Section 48-144.01 requires that, quote, in every case of reportable injury arising out of and in the course of employment the

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employer or workers' compensation insurer shall file a report thereof with the Nebraska Workers' Compensation Court, unquote. These reports typically contain the name of the injured, the name of the employer, and the nature of the injury among some other things. And these are the kind of details that in any other situation would be governed by HIPAA and myriad other federal and state programs to protect a person's medical history. But in these cases they essentially become a public record. Nebraska Revised Statute Section 84-712 makes available for examination by citizens all public records of the state or any political subdivision; 84-712.05 provides exceptions to our Open Records Act by allowing entities to withhold from public view various categories of records. There are currently 20-such categories, I believe, maybe a little more than that. LB19 amends this statute to restrict access to first injury reports. It amends the statute to require, to require nondisclosure of a new category of records and that category would be the first injury reports pursuant to Section 48-144.01. However, LB19 also provides that such records shall be available for inspection in limited circumstances. These circumstances include requests by the employee, or his or her agent, request by the employer workers' comp insurer or risk management pool or third party administrator, or the agent of any of the above, request by a third party identifying the number and nature of injuries to employees of employers identified in the request so long as the name of the employees are redacted, and request by a nonprofit for providing memorials or counseling in the event of employee death. The bill further provides that such records shall be made available for any federal or state investigation or compilation of statistical information. I submit to you that this is good legislation. What it does is protect the privacy of our citizens. By doing so, it can also encourage workers to come forward to disclose minor injuries they might otherwise be reluctant to disclose. And I maintain that disclosure of this information is not necessary. It's my understanding the Workers' Compensation Court has an 800 number which employees can call to access information regarding their rights. Injured workers already have adequate access to information regarding legal representation. And the vast majority of those cases-- these cases don't result, result in litigation anyway. You know, so my question is, what's the need that is so compelling as to warrant this intrusion into the privacy of these employees? And I submit there is none. I do note that 37 states have some sort of restriction on this information including several of our neighbors such as Iowa, Kansas, Missouri, and South Dakota. Bottom line an employee should not be required to

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surrender their right of privacy to have the court provide recourse. I'd ask for your support in moving this bill forward. Thank you.

**M. HANSEN:** Thank you, Senator. Questions from committee members? All right. Seeing none, thank you for your opening.

**BRIESE:** OK. Thank you.

**M. HANSEN:** All right. With that, we'll move to proponents of LB19.

**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 as registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business to testify in support of LB19. Senator Briese has done a nice job of framing the issue in terms of the confidentiality of first injury reports and we would like to provide for a measure of exceptions to provide a limitation on the solicitations that occur because this information is made available to the public. One of the areas of law regarding workers' compensation where employers probably hear the most from their employees is this particular area. They are wondering why they are getting letters from attorneys seeking to assist them in, in the course of a workplace injury. And the employer says we're required by law to disclose this information. They are surprised. I know there's an exception for-- from HIPAA for workers' compensation related records but they don't know that. They don't have any expectation that this type of information would be made public particularly for the purpose of having solicitations. Senator Briese has noticed-- noted that the vast majority of states have similar types of confidentiality of first injury report or workers' compensation types of records. So it would not be unprecedented for Nebraska to join those states. It's also not unprecedented under Nebraska law. In my testimony, I noted that the provisions of 48-612 and 48-612.01 grant confidentiality protections to unemployment insurance records which are certainly similar to the records that we are seeking the confidential treatment of here. I think everyone has ample opportunity to be represented by an attorney if they so desire. There's plenty of avenues through public records and the workers' compensation court to obtain information regarding the need for an attorney if one exists. But in many cases, as Senator Briese noted, there's minor injuries for which no representation is necessary and sometimes these employees end up losing some of their benefits to attorney fees when they're represented perhaps in cases where they

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would not need to have been. And I'd be happy to address any questions that the committee may have.

**M. HANSEN:** Thank you, Mr. Hallstrom. Are there questions from committee members? All right, seeing none.

**BOB HALLSTROM:** Thank you.

**M. HANSEN:** Yeah. And I will note we do have some on-deck chairs up front so if anybody's planning on testifying you're welcome to come forward while the previous testifier is coming up.

**KATHY SIEFKEN:** It's difficult to get in and out of those.

**M. HANSEN:** I-- fair enough. Welcome.

**KATHY SIEFKEN:** Chairman Hansen and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association in support of LB19 and we would like to thank Senator Briese for bringing this bill. It's probably one of the best bills we've heard before this committee this year. We love this bill. So with that, we do support it. Withholding first injury reports from the general public with appropriate exceptions gives employers a chance to work with employees to establish a plan that provides appropriate care and a plan to help them get back to work as quickly as possible. We believe it's very important. Everyone wins when this type of legislation is passed because it allows the system to work as it was intended to work. It's a good bill and we ask that you pass it out of committee if you have any questions I'd be happy to answer. Thank you.

**M. HANSEN:** Thank you. Are there questions from committee members? All right, seeing none.

**KATHY SIEFKEN:** Thank you.

**M. HANSEN:** Welcome.

**RON SEDLACEK:** Good afternoon, Senator Hansen and 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 and Industry also in support. There's been a lot of iterations with this bill over the decades and I can remember one of the first times it was heard was back when Judge Novicoff was presiding judge of the Workers' Comp Court and decided to bring this

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concept before the Legislature. It's been many years ago. And since, since then there've been, as they say, many bills that address the situation. Employer community, there's a couple of reasons why we support the bill obviously. Are there some employers that get irked when their employer gets injured and they get all these letters and solicitation? Not necessarily. Sometimes depends on maybe the tone of the letter that can, that can get some people excited. But more often than not it seems like these days that when the employees are disappointed and they come in and they say, you know, I had a small cut, went to the company nurse or clinic and all of a sudden I'm getting all these letters. Why is that? Why did you reveal my confidential information? This is not unheard of in other areas of practice. There are some health care provider regulations that require kind of a cooling off period of a few days or weeks or even up to 30 days before solicit-- solicitations can be made. But it's not really a purpose of stopping the solicitation so much as the expectation that there is some privacy or there should be some confidentiality. After all, Nebraska is one of 13 states remaining now that still do not have any privacy or confidentiality protections. So we'd ask the committee to take a closer look at legislation of this kind and keep in mind those privacy concerns and, and to work out some legislation that could be advanced that's reasonable that would meet the expectations of, of employees. And that's all I have to testify for and I'd be happy to entertain any questions.

**M. HANSEN:** Thank you. Are there questions from committee members? Seeing none, thank you.

**RON SEDLACEK:** Thank you.

**M. HANSEN:** All right, are there any other proponents to LB19? Seeing none, is there anybody who wishes to testify in opposition to LB19? And a reminder, we do have the on-deck chairs if anybody would like to use them.

**JOHN CORRIGAN:** Good afternoon, members of the committee, Mr. Chairman. My name is John Corrigan, C-o-r-r-i-g-a-n. I'm here to testify in opposition to LB19 on behalf of Nebraska AFL-CIO. I'm an attorney in Omaha with the law firm of Dowd and Corrigan and we serve as co-counsel to the AFL-CIO Nebraska. And this bill is something I've testified in a different iteration previously to today as I'm sure you know a lot of the people that testified for it and a lot of people that will testify against it. It's a recurring theme in our policy. I think it's just important to recognize that the-- in fiscal year 2018



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the Comp Court had about 37,000 injuries reported. Of that they had about 6 percent resulted in petitions being filed and the, the number of claims that have been filed over the last ten years have steadily gone down. The reason for this bill is to reduce the exposure to communication from legal-- either from lawyers or other people who contact injured workers to advise them of their rights. And we always have struggled with this idea of privacy, but of course one thing that you need to remember is once that an employee has that injury and is alleging an entitlement to benefits, that employee loses their privacy, too. So their, their entire personal, physical history is now in play and they're gonna have to respond to questions about have they ever broken a bone? Have they ever been to the hospital? All those things are in play and that's one thing that it, it goes both ways. And that's OK because we want employers to investigate to determine whether there is a good claim or a bad claim. But we also think it's very important from the AFL-CIO's perspective that injured workers have an ability to access information whether there's a conflict or not in terms of-- you know, is there a dispute with the employer over this injury? But oftentimes there may be no dispute. And I point to a case involving a young woman who had three kids, I represented her for-- and it has been for 4 or 5 years now. But she came to me, had a shoulder injury, employer put-- had terminated her because that injury resulted in permanent restrictions on her right shoulder and she had developed an injury to her left shoulder as a result of overcompensation. And the employer assigned an impairment rating or have the doctor assign impairment ratings to both of those injuries and then paid her out 5 percent on each shoulder and she was destitute. Nobody explained to her that-- and nobody explained to the doctor, for that matter, that based on Nebraska law her bilateral shoulder condition arising out of the same accident entitled her to loss of earning benefits and loss of earning evaluation and ultimately to vocation rehabilitation. Without having access to legally trained professionals, she would have not had any-- she would of-- her, her right to those benefits would have expired by virtue of the statute of limitations expiring. This is what happens in the real world. And the insurance industry and the workers' compensation industry are very effective. They're well-trained. They have good lawyers. They've got adjusters. They have nurse case managers that attend all these meetings to, to meet with medical professionals during these appointments. And simply to have the ability for injured workers to have access to well-trained and competent individuals to protect their rights is a small price to pay for somebody getting a letter in the mail and that's the conclusion that the AFL has reached over the years

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of dealing with this, this bill. And we think it is a, a fair and workable compromise given the, the fact that the number of injuries and the number of petitions has steadily gone down over time. And with that, I'd be happy to answer any questions you might have.

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

**JOHN CORRIGAN:** Thank you.

**M. HANSEN:** All right, we'll take our next opponent.

**MIKE DYER:** Hi, my name is Mike Dyer, D-y-e-r. And the exhibits I'm handing out, I accumulated in the last month. My daughter bought a house. And when I saw that LB19 was coming up, I thought, well, let's take a look at the mail that she gets just from buying a house. And there's an outline of 21 pieces of mail that she received. I think the original is here. And people who have sent mail who, who want to sell window, window coverings, a dentist sent a mailing, a gym, people who want to sell life insurance policies for the mortgage, and a whole lot of other places. And they got that information from the public record. The public record that-- you know, we use to be able to send letters. I'm an attorney. I send letters and I send a booklet. I give people the information that would hopefully help them if they're injured at work. You can easily find offense in receiving any of those pieces of mail and my privacy was in question. You know, somebody thinks my window coverings are wanting or maybe I should join a gym. I mean-- but as far as the, the concept of an attorney sending out helpful information or a booklet for them to be able to look to, the Workers' Compensation System is set up in such a way that the employer purchases the insurance policy. So if the insurance company doesn't treat the employee correctly, the employee is not the first party insured. They're not the ones who paid for it. So it's an adversarial position. So if an attorney, myself, or one of the others who send out mailings like this, can help a person who's injured know what their rights are before they make a mistake then it's the benefit of the employee which the system should be set up to help the injured employee. One example is a Form 50, now Form 50 is a form that is sometimes-- well, it, it sometimes presented when people are injured or if it turns into a bigger thing that they'll look to it and it's a choice of physician. And when I send out my information of what the choice of physician is, a lot of people don't know whether their hurt, they're swinging a hammer for a living whatever they're doing. I don't have a doctor. Well, the definition of a physician in the state of

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Nebraska is any physician who you've treated with. Anybody your family members, your children, your spouse, your parents, your stepchildren, your stepparents, any of the-- any physician who has treated any of them. Additionally, any place that maintains the medical records. Just all of a sudden the people who didn't think they had a doctor have a doctor. It's just a matter of evening the playing field and it's public record. We're not asking for anything that-- you know, as far as privacy issues, it's, it's a letter that just like the advertisements my daughter got can go right in the garbage if it's something you don't like. Any questions?

**M. HANSEN:** Thank you for your testimony. Are there questions? Senator Halloran.

**HALLORAN:** Thank you, Chairman Hansen. I, I think it's an amusing-- it's, it's kind of an amusing argument that you're using in, in which you give us examples of very annoying mail that we get and saying, well, you get this annoying mail so it's OK if you get it from us. I, I just googled workmen's comp-- compensation attorneys Nebraska, and there are like six pages on Google of attorneys that deal with workmen's comp. It seems to me in a, in a-- it's a, it's a buyer's market. If someone has an injury, they could pursue looking for a compensation attorney vis-a-vis Google. They could search and shop for those, and-- as opposed to being bombarded with annoying mail.

**MIKE DYER:** Well, Senator, you're very fortunate to own a phone that has Google access and knowledge to be able to search. If somebody's making \$10 an hour and they don't have a phone that has Internet access or has the technology or knowledge to be able to do what you're doing, they're completely gonna have to hope that they're treated right.

**HALLORAN:** Well, I, I, I find it very difficult to find anybody that doesn't own a cell phone these days that has Internet access, but there may be exceptions to that I'm sure.

**MIKE DYER:** Walmart's full of phones that, that they sell, they're called burner phones. And people who can't afford to, to step in and what we take for granted that we've become accustomed to. They live paycheck to paycheck and they make ends meet the way they can.

**HALLORAN:** OK. Thank you.

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**MIKE DYER:** You're welcome.

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

**SLAMA:** So just to follow up on Senator Halloran's question. Do you have numbers on people in the United States who do not have any type of access to the Internet?

**MIKE DYER:** No.

**SLAMA:** OK. Because from my knowledge that's far under at least 5 percent, I think, might be approaching 1 percent now. People have access to-- if it's not in their phones, it's in some other way. So--

**MIKE DYER:** Access to?

**SLAMA:** The Internet and Google.

**MIKE DYER:** Yes. And if they have the knowledge to be able to properly search and know the questions to ask, they'll have all kinds of information. If they don't-- if they're not high school graduates, there's a percentage of people who haven't done that. People who don't read English. People who have other issues that-- they might get lucky and, and Google information that they need or they may not. If you go to the Workers' Compensation Court and you ask them for help, they're prohibited from giving legal advice.

**SLAMA:** But wouldn't you say that falls along the same lines as the person going through their junk mail and trying to decide from there what their workers' comp attorney should be. I mean, they don't have the same-- their access to knowledge doesn't change whether or not they're Googling it or getting their mail, so I don't think that argument holds.

**MIKE DYER:** Well, if I send you a 38-page booklet that identifies 7 different mistakes you could make along with rights and, and benefits you get as a worker in Nebraska and you read it yourself and you found out things you didn't know about like getting mileage paid for. Being able--

**SLAMA:** So you're still trusting that the information they're providing to you is accurate.

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**MIKE DYER:** Well, actually if I provide false information as a licensed practicing attorney, I could probably lose my ticket.

**SLAMA:** So that would be the same on-line or in mail though, right? So if you have that false information posted on your Web site you would get dinged for that as well.

**MIKE DYER:** If, if it's access-- if, if people can find me and, and know what questions to ask and look for me on, on my Web site. They'd find some very helpful information I would think.

**SLAMA:** Thank you.

**MIKE DYER:** You're welcome.

**M. HANSEN:** Thank you, Senator Slama. Any other questions from committee members? Seeing none, thank you for your testimony.

**MIKE DYER:** Thank you.

**M. HANSEN:** Welcome.

**DENNIS CRAWFORD:** Thank you, Senator Hansen, members of the committee. Thanks for allowing me to testify here this afternoon. I am Dennis Crawford. I'm an attorney in Lincoln. I've been practicing workers' compensation and personal injury law in Nebraska for the last 33 years. And in the past, I have used direct mail advertising as a way to build up my law practice. I'm here on behalf of the Nebraska Association of Trial Attorneys to testify in opposition to LB19. I think we must consider most importantly that this bill is about the constitution, about the First Amendment, and the free market. Advertising is protected as commercial speech under the First Amendment. In my estimation, LB19 violates the First Amendment. This is because commercial speech was recognized and protected by the First Amendment by the U.S. Supreme Court as early as the late 1970s. I'd also contend that LB19 is an unnecessary and burdensome regulation of the free market and small business owners. The owners I'm talking about-- the business owners I'm talking about are those folks who represent people injured on the job. As one of my previous testifier's noted, direct mail advertisement is a common practice of small businesses. Many small businesses utilize public records to send out advertising letters. When you buy or sell a house, you get letters from insurance agencies trying to sell you homeowner's insurance. You get letters of advertisement from the title companies. If you have a

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baby, you'll get letters of advertisement from a life insurance agent. There's no reason to discriminate against small business owners who happen to represent people injured on the job. They shouldn't be treated differently. And if you look at my letter, it's very similar to what other small businesses send out and you'll see it's very low-key. It just hands out some free practical advice to injured workers. If they want to call me, they can call me. If they want to pitch it and put in the recycling bin, that's fine, but at least they should know what they should have to do in case they get hurt on the job. There are some rationales advanced for this bill that in my estimation don't make any sense. One of the rationales is worker privacy, but I've put into evidence here a medical authorization from Werner Enterprises. As you can see, Werner's medical authorization is very intrusive. Before they pay a claim, Werner has the right to access records from your mental health care professionals and access records regarding your history of sexually transmitted disease. So I'd contend that Werner's claims to be concerned about worker privacy rings hollow in light of this authorization and other employers and insurance companies asked for a similar authorization. I'd also make the point, there's no workers' compensation crisis in Nebraska to justify limits on the first amendment and the free market. If you take a look at the 2018 annual report from the Nebraska Workers' Compensation Court, reported injuries are down 18 percent since 2009. It has been a steady decline over the last ten years. The number of lawsuits filed since '09 are either down slightly or their steady depending on which numbers you look at, but there's no spike in litigation. Also, Nebraska's premiums ranked 26 out of 30 states. Our premiums are just below average in the nation. You'll also see a press release from the work comp court from 2016. The comp court said that we're maintaining a low insurance premium environment while meeting our obligations to injured workers. I also presented to you a search result for regarding the lawsuit climate in Nebraska. In 2017, Nebraska was number seven from a business standpoint in the 2017 lawsuit climate survey. In other words from the standpoint of business, our legal climate is very favorable to business. You know, in conclusion, I would contend that employers want to discourage workers from hiring lawyers. If you take a look at a handout from Werner Enterprises, basically this handout discourages people from hiring attorneys. I think there should be a level playing field. I think workers should have access to what their rights are in the unlikely event they get hurt on the job. Thank you very much. If you should have any questions or comments, I'd like to hear from you.

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**M. HANSEN:** All right, thank you. First and foremost, can we have you spell your name for the record?

**DENNIS CRAWFORD:** Oh, I'm sorry, Dennis, D-e-n-n-i-s, Crawford, C-r-a-w-f-o-r-d.

**M. HANSEN:** Perfect. Questions from committee members? Seeing none, thank you for your time.

**DENNIS CRAWFORD:** Thank you, everybody.

**M. HANSEN:** All right, we'll take our next opponent to LB19. Welcome.

**JOHN LINGO:** Good afternoon, my name's John Lingo. It's J-o-h-n L-i-n-g-o. I'm a private practice lawyer in Omaha, Nebraska. I'm a solo practitioner. I have been doing this work for 28 years, graduated from Creighton Law School in 1990, been practicing ever since. Exclusively, I represent workers-- injured workers. I don't represent insurance companies. I don't represent employers. Before I talk about my prepared testimony, I want to take issue with two things that Senator Briese had made in his opening comments. I heard him say that there was-- and I wrote down a quote, that there was no other situation or unlike any other situation that this information would be released. I'm gonna take issue with that because I can testify very clearly and honestly that in a motor vehicle accident, God forbid you're in when on your way home, I guarantee you no matter what county you reside in, no matter what county in Nebraska that motor vehicle accident happens, that motor vehicle accident is a public record. And it's gonna be found by lawyers who go to the police department, sheriff's department, whatever the case may be, they're gonna find out about you. They're gonna find out about your address, and they're gonna find out your date of birth. They're gonna find out on that same police report what, what part of your body was injured. They're gonna find out if you were taken by ambulance to a medical facility, etcetera, etcetera. So it's not as if these workers compensation first reports are the only thing in this state that has anything to do with the injuries that unfortunate people suffer that are made public. The second thing, and it was also, I think, mentioned briefly by Mr. Dyer before me, the second thing of Mr.-- Senator Briese's comments that I'm gonna take issue with this morning, is he says, go ahead and call the Workers' Compensation Court and they will advise you of your rights. Sadly, by statute and by procedure at the Nebraska Workers' Compensation Court, they cannot advise injured workers of their rights, a complete impossibility. So what's that injured worker to do?

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Well, let's talk about that and let me get into my prepared remarks. So as I mentioned a minute ago that I've been doing this for 28 years, I've been sending these first report letters for approximately 16 years. I send about 50 letters a week. By my rough math, and I'm not a very smart kid from North Platte, that's about 40,000 letters that I've sent to Nebraska citizens. I received one complaint in 40,000 letters from a gentleman whose name I don't remember and it was a long time ago. It was probably more than six, eight years ago. The gentleman wasn't necessarily upset, but his question was the question that's, that's bandied about in these committee hearings. How did you get my information? How in the world, Lingo, did you even know that I got hurt? And I tell him the truth, of course I do, this is a public record and I get a report of that every week. And it looked to me like you've got an injury to your low back from what I can tell, sent you that letter and the attachments to see if you needed any help. And he says, well, now I don't think that I do, but let me ask you a question, Lingo, and in fact, he does. Comes to find out he wasn't getting paid appropriately under Nebraska Workers' Compensation Law and was news to this man. And I mean, by my recollection, it was pretty serious money in the thousands of dollars let's say. This gentleman didn't hire me, but he got enough free information out of me that day that he knew exactly what to do, exactly where to do it, exactly how to do it. And I hope to God that he went ahead and did it either with another lawyer or directly with that claim adjuster. In any event, it happened without me. One in 40,000 over 16 years. I would submit to you folks that this is truly a very minor inconvenience to injured workers. And as mentioned by Mr. Corrigan, it's truly a trade-off to get the help that we offer. Let's be honest in this room and let's not be naive about this that technology has really eroded far more privacy than anything that this first report of injury information is gonna have to do with our lives. I always find it interesting how the pop-up ad that pops up the next time I'm on Google is exactly the retail item that I was last looking at on the Internet. It was a pair New Balance shoes that I was looking at. All of sudden now I'm on one of my fishing sites, and what pops up? The doggone New Balance shoes that I was looking at ten minutes ago. I know it's happened to you folks. This very tiny intrusion to privacy is, is so minimal. Look at the motor vehicle licensing reports, look at the real estate transfers. Let me do you a little bit better. There's a probate in your family, that's a public record that gets published in in legal newspapers in the state of Nebraska. Your family is gonna get sent information when there's a probate. You form a new corporation or a limited liability company in the state of Nebraska,



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that's published in a public newspaper-- in a legal newspaper in the state in Nebraska. That corporation at that address is gonna get mailings. It will happen. This is not HIPAA protected medical information because these are not medical providers. And let me, let me hit you with one last piece. There's-- you may have heard an old song years ago about work, home, and church. Those are kind of the big three: work, home, and church for a lot of Nebraskans. This is a third of that piece right here because if that worker's job and livelihood is at risk, it's too much risk for that employee. Oh, just go along and get along. Well, you've got the employer. You've got the HR department. You've got the claim adjuster. You've got the nurse case manager. You've got the employer chosen physician. And then you've got Joe Schmuckatelli, the worker, who's my typical client. That's not a fair fight. That's not the way we play in Nebraska. This levels the playing field and gives me a chance to help out Joe Schmuckatelli.

**M. HANSEN:** All right. Thank you, Mr. Lingo. You hit your red light a little bit.

**JOHN LINGO:** Thank you.

**M. HANSEN:** All right, any questions from committee members? Seeing none, thank you for your time.

**JOHN LINGO:** Thank you, all.

**M. HANSEN:** All right, any other opponents? Welcome.

**SUSAN MARTIN:** Good afternoon, Chair Hansen and members of the Business and Labor Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n. Typically, I am here to testify on behalf of the Nebraska State AFL-CIO, but today I'm also testifying on behalf of myself and my husband Denny in opposition to LB19. My husband worked part-time as a transportation driver for a rehabilitation center here in Lincoln. A year ago on February 14, he went to work like normal and he went to get the company van out of the employer's garage and slipped and fell on the black ice in the parking lot. He ended up hyperextending his arm and tearing his muscle from the bone in two places. A first report of injury was filed with his employer and he was on workers' compensation as he went through surgery and recovery. Upon being put on workers' compensation, my husband's employer also put him on FMLA leave to run at the same time he was on workers' compensation, which at the time, which at the time we did not know that they could do. FMLA is only for a 12-week period and he was told by his employer that

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he needed to be back to work in some capacity by the end of that period. Unfortunately, his doctor did not release him to go back in-- to work until four weeks after the 12-week date. Needless to say, they did not offer work accommodations and they fired him from his job. We are still dealing with this today over a year later. During this entire ordeal, as you may or may not imagine, this was an upsetting and frustrating time for him. Unless you have actually been through a workers' compensation situation, you have no clue as to the employer's responsibility, the insurance company's responsibility, the employee's responsibility, and, most important, knowledge about workers' compensation laws. Workers' compensation is extremely complicated to comprehend and the typical average worker cannot begin to understand their rights and instead they get lulled into thinking that their employer will lead them through the oftentimes nightmarish situation. Not all employers look out for employee-- the employee. The employer looks at how it's going to affect them. Workers' compensation was created to help injured workers in exchange for the employee not coming back on the employer and suing them. That's the trade-off. But does the average worker really know this? The bill as presented will remove the name of the employees on a first report of injury from the public record. Several concerns that the Nebraska State AFL-CIO has had in past introductions of this bill have been addressed by Senator Briese and we thank him for including those changes in this version. But the main intent of the bill will actually hurt the employee by not providing access to others who are knowledgeable about workers' compensation laws who can provide real assistance to these injured workers which we see as a benefit to the employee. Bottom line, the true intent of the bill seems to me to prevent workers from having access to the people that can truly help them and this is not in the best interests of an employee. If one of the concerns is that the injured employee is objectionable to receive mail as a result of their incident being a public record, I would like to state that my husband received five pieces of mail from those seeking to assist him with his injury. These pieces of mail were tossed just like we toss other mail such as grocery ads and other advertisements. It was not extremely burdensome and he was grateful that there were those out there offering their assistance. Had I not had the little knowledge I had about workers' compensation and how to seek assistance, my husband would have been fired from his job with no options set forth, benefits stopped, and he would not have known his rights under workers' compensation laws. It really makes me wonder just how many others have been in this situation or how many others have relied on their employers to get them through this extremely difficult time. For these

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reasons, I respectfully ask that you indefinitely postpone LB19. I'd be happy to answer any questions.

**M. HANSEN:** Thank you. Are there questions from committee members? Seeing none, thank you for your testimony. All right, are there any other opponents to LB19? Seeing none, is there anybody who wishes to testify in neutral in LB19? Welcome back.

**TONYA FORD:** Hi. Thank you very much for your time. My name is Tonya Ford, T-o-n-y-a, Ford, F-o-r-d, and I'm speaking on behalf of United Support and Memorial for Workplace Fatalities, a national not-for-profit organization that offer support, guidance, and resources to families that have been affected by work-related incidences. I reside in District 21 and come here today as a neutral party in regards to this bill. As an executive director of a nonprofit organization that strives to help families that have been affected by work incidences related to-- sorry, affected by work-related incidents. The workers' compensation records and information continue to help us find the families of our fallen workers, as not every work incident makes the 5:00 news. Also, these records allow us to honor and remember our fallen workers at Nebraska Workers' Memorial Candlelight Vigil on each April 28. Therefore, I support and thank you that we are included as a recipient of these records as no family should have to go through the devastating grieving process and investigative process alone. However, I believe that knowledge is power. And by not allowing legal representatives to receive the names of our injured workers, it takes the power away from the worker and/or the family member victims and that is not right. The fact of the matter is not all workers and/or family member victims have the ability, knowledge, and/or equipment to research and understand their rights as such-- after such an incident. Therefore, receiving flyers, letters, and information from local attorneys can be a sigh of relief to many of the victims. It can help find the individual they need to open an estate and/or receive the information of accountability. My family was directly affected in 2009 after my uncle fell 80 feet off of a belt-operated man lift. Having never been affected by a work incident before, we did not know or understand who we should go to after the incident. We, like many other family member victims, believed in many myths that we heard over the years and found the truth to the knowledge we received from local attorneys who reached out to us after the incident. It's important to know that sometimes the resources you need is the assistance from others. We should not take anyone's rights away all because they may not be knowledgeable of

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their rights or who to go to after such an incident. We should continue to allow them to receive the information, understanding, and resources to find the answers to many questions one has after such an incident. Going to work should not be a grave mistake, but sadly happens every day in the U.S. And in Nebraska, in 2018, we lost 55 workers. Leaving 55 family members with the unanswered question, of what do I do next? We as family member victims already possess so many questions after such an incident. The question of who should we go to or who, who can help us, are those questions that we shouldn't have to worry about. I'll be the first to admit loving my parents as much as I do when there is something on the Internet that they need to research, not everybody has that ability. And of course, I-- not everybody has that daughter or that family member that would be up all the time helping them find that information on the Internet. And in circumstances like this, they shouldn't have to fear to know what's next or what, what do I happen or what can I do from here. I ask that you please consider our injured workers and family member victims and continue to allow them to receive the knowledge and the power that they deserve after such an incident. Thank you very much for your time, and I'll be happy to answer any questions.

**M. HANSEN:** Thank you for your testimony. Are there questions from committee members? Seeing none,--

**TONYA FORD:** Thank you.

**M. HANSEN:** --thank you. All right, is there anybody else wishing to testify in neutral on LB19? Seeing none, Senator Briese.

**BRIESE:** Thank you, Chairman Hansen. I, I believe this is good legislation. It pro-- protects the privacy rights of these folks. And this isn't a probate proceeding. It's not a notice of incorporation. It's not like buying a house. These are essentially quasi health matters that become public record. We're talking about the type of an injury. We're talking about the body part affected. We're talking about how the injury occurred. We're talking about the initial treatment and diagnosis and the name of your doctor. And so these are essentially matters related to your personal health. They're to be distinguished from some of those other categories that were mentioned. And where is the need for this information? We're not, we're not restricting anyone's access to a lawyer here. Workers already have ample access to information about attorneys. You know, numerous ads, word of mouth, social networks, social media, and their personal lawyer can advise them on these types of matters. I indicated earlier

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that it's my understanding the Workmen's Compensation Court has a hotline. I'm not exactly sure based on the testimony I heard earlier what can be disclosed on that hotline. But there are information sources nonetheless. And I don't think we're giving the workers enough credit here. They know their rights. They know what's going on. And as far as the First Amendment issue, we're, we're not impermissibly restricting attorneys' First Amendment rights. You know, first we have to remember that no right, particularly a constitutional right is absolute. Instead, most constitutional analysis, analysis involves a balancing of the competing interests. And this provision strikes a nice balance between the privacy rights of these employees and the interests of attorneys. Here, attorneys can still advertise all they want. And a lot of employees don't want future employers to have access to this. And from the testimony that we heard last year, I don't believe rank and file want disclosure of this information. Many find an avalanche of solicitation intrusive, they don't want future employers browsing through these records, and this lack of confidentiality makes some reluctant to report injuries. And, and the bottom line here, I, I don't think there's any evidence that I've heard that lack of disclosure will result in any harm to employees. Any, any suggestion to the contrary really is speculative in my opinion. This balance-- bill balances a need for protecting the privacy rights of individuals with the need for this information in a limited set of circumstances by setting forth some exceptions to nondisclosure. I would encourage your consideration of this bill and move it on to General File. Thank you.

**M. HANSEN:** Thank you for your closing. Questions from committee members? Seeing none, thank you, Senator Briese. Before I close the hearing, we did have two letters. We had a letter of support from Andy Hale in Nebraska Hospital Association. And a letter opposed from Schuyler Geery-Zink of Nebraska Appleseed. And with that, we will close the hearing on LB19 and welcome up Senator Hilgers. All right, Senator Hilgers, you're welcome to open on LB178.

**HILGERS:** Thank you, Chairman Hansen. I'm sad Vice Chair Hansen left so I couldn't say welcome or-- you know, good afternoon, Chairman Hansen and Vice Chairman Hansen, it's a poor joke here at the end of committee hearings, and members of the Business and Labor Committee. My name's Mike Hilgers. I represent District, District 21, which is northwest Lincoln in Lancaster County. My name is spelled M-i-k-e H-i-l-g-e-r-s, and I'm here to introduce LB178. I'll be as brief as I can in the opening. This is the bill that was brought before this

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committee last year in the form of LB1096. It was passed 8-0 [SIC] out of committee but we ran out of time before the end of last year to get it over the finish line. It has four technical changes. It was brought to me from DAS. I'll mention all four described to and then I have a testifier behind me who will go into a little bit more detail on the other two. The first change is, is to clean up some language related to references of the State Claims Board. In 1992, the Legislature actually made some changes from this and provided some of this workers' comp payment authority to the risk manager title but there were some statutory references to the State Claims Board that are obsolete and that need to be repealed. The second, Section 9 deals with-- there are certain exceptions to the labeling of vehicles from the-- for the-- that are owned or operated by the-- or owned by the state of Nebraska. There is-- this bill would add to one of their seven exceptions. The eighth exception would be for the Department of Justice. And so the real purpose of this is for undercover investigations you might imagine for-- if there's an undercover investigation or an agent with a Nebraska vehicle, it says state of Nebraska. It sort of undermines the purpose of the investigation. The other two changes which will be discussed in more detail from the testifier behind me are, are in Section 7 and Section 8. Section 7 deals with, with not requiring the aggregation of certain settlement claims to be paid. Current practice, as I understand it, is that they do have to be aggregated which can actually delay and make less efficient the payment of certain, certain claims. And then in Section 8, would be to make explicit permitting payments from the State Self-Insured Liability Fund to pay certain claims, which is already the current prac-- practice. But again, would make this explicit. So those are the four changes. I would ask the committee move it to General File. Certainly happy to answer any questions. But as I say, a subject matter expert will be behind me. Thank you.

**M. HANSEN:** Perfect. Thank you, Senator Hilgers. Are there questions from committee members? Seeing none, thank you very much.

**HILGERS:** Thank you.

**M. HANSEN:** All right. And with that, we will move to proponents for LB178. Welcome.

**RYAN POST:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Ryan Post, R-y-a-n P-o-s-t, and I'm an assistant attorney general with the Nebraska Attorney General's Office. The Attorney General thanks Senator Hilgers for introducing

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this legislation. As you just heard, LB178 makes a series of technical changes and is identical to LB1096 that advanced from this committee last year. I'm just gonna address two of those changes so it's not repetitive. The first change I will address is that the bill will make the claims process more efficient. Currently, claims arising out of the same facts and circumstances must be aggregated before payment. It would be beneficial to allow these claims to be settled without aggregation. The risk manager may have negotiated a fair settlement on a property damage claim for one individual but the payment must be delayed until all the claims arising out of the same facts and circumstances also reach a settlement. This change will allow some multi-claimant claims to be paid in a more timely manner rather than waiting out till the end of a legislative session. Risk management would be authorized to pay individual claims under the \$50,000 threshold but would still report to the Legislature when the aggregate of any multi-claimant claim surpasses that statutory threshold. The other change I want to address is the amendment to the State Self-Insured Liability Fund which would allow it to be used to pay claims against the state for which there is a specific provision of law allowing for the resolution of the claim but which doesn't neatly fit into one of the current funds that exist. The example we see in our office is if we have an official capacity civil rights claim against a state officer. If the state loses that and there's an award of attorney fees that technically is not an indemnification, so it doesn't fit any indemnification fund. It's technically doesn't fit within the definition of liability fund. But we lost, so we need to pay the bill. But there's not a perfect fund to pay it out of. And so this bill would make sure that those bills do get paid when the state loses. And we think that it, it helps clarify which fund is used to pay the award. It shouldn't cost the state any more money. It's the same bill it's getting paid either way. I thank you for your time, and I'll answer any questions you might have.

**M. HANSEN:** All right, thank you for your testimony. Are there questions?

**LATHROP:** Yeah.

**M. HANSEN:** Senator Lathrop.

**LATHROP:** I want to start with the last thing you talked about first.

**RYAN POST:** Sure.

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**LATHROP:** The-- you talked about paying attorney fees in cases that you lose.

**RYAN POST:** Yes.

**LATHROP:** Are you going to-- would this bill permit you to do that without approval of the Legislature?

**RYAN POST:** No. It wouldn't, it wouldn't change that portion of it unless I guess it was under \$50,000 dollars. It leaves the total dollar amount the same for what we have to bring to the Legislature. The, the changes were identifying specifically which fund it's supposed to come out of.

**LATHROP:** OK.

**RYAN POST:** Because there, there could be claims where it's clear, but some of--

**LATHROP:** Right, and I like to know when we've, we've lost a constitutional challenge. Right?

**RYAN POST:** Sure.

**LATHROP:** Because they typically come through this committee in a claims bill that we'll hear later on.

**RYAN POST:** They do, and I think you'll hear one shortly.

**LATHROP:** Yeah, it's worthwhile letting us know when we've done something unconstitutional and we've lost a, a challenge in that respect. The other thing I want to ask you about is-- I'm looking at the introducer statement of intent, it says Section 9 of the proposal-- basically it exempts you guys from putting a sign on the side of your car that says State of Nebraska.

**RYAN POST:** Correct.

**LATHROP:** Why is that a big deal?

**RYAN POST:** So two reasons. You heard one example--

**LATHROP:** Because this is for the-- this is for the Attorney General?

**RYAN POST:** Correct. And so two reasons: the one you just heard about a potential undercover investigation. A second one might be where one of



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our prosecutors or investigators is working with say a victim of sexual assault out in some other county. And now that car sitting in the driveway, it says State of Nebraska on the side. So that'd be another reason why it would be beneficial not to have that there.

**LATHROP:** Has that been a problem?

**RYAN POST:** I'm not on the criminal side so I couldn't, couldn't tell you. I don't have a specific example to give you right now. If you'd follow up with their office, they might be able to. But I just-- I don't off the top of my head.

**LATHROP:** Thank you.

**M. HANSEN:** Thank you, Senator Lathrop. Any other questions from committee members? All right, seeing none, thank you--

**RYAN POST:** Thank you.

**M. HANSEN:** --for your testimony. All right, is anybody else wishing to speak in support of LB178? Seeing none, anybody wishing to testify in opposition to LB178? Seeing none, anybody wishing to testify in neutral in LB178? Seeing none, Senator Hilgers, would-- Senator Hilgers waives closing. And with that, we will close our hearing on LB178. All right, the next bill we have is LB464. This is the state claims bill. As this is a statutory requirement of this committee, I'm gonna have our legal counsel, Tom Green, introduce this bill and the following. Go ahead.

**TOM GREEN:** Chair Hansen, members of the Business and Labor Committee, my name is Tom Green, T-o-m G-r-e-e-n, and I am the legal counsel of this committee. I am here to introduce LB474 which provides for payments of claims against the state. You have in your materials an amendment that becomes the bill and a spreadsheet that provides details on each of the claims. Following me will be Allen Simpson, the Risk Manager for the state who will provide additional details on the claims and the process. Also, also testifying today will be Stephanie Caldwell, from the Attorney General's Office, and individuals from the state agencies with the write-off requests. Procedurally, the state claims bill will be advanced and debated as part of the budget process and I'd be happy to answer any questions you may have.

**M. HANSEN:** Thank you, Mr. Green. Are there questions from the committee? Seeing none, thank you. All right with that, we will move

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on-- to begin with we'll have kind of a choreographed list of testifiers. Please come on up and then after that we'll open it up for any other public comment.

**ALLEN SIMPSON:** Senator Hansen, members of the Business and Labor Committee, good afternoon. My name is Allen Simpson, A-l-l-e-n S-i-m-p-s-o-n, and I am the Risk Manager for the state of Nebraska. LB464 provides for the payment of claims against the state. I'm here to discuss the claims listed within the bill and to provide an overview of the claims process. Torts, miscellaneous, indemnification, and contract claims are filed with the Office of Risk Management. Claims in the amount of \$5,000 can be approved directly by the State Risk Manager. Any claim more than \$5,000 up to \$50,000 must be approved by the State Claim Board. Claims totaling more than \$50,000 must be approved by the Legislature and, thus, are added to the claims bill. Agency write-off requests for uncoll-- uncollectable debts and the payment of workmen's compensation settlements and judgments greater than one hundred thousand dollars must be approved by the Legislature and are also included in the claims bill. That's a quick summary of how the claims make it to the claims bill. We will now go through the process and provide a brief description of the tort claims, indemnification claims, workers' compensation claims, and miscellaneous claims listed within the bill which have been settled by the Attorney General's Office. Section 1 of the bill covers miscellaneous claims. Miscellaneous Claim 2019-18902 is for the Nebraska Press Advertising Service. This claim covers the cost of publication of legal notice of measures that were voted upon at the November 2018 general election. The cost of this claim is \$72,133.49. Section 4 of the bill covers workmen's compensation claims. The first is for Jeffrey Forsen. Jeffrey Forsen stepped off the back of a truck where he landed on a low spot on the ground and his heel fell into what-- fell into it which resulted in lower back pain. The negotiated settlement in this case was for \$100,000. The next claim was for Kim Lowe. Kim Lowe was shoveling snow after a snowstorm and injured her back. The negotiated settlement in this case was \$25,000. The third claim is for Jeffrey Evans. Jeffrey Evans was cleaning an auger with his shovel when the shovel came around and struck him causing him to fall and strike his back on a valve when he suffered his injury to his back. The negotiated settlement in this case was \$149,000. The fourth claim is for Jessica Lang. Jessica Lang was assaulted by an agitated patient which resulted in injuries to her right shoulder and back. She was also diagnosed with PTSD after the incident. The negotiated settlement in this case was for \$175,000. The fifth claim is for John

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Overstreet. John Overstreet's truck got, truck got stuck in the snow and he injured his lower back as a result of shoveling and chipping ice from underneath the truck. The negotiated settlement in this case was for \$12,487. The sixth claim is for William Lichtenwaldt. William Lichtenwaldt returned to work after he had suffered injury to his bilateral ankles. Upon returning to work he fell causing him to break several ribs, injured his left wrist, lower back, reinjuring his right ankle and now suffers depression as a result of these injuries. The negotiated settlement in this case was \$80,000. The seventh claim is for Franco Signor. This payment funds a professional administered medical set aside account for William Lichtenwaldt. The negotiated settlement in this case was \$165,803. The eighth claim is Jonathan Reisdorff. Jonathan Reisdorff sustained a back injury while bending, bending over to unload a dishwasher. The negotiated settlement in this case was for \$75,000. Senators, that is all I have for you this afternoon. Up next is Stephanie Caldwell, assistant attorney general, she will present claims 16-3306, 2016-15465, 2016-1573 [SIC], 8:15CV00424, 2017-16781, and 2017-17088. She will discuss case settled by the Attorney General's Office. After Stephanie Caldwell's testimony, the following individuals will discuss a specific agency write-off request for their agencies: Anthony Deitering, for Nebraska Department of Veterans Affairs; Wendy Wussow, for the Supreme Court; Lyn Heaton, for the Department of Transportation; Chris Peters, for the Game and Parks Commission; Dave McManaman, for the Department of Health and Human Services; and John Albin, for the Department of Labor. Are there any questions?

**M. HANSEN:** Thank you, Mr. Simpson. Are there questions?

**LATHROP:** Can I ask just a couple?

**M. HANSEN:** Of course.

**ALLEN SIMPSON:** Yes.

**M. HANSEN:** Senator Lathrop.

**LATHROP:** So previously when I served on the Business and Labor Committee and we did claims, I thought we-- I thought you guys paid out the first fifty and came here for the balance. And today it sounds like you're here for the whole amount.

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**ALLEN SIMPSON:** No, sir, these are-- we've already paid out \$100,000 on these and this is the additional on top of that.

**LATHROP:** OK. So when you ask for \$100,000 for this Jeffrey Forsen, that's actually the second half of two hundred.

**ALLEN SIMPSON:** Yes, sir.

**LATHROP:** OK. Thank you for that. The second question I have for you, is you said Jessica Lang has a claim for a hundred and seventy-five, which should be actually a total claim of--

**ALLEN SIMPSON:** Two hundred and seventy-five.

**LATHROP:** --two hundred and seventy-five. And she was assaulted at work?

**ALLEN SIMPSON:** Yes, sir.

**LATHROP:** And is she a state employee?

**ALLEN SIMPSON:** She was a state employee, yes.

**LATHROP:** OK. Where was she working when she was assaulted?

**ALLEN SIMPSON:** I would-- can get back to you, sir. But, I believe, she was working at the Correctional Institution.

**LATHROP:** Department of Corrections?

**ALLEN SIMPSON:** Yes.

**LATHROP:** And I may have missed something when you were going through the miscellaneous claims, you had-- you told us about the claim of the Press Association, but you didn't-- if I-- unless I missed it, talk about Lyle Hunter and Abby Osborn.

**ALLEN SIMPSON:** Miss Caldwell is going to take that one over.

**LATHROP:** Oh, OK. Thank you for your--

**ALLEN SIMPSON:** Yeah.

**LATHROP:** --answering my questions.

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**M. HANSEN:** All right. Thank you, Senator Lathrop. Other questions from committee members? All right. And just to clarify because this comes up, the a, the a-- the amount for the miscellaneous claim for the Press Association was in response to announcing the 20--

**ALLEN SIMPSON:** 2018.

**M. HANSEN:** --elections?

**ALLEN SIMPSON:** Yes, sir.

**M. HANSEN:** So we spent about \$72,000 telling everybody there was an election.

**ALLEN SIMPSON:** Yes, sir.

**M. HANSEN:** All right. Thank you very much. All right. Seeing no other questions, we will move on to our next testifier. Thank you very much. Welcome.

**STEPHANIE CALDWELL:** Good mor-- good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Stephanie Caldwell, S-t-e-p-h-a-n-i-e C-a-l-d-w-e-l-l. I'm an assistant attorney general for the state of Nebraska and I also serve as legal counsel for the State Claims Board. LB464 provides for the payment of claims against the state and state officials. I'm here to provide a brief description of the remaining tort and miscellaneous claims that were listed in the bill which constitute settlements entered into by the Attorney General's Office on behalf of the state of Nebraska or judgments entered against the state of Nebraska in a court proceeding. Section 1 of the bill covers miscellaneous claims, and Miscellaneous Claim 16-3306 is a judgment entered against the Nebraska Department of Correctional Services following a jury trial that took place in Lancaster County in 2018. Mr. Hunter filed a lawsuit against the state of Nebraska and the Department of Correctional Services pursuant to the Nebraska Fair Employment Practices Act. Mr. Hunter alleged he suffered a work-related injury and thereafter was unable to perform the duties of his job. He was then given an opportunity to apply and compete for other positions. Mr. Hunter subsequently applied for a position but was not qualified for it and thereafter was terminated by the Department of Correctional Services. The jury returned a verdict in favor of the plaintiff, Mr. Hunter, and the court awarded an amount of \$61,179.11 in lost wages and attorney's fees. Section 2 covers tort claims. Tort Claim 2016-15455 [SIC] as a settlement entered into on

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behalf of the Attorney General's-- by the Attorney General's Office on behalf of the state of Nebraska. This involved a tort claim filed by an inmate at the Community Correctional Center in Omaha. An inmate slipped on a wet floor in the facility and fell onto the ground. After this the inmate, Mr. Donald Johnson, sustained injuries to his right shoulder. The settlement was to pay for his medical bills and surgery that ensued after his release from the Community Correctional Center. The total amount of that settlement was \$85,000. Fifty thousand dollars has been paid, and the remaining amount of \$35,000 has been placed into LB464 for approval and payment. Tort Claim 2016-15753 is a judgment entered against the state of Nebraska following a bench trial in Lancaster County. In 2016, an individual slipped and fell on a wet floor inside the State Office Building in Lincoln, Nebraska caused by snow and ice that had been tracked in from the outside. Upon his fall, the individual sustained a wrist fracture. The plaintiff prevailed at trial and the court awarded \$60,000 in damages. Fifty thousand dollars has been previously paid, and the remaining amount of \$10,000 has been placed into the bill for the Legislature's approval and payment. Section 3 is the Indemnification Fund and claim 8:15CV424 is a settlement entered into by the Attorney General's Office with regards to a lawsuit filed against individually named employees. Mr. Boyd, the plaintiff, was an inmate at the Lincoln Correctional Center who suffered a heart attack and alleged staff did not respond in a timely matter. A settlement negotiation took place and the Attorney General's Office agreed to pay a settlement in the amount of \$115,000. A payment of \$50,000 has already been paid and the remaining amount has been placed into the bill for approval and payment. The last section is Section 6, this is the State Self-Insurance Fund. Tort Claim two thousand 17-- or 2017-16781 is a settlement entered into by the Attorney General's Office on behalf of the state of Nebraska. This involved a tort claim from an individual who is involved in a motor vehicle accident with a vehicle driven by a state of Nebraska employee. The accident occurred in 2016 in Lincoln, Nebraska. The state driver and the other driver's vehicle collided. The claimant, Mr. Josephus Pickett contended he was knocked unconscious and suffered a traumatic brain injury. As a result of his traumatic brain injury, he was terminated from his employment position and has been unable to work since then. A settlement negotiation took place and the state agreed to settle in the amount of \$225,000. Tort Claim 2017-17088 is the last claim I will speak about, and this is a settlement entered into on behalf of the Attorney General's Office on behalf of the state of Nebraska. This involved a tort claim filed by an individual who was in a motor vehicle accident with a vehicle driven by a state of

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Nebraska employee. The claimant, Mr. Winkelman, was driving a motorcycle in 2016 and a state employee was operating a state vehicle at that time. The state driver attempted to turn west on a curved lane and did not see the claimant coming around the corner. Mr. Winkelman, to avoid the collision, drove his motorcycle into the west ditch, west ditch. Mr. Winkelman then incurred medical expenses and lost wages. A settlement negotiation took place and the state agreed to settle in the amount of \$350,000. Senators, that is all I have for you this afternoon on the claims I have presented. Up next are individuals who will discuss their individual agency write-offs and are gonna be able to answer any questions. Are there any questions for me?

**M. HANSEN:** Thank you. Are there questions from committee members? All right. Seeing none, thank you. All right, we'll take our next testifier. Welcome.

**ALLEN BEERMANN:** Senator Hansen, members of this committee, my name is Allen Beermann, A-l-l-e-n B-e-e-r-m-a-n-n. I have the privilege of representing the Nebraska Press Advertising Service. We are speaking in favor of that portion of LB427 [SIC] that relates to the publication in all newspapers three times of the ballot measure that appeared before the voters in 2018. As well as the ballot language. As well as the language that is prepared by the Attorney General explaining to all prospective voters what is the nature of their vote for the proposal, what is the nature of their vote if they vote against the proposal. These are published in every newspaper in Nebraska of which there are about 640,000 paid subscriptions in addition at our own expense not the state expense. We do publish and print additional copies of the ballot measure that groups and organizations use when they have listening sessions with their own associations. For example, it might be the Farm Bureau or some other group that meets and they use these extra copies that we print for the purpose of studying and discussing ballot measures. This one had to do with the Medicaid expansion. I would be happy to answer any questions that this committee may have.

**M. HANSEN:** Thank you, Mr. Beermann. Are there questions from committee members? Seeing none, thank you for your testimony.

**ALLEN BEERMANN:** Thank you for your courtesy, sir.

**M. HANSEN:** Of course. All right with that, we'll take our next testifier. Welcome.

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**ANTHONY DEITERING:** Chairman Hansen, members of the Business and Labor Committee, good afternoon. My name is Tony-- or Anthony Deitering, A-n-t-h-o-n-y D-e-i-t-e-r-i-n-g. I'm an attorney with Department of Veterans Affairs and I'm here in support of the agency's request to write-off \$119,318.25 as set forth in this year's claims bill. The write-off request arises out of debt owing in relation to unpaid monthly maintenance charges associated with a member stay at the Eastern Nebraska Veteran's Home. The debtor passed away a little over two years ago with no probate being filed. Prior to submitting this debt for write-off, there are numerous attempts to pursue recovery through regular billing statements, multiple demand letters, and demand for notice filings with the relevant county courts following the member's death. Unfortunately, the agency has not been able to recoup the debt following the member's passing in 2017. That concludes my testimony. I'd be happy to try to answer any questions you might have.

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

**ANTHONY DEITERING:** Thank you.

**M. HANSEN:** Welcome.

**WENDY WUSSOW:** Good afternoon, Senator Hansen and members of the Business and Labor Committee. My name is Wendy, W-e-n-d-y, Wussow, W-u-s-s-o-w. I am Clerk of the Supreme Court and I'm here to testify in support of LB465 [SIC] and the write-off that was submitted by the Nebraska Supreme Court Clerk's Office for a hundred and forty five-- forty seven twenty five. Those represent small fees for their certificates of good standing or fax filings we've been unable to collect after two notices including a letter from the Chief Justice.

**M. HANSEN:** That--

**WENDY WUSSOW:** We would just ask that respectfully of the committee write those off.

**M. HANSEN:** All right. Thank you very much. Questions from committee members? Seeing none, thank you. Welcome.

**LYN HEATON:** Thank you. Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Lyn Heaton, L-y-n H-e-a-t-o-n, and I am the Chief Financial Officer for the Nebraska



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Department of Transportation. I appreciate having this opportunity to testify in support of our element of LB464. And Director Schneweis was planning to be here to testify with you today, but he had to change a schedule to attend a meeting about the status of the flood assessment and repair. As you have already heard through the testimony of Mr. Simpson, the department has a write-off in the bill. It totals \$140,183.33. Department's duty and responsibility includes protecting and maintaining the 10,000 mile state highway network and our numerous yards and other facilities across the state. From time to time that infrastructure gets damaged due to the negligence of others. Common examples include damaged guardrails and sign installations. The driver in such, such accidents may initially only be thinking of the damage caused to his or her vehicle, but we make diligent efforts to recover the damage to state property. Annually, the department is able to recover over 90 percent of the claims we pursue because we have a systematic and well-established process in place. Ultimately though, some claims must be written off. Having reviewed past write-off amounts for the Department, this year's total is consistent with those. Having spoken with Director Schneweis and department personnel directly involved in the process and the procedures undertaken by the NDOT, we are confident that the Department's damaged recovery process is thorough and effective. NDOT is proud there are no tort claims this year. As a Department when incidents do occur regardless of the circumstances or fault, we thoroughly examine why that incident, incident occurred and what steps can be taken to prevent the same thing from happening in the future. We do the same for near misses and share and discuss lessons learned to make sure we are operating in the safest manner possible for both our workers and the public. On occasion someone asserts that a traffic crash was related to NDOT's work or facilities. When formal claims are filed against NDOT, the department works closely with the Attorney General's Office to determine what happened and determine responsibility. Again, we are proud to say that there are no tort claims involving the Department this year. So thank you for the opportunity. And with that, are there any questions?

**M. HANSEN:** Thank you. Are there questions from committee members? Seeing none, thank you.

**LYN HEATON:** Thank you.

**M. HANSEN:** Hi. Welcome.

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**CHRISTINA PETERS:** Hello. Thank you. Good afternoon, Chairman Hansen, committee members and counsel. My name is Christina Peters, C-h-r-i-s-t-i-n-a P-e-t-e-r-s. I'm an accountant for the Nebraska Game and Parks Commission. Our write-off request portion of this bill totals \$7,731.36. Our submission includes four different types of collection issues. The first being uncollectible or insufficient fund checks received at various parks throughout the state totaling \$3,616.17. They range in size from \$6 for a daily park permit up to \$280 for a multi-night stay-- camping stay and more than 80 percent of our bad checks are for under a \$100. The second issue totals \$244 which were fees not collected at a park for two different events, a wedding and a youth activity. There was one theft of shower change at our Lake Ogallala in Keith County for \$24.75. And last, we had three external permit vendors or agents close their shop before they paid us what they owed for selling park permits, fishing permits, hunting permits, etcetera, owing us a total of \$3,846.44 in sold permit fees. Our agency follows debt collection procedures to attempt recovering these amounts at the park and office locations before they send them on to the Lincoln office for additional collection efforts. And our permit section attempts to collect all sales proceeds from the permit agents located throughout the state. None of these claims were deemed sufficient enough to warrant involvement of the agency legal counsel or assistance of Attorney General and we would respectfully request your approval of the submitted write-offs. Thank you.

**M. HANSEN:** Thank you very much. Questions from committee members? Seeing none, thank you.

**DAVID McMANAMAN:** Good afternoon, Chairman Hansen and members of the Business and Labor Committee. I am David McManaman, D-a-v-i-d M-c-M-a-n-a-m-a-n. I'm an attorney with the Department of Health and Human Services and I'm here to testify in support of LB464. Specifically, Section 6 which would permit the Department of Health and Human Services to write-off certain debts owed for fiscal or accounting purposes and to provide additional information. The total debt for which DHHS is requesting write-off authorization is in the amount of eight hundred and thirty one thousand dollars three hundred and seven-- I'm sorry, \$831,376.21. The requested write-off relates to debt owed to HHS by way of assistance provided through 18 different programs. The debts are due to overpayments made for services provided or for which we have not been reimbursed. The requested-- I'm sorry, prior to submittal of these debts for write-off, the agency pursued recovery through one or more of the following efforts: first, regular

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billing statements; second, recoupment; third, demand letters signed by the program by one of the agency's directors and or by one of the agency's attorneys; and fourth, litigation. Approximately, 99.8 percent or \$829,571.26 of the debt being submitted for write-off is being submitted because the debtor has passed away with no probate being filed, because the debtor had the debt discharged in bankruptcy, or because the applicable, applicable statute of limitations has passed to include money owed from persons who remained on needs-based assistance. In fact, the majority of this year's submission nearly 92 percent falls within that third category. Debt that is uncollectible has passed the statute of limitations. Much of the debt that is owing from persons who are-- much of that debt is owing from persons who were on needs-based assistance at the time their debt went past the limitation's period. By way of example, the largest number of accounts included in this year's request involve debts that came about due to overpayments made to recipients of Aid to Dependent Children, ADC. Over half of this year's submission involves debt owing from ADC recipients, 420 accounts in all, with the average account owing \$664.37. Of those accounts, nearly 95 percent involved deaths that where had-- it had been at least five years since the last payment was made. And so the statute of limitations period had run. The remaining two-tenths of one percent of this year's total write-off requests involve 44 individual accounts of less than \$100 each averaging approximately \$41 where we have sent billing statements, mailed demand letters and made telephone calls to no avail. Thank you for the opportunity to be here today and I'm happy to try to answer any questions you may have.

**M. HANSEN:** Thank you. Are there questions from committee members?  
Senator Crawford.

**CRAWFORD:** Thank you. And thank you, Mr. McManaman, for being here. Can you characterize-- is there a particular incident that happened for the overpayments that were made to persons on ADC?

**DAVID McMANAMAN:** Typically, what would happen in a situation like that would be-- ADC is provided for folks who are in financial need. And typically, you might have a situation where the reported income changed and, and DHHS was not advised of the change until a couple of months later. During the course of those two months, additional payments went out at a higher rate than they should have. And then we find out about it. We try to collect. Unfortunately, if the recipients

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continue on needs-based assistance it, it becomes very difficult, if not impossible, to recover that amount.

**CRAWFORD:** Thank you.

**M. HANSEN:** Thank you, Senator Crawford. Any other questions? Seeing none. All right, thank you.

**DAVID McMANAMAN:** Thank you.

**M. HANSEN:** Welcome.

**JOHN ALBIN:** Good afternoon, Chairman Hansen, and members of Business and Labor Committee. Excuse me. For the record, my name is John Albin, J-o-h-n A-l-b-i-n, and I'm the Commissioner of Labor. I'm appearing here today in support of the write-offs of uncollectible unemployment benefit overpayments in LB464 requested by the Department of Labor. The Department is in the midst of implementing a new unemployment benefit payment system. A part of that implementation process is cleaning up the database transferred from the old system to the new system. Because there is no statute of limitations on the collection of unemployment debt, the Department has never written off an unemployment insurance benefit overpayment since the unemployment program was enacted in 1937. The Department is asking the Legislature to approve writing off these uncollectible overpayment bene-- debts so that the Department does not carry forward uncollectible debt data into its new unemployment system. Going forward, NDOL plans to propose debts for write-off on an annual basis. Department of Labor seeking to write-off \$4,980,784.21 in unemployment insurance benefits overpayments. This number consists of 8,295 separate overpayments over the past 81 years. The debts brought to be-- sought to be written off include debts discharged in bankruptcy, overpayments owed by persons who were deceased, and persons that simply cannot be found after multiple efforts. NDOL takes considerable effort to collect on overpayments. If the claimant does not voluntarily repay the debt, the Department first offsets the amount owing against current or future benefits. If that does not recapture the debt, all overpayments are certified to the Department of Revenue for offset against state income tax refunds. If the overpayments resulted from unreported earnings or fraud, the debt is also certified to the United States Treasury for offset against federal income tax refunds owed to the claimant and that offset process continues until the debt is recovered. In addition, if the debt is due to fraud the department levies against wages owed to that claimant by a Nebraska employer. In 2018, the

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Department collected \$2.7 million in overpayments. In 2017, \$3.4 million; 2016, \$4.1 million; 2015, \$5.2 million. Collections in 2016 and 2015 were higher because they were the first years that offsets against federal income tax refunds were possible under the Department's existing software. And that meant that a lot of relatively old debt was recovered in the early years of the Federal Offset Program. In addition, these offsets also reflect the overpayments that occurred during the historically high level of benefits paid during the Great Recession. Even in years of historically low unemployment rates, NDOL will process over 30,000 new unemployment claims each year. Of the millions of claims filed since the enactment of the program in 1937, DOL is proposing to write-off 8,295 overpayments. That concludes my testimony and I'll be happy to try and answer any questions you might have.

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

**JOHN ALBIN:** Thank you.

**M. HANSEN:** Welcome.

**COLLEEN BYELICK:** Hello, Senator Hansen and members of the Business and Labor Committee. My name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the Chief Deputy and General Counsel for the Secretary of State's Office here on behalf of the Secretary of State, Robert Evnen. I appear before you today in support of the miscellaneous claim to the Nebraska Press Advertising Services which was in Section 1 of LB464. This is for ballot printing costs associated with Initiative 427, which is the Medicaid Expansion Initiative. In 2018, Nebraska law requires that the Secretary of State publish a true and correct copy of the ballot title and text in all legal newspapers in the state once each week for three consecutive weeks. These costs, when incurred, have typically been paid through or historically been paid through the state claims process. And that's the case before you today with the miscellaneous claim in Section 1 of the bill. We do approve these costs and support payment of the costs via LB464. Happy to answer any questions you may have.

**M. HANSEN:** Thank you. Are there questions from the committee? Seeing none.

**COLLEEN BYELICK:** Thank you.

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**M. HANSEN:** All right, are there any other proponents to LB464? Seeing none, anybody wishing to testify in opposition to LB464? Seeing none, anybody wishing to testify in neutral to LB464? All right with that, we'll close the hearing on LB464 and I'll invite our committee counsel to open up on LB465. Are you ready?

**TOM GREEN:** Chair Hansen, members of the Business and Labor Committee, my name is Tom Green, T-o-m G-r-e-e-n, and I am the legal counsel of this committee. I am here to introduce LB465 which is a placeholder bill for denying claims against the state at the time of introduction, and currently there are no denied claims. I've had discussions with the Risk Manager and there are not expected to be denied claims so LB465 will not be needed. That concludes my testimony and probably the last word in the Business and Labor Committee so-- unless you have any questions.

**M. HANSEN:** Are there questions from the committee? Seeing none-- oh, Senator Halloran, sorry.

**HALLORAN:** I need to ask a question, but it's, it's, it's not appropriate to ask the legal counsel the question, so I'm good.

**M. HANSEN:** All right. Thank you, Tom. All right. Are there any proponents to LB465? Seeing none, any opponents to LB465? Seeing none, any neutral to LB465? With that, we'll close the hearing on LB465 and our business for the hearings for the day and for the year. Thank you, everyone.