

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee March 6, 2023

RIEPE: I am Merv Riepe. I'm the Chairman of the Business and Labor Committee. I represent southwest Omaha and the people of Ralston. We're going to skip self-introductions because we don't have everyone here yet, but-- and I will wait on the terms of all of our administrative staff also. My request is that you all please silence your phones, beepers or any other distractions from this hearing. Today and before each hearing, all bills to be heard will be posted outside the hearing room and heard in the order posted. On each of the tables near the doors, you will find green testifier sheets if you intend to testify today. Please fill one out. Legibly print all information and hand it to the page when you come to testify. This will help us to keep accurate records of the hearing and to make sure that we get credit for your being here. If you're not testifying at the microphone but want to go on record as having a position on a particular bill being heard, there are white sign-in sheets in each entrance where you may leave your name and other pertinent information. Also, I would note if you are not testifying but have a position letter to submit, the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. The senator introducing the proposed legislation today will present first and will be given the time required or requested. For purposes of the record, recorded record, we ask each presenter to state one's name, spell it, and then state who you rep-- state clearly who you represent. Senators who serve on the committee are encouraged to ask questions for clarification. That said, the presenter and those testifying are not allowed to ask questions of the senators serving on this committee. Senators may have computers, laptops at their disposal regarding the hearing, so please understand that they are paying attention because they can follow along on the agenda for those who are more technically inclined than I am. In the Business and Labor Committee, we will use the light system to promote maximum engagement of those wishing to express positions as proponents, opponents, and in a neutral capacity. Each testifier will have three minutes today given the length of our agenda. When you begin, the light will be green. When the light turns yellow, that means you have one minute left of the three remaining. When the light turns red, it is time to wrap up or end your testimony; and I may ask you to wrap it up with your final thoughts. The three-minute rule may change based on the number of people waiting to speak. Well, I won't change that in the middle, but we might change it, if you will, between different bills. But we're going to start with three just so we make sure we maximize the time. As Chair, I will seek to hear citizens who have traveled from some distance to each hearing, and we

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will also acknowledge letters received from all concerned parties along with emails. We have a strict policy of no props in this committee. Should you have handouts you wish to share, please share ten copies or ask our page to make copies. Please be aware that any handouts submitted by testifiers will be included as part of the record as exhibits. The pages, page will then distribute any and all handouts to committee senators. Following all proponent, opponent, and neutral testimony, testimony, the bill presenter is often offered the opportunity to close with final remarks or he or she may waive if they have no remarks they want to make. As a committee, we will work diligently to provide a fair and full hearing. We will make every effort to accommodate special needs. And short of an emergency, this committee will not take action on a bill the day of the hearing. At this hearing, we ask you to be respectful of the process and to one another. With that, I'm going to-- I'm going to ask the committee members to introduce themselves. And I will start at my right and I will ask staff to introduce themselves as well. So, Senator Halloran.

HALLORAN: Good afternoon. Steve Halloran, District 33, which is Adams, Kearney, and Phelps Counties.

McKINNEY: Good afternoon. Terrell McKinney, Senator, District 11, north Omaha.

MICAH CHAFFEE: Micah Chaffee, research analyst, Business and Labor Committee.

IBACH: Teresa Ibach, District 44, which is southwest Nebraska, eight counties.

HANSEN: Ben Hansen, District 16: Washington, Burt, and Cuming and parts of Stanton Counties.

PAYTON COULTER: Payton, I'm the committee clerk.

RIEPE: OK. And our page, she's flying solo today, is Mia. So thank you, Mia. With that, we will begin today's hearing with LB405. And we welcome Senator Vargas.

VARGAS: Good afternoon, colleagues. Members of the Business and Labor Committee, Chairman Riepe, thank you for taking the time today. I got a couple of handouts I'm going to hand out in advance if a page can help. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, which includes the communities of downtown and south Omaha. Today I bring you LB405, which would make changes to the Non-English-Speaking Workers Protection Act. Now, the spirit of LB405

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is that given the industry's decade long track record of higher injury rates and the recent child labor law violations, policymakers need to have a better understanding of the working conditions that exist in the meat and poultry industries. LB405 tailors the coordinator's annual report to do just that. It creates a tool, too, that better positions us as policymakers to develop and implement solutions. Now, over the last several years, we have heard an increasing number of concerning practices taking place in the meatpacking plant industry. In 2020, we heard firsthand for the first time from our meatpacking industry workers directly about what they were experiencing at work. During this hearing, we heard numerous concerns about their work conditions and environment, such as a lack of investment in improvements to the plants, little ventilation or sanitation issues, and health and safety precautions. Now, OSHA data corroborates what we heard in 2020. Most recently, we've been made aware of violations of child labor laws in our meatpacking plants. The Department of Labor, the federal Department of Labor reported 33 violations of child labor laws in Nebraska packing plants, 33 of the 100 more than any other state. A few of the data points that I think are important for me to share with you: In Nebraska in 2020 alone, there were about 2,700 work-related injuries and illnesses that caused nearly 31,000 days of missed work in Nebraska's meatpacking industry. In 2020, nearly 10 percent of FTEs in Nebraska's meatpacking industry had reported injury or illness, compared to only 2.3 percent in private industries or other private industries. I passed out a sample of the 2020 NAICS Injury Data Nebraska Meatpacking Report for your reference. So that is where I'm coming from that these changes in LB405, this creates tools that better position us as policymakers to develop and implement solutions that are not only going to protect workers but increase transparency. With that, I'm happy to answer any questions.

RIEPE: Are there questions from the committee? I do have a question. When I was-- when I was reviewing this, I was-- I was questioning whether it should be a non-English-speaking or whether it should just be Workers Protection Act, because I assume that the intent of it is, is Workers Protection Act, regardless of whether they're English-speaking or any of the multitude of languages that we have out in those industries.

VARGAS: So I'm happy to entertain some changes there. I mean, this is the existing act that already exists. So this is just making changes to that current act as it's currently stated. One thing that we do see is there are-- there's a need for more engagement and education and outreach in regards to all the different languages. And I always say there's a spectrum within the industry. There are people in the

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industry in terms of meatpacking plant companies that are doing a lot and some that are doing a lot less and some that have a much more higher population of non-English speakers. But it's just because we're making changes to the-- to the current act.

RIEPE: OK. And would-- are there any other questions? Seeing none, will you be staying around for closing?

VARGAS: Yes.

RIEPE: Oh, I'm sorry.

HALLORAN: I'm sorry. I was a little late on the draw. Thank you, Mr. Chairman. Thank you, Senator Vargas, for bringing the bill. So this was-- had a form that you sent out with the [INAUDIBLE] is 2020 NAICS Injury Data Nebraska Meatpacking. It'd be helpful to see years other than a COVID year, particularly for the total illnesses. That year might be just a bit of an anomaly for what is average or more normal. Do you have that data available?

VARGAS: I don't have that data. I think you'll hear anecdotal data and some updated data from what we hear from different proponents and opponents, I would imagine. But I think this is part of the solve. This is what we're trying to solve. Like, if we are able to collect this data on an annual basis, report it to our state Department of Labor, we would have much more insight and it wouldn't be just a snapshot into 2020. To your point, I think that's going to be really useful information for us. So that's what this bill is really trying to do as well.

HALLORAN: OK. Thank you.

RIEPE: OK. Any other questions? Thank you. Now, will you be staying around for closing?

VARGAS: I will, especially since I have the next bill.

RIEPE: Are there other proponents if you would like to testify? Welcome.

NICK GRANDGENETT: Thank you.

RIEPE: And if you would state your name, spell it, and the organization you represent, and then we'll ask you to go forward.

NICK GRANDGENETT: Yeah. Good afternoon. My name is Nick Grandgenett. That's spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in support of LB405. So driven by an unrelenting workplace that requires workers to make between 20,000 and 100,000 motions per shift, the large scale meat and poultry plants continue to be among the most dangerous work sites in the United States. As Senator Vargas said, in 2020 there were 2,726 work-related injuries and illnesses in our state's meatpacking industry. Those injuries and illnesses caused a combined 3,822 days of missed work. If you look at my testimony, figure one demonstrates how these injuries compare to both construction and animal food processing. About 10 percent of meatpacking workers experienced a work-related injury or illness in 2020. By comparison, about 2.7 percent of construction workers experienced a work-related injury or illness, while animal food processing had an injury rate of 2.3 percent. Also, just say that with respect to COVID-19, these numbers do reflect what happened with COVID-19. However, if you look back at data from previous years, you'll see it's also very high. So in 2016, for example, the injury rate was like 10.5 percent for meatpacking workers. In addition to the poor health and safety record, serious child labor violations were recently uncovered in the meat processing plants, which were violated by a third-party cleaning corporation, which was ultimately determined to be responsible for hiring youth between the ages of 13 and 17 in overnight shifts, cleaning very dangerous equipment with very hazardous chemicals. So LB405 is just a commonsense bill that benefits Nebraskans working in meat and poultry plants. It does so by simply clarifying a few aspects of Nebraska's meatpacking coordinator's duties by using publicly available OSHA data, which is included in the coordinator's annual report to allow for year-over-year comparisons. This would both improve industry transparency and assure the Legislature, the Governor, and other policymakers have more consistent information to develop solutions to the-- to the industry's poor labor record. Additionally, the bill clarifies and requires the coordinator to communicate how they will prevent child labor law violations in the future and also ensure that the traditional promises of the act, which have to do with translation and transportation services, are being honored. The final thing I'll just say is that the bill puts the coordinator in a position to ensure that when they become aware of labor-related disputes, they're in a position to refer those disputes to the appropriate labor enforcement agency. This is important because the coordinator in the state of Nebraska doesn't have the jurisdiction to address workplace health and safety issues. But the coordinator can refer those to OSHA or the appropriate labor enforcement agency. So at its core, LB405 is really just about transparency. And for all of

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those reasons, we would just urge this committee to advance it to General File. Thank you.

RIEPE: Thank you. Are there questions from the committee? Senator Hansen.

HANSEN: Thank you. Thanks for testifying.

NICK GRANDGENETT: Sure.

HANSEN: It seems like the-- so far from just the two testifying, two testifiers so far, the prevailing theme is that this is in the name of safety. Is that kind of the purpose of the bill is because the job is dangerous and so we're trying to get more information?

NICK GRANDGENETT: Yeah. I think the industry has a history of being very opaque. At the same time, if you look at all the OSHA data and just listen to community members, I think what's really clear is that there's a track record of incredibly high injury rates, you know, that cause serious cuts, amputations, lifelong injuries. And if we collect this data and look at it just on a year-by-year basis, it's going to better position all of us policymakers, the Governor, to figure out what are our solutions to improve worker health and safety in meatpacking.

HANSEN: OK. Wouldn't insurance or workers' comp already have all this information?

NICK GRANDGENETT: So all of the information that would be collected by LB405 is publicly available through OSHA. So it's really just going through and using the NAICS codes, which breaks out in private industry how injuries are reported and collects all of the relevant NAICS codes for the meatpacking industry and makes it specific to the meatpacking industry in a way that allows for year-by-year comparison. So I don't know that they necessarily have this exact data, but they have other data that's similar to it.

HANSEN: OK. Can I ask another question, Senator?

RIEPE: Absolutely.

HANSEN: Do you know, do we require this information reporting from other industries? I'm just unsure. I don't really know for sure.

NICK GRANDGENETT: For sure. Not in this way. Every employer is required to report their, you know, certain injuries or illnesses that

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happen on their work site. And I think it's how do you represent that data to actually parse out what it means? So I don't know that Nebraska has statutes in place that require the reporting of injuries using the NAICS codes. But I think you can use the NAICS codes to better figure out specifically what does health and safety look like in a given industry. I think that's what this bill would do.

HANSEN: OK. All right. Thank you.

NICK GRANDGENETT: Yeah.

RIEPE: Are there other questions? I have one that would say, how does this relate to child labor laws [INAUDIBLE]?

NICK GRANDGENETT: So both, you know, the state of Nebraska and the federal government have laws that prohibit child labor. I think the key here is to put people in a position to catch those violations when they're occurring. I think the, you know, the core responsibility of the coordinator is to ensure the fair treatment of workers in the meatpacking industry. And so what they do is they go out to sites, talk with people, and they compile all that into a report. And I think if they're actively talking about how meatpacking companies can better position themselves to prevent those child labor violations by just communicating their policies to the coordinator, it better puts all of this in a position to prevent that type of conduct from happening in the future. So it's not like the coordinator would have the jurisdiction to enforce child labor law. It's more just that they're exploring how can we prevent that type of problem from happening in the future.

RIEPE: OK. This seems like a broader umbrella that you have. OK. Thank you.

NICK GRANDGENETT: Yes.

RIEPE: Senator Ibach.

IBACH: Thank you. I'm noticing that I kind of echo Senator Riepe's comments earlier, that these are 2020--

NICK GRANDGENETT: Yeah.

IBACH: --statistics. Are they not available more currently than that or are they just processed every?

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NICK GRANDGENETT: So the way the, the OSHA data works is employers throughout the course of a year will report their injuries to OSHA. And then after it's done, after the year has ended, they have basically one year to file like an amended report. So currently the most accurate year for which we have data is 2020. But you again, if you look at the incident of injury rates, it confirms that these are very high injury rates. So like in 2016, the injury was 10.5 percent, I think, for meatpacking.

IBACH: OK. Thank you.

NICK GRANDGENETT: Yeah.

IBACH: Thank you, Mr. Chairman.

RIEPE: Thank you. Are there any other questions from the committee? OK. Thank you very much. We appreciate your being here.

NICK GRANDGENETT: Thank you.

RIEPE: Are there additional-- before I go on, I would like to introduce Senator Hunt just joined us. So thank you very much. Do you want to make any comments about your district, the best one in Omaha?

HUNT: Yeah.

RIEPE: OK. OK. Any more proponents, please? Thank you for joining us. If you would, just state your name and spell it, please, and who you represent. Thank you.

RUBY MENDEZ LOPEZ: Yes, thank you. My name is Ruby Mendez Lopez. And I'm here in a personal capacity. You spell that R-u-b-y M-e-n-d-e-z L-o-p-e-z. I am a resident of Crete, Nebraska, and I'm here in support of LB405. Crete's largest employer has always been the meatpacking plant in town. My parents, aunts, uncles, cousins and almost everyone I know is employed by the meatpacking industry. This leads to many conversations at family and community gatherings being about their jobs inside these meatpacking plants. I hear constantly about the large number of injuries and general mistreatment inside their workplace. So I have brought just a few quotes from workers and community members in Crete about the conditions inside the plant, all of which have been collected just within this year. The problems always continue and that is why there are so many injuries at the plant. I can name five people in just the past week that I know were injured, and that's not rare. The work never ends. Every day they ask for more production, the line speeds up and there are less and less

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workers. There is a lack of respect from supervisors to the workers. They treat us like animals and the insecurity in the work areas. Area X is bad, but the supervisors ignore what the workers say. And that's why they're-- that's where accidents happen. Days and months will go by and no one will fix it until after someone gets injured. There are not enough workers. We are forced to fill in in areas where we are not properly trained to keep the line moving so there are always new injuries. When I worked in the meat packing company, I had to forget I was human. It is difficult to know who to report to for what, and then to find the time is almost impossible. This last quote, it's difficult to know who to report to, for what, and then to find the time is almost impossible highlights what a resource like a full, full-time meatpacking coordinator could do for workers inside these facilities. A full-time meatpacking coordinator and all of-- all of its resources would not only help us understand the true conditions inside the plant with our annual report, but also help workers navigate reporting and finding resources. The meatpacking and poultry industry has a decades-long record of alarmingly high injury rates and dangerous work speeds that cause permanently disabling injuries for Nebraskans who are our families and neighbors. Adding extra resources and safeguards like full-- like a full-time meatpacking coordinator and its resources can only help workers by providing important information, referral, and referrals in response to their questions and concerns. That is why I'm here in support of LB405. Thank you.

RIEPE: Thank you. Are there questions from the committee? Seeing none, thank you very much for being here. Additional proponents. Thank you for being here, if you'd state and spell your name, please, and then who you represent.

MARIA ARRIAGA: Thank you. Good afternoon. My name is Maria Arriaga, spelled M-a-r-i-a A-r-r-i-a-g-a, and I'm the executive director of the Nebraska Latino-American Commission, testifying in favor of LB405. I want to thank Senator Vargas for introducing this legislation that is so important for our state and for the Latino community. This testimony is given in my capacity as executive director of the Latino-American Commission and as a former worker in a meatpacking plant. The section, sorry, the sections they are intended to be modified or added in the statutes related to the Non-English-Speaking Workers Protection Act are necessary so the work of the meatpacking industry worker rights coordinator and the commissioner can be performed properly and underline the necessary areas of action. Those responsibilities have not been specified for both positions in the past. And I will like to add in this part the importance to call these Non-English-Speaking Workers Protection Act, since the most vulnerable

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people that fall in this category are non-English-speaking. And I'm talking from myself, my family members, my mom, a lot of people that I know that work in this industry and they don't speak English and those-- that's why they are very affected for all these revelations, they are now being-- they're being obligate correctly. I would like to highlight only some of the, the vital parts of the roles, Sorry. I'm a bit nervous. So part (4) is where accessibility to information and data regarding employees as well as the language that they speak are established. They are basic data that they need to be considered in determining if regulations and rights are being fulfilled. At the moment, I totally don't know where this information can be acquired of if the meatpacking plants really know it, or even they are aware of how many people in their-- in their-- in their industry speak other languages. Another very important part is part (5) where it specifies that the coordinator shall visit each meatpacking operation, meatpacking plant with more than 500 employees at least once per year. And this part is very important that needs to be included since at the moment it is not clear how many times the current meatpacking industry worker rights coordinator has visited the plants or which of this and how often this person has done so. This also referring to the implications that this person who only does the job on their part-time hours and that is based on Lincoln, can actually visit, can actually visit plants, for example, in Grand Island or Lexington, which I think it's not possible. So I, I really don't think that this person has visited any of these plants or talking to any of employees at the moment. To finish, I would like to mention a very important part in Section 4(d) that establish that the procedures used to ensure that children and minors are not being employed by a meatpacking operation or its contractors shall be known by the coordinator. Sometimes-- something that is-- something that as we know well is not established or applied or otherwise children would not have been hired to perform these jobs in our state. Thank you very much for, for your time. And I hope that you take this bill to the General File. Do you have any questions?

RIEPE: Are there questions from the committee?

MARIA ARRIAGA: I will be happy to answer.

RIEPE: I have a question.

MARIA ARRIAGA: Yeah.

RIEPE: What's the role? Is there a union involved?

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MARIA ARRIAGA: Is what is the role of what?

RIEPE: Is a labor union involved with the meatpacking workers?

MARIA ARRIAGA: Now, in some of them I'm aware of this. Some of the meatpacking plants has a union, some others does not. Some other even when I used to work, it was not here in Nebraska, was in Iowa, it was in Council Bluffs, even in the training years ago, I remember they even kind of plant a fear for us to don't be part of the union. And they basically say, you accept to talk to even to them, you will be willing to consequences. Basically, that was saying that you cannot talk to them because you will be fired. That happened to me. I'm talking by my own testimony. And that was obviously in Iowa. But that is something very similar that happens in a lot of different other areas. That's why I think it's very important and if the coordinator gets up, I hope that soon it gets full time. That way this position can actually go to the plant in the different areas in Nebraska and actually talk to people in their own language because it's the only way they're going to be able to communicate correctly what is really happening. Other than that, is very difficult for someone in another language to feel confident enough to go and talk about what is happening in another language with a person that probably barely understand you and bring an interpreter that is probably not interpreting correctly. It's a whole thing.

RIEPE: OK. Thank you very much. See any other questions? OK. Thank you very much.

MARIA ARRIAGA: Thank you.

RIEPE: Next proponent, please. If you'd be kind enough to state your name, spell it, please, and then who you represent.

JANE SEU: Good afternoon. My name is Jane Seu, J-a-n-e S-e-u, and I'm here testifying on behalf of the ACLU of Nebraska in support of LB405. And we thank Senator Vargas for introducing this legislation. Our immigrant neighbors make up the majority of the workers in meatpacking plants where working conditions have had little accountability for health and safety. Additionally, meatpacking plants are likely to have a workforce who predominantly do not read or speak or understand English, and many of the rights afforded to workers are not adequately communicated or represented, which makes them particularly vulnerable to retaliation, harassment and mistreatment. And as you may recall, the ACLU of Nebraska, we actually filed a lawsuit against a meatpacking plant during the height of the pandemic because of the

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horrible working conditions reported there. And just recently, there were reports of child labor law violations out of meatpacking plant in central Nebraska. And while unsurprising, I hope it serves as an alarm for policymakers to do all they can to increase oversight of the issues in meatpacking plants, which should include giving the meatpacking coordinator the tools to increase accountability in our meatpacking plants and protect the rights of the workers that are included in this bill. Giving the meatpacking coordinator increased access to meatpacking plants' reporting requirements will help ensure that meatpacking workers are afforded their rights and increase safety and reduce harassment and retaliation while at work. Among other requirements, the meatpacking coordinator will report on the number of complaints, identify language access gaps between employees and employers, and will visit and inspect the large plants at least once a year. The lack of oversight in meatpacking plants have put thousands of workers at risk and allowed plants to evade accountability for years. This troubling trend cannot continue and we are committed to advance LB405 to General File. And I'm happy to answer any questions.

RIEPE: OKay. Thank you very much. Are there questions from the committee? Seeing none, we appreciate you being here very much. More proponents, please. Anyone else wanting to speak in favor? Again, if you'd be kind enough to state your name and spell it and then who you represent.

JON REHM: Yes. Jon, J-o-n, Rehm, R-e-h-m, on behalf of the Nebraska Association of Trial Attorneys. We support LB405. Like many of our members, many of our members represent non-English-speaking workers in cases in front of the Nebraska Workers' Compensation Court. And I can say in my experience that this legislation will impact-- will help non-English speakers; but, Senator Halloran, it will also benefit a substantial number of native born English speakers who do work in those plants. And it is a significant minority of employees, but they do work there and some of them even commute out of your district to go work at JBS because that's close from Hastings. So I've represented some of those employees before. This law is good because, as many of the proponents have said, increased transparency. And I think the advantage of having the coordinator is while the information, Senator Hansen, is-- some of the information is available through the Workers' Compensation Court, having a coordinator is going to sort of collect and collate and put that information, coordinate that information so, you know, better enforcement can be made and they can do things that private lawyers who are concerned about individual cases can't do. We're focused on the individual cases, whereas I see the meatpacking coordinator as somebody who can take collective action or group

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action, kind of similar to what the maybe the NEOC is doing in regards to housing discrimination in some of these packing house towns where there were, you know, housing has been an issue. And the NEOC has taken some action there. At least give the meatpacking coordinator the ability to refer some of this work out. So and-- so, yeah, I mean, again, the private lawyers who do this, we're not looking at the big pictures. We're looking at our, our clients. We kind of know what's going on. But the meatpacking coordinator we see is, is somebody who would put things together and also show which meatpacking, which meatpackers are doing the right thing and which ones are kind of slacking off and who's cutting corners. And I think, you know, Senator Ibach, I come to your district quite a bit and litigate against the meatpacker out there in Lexington. And I'm not giving too much credit but, you know, they do better. They do a lot better than some of the other outfits out there, including the company, Brazilian company in Grand Island so-- employed child labor. So any questions?

RIEPE: OK. Thank you for being here. Questions from the committee to the counselor in the chair? Seeing none, thank you very much for being here. We appreciate it. Are there other proponents? OK. Seeing none, are there-- is there anyone here to speak in opposition, opponents? Here we go. You know the rules so we will let you go.

JESSICA KOLTERMAN: Senator Riepe, members of the committee, my name is Jessica Kolterman, K-o-l-t-e-r-m-a-n. I'm representing Lincoln Premium Poultry. We're a wholly owned subsidiary of Costco and started our company in 2016 with operations beginning in 2019. I've spoken to Senator Vargas about the bill. I appreciate his perspective and understand where he's coming from with the legislation. However, we believe this legislation would be unnecessary, and would like to go on record as opposing it because we believe it places an additional regulatory burden on companies such as ours. I have a couple of specific things that were-- wanted to bring up in the bill. On page 4, Section 4, it says the coordinator shall provide any recommendations it deems necessary for the fair treatment of workers in the meatpacking industry. I guess one of the questions we have is what qualifies this person to provide those recommendations? Additionally, on page 5, it references our companies giving specific languages that the people within our organization speak. While we do know that generally it's hard to get into specifics because some of these people are not only not literate in English, but they're not literate in, in any language. Some of these languages are not recognized as formal languages. There's a lot of dialects involved. So that might be problematic. And generally just it says on page 7, "The coordinator or a representative...shall be available to deliver presentations that

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explain basic rights under worker protection laws and...other topic deemed appropriate by the coordinator." I guess we just really wanted to better understand what that means. That's very broad in general. All that being said, I do want to take just a couple of minutes to tell you a story about our company and some of the extraordinary things we do to support our people. In the start, we had just opened when COVID shut down our world. And it really, even though was a hard time in our industry, it gave us the opportunity to really show our people how we wanted to support them as individuals and wanted to support them through that difficult time. And as COVID has faded into the background, the spirit of that support has not. We continue to offer a wide variety of services, including English and Spanish, to our people, that we offer those language classes on the clock and just a lot of other services that I can certainly answer questions about. But we are, if you come visit us, you'll see that our people are happy, they're respected in their roles, they're appreciated, they're valued. And generally that's, that's the story of our company. I can get into specifics if you have any questions. I did want to answer Senator Halloran's observation about the 2020 data. In the beginning, we were told that anytime anyone in our company contracted COVID, whether they contracted it at our company or not, we did have to report that to OSHA. And so I do believe that that data is very skewed for the year of 2020 specifically. With that, I'll close and answer any questions you have.

RIEPE: Thank you very much. Are there questions? Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. Thanks for being here, Ms. Kolterman. So can you kind of give us a feel for how your company, Lincoln Poultry, accommodates people with different languages?

JESSICA KOLTERMAN: So first of all, most every single thing we do is translated into three. We have English, and then we have two other main languages, Spanish and Karen. That makes up the majority of our population and the languages that they represent. If there is someone that has a specific dialect and we have identified that, we do have people that will then further work with that individual to make sure that they're getting the very specific language that they need so that they can understand our procedures and processes and anything they might need, especially to be safe.

HALLORAN: OK. One other question.

RIEPE: Absolutely.

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HALLORAN: How about in regard to what your company does to make sure, ensure that minors and children aren't employed?

JESSICA KOLTERMAN: Yeah, I appreciate that question. So we actually do third-party audits of all of our contractors where we'll have an auditing company come in and do an audit of that, of our contractors to make sure that all of the things that we require of ourselves is, is being adhered to by them as companies as well. So we have also had our third-party audit of the company that had the challenges with the child labor issue, and we found no wrongdoing within our facility.

HALLORAN: OK. I'm sorry, Mr. Chairman. Back to the language issue.

JESSICA KOLTERMAN: Sure.

HALLORAN: So what-- what would-- what would be the percentage of English and non-English?

JESSICA KOLTERMAN: I would say it's, it's probably 85 to 90 percent speak Spanish or are bilingual in our company specifically.

HALLORAN: OK.

JESSICA KOLTERMAN: It's a very small percent that speak Karen. I think there's about 30 individuals.

HALLORAN: OK. Thank you.

JESSICA KOLTERMAN: Yeah.

RIEPE: Any more questions? OK. Are there other questions? Seeing none, thank you very much for being here. Other opponents? Do we have anyone else speaking in opposition? Seeing none, is there anyone who is speaking on a neutral capacity? Seeing none, Senator Vargas, you're welcome to close.

VARGAS: Members of the Business and Labor Committee, Chairman Riepe, thank you very, very much for engaging in this and for all the testifiers, including opposition as well. I had a nice conversation with, with Ms. Kolterman, and there's a couple of things that I want to try to address on the record. One is nobody believes, and me in particular, that every single meatpacking plant industry in terms of a company is acting in the exact same way. I think what we saw from the child labor violations, there were extreme bad actors. We have one. In this instance, it was JBS that had 33 violations. That is an egregious problem that shouldn't have taken getting to the federal level to then

solve. And when we had conversations with even our own Department of Labor, there wasn't anything in an actual statute that is requiring us to do more for transparency to address this in the future. And so this bill isn't about starting something new. It is about following through on something that exists. It's kind of getting to Senator Hansen's part. Do we treat other industries differently? This act was created under Governor Johanns. It's created because the industry inherently is already different. Put aside the 2020 numbers, even the 2016 numbers, I think you heard this number, 10.5 percent injury rate. That is already nearly four or five times higher than every other private industry that exists. This was created to create a coordinator position way, way back that created a bill of rights for meatpacking plants in terms of their workers to make sure that there is safety in place, to make sure that there is a liaison, to make sure there's a connection. This is updating on that existing law, on existing statute. And the ways that we're doing it, you know, and I do-- I do disagree with this, this is going to be onerous or it's going to be extremely difficult. If you're looking at Section 4 on page 4: The coordinator shall, on or before June 30, submit a report to the Legislature and they can make recommended actions on what they deem appropriate. You know, our current coordinator that exists has background and has had experience working with the industry. And if we need to put more language in there that elevates the types of background they need to be able to do this, we can do that. I'm not worried whether or not they can have the experience. It's whether or not we actually dictate in law the requirements of what we are looking in terms of data. The report shall be submitted to the Legislature electronically. It needs to include the total number of all these different categories for deaths, cases of injuries, work cases. We heard all these numbers can be-- we can access many of these data points from some of the federal OSHA data. And it's being compiled then by the coordinator that already exists in state law under the bill of rights that already exist in state law. To keep looking, this includes on page 6, you also have to put in a list identifying the services provided to all employees in this section. This is just identifying all the services that you're providing to employees in terms of language, the list, identifying all languages other than English spoken by 10 percent or more. I think what we heard also from Ms. Kolterman is that in terms of 10 percent or more, there's only a few languages that actually get to 10 percent or more. We want to make sure that we know what languages are actually being. Because if you can imagine, if a coordinator knows the main languages spoken at each of these different facilities, they can make sure that they're providing the, the necessary education and support that's needed so

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that meatpacking plant workers that we're actually following through on the bill of rights that's exist in statute. And then the next portion on page 6, the procedures used to ensure that children and minors are not being employed by a meatpacking operation or its contractor, that is meant for transparency. I think we heard from Ms. Kolterman that the company that she represents is meeting that standard and we would see it and it'd be transparent that they have a policy on double-checking that. I'm not worried about Ms. Kolterman's, you know, company. I'm worried about all the other companies that don't have a policy or are afraid to share what their policy is. And that's the reason why we had these child labor violations. This is about making sure that this act is following through on what it was intended to do. It's intended to be a voice for meatpacking plant worker safety while also simultaneously making sure the industry is successful. When workers are sharing stories in confidence and you heard some of the stories, and this continues to be the case, this is not about COVID-19 times when we're hearing those stories, something is still wrong. And rather than waiting for egregious things to happen, let's improve the data collection to inform policy making. Let's make sure that we are having some more transparency. Let's utilize the data points that we do have so we're not being redundant. And let's make sure that there's real policies put on the books that they have to share with the Department of Labor so we have a window into what they're holding themselves accountable to. And that's really the most of this. This is what this bill is. I appreciate you very much. We cannot sit idly by and just wait for something else bad to happen. And again, this is not about COVID-19. There's egregious things that happen. We have child labor violations and we don't do something about it. And I think seeing through something that was put in the statute years ago is a really good use of our time. And instead of creating a whole new program or whole team, we're talking about empowering the current coordinator position to use the law so it can do right by what we put in the statute. Thank you.

RIEPE: OK, let's see if we have some questions. Senator Hunt.

HUNT: Thank you, Chairman Riepe. Thank you, Senator Vargas, for introducing this bill. I was really troubled when I saw the news about the child labor violations in the Nebraska meatpacking plants, and that became national news in the last couple of weeks. And I was sort of surprised that we didn't get to really talk about that on the floor. You know, usually when something that egregious happens, especially in our state, someone can kind of take a minute and talk about it. But can you say any more about what happened in that case?

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VARGAS: Just so I can give you some high level.

HUNT: Yeah.

VARGAS: The thing that is probably the most egregious is that there were about 100 cases of child labor law violations across the country that were identified and 33 of those were identified in the state of Nebraska.

HUNT: Like a third of them.

VARGAS: Like a third of them, yeah. And the majority of those are from two or really one main actor, JBS being one of them. And it took getting up the food chain to get to this point. But what we don't have at our state level is any types of procedures that would help avoid this ever happening again.

HUNT: So how, how young were the kids that were involved in that, that? Do you remember?

VARGAS: It was all different ages, some as old to 17, I think some to 12 or 13. That's what, what I remember.

HUNT: I feel like--

VARGAS: I can't remember if it was just confined to Nebraska, but.

HUNT: I feel like I saw as young as 12 in Nebraska,--

VARGAS: Yeah.

HUNT: --maybe younger. And these kids were working overnight. It wasn't even like, OK, you're working after school, helping bring in a little more money sweeping up. It's like they were doing labor overnight, not going to school because they have to work like this is the friggin 1920s or something.

VARGAS: Yes. Yes. And I think what we heard again from, from Ms. Kolterman is they have a policy that does their own review of any subcontractors to ensure something like this doesn't happen. So there weren't violations related with her employer. However, for some of these other employers, either they willfully ignored and had no policies in place for transparency or in any audit of these subcontractors or these contractors, or they just didn't care because they were caught. And I want to make sure and with language that we have that says the procedures used to ensure that children and minors

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are not being employed by meatpacking plant operator or its contractor being listed and being made available every single year from each of these plants will give the Department of Labor that window that they have something on the books and what that language actually is.

HUNT: And that maybe this could have prevented these 12-year-olds from working overnight in Nebraska meatpacking plants, which was mortifying to even read that that was happening here.

VARGAS: Yes. And it also gives a voice, you know, the other languages you talked about, the availability to deliver presentations to explain basic rights under worker protection laws. A coordinator can communicate that they're providing education to individuals that may not actually know their rights. This isn't about undermining any type of system. This is making sure people know their rights while they're working and they're voluntarily working in these facilities. We, we, we know that. But they also deserve to know what their-- what their rights are. They deserve to understand what those basic worker protection laws are. And if they're able to communicate to some entity that this is happening, they could have avoided this as well.

HUNT: Thank you.

VARGAS: Thank you.

RIEPE: Are there other questions? Senator Hansen, please.

HANSEN: Thank you. I didn't know a whole lot about the fine for the minor children. I just looked up real quick. It was between 13 and 17 years of age. I'm trying to think if your bill would have prevented that, because it looks like it's a sanitation company that got fined, not the meatpacking indus-- meatpacking industry looked like they hired the sanitation company to clean the facility. And so would that-- so when you're reporting on the meatpacking employees, would this company be a part of that?

VARGAS: So I think the best example I can give actually is what Ms. Kolterman said. They have their own audit on what subcontractors or contractors that they are-- that they are abiding by these same type of laws. And I imagine that these other bad actors didn't have a policy on the books or it didn't matter to them. What we have seen in other industries, it's not just this industry, is sometimes when we have contractors or subcontractors, really great employers will care about whether or not subcontractors are meeting types of labor regulations and others that, that don't care. I think in this

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instance, if we had on the books what are the procedures or the policies that, that are ensuring that minors are not being employed, if we had that on the books every single year, we would be able to reference it. And through education from our coordinator, they would be able to communicate that back to workers that this is something that you should also watch out for. I think that would have been a stopgap and a preventative way of getting at-- getting ahead of this.

HANSEN: OK. I think that kind of led into my next question. You kind of led up to that. And that's a question Ms. Kolterman had about on page 7, the coordinator repre-- "presentations that explain basic rights under worker protection laws and any other topic deemed appropriate by the coordinator." It does seem a little broad, you know, because I think they could pretty much bring up any topic they want to have-- to have a presentation about. I don't know what that means. But can you, like, explain just that part a little more because she had a question about it. So I'm just kind of curious your thoughts.

VARGAS: No, it's a good-- it's a good question. I would say two things. One, this act, there are still workers that may not know about this act. Part of it is not because, for those that have been either in a meatpacking or food processing plant, there is turnover. Sometimes it's seasonal. Some of the better companies, like we heard from one of them, doesn't have as much turnover. But when you have higher turnover, people aren't actually aware of their rights, specifically under this Nebraska meatpacking plant bill of rights that has existed and also may not know some of these new provisions that we're putting in in terms of education. So I imagine that delivering presentations of basic rights would apply for both federal OSHA, but also what we see here. And in terms of other topics deemed appropriate by the coordinator, it was making sure that we have some availability for other things. So if you look at the meatpacking plant coordinator Bill of Rights, which is not-- this is not new language. It's on page 3. You know, the right to a safe workplace; the right to adequate facilities; the right to complete information. Some might think that that's somewhat vague, but this coordinator also has experience working in the Department of Labor on other issues of labor law. And so we don't want to-- I didn't want to confine them of what they could be able to deliver. And the language has made it so that they shall be made available to then do this, not that they have to do presentation every single year to each facility. It's that they have to be available to deliver these kinds of presentations.

HANSEN: OK. Thank you. Appreciate that.

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RIEPE: Are there other questions? I have a question. Given the fact that there is no fiscal note for a coordinator position, my question is this. Is it a failure to enforce the existing laws? And that should include all workers, regardless of their language. And I have a concern, of course, always of adding something new because somebody in that role is not performing what they should be doing. I don't believe in transferring problems or overlooking them.

VARGAS: Yeah. I think it is more of if we do not, we do not spell out in statute what we expect in terms of this report that is going to actually inform our policymaking then that it's not going to be included in this report. And, you know, this could have been different. We could have created, I mentioned this to others, could have created a team of ten investigators that are proactively going into meatpacking plants five, six times a year. I think we can get the data points we need from existing data. I think we can get it from the one visit per year. I think we can get it when we have these provisions in place. But if we don't-- if we don't have some more detail, I guess it's to Senator Hansen's point, it was a little vague in some places even before. We're trying to make sure it's more clear so it actually does what it was expected to do, and that's the intent.

RIEPE: Is there one coordinator in that position at this time?

VARGAS: There's a half-time coordinator right now.

RIEPE: Half-time.

VARGAS: Um-hum.

RIEPE: Has-- have you or anyone had an opportunity to look at the expectations or the role outlined in the position description against which this individual is evaluated against?

VARGAS: So I have not.

RIEPE: Because you wouldn't think it would have to be that clear, but sometimes you have to.

VARGAS: I have not. What I do know is a half-time coordinator also has other half-time duties within the Department of Labor. I think what we're hearing is not only from testimonials and from workers, is that there's a benefit to having more of the work from this coordinator position. And so let's, let's be more clear on what we expect from it. So yeah.

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RIEPE: OK. Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. So I guess along that line of questions and answers, do you suspect that there would be a need for a full-time coordinator rather than half time?

VARGAS: We didn't see that in the fiscal note, but I might anticipate that might be the case. And I don't know the exact cost of that. Could be-- I don't know what their salary is right now off the top of my head. But in some other instances, I'm sure you've seen either in HHS or even in Business and Labor, sometimes these different agencies can absorb some of these, this work because they're not starting from scratch. The data is not starting from scratch. We have it. It exists somewhere. I think we heard the, the coordinator is visiting different facilities. The question is if they're visiting each facility once per year. I did hear from Ms. Kolterman as an example that they did visit their facility, I think, once each year. So it's creating a consistent standard. So it might not actually need the full coordinator level position, which is reflected in the fiscal note, but maybe it does.

RIEPE: OK. Are there other questions? Seeing none, thank you.

VARGAS: Thank you.

RIEPE: Before we conclude, LB405 had nine letters or communications proponents, and zero, zero in opposition, and none in the neutral capacity. So thank you very much. With that, we conclude the hearing on LB405 and thank you very much. We will now proceed on to LB272 and that again will be Senator Vargas. This is the encore.

VARGAS: This is the what?

RIEPE: The encore.

VARGAS: Yeah, this is the encore. OK. Good afternoon again, colleagues and members of Business and Labor Committee, Chairman Riepe, members. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, which includes the communities of downtown and south Omaha here in the Nebraska Legislature. Today I bring to you LB272, which creates a more reasonable waiting period for workers' compensation. As you all know, the purpose of workers' compensation is to support Nebraskans injured on the job to be able to recover and get back to work, which ensures a healthy workforce and a healthy economy. In many critical ways, Nebraska state law already lags behind the workers' compensation systems in other states. In 1913, when Nebraska Workers' compensation system was created, it is unlikely the drafters of Nebraska's Workers'

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Compensation Act foresaw the detrimental impact inflation would have on the value of an injured worker's wages loss support. Many other states combat this problem by periodically adjusting wage loss support to guard against inflation. Proposals that cut off wage support compound this problem and are missing an opportunity to update the act to reflect the financial realities faced by injured Nebraskans in 2023. For Nebraskans, Nebraska has some of the longest waiting periods in the nation before people injured on the job can access workers' compensation support. Many are deterred by the long wait periods and pressured to prematurely return to work because they need to pay the bills and put food on the table, risking further or permanent injury and shifting costs to families, communities, and taxpayers. Now, this bill would ensure injured Nebraskans can reasonably access workers' compensation support for recovery. This bill is particularly important for immigrant Nebraskans who are disproportionately impacted by on-the-job injuries and unsafe working conditions. There are two waiting periods for workers' compensation wage support. First, Nebraskans must wait seven days before receiving wage support after a workplace injury, putting people in difficult financial situations as they're trying to heal. That week of missed pay is retroactively reimbursed only if the injury lasts longer than six weeks. Many states, including Nebraska's neighbors, provide initial benefits for injured workers after three days versus our seven-day waiting period. For retroactive benefits, the national average is 15 days. Where most states have a 14-day waiting period, some have no retroactive waiting period at all. Nebraska has the longest retroactive waiting period of any other state at 42 days. I would look to the sheet that was handed out. On the back side, you'll see all these states and the surrounding Midwestern states and both the first waiting period and the retroactive waiting period. And as a reminder, Nebraska has the longest retroactive waiting period at 42 days, which is an extreme outlier relative to all the other states. And moving the first waiting period to three days would put us in more alignment with Colorado, Iowa, Minnesota, Missouri and Wyoming, for example. So that is what LB272 brings us. This bill follows the practice used in most states, as I said, which includes Iowa, Missouri, Colorado and Wyoming by reducing the additional waiting period from seven days to three days and the retroactive waiting period from an extremely long six weeks to a much more in line two weeks. Our workforce has been through a lot in the last several years. Every year, Nebraska workers and families are forced to bear the physical trauma and financial hardship that result from workplace injuries and deaths. Every year, approximately 20,000 Nebraskans are injured on the job, and an additional 50 Nebraskans never come home. There will be folks behind me who will speak further

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on the importance of these updates. I'd be happy to answer your questions. Thank you. And hopefully this one page here will show you in terms of the data. You know, for, for those that have had some experience with just looking at public arrays when we're talking about policies and standards, we're not comparing ourselves to the coasts. We're comparing ourselves in the Midwest. And on both of these standards, we are huge outliers, in particular the retroactive waiting period. And I think this will put us in, in more alignment with the other Midwestern states.

RIEPE: Thank you. Are there questions from the committee? I have a question.

VARGAS: Yep.

RIEPE: Can you give us some insight why you think that we're far off the mark?

VARGAS: I would actually leave that question to some of the testifiers that will speak to that.

RIEPE: OK.

VARGAS: But I think you can see that there's a reason in terms of why we should when we're looking at the other states. If they figured out the way that they can go about doing this, both in terms of statute and policy, but also in terms of what is needed maybe in, in workers' compensation and the Department of Labor, they have figured out how to do it and in our other states that we usually compare ourselves to for a lot of other economic indicators.

RIEPE: OK. Any other questions? Seeing none, thank you very much.

VARGAS: Thank you.

RIEPE: Will you be staying around for the closing?

VARGAS: Yes.

RIEPE: OK. Are there proponents that would like to speak? We recognize you. So we will ask you to go forward.

NICK GRANDGENETT: Sounds good. Thank you. My name is Nick Grandgenett, spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in support of LB272. So unlike injuries caused by car accidents and consumer products, workers can't sue their

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employers for the injuries they suffer at work. It's workers' compensation that provides them with medical benefits and wage support for a limited period of time while they recover. Under state law then, virtually every employer is required to carry a workers' compensation insurance policy, which is ultimately responsible for covering the cost of a claim. Every state requires a worker to wait a few days before their lost pay can be replaced. However, Nebraska, as Senator Vargas said, has the longest waiting periods in the nation. We stand alone in requiring workers to wait seven days before their wage loss benefits can commence, and 42 days before that first week of missed pay is retroactively reimbursed. In Iowa, Missouri, Colorado, and Wyoming, workers wait 3 days before that lost pay is replaced and then the 3 days of lost pay is retroactively reimbursed after 14 days. For many Nebraskans, these long wait periods are simply financially out of reach. Additionally, at Appleseed, we work across the state with workers. What we frequently hear is that employers use these long wait times to steer people away from the wage support benefits in an effort to keep their premiums lower. So what I want to say about premiums is that insurance premiums are first and foremost a reflection of workplace safety. If employers maintain a safe working environment, injuries won't happen. Workers won't be hurt and they won't have to file workers' comp claims. That naturally keeps premiums low. The second thing I want to say is just looking at Nebraska's premiums, we can see that currently they're at an all-time low. For decades, for 30 years, they've been declining. Again, they're at their currently, they're at their lowest recorded level. In 1994, their highest recorded level, the average employer was paying \$3.31 per \$100 of payroll. As of 2022, the average Nebraska employer was paying \$1.25 for \$100 of payroll. This ranks number 29th out of the 50 states. Twenty-one states, in other words, have less expensive premiums. And 8 of those 21 states have shorter initial waiting periods, and none of them use that 42-day retroactive waiting period. If you look at both Colorado and Utah, they've had the LB272 style policy on the books since the early 1990s. And during that 30-year period, they, too, saw declining premiums just like Nebraska. And today they actually have lower premiums than Nebraska. So what that means is LB272 is not going to stand in the way of those premium trends. What's really-- what's really important now in this moment is to align our state's waiting times with surrounding states, because that will not create a misalignment with our insurance premiums. So for all of these reasons, we urge the committee to advance LB272. Also just note with my testimony, there is a fact sheet which just highlights the broad array of support that this bill has across the state and then further details some of what I just described.

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RIEPE: Thank you very much. Any questions from the committee? Seeing none, again, thank you.

NICK GRANDGENETT: Thank you.

RIEPE: Additional proponents.

MIKE DOWD: Good afternoon, Senators. Mike Dowd, D-o-w-d. I'm appearing and speaking on behalf of the AFL-CIO in support of LB272. I also bring with me 30 years of experience in trying cases before the Nebraska Workers' Compensation Court. And one of the things that was always a kind of a strange bird is when you talk about these six weeks. Everyone, if you hear after six weeks, then you'll go ahead and receive the waiting week back. While the six weeks isn't a six consecutive weeks, it could be an hour here, an hour there, and once all of that time missed adds up to six weeks, then there is an obligation for that employer through their work comp carrier to make payment of that waiting week. Countless cases where we've gone into penalty situations because the employer does not make that payment, they lose track of accounting, they lose track of the time, as does the employee, to be able to go ahead and demand payment of that. Six weeks is too long. It's too burdensome. It's complicated. And all it does is lead to problems. The economic realities of the situation are that individuals that are injured need the money. They need the money now. They don't need to go ahead and file litigation that allowed for them to get into court nine months from now. So this really simplifies the statute, simplifies the accounting. Shorter time equals prompter payments. It's a solution. It's not a problem. And it also addresses the economic reality that the workers are facing today. Thank you.

RIEPE: OK. Thank you. Thank you for being with us. Let's see if we have any questions. Seeing none, thank you again. Again, proponents.

BRODY OCKANDER: Good after, Chairman. Good afternoon, Chairman Riepe. My name is Brody Ockander, B-r-o-d-y O-c-k-a-n-d-e-r. I'm a lawyer here in Lincoln, and I'm here on behalf of the Nebraska Association for Trial Attorneys. I'm here in support of LB272, and Mr. Dowd covered some of my talking points. But I'd like to take a look at some of the practical scenarios here. As background, if you get hurt on the job, you don't instantly get paid as, as you probably understand by now. You have to take a week off before you can get paid, and that's after you get restrictions from the doctor that take you off of work. So sometimes you might not even get into the doctor right away. So after you're off, have these restrictions. You're off of work. You miss that first week of payments. Then let's say you have to be off

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work for another week, days 8 through 14. You still don't necessarily get paid immediately. The insurance company or the employer has up to 30 days to make that payment before it's considered late. So let's think about that now. You've had a work accident. You've been off for two weeks; and it's possible that you have to wait 38 days to get any disability payments and you would only get paid for one of those two weeks that you missed. Now, that's a huge problem for many of the blue collar workers that might be the sole breadwinner or live paycheck to paycheck. And it creates a domino effect on people. Can't pay rent, can't pay for food, can't pay their insurance premiums, and keep up on that so they can, if they have further health problems or if their claim is denied, they can't continue treatment, might get evicted from their apartment and then they oftentimes don't qualify for immediate assistance for Medicaid or housing assistance or food stamps. Now, in an ideal world, people would have an emergency fund. But, you know, we're not talking about business executives here or lawyers or anything like that. We're talking about someone getting by on \$12 an hour. So another scenario that can arise in these situations would be if you-- your PTO time, your sick leave, your vacation time. Now, a lot of employees are forced to use that time in lieu of missing that week of payments so that they can meet the bills. So if you're someone out in Bridgeport, you're having a good basketball season, your daughter is going to make it to state, you're saving up those vacation days. Suddenly you get hurt. You got to use your vacation days just to get by to pay the bills and decide, oh, I'm going to have to use my vacation. I'm not going to be able to make it to the state tournament this year because I want to be able to pay the light bill, pay the electricity. So I get why there's a waiting period. It's reasonable if you need to get stitches or something, you miss a day or two or need to get a cast on a broken limb. That, that makes sense. But again, it's unreasonable for that to be seven days, two to three days. In this situation, three days is a lot more reasonable. And so because of that, we ask that the Chair adopt or that the committee adopt LB272. Thank you. I'd be happy to answer any questions.

RIEPE: Are there questions from the committee? Seeing none, thank you very much for being here.

BRODY OCKANDER: Thank you.

RIEPE: Additional proponents.

FELICIA HILTON: Thank you, Chairman Riepe and board members, I'm sorry, members of the committee. My name is Felicia Hilton, F-e-l-i-c-i-a H-i-l-t-o-n, and I'm speaking on behalf of North Central

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States Regional Council of Carpenters in support of LB272. I think the experts kind of broke down the waiting period and how it can impact workers. But I do think that updating the worker compensation timeline for payment of benefits makes a lot of sense in 2023. A lot of workers are working, you know, every hour that can possibly be worked. People are working multiple jobs. And so if you get injured on the job, the one thing that you're most stressed about outside of your injury is how are you going to pay the bills? And I think moving up the timeline helps relieve that. I believe that it helps workers, you know, get well or take care of their injuries a lot sooner because eliminating the stress of how are you going to pay your bills, how are you going to eat all of these different things because you got injured at work and you have to think of the work that people are doing today. People are still working with their minds and their hands. They're still doing very physical labor jobs. I know that the tech industry and there's a lot of jobs where injuries are less likely to happen, but there are still, you know, folks out there that are working day and night with their bodies, with their minds, and their hands. And so we would just like to thank Senator Vargas for bringing the bill forward, to somewhat update the timeline and update the way workers' compensation pays out injured workers. And we hope that you would consider workers like carpenters, pipefitters, people that are working with their hands and their bodies on a regular basis, meatpacking workers, to consider them when you think about when someone gets injured on the job, the type of injuries and what would actually keep someone from being able to sustain their home and their car payments so that they're not-- their injury doesn't cause them to basically lose everything they have. And like the speaker before me said, when you work for a living and you work every day and sometimes in construction, you can work 7/12s depending on what the project is. But when people work like that and they get injured, just consider the hardship of what it would be like to not have your paycheck and the stress that goes along with that. And we'd hate to have that compounded with the loss of a home, with the loss of apartment or car or something like that. It just compounds it to a place where, you know, it is hard to qualify for benefits when you work for a living. So just to consider that and like I said, we really appreciate Senator Vargas bringing this bill forward.

RIEPE: Thank you. Let me see if we have any questions before you run off here. Do we have any questions from the committee? I see none. Thank you very much for being here. Additional proponents. Welcome.

RUBY MENDEZ LOPEZ: Hi again. My name is Ruby Mendez Lopez, spelled R-u-b-y M-e-n-d-e-z L-o-p-e-z. As I previously mentioned, I'm a

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resident of Crete, Nebraska. I am here in support of LB272. Also, as I previously mentioned, I have a lot of people in my life who work within the plant where injury rates are disproportionately high. What I didn't mention previously is my mom worked in the plant for several years before she was injured when a distracted forklift driver hit her, a pallet fell and completely crushed her foot. The injury-- this injury has left my mom permanently disabled and she still suffers from this injury daily. This injury also meant that my family had to navigate the workers' compensation system for many years. At that time, my mom was a single parent, barely making ends meet with her full paycheck. If it was not for the severity of her injury, she would have never entered a system that made her wait seven days to even begin her process to get payment and even longer to actually receive payment. She simply could not afford it, but she had no choice. This is just my mom's story. Growing up and living in Crete means that I live in a community with a large number of permanently injured people, people who have either navigated the workers' compensation systems themselves or know of people who have had to navigate it. I brought some of their voices to share here with you today. These are quotes that have been just collected in the past few weeks from workers navigating the system. The system that leaves people living day to day without pay is unfair. Expenses don't stop when somebody gets injured on the job. You still have to pay for gas to take your kids to school, find a way to eat, or even just figure out how to get to the doctor's office. Of course, any injury can ruin a life. But when you put not getting paid on top of that, that's when you ruin someone's life, especially if you are trying to support a family. I would never recommend anyone go through the workers' compensation system if they don't have to. If the system continues as it is right now, workers will continue to get injured more and more because there is no support for full recovery. Workers from the first day of their injury feel pressured to return from work even if they are not ready due to this lack of support. These quotes are just a few example of the impacts of the workers' compensation system and why it needs change. That's why I support LB272. Shortening wait times would encourage more workers to report injuries and know they will get the support they need for their full recovery. Thank you.

RIEPE: OK. Are there questions from the committee? Seeing none, thank you again for being here. Additional proponents. Any others speaking in favor? If not, anyone speaking in opposition, opponents? If there are any other wishing to testify, I'd ask you if you'd like to come down to our front row seats just to keep us moving. If you'd be kind enough to state your name, spell it, share who you represent.

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TOM CHAMPOUX: Yes, sir. My name is Tom Champoux, T-o-m, last name spelled C as in Charlie-h-a-m as in mother-p as in paul-o-u-x as in x-ray. And I represent Nebraskans for Work Comp Equity and Fairness and the Nebraska State Chamber of Commerce and Industry.

RIEPE: Thank you.

TOM CHAMPOUX: Thank you for your time in considering testimony on LB272. I am a property casualty insurance broker from Lincoln, Nebraska, and workers' compensation is an area of focus for me. I'm opposed to LB272 in its current form, as it will undoubtedly increase workers' compensation costs for Nebraska employers. This bill, should it become law, would also likely have a negative impact on effectiveness of employer return to work or light duty programs that ease injured workers back into the workplace, and also allows employer-- employers to minimize the impact of their future workers' compensation costs. Workers' compensation insurance is experience rated for premium development, which simply means that the employer pays future premiums based on a three-year claims lookback period. The National Council of Compensation Insurance, or NCCI, performs these individual employer calculations for Nebraska and many other states after receiving loss information from the insurance companies. Each employer is then provided with an annual experience mod calculation which significantly impacts what their workers' compensation premium will be for their current year. Nebraska is also an experience rating adjustment state, which means that all workers' compensation claims that an employer is able to keep, quote unquote, medical only and which include no indemnity payments which include lost wages are reduced by 70 percent as they impact the experience mod calculation. This fact creates a terrific opportunity for employers to be financially rewarded for getting injured employees back to work quickly and follow any work-related restrictions directed by the employee's treating physician. Reducing the waiting period-- reducing the waiting period for lost wages to be paid from seven to three days will mean that many more workers' compensation claims in Nebraska will include indemnity payments, which are calculated at 100 percent in the experience modification formula instead of 30 percent. You see, once \$1 of indemnity is if, which again includes lost wages has been paid, the claim no longer enjoys medical only status. It concerns me that this change will not only drive up workers' compensation costs for Nebraska employers, but will also have a detrimental impact on the incentive for employers to create and maintain vibrant return to work programs. We have many Nebraska employers who are doing very good things with their return to work programs to the benefit of everyone involved. If this bill were to become law, a premium for employers--

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premiums for employers will undoubtedly increase shortly after enactment. Premiums will increase for virtually all employers in anticipation of the additional indemnity payments that will follow. The increase in cost of workers' compensation insurance and the financial impact it has on our employers may well have a negative impact on providing overall compensation and benefits to all employees though this is-- though it is clear that this is not the bill's intent. Employer money spent on workers' compensation insurance is money that cannot be spent on things that benefit all working people in Nebraska. Reducing the retroactive benefits waiting period from 42 to 14 days will also likely cause an increase in workers' compensation premiums for Nebraska employers. However, this change will likely not be as financially damaging as the reduction from seven days to three days when lost wages begin to be paid. The ability for an employer to effectively keep as many of the workers' compensation claims they have as medical only is substantial.

RIEPE: OK, we're on the red light.

TOM CHAMPOUX: OK.

RIEPE: Can you wrap it?

TOM CHAMPOUX: Yeah.

RIEPE: Any final thought or two?

TOM CHAMPOUX: Yeah. The last I have is that this allows them to control their costs better. And you have the document in front of you so in respect of time.

RIEPE: Thank you. Let me see if the committee has any questions. Is there any questions from the committee? OK. Thank you very much.

TOM CHAMPOUX: Thank you.

RIEPE: Are there other opponents? You know the rules.

BOB HALLSTROM: Chairman Riepe-- I know the rules. Thank you, Chairman Riepe, members of the committee. My name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness to testify in opposition to LB272. I've also been authorized to appear on behalf of the Greater Omaha Chamber of Commerce and the Lincoln Chamber of Commerce. Much of my written comments mimic what Mr. Champoux provided to the committee,

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so I'll make up some of the time that, that he utilized. Just a couple things to close on. With Nebraska being an experience rating adjustment state, it creates an incentive for employers to get injured employees back to work promptly and to follow any work-related restrictions as directed by the employee's treating physician. The waiting period serves an important purpose with respect to containing the cost of workers' compensation coverage. For employers, reducing the time, the period of time in which an employer has to make solid return to work decisions will result in many more claims that will include liability for indemnity benefits, drive up the employer's experience modifier calculation and increase employer's workers' compensation costs. In closing, I'd just note the early witnesses in support suggested that many other states do something different than Nebraska does. If that was the case, when you hear LB191 later this afternoon, the number of states that have the issues with regard to the confidentiality of first injury reports would have been the law in Nebraska many, many years ago. So I don't think we can just blindly follow other states. Mr. Ockander testified that Nebraska, if I heard him correctly, is in the middle of the pack with regard to workers' compensation costs. Even though those workers' compensation premiums may be lower than they were back in the 1990s, to make changes that will drive up the cost would be detrimental to the employers and with regard to the return to work issues that we discussed, could be detrimental to employees as well. With that, I'd be happy to address any questions that the committee might have.

RIEPE: Are there any questions from the committee? Seeing none--

BOB HALLSTROM: Thank you.

RIEPE: --thank you for being here. Are there additional opponents?

BRIAN BRADLEY: Thank you, Senators, for having us here today. My name is Brian Bradley, B-r-i-a-n B-r-a-d-l-e-y. I'm here on behalf of the Independent Insurance Agents of Nebraska, also known as the Big I of Nebraska, to testify in opposition to LB272. The Independent Insurance Agents of Nebraska are in opposition in its current form because it just-- it decreases the waiting period that workers must wait to receive compensation after a disability in most instances. Our largest concern with the bill is that it reduces the amount of time from six weeks to two weeks that an injured employee must wait to have a retroactive workers' compensation pay back to the initial date of injury. We believe that this will increase the frequency of claims as it makes qualification much sooner and before any substantial treatment or healing can be done. We also believe it will lead to an

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increase in insurance premiums across the state. On behalf of the more than 500 member agencies of the Independent Insurance Agency of Nebraska, we strongly oppose LB272 in its current form and respectfully ask that you do so as well. Be happy to answer any questions you might have of me.

RIEPE: OK. Are there any questions from the committee? Seeing none, thank you very much.

BRIAN BRADLEY: Thanks.

KORBY GILBERTSON: Good afternoon, Chairman Riepe, members of the committee. For the record, my name is Korby Gilbertson, that's spelled, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association. I'm not going to repeat what you've heard three times before. I won't. But I do want to point out that, especially for Senator Ibach who hasn't sat through workers' comp lawyers, as I call them, for the last 30 or so years, but you'll see the same groups come up and talk about things. And I think the one thing that we all have to remember is the purpose of workers' compensation insurance and the reason why it was established, and that it's to make it more reasonable for everyone so that people don't have to go through court cases and things like that. LB272 most definitely will raise rates. I forwarded a copy of NCCI's latest evaluation of the legislation to your committee counsel and to Senator Vargas this morning. They do estimate that rates will have to increase because of the indemnity costs of the bill. So that's all I will say today, and I'd be happy to answer any questions.

RIEPE: OK. Let's see if we have any questions. Any from the committee? OK. Seeing none, thank you very much.

KORBY GILBERTSON: Thank you.

RIEPE: Additional opponents. Any speaking in opposition? Seeing none, is there anyone here in a neutral capacity? Seeing none, we will invite Senator Vargas back to close. And while he's doing that, I will share with you that we have five letters or emails as proponents and one as an opponent for the record. Senator Vargas, the show is yours.

VARGAS: The show, OK. Thank you, everybody. And thank you, Chairman Riepe and members of the committee. Where do we start here? Look, you know, one of the hardest things about being here in the Legislature is we try to be as consistent as possible with rationale. And part of

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this addressing this issue is to become more comparable and more aligned and address inequities specifically for workers. I have in other committees and bills supported issues of inequities in taxes for businesses, tax incentives, funding for projects and employers to grow and develop, all with the goal of trying to make sure we have more jobs that are available even when it is sometimes not an immediate need and is a long-term investment. And I think what I heard a lot from the opposition is this is going to cost us money. Premiums are going to go up. And what I'm hearing that I still am listening to a lot of the voices of workers that are saying that this is taking a really long time and they're asking for more parity of fairness, alignment with what other states are doing. I am open, like many of my bills, to try and find what is the best scenario for moving us forward. But doing nothing is not a good answer and has-- there's no rationale not to do anything. Profitability for within the sector has gone up and continues to go up. And then I ask myself, for the workers that are not getting compensated and are being delayed, what is the long-term economic impact of people not being able to pay for simple things for their lives and for their family; how that affects them getting back to work; how that affects their ability to provide for the simple, simple needs of their loved ones. And this is just making it more prolonged and longer and harder. I think we need to do something. I think that we need to move in the right direction. Again, I'm open-minded on what we address. If we address both of these waiting periods or one of them, but we can't just do nothing. And like we operate with every different other sector, this is about equity to the voices of workers that have been injured and making sure we're in alignment and competitive with other states, which we are currently not competitive, especially for the second waiting period. So I look forward to work with the committee on this. I think it's something that we should work on and I appreciate your time and happy to answer any more questions.

RIEPE: Are there any additional questions? Seeing none, thank you very much for being here.

VARGAS: Thank you.

RIEPE: And that concludes the hearing on LB272. As I will be opening on LB203 Vice Chairman Ibach will be serving as the Chair and will be running the operation.

IBACH: Thank you, Chairman Riepe. We'll now open the hearing on LB203. Go ahead. Thank you.

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RIEPE: Thank you, Vice Chairman Ibach, and good afternoon, members of the Business Labor Committee. For the record, my name is Merv Riepe. It's M-e-r-v and my last name is R-i-e-p-e. I represent District 12, which is the southwest corner of Omaha and the city of Ralston, people of Ralston. I have introduced LB203 on behalf of the Nebraskans for Workers' Compensation Equity and Fairness. LB203 would require an employee filing a workers' compensation claim to provide consent to the release of previous medical and hospital records upon the request of an employer compensation insurer, risk management pool, or self-insurer. At present, an employer, compensation insurer, risk management pool, or self-insurer has limited means to obtain an employee's previous medical and hospital records in the absence of a consent or release. Generally, this means that they must wait until litigation is commenced in order to obtain the records pursuant to discovery. Even then, a subpoena may not be useful for cases involving doctors located outside of the state. LB203 requires a patient waiver to be provided upon request by an employee filing a claim for workers' compensation benefits. This will allow an employer, compensation insurer, risk management pool, or self-insurer to review an employee's prior hospital and medical records, enabling them to determine whether a claim is "compensatable" or whether there is possibility-- possible defense for a preexisting condition. LB203 provides protection for sensitive medical records, providing records related to an employee's previous treatment for sexual abuse, human immunodeficiency viruses, reproductive health conditions, mental health conditions, unless seeking benefits for mental health injuries, or alcohol or controlled substance abuse, and those who would not be subject to disclosure pursuant to the patient waiver. LB203 would reduce costs associated with workers' compensation litigation by minimizing the need to obtain subpoenas in the case of out-of-state medical providers, minimizing the need to file lawsuits in other jurisdictions to obtain proper subpoenas from that state. This legislation will serve to expedite the claims investigation process and enable employers and/or employees and their insurance carriers to make timely and informed decisions regarding compensation or claim prior to the commencement of litigation. The benefits of this legislation should accrue equally to both employers and employees. I would also like to note that LB203 has no fiscal note. Thank you for your time and attention. I will take questions. There are others here to further explain the bill who might be able to answer more detailed questions.

IBACH: Thank you, Senator.

RIEPE: Thank you.

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IBACH: Are there questions from the committee? Seeing none, you'll close?

RIEPE: I'll be around, yes.

IBACH: All right. We invite any proponents of LB203 to step forward. Welcome.

PAUL BARTA: Thank you to the members of the Business and Labor Committee. My name is Paul Barta, P-a-u-l B-a-r-t-a. I am here on behalf of Nebraskans for Workers' Compensation Equity and Fairness. And I wanted to thank personally Senator Riepe for introducing this bill, which we truly believe would have a potential positive impact on both employers and injured workers. Essentially, what this bill does is in those circumstances when a, a affirmative allegation is made or request for benefits is made by an injured worker, it allows the employer to request a medical records release. Why is that important? I think it's important because there are many circumstances, if not the majority of circumstances, in workers' compensation where the injuries themselves are not apparent. We're not talking about a situation where someone's hand has been cut or things like that. You know, the standard situation where there is a back injury or things of that sort. Why is that relevant? Well, as I think anybody who deals with workers' compensation and as you'll be acclimated to some of these bills, what you see is there are often circumstances where people have preexisting conditions. The injuries themselves allegedly arising out of the workers' compensation context aren't that apparent. Why is that important? Well, there are certain statutory requirements right now that require an employer to make a decision and/or pay benefits within a very truncated period of time. If that employer does not have the ability to investigate that claim, and by investigate, I mean look into the issue of preexistence, that can have an adverse effect both on the employer in the context of they're kind of between a rock and a hard place. And it can also have an adverse effect on the employee because decisions are not being made in a timely fashion. I think the bill introduced by Senator Riepe has sufficient procedural safeguards. You may hear a suggestion from opponents that this is a fishing expedition. I don't believe that's the case. Benefits would have to be paid as soon as a determination is made. The other piece I would raise, and I know this goes back and forth on some of the other bills, is when we compare ourselves to corollary states, state of Iowa, it's mandatory that a release be provided upon assertion of a claim regardless of whether the claim is litigated or not. We believe this will result in faster administration of claims and ultimately

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quicker determinations of benefits for injured workers as well. That would be the extent of my spiel.

IBACH: OK. Thank you very much. Are there questions for this testifier from the committee? Seeing none, thank you very much.

PAUL BARTA: Thank you.

IBACH: Welcome back.

BOB HALLSTROM: Thank you. Vice Chair Ibach, 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, as well as the National Federation of Independent Business. I've also been authorized to appear in support on behalf of the Greater Omaha Chamber of Commerce. I think Senator Riepe has covered succinctly all of the items that were in my written comments, and Mr. Barta has followed up with the rest of the substantive story. I think just in summarizing again to clarify, this is not information that will not be available to the investigators, the employer, or the insurance company at some point in the process. It simply speeds along the process to allow better, quicker investigations, better decisions to may-- be made in a more timely fashion. And with that, I would be happy to address any questions of the committee.

IBACH: Very good. Thank you. Questions? Senator Blood.

BLOOD: Thank you, Senator Ibach. And if I-- if this question was asked before I got here, I apologize. So maybe someone already asked Senator Riepe, but I know that you testify a lot in favor of bills such as this and against some workmen's comp bill. Here's my concern. What? How does this not violate that person's privacy?

BOB HALLSTROM: Well, the, the statute directs them to release it upon request. There are-- there are some exceptions, Senator, that Mr. Barta talked about that are written into the-- into the legislation to address what some might describe as more sensitive information with regard to abuse issues, mental health issues and the like, unless the claim is directly related to a mental health issue. So I don't think there's any privacy issues. Mr. Barta testified that the state of Iowa already has a mandatory release of this type of information as well, so other states do it. Again, I'll be consistent. That doesn't necessarily mean we should do it. But at the same time, there is precedent for it in other states, and I don't believe it would be a privacy concern.

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BLOOD: Yeah, I did read the bill and I'd have to say that the other states that we're comparing this to, I would not call employee friendly personally. So--

BOB HALLSTROM: Senator, I might also add, not to interrupt you, excuse me, but I would add that if you look at the bill, it says the failure to provide this, even though it says upon request, is to be provided. But the safety-- safeguard or the safety net is if for some reason the employee chooses not to provide it, it provides the employer the protection of not being subject to the penalty and interest provisions that might otherwise apply if they don't respond affirmatively or negatively with regard to the claim within 30 days. There are penalty and interest provisions that apply if the employer or its insurer doesn't make an appropriate decision in a timely fashion. So the consequences of not responding if for some reason the employee decides not to, are that that 30-day penalty provision is going to be tolled until such time as they determine to release the information.

BLOOD: So in other words, we generate a consequence, as you put it, to somebody who may already be in a bad position and we're making it more difficult on them.

BOB HALLSTROM: Well, the consequence is on the employer or its insurer. If they don't respond within 30 days under the current law, then they can be subject to penalty and interest. We're saying if they don't get the information that this bill would suggest the employee should provide, that we're going to toll or delay the running of that 30-day time period so that the employer is not subject to penalties if it's because they haven't gotten the information upon request.

BLOOD: The additional information.

BOB HALLSTROM: Yes.

BLOOD: Thank you.

BOB HALLSTROM: Thank you.

IBACH: Thank you. Are there other questions from the committee? Seeing none, thank you.

BOB HALLSTROM: Thank you.

IBACH: Other proponents. Not, we'll move on to opponents.

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MIKE DOWD: Good afternoon. Mike Dowd, D-o-w-d, appearing on behalf of the AFL-CIO in opposition to LB203. One of the things that was interesting is when Mr. Barta came up, he said, well, we're not-- we're not talking about obvious injuries. That's not what the bill says. The bill says that in any instance where there's an alleged work injury, this information is to be made available to the employer and they can go ahead and they will go ahead and look at those records, whether it's relevant or not. What-- let's assume that someone falls from a ladder and is hit by a forklift. What is there really to consider and contest? And that person is now being transported to the hospital. What is there to consider or contest in terms of the fact that that person may have had care in the past? Why are we going to put an additional burden on this particular person who may not be educated, may be paranoid, may be upset, and now someone saying, well, you better go ahead and sign this thing or we're going to hold back your benefits? Is that really what we're trying to accomplish here? The ability to obtain these records on a contested case where it's said, it's not so open and obvious. They're just saying that this is something that's developed over time. We think that maybe they had some problems in the past. If that's a contested matter, litigation is available. The ability for the judge to go ahead and be the gatekeeper of that information and that evidence and those subpoenas is there to make those decisions. So we do believe that this is an invasion of the employee's privacy, that it is uniformly applied to all cases, whether there are obvious injuries or not. And there is a mechanism, an ability to obtain this information if they are truly contesting this case. We have a judicial system which will address that. And again, we believe that this is simply another layer in a very difficult situation with an employee with an injury that just does not need to be an additional burden upon that injured employee.

IBACH: Thank you. Are there questions for this testifier from the committee? Senator Blood.

BLOOD: Thank you. Senator Ibach. Thank you for coming today. I think you're the right person to ask this question. So I fall outside of work and break my arm in two places and it heals. And I've been a good employee for ten years. Then I end up falling off a scaffold and breaking the same arm in two different places. I know somebody this happened to you, so I'm actually using a real example. And because I have the past break in my record, if I were to turn that in, chances are pretty good that that can be utilized as a weight, as a reason to use against the fact that it's not their fault that I got hurt, that there is a preexisting condition. Am I reading this bill correctly?

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MIKE DOWD: Correct. And it could even go beyond that. It could go back to a situation and I've seen this play out time and time again. Well, we had a pre-employment examination and consultation with you, didn't we? Yes. And well, you didn't share with us that you broke your arm when you were ten years old.

BLOOD: Right.

MIKE DOWD: And so now that you've not been forthright, we're going to terminate your employment; doesn't have anything to do with your work injury. But you just weren't forthright with us with respect to that injury. What you see time and time again is when people are filling out those applications, they're looking at where they are at in life at that point in time. And do they feel that they can go ahead and perform that work, have the adequate ability to do that, and they're going to answer yes or no. But to go ahead and say you didn't disclose something 20 years ago, 10 years ago, whatever it may be, that the person just doesn't have a recollection of or didn't feel was relevant is problematic.

BLOOD: So I'm going to do a follow-up on that. So again, I'm rereading what you can keep from them. So say that I have cancer and it's nobody's business that I have cancer and I'm getting treatment for it. I fall and I get hurt. They could say, you have cancer. You're-- you've been pretty weak. You probably shouldn't have been working. [INAUDIBLE] the guidelines that you can't work with cancer, we feel that that was a disability that prevents-- that, that caused this accident, right?

MIKE DOWD: Sure. When you look at the risk management issues and decisions, a lot of gray area.

BLOOD: Which is their jobs, I don't fault them for doing their jobs. I don't fault them for-- we've had a couple of bills like this over the last few years since I've been here, but it-- when it's always compared to other states that aren't employee friendly.

MIKE DOWD: But I think that goes back to the safeguards that already exist within the system. If this is truly a contested case, that's for the judge to decide.

BLOOD: [INAUDIBLE]

MIKE DOWD: And the judge is the gatekeeper and can make those determinations.

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BLOOD: Thank you for humoring me.

IBACH: Thank you. Other questions? Seeing none, thank you very much.

MIKE DOWD: Thank you.

IBACH: Other opponents.

BRODY OCKANDER: Good afternoon, Vice Chairwoman, members of the Business and Labor Committee. My name is Brody Ockander, B-r-o-d-y O-c-k-a-n-d-e-r. I'm a lawyer in Lincoln, and I'm here on behalf of the Nebraska Association of Trial Attorneys. I appreciate the perceived problem, but we have some concerns with the bill as it's written, so we're here to oppose it. First, what is sought is pretty much already covered in Section 48-120(4) of this work compact. Second, the language grants the employers carte blanche to obtain all records from an injured worker, even irrelevant stuff. Third, the injured worker is the one who's going to suffer from any delay caused by this bill because it gives all the control to the insurance companies. So let's start with the first point. If I understand correctly, the problem is framed in the statement of intent that the insurance carriers are unable to obtain medical records to investigate in a timely matter-- in a manner in order to avoid getting sanctioned for a delay in investigating a work comp claim. I have never known 48-146.02 to ever be used to revoke an insurance license or a self-insured status. At least it's never happened in the time that I've been practicing. The insurance companies and employers do not need this statute because, like I said, if you look at 48-120 and I'll read the relevant portion of that: All physicians, providers of medical service, and this is abridged, shall comply. All medical and hospital information relevant to the particular injury shall on demand be made available to the employer, the employee, the workers' compensation insurance-- insurer, and the Compensation Court. When the physician or the provider of medical services willfully fails to make any report required of him or her under this section, the Compensation Court may order the forfeiture of his or her right to all part or payment due for services. In essence, they can get the medical records by this in this manner, and if not, they can go to the court and ask for the court to issue some sanctions. Now, the second problem with this bill is the carte blanche problem. If you look at lines 12 through 15, "to obtain all previous hospital and medical records...concerning the employee's previous treatment with any physician, psychologist, or other medical provider." Now, it does give exceptions to that, which are very specific private things, including HIV, sexual abuse. It also mentions mental health condition. But this

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kind of contradicts itself because it says you can get psychologist reports and psychologist records. So that kind of contradicts itself. If you cut your finger the way this is written, your employer and insurance company can get psychology records from whenever, going back to when you were in high school or something like that or there's no limits on this. Are we going back 20 years, 30 years? Can they obtain any psychology records, stuff like that? It's just not in the bill. The third point is that the injured worker suffers with this bill, and it just seems like we're always here with a beatdown of, of workers' rights here. And this, except for the previous bill, finally trying to give the worker something else. But towards the end of this subsection, it's a backdoor for the insurance companies to delay payment even longer without the risk of penalties. Now, to give you kind of a miniature background on 48-125, that's where you can get penalties, if there is no reasonable controversy in a claim, benefits are supposed to be paid within 30 days. Now, this bill allows for the insurance company to say, oops, well, we didn't get this signed waiver from you. So until we do, we get another 30 days without payment for treatment or disability benefits. And it looks like my time is up, unfortunately, But I'd be happy to answer any questions.

IBACH: OK. Thank you. Senator Blood.

BLOOD: Sorry, this is an important bill for me. So why would you say that it's important that we make sure that people receive funding as soon as possible if it's a workmen's comp claim?

BRODY OCKANDER: As we previously discussed in a bill earlier today, because the longer that it's delayed, the more that the injured worker is going to suffer, whether it be indemnity payments that they're not getting paid while they're off of work and sitting at home trying to convalesce from their injury or whether it's the treatment that they need to have the surgery right away. So again, this 30-day period is the only incentive that we have for these insurance companies to act quickly. And 30 days is not exactly quickly necessarily either, but it's their only incentive. We don't have a bad faith act here in Nebraska like other states do, like Iowa that was mentioned earlier today. You know, so if an insurance company is just dragging their feet purposely, we can't just rely upon that and say, well, we can sue you in bad faith here. And, and our only remedy is them being possibly sanctioned under this statute that's never been used that I alluded to earlier.

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BLOOD: And if there is an emotional component to the injury, which often there is, then that person having this additional burden may just give up.

BRODY OCKANDER: Absolutely.

BLOOD: Which I think is kind of the point of this bill.

BRODY OCKANDER: And it could be used for that purpose, is what I'm saying. I'm not sure if that is necessarily the point, but it could be used for that purpose. And that's the part where I mentioned earlier where they can just come. The statute says the employee shall provide this waiver, as it's called. We would call it like a medical release, you know, but the employee shall provide that. Employees are not walking around with releases saying, I just got hurt, here we go. Here's so you can investigate my claim. That puts it all in the control of the employer. And they're supposed to hand out these sheets that they're supposed to sign. What if they don't? It doesn't say anything about that. So if they don't hand those out and they don't hand it out till 45 days later, there's no remedy for a penalty against them under this statute, under this bill, the way that it's written. So it gives all the control to the employers and to the insurance company.

BLOOD: Thank you for confirming what I already believed so thank you.

IBACH: Very good. Thank you. Other questions? Seeing none, thank you very much.

BRODY OCKANDER: Thank you.

IBACH: Other opponents. Welcome.

FELICIA HILTON: Thank you. Thank you for having me, members of the committee. My name is Felicia Hilton, F-e-l-i-c-i-a H-i-l-t-o-n, here with the North Central States Regional Council of Carpenters in opposition to LB203. Mainly the-- our opposition has been what everyone else has said that for one, we feel that this bill makes it compulsory to sign this waiver in order to receive or be in the process of receiving your unemployment benefits or it's delayed for another 30 days. We also think that the things that the bill is asking for the worker to turn over to their employer or to the insurance is protected private information under the HIPAA Act. And we don't believe that every medical injury or medical issue that you've ever had, whether it's mental or psychological or whatever, relates to someone, you know, breaking their arm or, you know, falling off of a

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ladder or scaffolding or something like that. Usually the medical records pertain to that particular injury that happened on the job. It doesn't pertain to every injury that you've ever had. And so our real concern with the bill is the compulsory nature of signing away your rights that are protected. You don't have to disclose your private medical history to anyone. It's protected. And the, the nature of the bill says you shall do this in order to somewhat be in line with receiving your unemployment benefits or it's delayed for another 30 days. And the bill somewhat takes all of the power or authority that the employee would have over their own medical records and information and puts it into the hands of their employer. So regardless of if you, you know, get well enough to go back to-- go back to work, now your employer has all of this information about everything about your, your medical health, regardless of if it's related to that injury. It doesn't say what does the employer do with this information or the insurer after. But just knowing that your employer has all this information, even if you sign the waiver, get in the queue for the 30 days to receive it. You're always under that, I think, scrutiny of other things that were disclosed in that information. And I just don't think that anyone should have, if you're injured on the job, should have the right to knowing every medical injury you've ever had, every time you've gone to the doctor, why you were there, why you were at a therapist. I don't think that that's something that pertains to the injury. And so we're just opposed to the bill because we think it just overreaches when it comes to prying into an injured employee's life and their medical history. So we get some of the reasons why. But you do have access to the medical records pertaining to that injury. And we don't believe you need anything else other than what happened when you were at work and what injury was caused while you were there and working on the job. You don't need-- the employer doesn't need to know anything else, and you don't know how that information will be used later on in your working career so.

IBACH: Thank you very much. Are there questions from the committee? Seeing none, thank you.

FELICIA HILTON: Thank you.

IBACH: Other opponents. Seeing none, we'll go ahead, Senator Riepe, with your close. Or I'm sorry, is there anybody here in the neutral? Don't see any neutral. OK. We'll go ahead and close. In the meantime, we had zero letters-- zero proponents, two opponents, and none in the neutral. So go ahead.

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RIEPE: Thank you, Chairman Ibach. I just want to review a few things. And my first one was that I believe that [RECORDER MALFUNCTION] three complements the bill. Just heard from Senator Vargas in terms of trying to expedite the payment, because what it does is it reduces the cost and time associated with litigation by minimizing the discovery process. It also expedites the claims investigation process and again, with a faster payout. Another point would be about the sensitivity of medical records. I think the predominant piece here is trying to look for preexisting conditions. And I think that there's-- if there's nothing that's related to any of the excluded pieces about immuno-- immunodeficiency viruses or reproductive health or sexual abuse or mental health conditions, unless that's related to the injury or alcohol and substance abuse are looked at. And it's simply a matter of trying to move these things along without having to go to the court system to make that happen, to try to get the payments out there. It's the only way I think that they can get [INAUDIBLE] Senator Vargas was requesting, faster payout is through faster investigations. I will take questions that I might be able to answer.

IBACH: All right. Are there questions from the committee? Seeing none, thank you very much.

RIEPE: Thank you, Chair.

IBACH: This concludes our hearing on LB203.

McDONNELL: Thank you, Chairperson Riepe. Members of the committee, my name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I come here today to submit LB460 for your consideration. The legislation relates to mental health injuries or mental illness for all Nebraskans [SIC] first responders pursuant to the Nebraska Workers' Compensation Act. The bill provides for reimbursement by the Department of Health and Human Services for the costs of mental health examinations and resiliency training, to the extent not reimbursed by the first responder's employer. This, quite simply, is a cleanup bill from LB963, which was passed in 2020. There are potentially two out of-- two, two out-of-pocket expenses for all the Nebraska's first responders, in order to qualify for coverage for mental health injuries or illnesses under Nebraska's workers' compensation law. First, the first responder must be screened as part of the mental health examination. Secondly, the first responder must participate in resiliency training concerning mental health on an annual basis. When LB963 was passed, the language in the legislation required the Department of Health and Human Services to reimburse a first responder for only the annual resiliency training, if not

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reimbursed by the first responder's employer. This bill required-- requires the Department of Health and Human Services to reimburse a first responder for the mental health examination and the initial resiliency training, if not reimbursed by the first responder's employer. Legislation, just like the, the latest legacy of legislation adopted for Nebraska's first responder, applies to both volunteer and career first responders and includes firefighters, paramedics, emergency care providers who work rescue calls, squad calls and law enforcement. The policy reasons for mental, mental injuries and illnesses have already been acted upon by this legislation. This bill simply calls for the reimbursement for the mental health examinations and initial resiliency training. Legislation also directs that the reimbursement rate for mental health examinations by establishment, by the Critical Incident Stress Management Program, who leads agencies, is the Department of Health and Human Services. Presently, only the rates for resiliency train are set by the Critical Incident Stress Management Program. There are testifiers to follow who have provided additional insight and personal experiences for the committee's consideration. As I said in the opening, this is a-- basically a cleanup bill from 2022-- 2020, based on the idea of working with Senator Brewer and taking the resiliency training that has happened in the military and put it in place for our first responders. At what's happened with some of the re-- reimbursements and clarifying the language, as you see in the, the legislation that's in front of you, there is no fiscal impact and it is a cleanup bill.

RIEPE: Thank you. Are there questions from the committee? I, I have a question, though. Does the healthcare-- does-- is there a right of the employers of first responders on the health coverage, that you said is-- that's the first coverage. This would be the backup coverage. Is that correct?

McDONNELL: Yes.

RIEPE: Is there a wide variance in terms of different health plans that they-- I would think that they would all be fairly generous, but maybe that's a bad assumption.

McDONNELL: Well, remember, we're, we're looking at all firefighters, so we're looking at volunteer and paid.

RIEPE: Oh, volunteer, too.

McDONNELL: Yeah. And also, but we wanted to make sure that the, the state was the last dollar in. If the employer is offering the

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examination of the resiliency training, then we as a state, when the individual would pay it out of their own pocket, so that volunteer firefighter, that police officer, the state trooper that paid firefighter, then would get reimbursed after their employer pays, possibly, the first dollar. They'd pay the second dollar.

RIEPE: OK, that helps. Thank you very much. Any other questions? Seeing none, thank you very much. Will you be able to stick around?

McDONNELL: Yes, I'll stick around. I've got one more bill, but I'm here as long as I don't have to go somewhere else. Thank you.

RIEPE: OK. Thank you. Proponents, please.

TODD BENNETT: Good afternoon. Thank you, Chairman Riepe. Todd Bennett, B-e-n-n-e-t-t, on behalf of the Nebraska Association Trial Attorneys. Also here personally, because I was intimately involved in the Norfolk shootings in representing some incident and, and fallout from that, as well as the Von Maur shootings in 2007, which was close to our Omaha office. And these bills are important to us because we've, we've had both cases on both sides. And, and what this is, is a simple reimbursement before an onset for these mental evaluations, examinations and resiliency training. And it's the first step and we should encourage it, not only encourage it, but, but obviously pay what's not going to be paid, because these are going to be things that are done before the onset. We know what the events are and the series of events that they're exposed to and they should be reimbursed. And it's, it's another step in the right direction. And we're in support of that and we hope you do. Any questions, I'd be happy to answer.

RIEPE: Thank you for being here. Are there any questions from the committee? Seeing none, thank you. Additional proponents. If you'd be kind enough to state your name, spell it for us, please, and then who you represent.

TIMOTHY BENAK: My name is Timothy Benak, T-i-m-o-t-h-y B-e-n-a-k. Thank you, Chairperson and the Committee for this opportunity. I'm here today as a ten-year veteran of a professional fire service and as a board member for the Nebraska Center for Workforce Development and Education. I'm here to speak in support of LB460. Nebraska already recognizes that the uniquely dangerous occupation of first responders is stressful, second only to our combat soldiers. Left untreated, stress and the accompanying mental injuries not only affects the first responders, but it negatively affects the family and friends and it negatively affects the citizens that they're sworn to serve. First

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instituted in the military, the development and-- of identifying and treating post-traumatic stress disorder, it found challenges involving institutional stigmas that prevented individuals from reaching out and getting the necessary, often lifesaving help. Already rescripted as resilient training, LB460 takes access a step further in streamlining the process and making training more effective. The way that the Workers' Comp-- Compensation Act sits now, there's a lot of pressure and red tape for individuals trying to gain access to these services. LB460 helps to encourage individuals seeking out and receiving help before the mental injuries can evolve into dangerous situations for themselves and for the public. At the Nebraska Center for Workforce Development and Education, we have, we have delivered resiliency training to over 200 first responders throughout our state. Through that process, we have recognized that accessibility and timely training was a hurdle for participation. I am here today in support of LB460, in making access easier so that more individuals can benefit. LB460 provides punctual mental health examinations and initial resiliency training, in addition to the already established annual resiliency training. Mental health is extremely important. I think that most people can agree to that. We need to do what we can to encourage participation from everyone, especially those among us who are at increased risks. Thank you and it'd be a pleasure to answer any questions.

RIEPE: OK. Thank you. Let's see if we have any questions. Apparently not. Thank you very much for being here.

TIMOTHY BENAK: Thank you.

RIEPE: Additional proponents, please. You have been here, so you know the way to do it.

MIKE DOWD: Good afternoon, once again. Mike Dowd, D-o-w-d, appearing on behalf of the AFL-CIO in support of LB464. You know, any effort to help with addressing the mental health crisis that we find within our first responders is helpful. I had been representing the Omaha police for about two decades and just, most recently, gained for an officer her service-connected disability for mental health issues, followed by her taking her own life. These issues are real. These issues impact the employee. It impacts the family. It impacts the community. The cleanup bill to help further streamline and gain access for assistance is important. And I, I just see this as a positive positive. With what I have at least heard, there's not any negative fiscal impact, .and I just don't see where there would be resistance in allowing for this to move forward.

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RIEPE: Are there any members in the community that have questions? Seeing none, thank you very much for being here. Again, proponents.

JERRY STILMOCK: Mr. Chairperson, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association, Nebraska Fire Chiefs Association. Those memberships total 9,000 members of men and ladies across the state, both Fire and EMS rescue. Also, I'm signing on behalf of the National Federation of Independent Business and Nebraska's--Nebraskans for Workers' Compensation, Equity and Fairness. The, the legislation-- the underlying legislation has already been approved. That was done in 2020. As Senator McDonnell has stated, this simply authorizes the Department of Health and Human Services to reimburse for those two costs that are not in place, the mental health examination at the front end, and then ongoing resiliency-- resilience training. So the, the legislation was set up so that the, the workers' compensation law would recognize the severe circumstances in which volunteer and paid first responders are in the field and do what they do every day. It, it allows a mechanism-- so it's already in place. This just adds the additional two items. The initial health exam-- this legislation literally just opens the door. The-- it opens the door because why? This is the best fiscal note I've ever seen. It's already-- there's money there. There's no additional state dollars that are needed, at least estimated by the department and it, it will-- I think it would be a tremendous asset to the volunteer firefighters across the state. The other item that this legislation does is it-- well, how is this reimbursement rate established? There's a group out there, the Critical Incident Stress Management Program, whose lead agency-- it's made up of several agencies-- the lead agency is the Department of Health Human Services. So that rate for the mental health examination will be established by a state government. And that resilience training-- for the initial resilience training, I think that right after that examination is completed, will be established by this same program, through the Department of Health Human Services. Hopefully, that you'll advance the bill to General File and ask for your support.

RIEPE: Are there questions from the committee? I have a question.

JERRY STILMOCK: Sir.

RIEPE: You had stated that there's no fiscal note and [INAUDIBLE]. My concern gets to be is when it comes down to mental health issues, in terms of the long-term implications, you know, I rather-- I think the fiscal staff refuses to even address it because they, they aren't

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actuarial scientists. They don't know how to project out if there was emotional-- which is stated in here. If-- you know, it's not-- it's beyond the examination of the actual care. Can--

JERRY STILMOCK: The, the, the-- you raise an excellent point, Senator Riepe. That part of it that you've raised in your good question is going to be accomplished through workers' compensation insurance. So once that mental health injury or mental health illness is documented and I proved that in a workers' compensation action, then it's going to be the workers' compensation insurance policy that's going to carry out and make sure that Stilmock goes back to the front line, if and when he's able, as a first responder, after I've, I've treated for my PTSI.

RIEPE: OK.

JERRY STILMOCK: Yes, sir.

RIEPE: Sounds like--

JERRY STILMOCK: Excellent point.

RIEPE: --a handoff. So it's a, it's a different-- once it's diagnosis, one thing; treatment's a second thing.

JERRY STILMOCK: Yes. This is, this is purely--

RIEPE: OK.

JERRY STILMOCK: --at the front end. Purely at the front end. And the keenness that, that the Legislature recognized, in 2020, that resiliency training, resilience training is so essential in curbing back the repeated incidence of PTSI, post traumatic stress injuries.

RIEPE: OK.

JERRY STILMOCK: Yes, sir.

RIEPE: Clarifies it for me. Thank you. Thank you for being here.

JERRY STILMOCK: Thank you for asking. Good point.

RIEPE: Any other questions? Seeing none, thank you, again.

JERRY STILMOCK: Thank you.

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RIEPE: Do we have additional proponents? Anyone speaking in favor? If not, anyone speaking in opposition? No one speaking in opposition. Anyone speaking on a neutral capacity? Seeing none, Senator, you are welcome back.

McDONNELL: Thank you. Just to clarify, when it was passed in 2020, there was a, a fiscal note of \$442,000 on it, that's been sitting there through LB963, just so you know that. But again, Mr. Stilmock answered the question appropriately and I'm just here to try to answer any of your questions.

RIEPE: Are there any questions of the committee? Seeing none, I think you had a good day.

McDONNELL: Thank you.

RIEPE: I would like to note that there were four letters or email correspondence as proponents and zero in opposition.

McDONNELL: Thank you.

RIEPE: So with that, we have closed the hearing-- formal hearing on LB460. We're going to take a 10-minute break and we'll start back up with the remaining three bills at 4:00, please. Thank you.

[BREAK]

RIEPE: Thank you. In the interest of time, we're going to get started again. This is the Business and Labor Committee, part two. We have with us today, Senator Conrad, is going to open on LB380 and we'll be having some more of our, our committee members returning. So-- but we appreciate you being here and you know the drill and so, we'll encourage you to go forward.

CONRAD: Thank you so much, Mr. Chairman. Good afternoon, members. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. Seems a little loud from my perspective, so I don't know if you're getting blasted out there.

RIEPE: Better loud than too soft.

CONRAD: Very good. I'm here today representing north Lincoln's fightin' 46th Legislative District, and I'm proud to introduce LB380. In a nutshell, the workers' compensation system, as you know, represents a grand bargain, whereby employees who suffered a workplace injury must file their claim through the workers' compensation court.

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In doing so, the employee forfeits the claims through a civil court system. In exchange, the employer agrees to pay the employee's medical expense resulting from the work injury and provide other limited benefits, such as vocational rehabilitation and some weekly benefits if the worker is unable to return, due to the injury. So, as you well know, the policy goal of the workers' compensation system is to return the employee to work. Additionally, complimentary to that system. Nebraska workers are also protected under the Nebraska Fair Employment Practice Act, or NFEPA, which prohibits discrimination and retaliation due to the employee's membership in a protected class or after the employee engages in legally protected activity. The Fair Employment Practice Act does not exempt disability discrimination claims arising from a work-related injury. The policy goal of the Fair Practice or the Fair Employment Practice Act, is to make employees who are victims of impermissible discrimination or retaliation, whole. So these systems work together in a complementary way, but they have different policy goals. In a recent Nebraska Supreme Court case, a worker who was injured on the job filed a claim through the workers' comp system and the claim was resolved in the workers' comp system. Afterward, the worker was discharged from her job, due to her disability that resulted from that workplace injury. The worker then filed a wrongful discharge claim under the employee-- the Fair Employment Practice Act. The Nebraska Supreme Court ultimately found that the workers' compensation claim was the only remedy, as the disability claim arose out of the initial workplace injury. In doing so, the Nebraska Supreme Court reversed decades of legal precedent in Nebraska and provided an invitation to the Nebraska Legislature to address and fix the issue. So I see this piece of legislation as accepting the invitation of the Nebraska Supreme Court to address the issue. For years, our legal precedent in Nebraska held that the Workers' Compensation Court is one of limited jurisdiction. Again, to provide that narrow goal to return the employee to work. The law provides that the state district court should handle cases of workplace discrimination and retaliation. Again, the goal being to make victims of retaliation or discrimination whole under the law. The-- Oh, I already got that part. LB380 is the legislative fix invited by the Nebraska Supreme Court to address this issue. It also helps to provide some clarity under the law in regards to the right to have a jury trial. Specifically, the case that we're looking at, which provided the, the opportunity to bring forward this legislation, was the Dutcher case. And there will be learned counsel on every side of this issue following me to provide more information to the committee. But with that, I'm happy to answer any questions.

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RIEPE: Are there questions from the committee? Seeing none-- oh, yes. Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. We're not going to retry the case today, are we?

CONRAD: Hopefully not.

HALLORAN: OK.

CONRAD: Hopefully not. But I do think that you will have an opportunity to see how this case was out of step with decades of precedent in Nebraska. That did provide some clarity to all litigants. Thank you.

HALLORAN: That's fine.

CONRAD: Thank you, though, Senator.

HALLORAN: Thank you.

RIEPE: OK.

CONRAD: Yes. Thank you.

RIEPE: All done?

CONRAD: All right. Thank you.

RIEPE: You'll be staying around, will you, for closing?

CONRAD: Yes, I'll be here. Thank you so much.

RIEPE: OK. Thank you. We would now take proponents. If you would be kind enough to state your name, spell it and then tell us who you represent, that would be much appreciated.

JENNIFER MEYER: Yes, Senators. My name is Jennifer Meyer, M-e-y-e-r. I'm an attorney in private practice. I have an office in Omaha and Lincoln. I work at Dyer Law. I represent injured workers in the Nebraska Workers' Compensation Court and I also represent disabled employees in state and federal court. I'm here today to discuss with you how the Dutcher decision has complicated something that we affectionately already called the Bermuda Triangle. And the reason why we call it that is because the ADA, the Nebraska Disability state law, workers' compensation and family leave laws all intertwine and at the place where they most intersect is return to work, which is what

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happened with Mrs., Mrs. Dutcher. I'm here today-- all I'm going to do is just provide you with a real life example of how this case has affected injured workers immediately upon its announcement. I have a client who is a 30-something-year-old male who works as a truck driver for a large Nebraska corporation. He was injured, injured his shoulder delivering goods for his employer. And this large employer does not dispute that he was injured. And in fact, the workers' compensation benefits have all been paid. Now he is after surgery, ready to go back to work. And that's where the problem in these cases sometimes arises. This is the best job he's ever had and he's worked hard to get where he is. And he brought his restrictions back from his physician and said, I can no longer lift 75 pounds with the arm that I injured. I'm able to lift 70 pounds-- 75 pounds with two arms and I have no restrictions on anything else. When telling this to the employer, the employer said, we will not return you to your job unless you have no restrictions. This is despite the fact that his job description does not even require him to lift 75 pounds with one arm. And in this particular situation, that employee can no longer pursue an Americans with Disabilities Act or a State Disability Act claim because of the Dutcher decision, because he's received work comp benefits. And what he-- the violation here is simply that an employer is supposed to make an individualized assessment about each worker and a blanket restriction that says we will not return you to work with restrictions is violative of the Nebraska disability law. And so, while other workers that I represent are able to pursue a claim like this because they were not injured at work, we've created a second class of individuals in the state who are injured workers that do not receive the same rights as those who are not injured at work, which, you know, seems to be backwards. If the employer says you were hurt at work and we want to return you to work, it seems like we should be protecting those individuals just as much as we protect somebody who has an outside-of-work injury. Thank you. And I'm open to questions.

RIEPE: Thank you. Are there questions from the committee? I have a question. I assume, as the attorney, you sent a letter outlining the concerns and why they should be. Did they respond or not respond?

JENNIFER MEYER: Pardon me?

RIEPE: Did he-- the employer of this, when you sent them-- as an attorney, I'm sure you sent them a letter.

JENNIFER MEYER: I have conversed with them, yes, Your Honor.

RIEPE: I figured you probably did.

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JENNIFER MEYER: Or sir. [LAUGHTER].

RIEPE: How, how did-- did they respond or did they not respond?

JENNIFER MEYER: They responded with they will not return this worker to work with no restrictions.

RIEPE: Oh, OK.

JENNIFER MEYER: Which normally, what I would do then, is contact the Nebraska Equal Opportunity Commission and file a complaint there.

RIEPE: Did you challenge them on their responsibility to try to do is make as many accommodations as they could? And I don't have any idea what those accommodations might have-- might be or could have been.

JENNIFER MEYER: I have, your Honor or sir. But, sir.

RIEPE: Really, there are people here that would argue with you.

JENNIFER MEYER: I know. I'm just usually in a completely different hearing, if you know what I mean. So I have, but the problem is, is after this decision, it doesn't matter what I say, right, because I can't do anything. Like, I can't file something. I can't have an enforcement action.

RIEPE: You could feel better.

JENNIFER MEYER: Pardon me?

RIEPE: You could feel better.

JENNIFER MEYER: You mean I could feel better--

RIEPE: By saying something to them.

JENNIFER MEYER: Well, we, we do. And we try to resolve it because ultimately, my client wants to go back to work for this employer and I don't want to create issues for him. But by saying something and then getting rejected, then the only thing that really gets us anywhere is filing a complaint, unfortunately. And we can't do that in this case.

RIEPE: OK. OK. Are there other questions? Thank you very much for being here. It's very informative.

JENNIFER MEYER: Thank you.

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RIEPE: OK. More proponents, please.

MIKE DOWD: Good afternoon. Mike Dowd, D-o-w-d, appearing on behalf of the AFL-CIO. Years and years and years ago, I tried a case called Trosper v. Bag 'N Save. Mr. Trosper was in the meat department at Bag 'N Save, sustained an injury, reported it to her employer. They said, if you pursue this, we're going to go ahead and take away the position that you have with our store. We went ahead and litigated that situation. It went to the Supreme Court. And at that time, the Supreme Court, in a correct decision, found that the at-will employee situation that exists in the state of Nebraska is not completely absolute and that a person's right to pursue a workers' compensation claim had such importance that it created an exception to that at-will employment rule. And that is case law that has been held for years and years and years, rightfully. It provided that protection, that we just heard from the other testifier, that is now obviously at risk. And this particular bill codified those years and years and years of case law and support. And a recognition of that exception is very important and it provides fairness in the workplace. It provides the ability for an individual who has been put in this disadvantageous position to go ahead and pursue their rights, their basic rights. And this isn't, this isn't winning the lotto to get a work comp case. You get two-thirds of your average wage, you get your medical, you get payment for some permanency. But there's no pain and suffering. There's no mental anguish. There's no loss of enjoyment of life. You're stuck with a wage that never changes. There's no cost of living adjustment. These are very basic and limited rights. And to be further dissuasive to an injured employee to even pursue those limited rights is wrong. This particular bill reverses that and allows for that opportunity to make fair that, that situation and allow for them to have some remedy, if in fact they pursue that right and are discriminated against.

RIEPE: OK. Thank you very much. Thanks for being here. Let's see if we have any questions. Any concerns, questions? Seeing none, thank you very much for being here. Appreciate it. More proponents, please. If you would be kind enough to give us your name, spell it, please, and who you represent.

KATHLEEN NEARY: My name is Kathleen Neary, K-a-t-h-l-e-e-n, Neary, N-e-a-r-y. I represent, in a big sense, the injured workers and persons who've been a, a victim of discrimination in Nebraska. I practiced employment law for 26 years in the state of Nebraska. And I'm here to testify in favor of LB380 today, because the Nebraska Supreme Court invited a legislative fix, a very important fix. Now, the, the requested legislative fix, which is reflected in LB380,

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codifies decades of clearly established Nebraska precedent and Nebraska law, as it existed prior to the Dutcher v. State of Nebraska [SIC] case, which was issued in September of 2022. It may be a surprise that Nebraska state law does not have a generalized wrongful termination claim-- does not exist in the law. It is a legal fiction. All wrongful termination and discrimination claims must arise or be based on a statute, the Constitution or clearly established case precedent, like Mr. Dowd testified. And that would be in the Trospen decision that he litigated decades ago, which held a person who had a work-related injury could not be retaliated against. There's three other cases that exist in Nebraska issued by our Nebraska Supreme Court. And they are identified in your hand out, but they are the Trospen v. Bag 'N Save, the Riesen v. Irwin Industrial Tool case and the Jackson v. Morris case. In each of those cases, a person who was injured on the job then suffered some adverse employment action, like a demotion, a loss of pay, a, a termination. The Nebraska Supreme Court has repeatedly held that it was illegal for an employer to do that and carved out an exception to the Nebraska at-will employment law. And we know and I think Jon Rehm is here to testify today, that what the Dutcher decision is doing is asking the Nebraska Workers' Compensation Court by saying, Nebraska Workers' Compensation Court, you have exclusive remedies, you have exclusive jurisdiction over claims or disabilities arising out of a work-related injury. Well, that's an impossibility. Why? Because the Nebraska Workers' Compensation Court cannot, legally cannot hear retaliation claims, wrongful discharge claims. And how do we know that? It's in your material. And it was, by the Nebraska Supreme Court held in Bower v. Eaton, we have recognized that an employee can state a claim in district court.

RIEPE: We're off red light district.

KATHLEEN NEARY: Oh, I'm sorry. I apologize.

RIEPE: We'll give you a minute to-- or not a minute, a few seconds, if you will, to wrap up.

KATHLEEN NEARY: OK. Thank you very much. The one thing I would really ask you to look at is on the second page of the handout.

RIEPE: Yes.

KATHLEEN NEARY: It, it juxtaposes the remedies allowed under the Nebraska Fair Employment Practices Act, what the law allows and under

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the rights and remedies under the comp laws. The Nebraska Workers' Compensation Court cannot provide the remedies, legally.

RIEPE: OK. Let me see if the committee has some questions of you that-- apparently not. Thank you so much for being here.

KATHLEEN NEARY: Thank you very much.

RIEPE: It's very important. Additional proponents? If you would, sir. You've been here before, so you know how it goes.

JON REHM: Jon Rehm, on behalf of Nebraska Association of Trial Attorneys, I submitted to the committee clerk a study from Mass-- M.I.T. economist that found that workers' compensation retaliation laws like, you know, strong ones, have been-- have reduced workplace injuries, fatalities by 14 percent. So these rules that Nebraska has encoded-- court, through the Jackson v. Morris decision, have probably had a very positive impact in Nebraska. If workers' compensation retaliation goes away, expect, you know, more serious injuries. Here-- a few other things that I want to talk about. I built-- in 2020, I had a case, Clark v. Sarpy County, which is in federal court, that built on what Mike Dowd did. In that case, the employer made my client, who had a mold allergy, they made her wear full PPE gear, like a hazmat suit, to do her job. And the federal judge in that case, when I, you know, said not only is that federal disability discrimination, which is still a thing now, that judge said, yeah, also that's workers' comp retaliation. So these are real people with-- and there is some stuff that if, if this Dutcher decision is expanded, there are going to be some serious, you know, mistreatment of injured employees in this state. I want to address a few things you might hear in opposition. One, this is double dipping. No, this isn't double dipping. When people get retaliated against for filing workers' compensation cases, they're basically giving up their job to get limited benefits. They're not double dipping. And there's no-- going to be no flood of litigation. There's been no flood of litigation that's come from this case. Most of the people who do employment law and represent injured workers and in, in employment cases, are here today. We're not doing this-- we're-- nobody puts up billboards to do this kind of work. These are hard cases. And if this Dutcher case is expanded, it's, it's, it's, going to be a travesty and it's going to be an injustice in the state of Nebraska. You know, the fair employment laws are tough enough. And, and, you know, if, if, if the-- if this Legislature, if this Legislature is not willing to, to fix it, there are going to be some serious injustices against injured workers in, in this state. And finally, for people from out of state Nebraska, you

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have to go to federal court. You can't go to state court. So you got to wait till the federal judge comes out to North Platte. You know, for those of you who are in Omaha and Lincoln-- or Omaha. Federal courts sit in Omaha. But if you've got a discrimination case in Lexington or Hastings, you got to wait until that judge gets out to North Platte or you got to, you know, the person has to take a trip to Lincoln, and that's disruptive for everybody. Thank you.

RIEPE: We're at a red light. So thank you very much. Are there questions from the committee? OK. Seeing none, thank you very much. Additional proponents? Are there any additional proponents? If not, opponents. If you would, please, state your name, spell it, and then tell us who you represent, please.

ERIC SUTTON: Mr. Chairman, members of the committee. My name is Eric Sutton, spelled E-r-i-c S-u-t-t-o-n. I'm an attorney here in Lincoln, here on behalf of Nebraskans for Workers' Compensation Equity and Fairness in opposition to LB380. As Senator Conrad indicated in her opening statement, the workers' compensation system in Nebraska is, is a grand bargain between employees and employers. On one hand, employees are able to access medical treatments and indemnity benefits to compensate them, without the hurdles that would be in place in general civil litigation, higher burdens of proof, rules of evidence and things like that. But on the other hand, employers receive a form of cost certainty for the benefits that may be owed to an employee, as represented in the schedule of compensation in Nebraska law. And they're also not exposed to other types of damages, such as pain and suffering. And the exclusive remedy provision in the Work Comp Act states, as has been noted, that the Work Comp Act is an employees only remedy for an injury that arises out of their employment. That's been the case, under this grand bargain, for many years. LB380 proposes a significant change to this grand bargain in Nebraska's workers' compensation system. If LB380 would make it more diff-- would make insurers and employers subject to additional litigation under these new grounds of employment discrimination. And if the, you know, the concern is that employees are being fired for filing, filing a workers' compensation claim, simply filing one, the Nebraska Supreme Court has already recognized a remedy for that, about 20 years ago, in Jackson v. Morris. So the, the cause of action for retaliatory discharge, for filing a workers' compensation claim, is still in place. And it's also important to remember that's-- the recent Dutcher decision and this bill do not affect an employee's federal remedies, whether that be for a federal cause of action or for the equal-- the EEOC. So those avenues will still remain in place. And at the end of the day, NWCEF is opposed to this bill because of the rather

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systematic and large change it represents to the work comp act and the potential that it would open the door for additional changes, whether that's for civil actions like wrongful death, assault and battery or bystander infliction of emotional distress, to now be viable causes of action arising out of a work injury. And with that, I would be happy to answer any questions that the committee may have.

RIEPE: Very good. Very informative. Got questions from the committee? Seeing none, thank you very much for being here.

ERIC SUTTON: Thank you.

RIEPE: Our next opponent. Thank you. Please go forward.

KORBY GILBERTSON: Good afternoon, Chairman Riepe, members of the Committee. For the record, my name is Korby Gilbertson, spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association in opposition to LB380. I'm not going to go back over the grand bargain discussion, but I wanted to bring up some comments that were made earlier during the hearing on a different bill and try to maybe, have a different view of how this works. One of the proponents on another bill talked about the pre-employment evaluation and that sometimes an employee might fail to disclose some information about prior injuries. And the reason was, well, they probably forgot about it or they didn't think it was relevant. At the time, all they are thinking about is that whether or not they think they can do the job. So if you try to look at that from the employer's standpoint, they can find out information later, maybe after a claim is made, that maybe then they have to demote the person or find a different-- through accommodations, a different role for that employee to make. This bill, LB380, would open up the door to more litigation. And it also-- I can give you a personal story of this. As I sat as the chair of a board that ran a business and we were surprisingly sued, out of where I thought it was nowhere, after releasing someone from their employment. They went to the EEOC, the NEOC and we're the Lincoln EEOC, NEOC-- were turned-- were told they did not have a case by either of those groups. Still remained-- retained an attorney and we were sued for five times what their annual salary would have been. And I, I am an attorney, don't practice, but called another friend of mine who practices all the time and they said, Korby, they, they know they don't have a case, that they know you'll settle. Because you're going to try to take the cheap way out. And that's what they do. They know you have insurance and you'll pay a settlement instead of going to court. That's what the concern is with this law. This is going to

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encourage more litigation that will encourage more settlements because the majority of cases end up in settlements anyway. With that, I'd be happy to answer any questions.

RIEPE: Thank you very much. Are there questions from the committee? Hearing none, thank you very much.

KORBY GILBERTSON: Thank you.

RIEPE: Are there additional opponents? If you would be kind enough to state your name and spell it and then share with us who you represent.

MARK SCHORR: Yes. My name is Mark Schorr, M-a-r-k S-c-h-o-r-r. I'm here on behalf of the Nebraska Chamber of Commerce, the Omaha Chamber of Commerce and the Lincoln Chamber of Commerce. I'm a partner in the Erickson Sederstrom law firm and have specialized in employment law for 40 years. I submit that LB380 is entirely unnecessary because it wouldn't actually change anything that we've had for decades, as precedent here in Nebraska. The Dutcher case, if you read it and you're familiar, is consistent with decades of precedent, not only in Nebraska, but in virtually all states in that, as you've heard, workers' comp is the exclusive remedy. That's part of the deal. You don't have to prove anything. You don't have to prove wrongdoing by the employer. And the one thing that everyone needs to remember is if there is a lingering permanent injury, then the Workers' Comp Court and the law in Nebraska already provides for an ongoing benefit, going forward, to compensate for that injury. The second thing that I think is important is, as testified earlier, we already have a recognized cause of action for workers' comp retaliation in Nebraska, as recognized by the Supreme Court. You heard about the Jackson v. Morris case, in which the court held that there is an absolute legal cause of action for any employee who is terminated because they exercised their rights under the Nebraska workers' compensation law or because they filed a workers' compensation claim. That constitutes a cause of action for wrongful discharge in violation of the public policy exception of the-- to the employment at-will doctrine in Nebraska. We have had that cause of action as a wrongful discharge claim in Nebraska since 2003 and as Mr. Dowd testified in his Trospen v. Bag 'N Save case in 2007, the Nebraska Supreme Court extended its ruling in Jackson v. Morris and held that even if the employee is not discharged, in that case, the employee was demoted, that there's also a cause of action for wrongful discharge in violation of the public policy exception to the employment at-will doctrine, if an employee is demoted or had suffered some other neg-- negative job loss. So I submit that it's abundantly clear that this is not the correct

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proposal and that it would be inappropriate to include it in the Nebraska Fair Employment Practice Act. There's also no need for an amendment to provide for jury trials. There has been a right to a jury trial in employment discrimination cases since 1991, when the Civil Rights Act of 1991 was enacted at the federal level.

RIEPE: OK.

MARK SCHORR: That expanded the rights to-- and remedies available to employees to include something more than just equitable remedies or reinstatement and backpay, to include punitive damages at the federal level and compensatory damages.

RIEPE: OK.

MARK SCHORR: And so, every claimant in an employment discrimination case in Nebraska has the right to a jury trial today, if they so request it.

RIEPE: OK. We do have a red light.

MARK SCHORR: So I see the red light. I'd be happy to take any questions.

RIEPE: OK. Any from the committee? Seeing none, thank you.

MARK SCHORR: OK.

RIEPE: Thank you very much.

MARK SCHORR: Thank you.

RIEPE: Additional opponents?

BOB HALLSTROM: Chairman Riepe, members of the committee. My name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the National Federation of Independent Business in opposition to LB380. Also appearing on behalf of the Nebraskans for Workers' Compensation Equity and Fairness and the Greater Omaha Chamber of Commerce. I think those that have preceded me have talked about the Dutcher case and what the precedent is or is not in Nebraska. I just would reiterate that we believe the Dutcher decision to be in keeping with the grand bargain, through its application of the exclusive remedy provision of the Nebraska Workers' Compensation Act, to the Nebraska Fair Employment Practice Act. The opinion makes clear that nothing in the Workers' Compensation Act

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limits an employee's ability to file a charge of discrimination with the Equal Opportunity Commission. And the worker comp exclusive remedy provision only precludes state claims regarding injuries arising out of and in the course of employment. Nebraska continues to recognize a public policy exception to the at-will employment doctrine, allowing employees to file suit against employers for wrongful termination in retaliation for filing a workers' compensation claim. In light of the Dutcher opinion, no other civil state claims may arise out of an employee work-- workplace injury. However, nothing in the court's holding, in Dutcher, absolves employers from the duty to accommodate disabled workers under both state and federal laws. And I'd be happy to address any questions that the committee may have.

RIEPE: OK. Are there any questions of the committee's? Seeing none, thank you, sir.

BOB HALLSTROM: Thank you.

RIEPE: Any additional opponents? If you'd state your name and spell it, please, and then who you represent.

PHOEBE GYDESEN: Certainly. Good afternoon, Chairperson Riepe, members of the committee. My name is Phoebe Gydesen, that is P-h-o-e-b-e, Gydesen is G-y-d-e-s-e-n. I am an assistant attorney general, testifying on behalf of the Nebraska Attorney General in opposition to LB380. Our office has four principal concerns. I'll give my truncated version of the first concern, which is that, you know, this is a deviation from the spirit of the Workers' Compensation Act. But I did want to point out that employees do actually receive substantial benefits under the Act. All their related medical expenses are paid by the employer. They receive temporary total disability benefits during times they are unable to work at all, temporary partial disability benefits for when they can only work part time, as well as permanent disability benefits for lost earning capacity, which compensates them for lost earning services, access to the market. And they also receive vocational rehabilitation services, which includes retraining or job placement, as well as lost wages while they're being retrained or undergoing job placement. The Dutcher case is actually a really good example of how that worked. Ms. Dutcher received almost \$200,000 in indemnity benefits, including going to school to be retrained. Secondly, LB380 would potentially allow employees to recover twice for injuries that occur in their employment, since it would allow them to fully pursue those benefits I just talked about under the Act and then, turn around and bring a claim under NFEPA against their employer for the same injury, which, in the context of the state as an

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employer, would subject the state and its taxpayers to being held financially responsible for that same injury and types of damages, such as lost time from work and voc rehab, twice. Third, if LB380 passes, the state and its taxpayers would potentially incur additional costs of litigation from having to defend these lawsuits, even if a judgment ultimately isn't rendered against the state. We anticipate that as the largest employer in the state, we would be significantly impacted by the increased number of suits and potential judgments that may result. Our initial assessment is that the Attorney General's current litigation resources would be insufficient for the expected increase in volume of lawsuits from this proposed change in the law. It would also likely increase the costs of our third-party administrator to coordinate with both attorneys and agencies for handling these new employment cases. Finally, as the previous testifier mentioned, we think that the proposal to add a jury trial under FEPA is unnecessary. It's been our office's experience that you always have had a right to a jury trial in cases brought under and NFEPA. For those reasons, we would request the committee not advance LB380. And I would be happy to answer any questions you might have.

RIEPE: OK. Thank you. Any questions? Seeing none, thank you very much. Additional opponents? Anyone speaking in opposition? OK. Is there anyone speaking in a neutral capacity? I see one, at least. If you'd be kind enough to state your name, spell it and then share with us the organization or if you represent yourself.

PAULA GARDNER: So good afternoon, Chairperson Riepe and members of the Business and Labor Committee. My name is Paula Gardner, P-a-u-l-a G-a-r-d-n-e-r. I'm the executive director of the Nebraska Equal Opportunity Commission. And I'm speaking in a neutral capacity on LB6-- LB380. Due to our workshare agreement with the EEOC, the NEOC is reimbursed for cases where the alleged harms occur in Nebraska. And those allegations are covered under both state and federal discrimination laws. While this bill would provide a new protection for individuals under the Nebraska Fair Employment Practice Act that is not included in federal discrimination statutes, we do not anticipate that this addition will create significantly more work for the NEOC. It has been our experience that when there are allegations involving workers' compensation, the individual is also filing a claim related to disability. In those instances, there is a federal charge filed as well as a state charge, resulting in reimbursement under our workshare agreement. Understanding that someone could file a charge alleging discrimination for having exercised their rights under the Workers' Compensation Act without alleging disability or other bases covered under federal law, we do not believe at this time those

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filings will be so many that we could not handle the additional state-only work. Additionally, having protections greater than federal law will not impact our substantial equivalency with the EEOC. The only thing I would like to suggest, is that if this moves forward, that moving Section 1, as cited in the bill, to Section 48-1113, under the Nebraska Fair Employment Practice Act. That is the section that is reserved in FEPA for retaliation. But I just kind of want to mention, too, about the Dutcher case. There's been comments about going to federal court that you still have those protections. Dutcher was not able to go into federal court. That was a state employee. And state employees have to go into state court to get their remedies under the Fair Employment Practice Act. I'll ask if anybody has any questions.

RIEPE: Any questions? Seeing none, thank you very much for your testimony. Any others in a neutral capacity? OK. OK. While you're getting ready there, Senator Conrad--

CONRAD: Thank you.

RIEPE: --we had, for LB380, we had one proponent-- letters or emails, one in-- as a proponent and zero in opposition. So please, if you choose, close.

CONRAD: Very good. Thank you so much, Chair. Thank you, members of the committee for your time, attention and consideration. I'll just leave you with three or four really, very quick points in closing. I want to thank everybody who came out today to share their perspective on the current state of the legal landscape. And I just want to reaffirm a couple of points for the committee. So prior to this Dutcher case that you've heard a lot about, it's my understanding that plaintiffs traditionally had the ability to pursue a workers' compensation claim and a claim under the Fair Employment Practices Act. It seems that this decision, as you heard from many who practiced in the field today, was contrary to what's required under the Fair Employment Act. So what this really does is, in fact, is it, in essence, creates a situation where Nebraska is really an outlier in terms of how our legal system approaches these kinds of situations. And again, was really provided an invitation from the Nebraska Supreme Court to address this legislatively. The other point that I just want to let you know is that these, these are tough cases, no matter what. I think that if you talk to, to practitioners in the field and you heard a little bit about it today, it's a very high bar. I don't think that we're seeing a flood of frivolous litigation. I think that you are seeing cases being brought forward where there are important issues to sort out, where it seems like there is a colorable claim to bring

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forward. And the final piece that I'll just reaffirm to you, of course, as attorneys, we're all held to an ethical standard in order to maintain our bar license and to continue our practice. There are penalties before the court if you bring forward frivolous litigation. So I-- that existed pre and post, this Dutcher decision, but something that we shouldn't divorce from the record or this discussion. So thank you so much. Happy to answer any questions.

RIEPE: Very good. Are there questions?

CONRAD: Thank you.

RIEPE: Seeing none, thank you very much.

CONRAD: OK. Thanks so much.

RIEPE: That concludes our--

CONRAD: Have a good afternoon.

RIEPE: --thank you. You too-- our-- that concludes our hearing on LB380. And with that, we will proceed on to LB443. And with that, we will have, instead of Senator Albrecht, we're going to have her legal assistant, who is Glenda. Is that correct?

GLENDA WARD: Yes. You're correct, Senator.

RIEPE: Thank you. Welcome.

GLENDA WARD: Thank you.

RIEPE: If you'd state your name and spell it for us, we'll go from there.

GLENDA WARD: Good afternoon, Chairman Riepe and members of the Business and Labor Committee. For the record, my name is Glenda Ward, G-l-e-n-d-a W-a-r-d, and I'm here representing Senator Joni Albrecht, who represents District 17 in northeast Nebraska, which includes Wayne, Thurston, Dakota and a portion of Dixon Counties. I have introduced LB443 on behalf of the Nebraskans for Workers' Compensation, Equity and Fairness. The legislation would provide for the termination of total disability benefits at age 72, unless an employee is injured after age 67, in which case, total disability benefits would cease after compensation has been paid for a period of five years. The bill would exclude certain catastrophic injuries from the limitation on duration of total disability benefits, including

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spinal cord injuries resulting in paralysis, severe brain or closed-head injuries and total and industrial blindness. Currently, total disability benefits only stop when the employee passes away or if disability is removed. This results in benefits being paid long beyond the normal or anticipated retirement of the employee and is extremely expensive for the employer. The workers' compensation system is intended to replace lost wages. And once a person reaches a certain age, it is unlikely that he or she would be working, even if not injured. As a result, there are no wages to be replaced under the circumstances. Most of these individuals receive not only workers' compensation total disability benefits, but also, Social Security income benefits, under our current system. According to 2019 data provided by the U.S. Chamber of Commerce, 26 states have some form of limitation on the duration of total disability benefits. These limitations include offset provisions for Social Security, limitations on the duration of total disability payments or a combination of offset provisions and limitations on duration. I believe Nebraska should join these states by adopting the limitations proposed under LB443. There will be a number of witnesses who follow me, who should be able to address any technical questions that you may have regarding this bill.

RIEPE: OK. Thank you very much. Are there questions? Seeing none, thank you very much. I'd ask for proponents at this time. If you'd be kind enough to state your name, spell it and who you represent, that'd be helpful.

CURTIS RUWE: Yes. My name is Curtis Ruwe, C-u-r-t-i-s R-u-w-e. I am employed as the vice president and general counsel for Crete Carrier Corporation. I appear today, before you, on behalf of the Nebraskans for Workers' Compensation Equity and Fairness and the Nebraska Trucking Association. Passing LB443 would allow Nebraska to join the majority of states which have either time limited or offset permanent total disability benefits awarded through the workers' compensation system. LB443 accomplishes this by establishing a sunset of benefits at age 72, with an exception for workers 67 or older who, if found to be permanently, totally disabled from a workplace injury, would be entitled to benefits for a period of time, which extends past the, the sunset of 72 years old. In this case, I think it's really beneficial to understand what the bill is not about. LB 40-- LB443 does not seek to limit workers' compensation coverage for any reasonable or necessary medical expenses resulting from workplace illness or injuries. LB443 does not affect benefits for families who lose a family member due to a workplace fatality. And it does not affect benefits for workers who suffer from certain serious head injuries or

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spinal traumas, as those injuries are excepted out of the bill. So what does LB443 do? The bill is a response to the reality that life expectancies and work-life cycles are such that an award of permanent total disability in Nebraska has a different impact now than it did at the time the Act was originally passed. The entitlement to so-called perm total benefits for life was a feature of the original Workers' Compensation Act, passed by the Nebraska Legislature in 1913. At that time, life expectancy of males was about 50 years old and females was 55. Today, the life expectancy for males is about 75 and females is 80. Likewise, in the early 1900s, workers generally did not retire. They worked as long as they were physically able to do so and very few were entitled to pensions or retirement benefits of any kind. Today, the average age of retirement of an American worker is 62 years old. All qualifying workers are entitled to full Social Security retirement benefits by 67 years old at the latest. Many workers also have private retirement benefits, such as 401ks or other retirement benefits. In short, the landscape is very different from the time that the Act was originally established. So how have states reacted to our current reality? Twenty-six states have passed laws either offsetting or limiting perm total benefits. Thirteen states offset perm total benefits by the amount the workers receive in Social Security or retirement benefits. Eight states limit the time the worker is entitled to perm total benefits. This can be through a total week limitation, or it can be a similar sunset provision to what's in LB443. Finally, five states have adopted both approaches. I, I just have one final comment here to close, which is that these are a mix of states. Employee-friendly and employer-friendly states have both adopted these limitations.

RIEPE: OK.

CURTIS RUWE: California, Michigan, Oregon, Washington, all have offsets. Massachusetts, Minnesota and New Jersey have combinations of limitations and offsets.

RIEPE: OK. Thank you. Are there questions from the committee? Seeing none, thank you.

CURTIS RUWE: Thank you.

RIEPE: Additional proponents.

BOB HALLSTROM: Chairman Riepe, I see my red light is on.

RIEPE: It's been nice talking.

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BOB HALLSTROM: Chairman, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear today on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, the National Federation of Independent Business and the Greater Omaha Chamber of Commerce, to support LB443. I think most of the information that's in my written testimony goes over things that both Senator Albrecht's representative and Mr. Ruwe covered, in terms of the states that have decided to make some inroads in this area. Our general proposition is that once someone reaches the age of majority with the general observation of workers' compensation to be able to provide for lost wages, that people are not going to be expected to live or to work past a general retirement age. We do have a provision in there that says if you happen to be working past a general retirement age and get injured past the age of 67, that we have benefits continuing on for a period of five years to address that particular situation. And we have also tried to take certain designated catastrophic types of injuries outside of the coverage for limitation of recovery of benefits. With that, I would be happy to address any questions of the committee.

RIEPE: Are there any questions from the committee? Seeing none, I did, did notice in the fiscal note that, because you mentioned that there was a-- it's indeterminate.

BOB HALLSTROM: Thank you, Senator.

RIEPE: What I mean, that's saying yes, there is, though you just don't have a clue what it is. Thank you very much.

BOB HALLSTROM: Thank you.

RIEPE: Additional proponents?

KORBY GILBERTSON: Good afternoon, again. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurers Association. And this is one day that I wish Senator Erdman was on this committee, because I'm going to do what he's always asked us to do and just say "ditto." So you can let him know I did that.

HALLORAN: That was me.

KORBY GILBERTSON: That was you that said it?

HALLORAN: It's OK. It's OK.

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KORBY GILBERTSON: OK. Well, now I've done it for you. Ditto. If you have any questions, I'd be happy to answer, but the previous testifiers have pretty much said everything.

RIEPE: OK. Any questions? Seeing none-- yes, sir. Senator McKinney.

McKINNEY: I'm trying to wrap my head around this. So say I'm 65 and I have to get my leg amputated. What about that?

KORBY GILBERTSON: So in the, in the bill, there's provisions for if the injury happens within, I want to say, five years of that.

McKINNEY: It says 67.

KORBY GILBERTSON: Sixty-seven, within several years of that.

McKINNEY: Or if I'm 60 and I-- or if I'm 30 and my leg was amputated, I, I don't know. I just-- I think, you know. We have to take care of people who are injured se-- severely, especially something like that. And I'm, I'm not sure if like, it matters what age I get injured. I'm injured and I'm disabled.

KORBY GILBERTSON: Right. I think the balancing act is whether or not if you weren't injured, if you would have continued to work after that age and so, whether or not the injury makes the difference in that. So what other states have decided is that there is a, a stage at which these benefits would end because you would be otherwise retired. You would not expect to continue receiving income from your employer.

McKINNEY: It's a tough conversation, but--

KORBY GILBERTSON: Yeah.

McKINNEY: --it, it's just-- I don't know. I just think, like if somebody is severely injured and the age shouldn't matter and they should be taken care of. Thank you.

KORBY GILBERTSON: You're welcome.

RIEPE: Did you have any followup questions?

McKINNEY: No, I don't. Thanks.

RIEPE: Would another option be that they could get Social Security disability?

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KORBY GILBERTSON: They did, yes. And I think that's part of it, that they are like, they are able to get those benefits.

RIEPE: So they're not just out in the cold, if you would.

KORBY GILBERTSON: Right.

RIEPE: OK. Thank you very much.

KORBY GILBERTSON: Thank you.

RIEPE: Any other questions? Thank you. Are there any other proponents? Seeing none, are there opponents?

NICK GRANDGENETT: Good afternoon. My name is Nick Grandgenett, spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in opposition to LB443. So currently, Nebraskans who are totally disabled as a result of a workplace injury, receive two-thirds of their lost wages for as long as a physician indicates their injury prevents them from working. For those Nebraskans whose total disability is permanent, the promise of the law is that wage support be retained as long as needed. Often referred to as the grand bargain, workers comp requires the forfeiture of any legal claim related to a workplace accident in exchange for lesser but more certain wage support through the employer's workers' compensation insurance policy. Employers, in return, are spared the expenses associated with costly litigation and large damage awards. By terminating wage support at the age of 72, LB443 attempts to shift the employer's financial responsibility away from the employer and back onto workers, their families and communities. Like all states, Nebraska's workers' comp system is dated. When our state's Workers' Comp Act was adopted in 1913, there was a failure to account for many of the modern phenomena that disadvantage workers, especially those who are totally and permanently disabled by on the job injuries. It is, for instance, unlikely that 110 years ago, the Act's original drafters foresaw the significant deleterious effects inflation would have on permanent total disability benefits over time. In the year 2000, a total disabled Nebraskan, earning the state's average wage, would have received a benefit of about \$320 per week. This is about \$17,000 per year. To have the same value today this benefit had in 2000, a worker would need to receive \$530 per week, which is about \$27,000 per year. This example illustrates how Nebraska's current statutes allow for the value of total disability benefits to shrivel and erode over time. LB443 will only compound this problem by snuffing out wage support altogether when a worker is in their seventies.

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Instead of modernizing workers' comp laws to ensure workers are adequately supported in the 21st century, lawmakers have, across the United States, eroded workers' comp benefits as employers and insurance companies chase lower premiums and larger profits. Today, we're at a moment in time where insurance premiums are at the lowest point in 30 years. Pure benefits are being paid. Insurance companies are recording growing profits. Now's the moment when Nebraska should be passing legislation to strengthen, rather than erode, our state's workers' comp program. We could, like South Dakota, Wyoming and 19 other jurisdictions, pass a cost of living adjustment to safeguard total disability benefits. These are the policies we need to explore to protect workers in the year 2023. Instead, we're debating whether or not they should have any compensation after the age of 72. For all those reasons, we urge the committee to indefinitely postpone LB443. And I'll just note, with my testimony, we submitted a study and also a-- just a general knowledge of workers' comp fact sheet. Thank you.

RIEPE: OK. Any questions from the committee? Seeing none, thank you for being with us.

NICK GRANDGENETT: Thank you.

RIEPE: Additional opponents? I see one, at least one. Welcome back and you're welcome to proceed.

MIKE DOWD: Good afternoon. Mike Dowd, D-o-w-d, appearing on behalf of the AFL-CIO in opposition to LB443. Workers' compensation doesn't make anyone rich. This proposal just amplifies the worst-case scenario of taking what little is given and stripping it away with the persons who are injured the most. All right. I always share this example. When I first started practicing back in the eighties, I had a client that came in and they were working for Northwestern Bell and sustained an injury in 1960-something. And it was a thumb and the thumb was just completely contorted. They kept their case open because they had to go back to the doctor so frequently because how severe the injury was, but never had an impairment rating on it. We get the impairment rating and they were astounded that it was next to nothing. It was de minimis. And that was because we had to utilize the wages that they were earning at the time of injury, back in the sixties. That is the problem with this law. There is no cost-of-living adjustments. These are individuals that are totally disabled, have now been divested of their ability to have health insurance for their family. They are divested of their ability to engage in the receipt of any fringe benefits. There's no 401k contributions, there's no retirement. So when we look at what little they have left, is it really appropriate

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to go ahead and put limits on that, when they've now lived what should have been a working lifetime and an ability to go ahead and put money away in the future for their needs? It's been stripped away. And now, they're living hand-to-mouth, in terms of these checks. There's some disinformation as, as to a suggestion that now, somehow, the federal government will make up the difference. That's not the case. When you have a workers' compensation claim and you're receiving Social Security disability, that is an offset from your Social Security disability, not the other way around. So they aren't gaining some windfall by going ahead and receiving these work comp benefits. Last comment I want to make and this is with respect to Senator McKinney, you're absolutely correct. This discriminates against the older worker. You take a 30-year worker that's 30 years of age and they're totally disabled, how much money are they going to receive between the age of 30 and the age of the late 60s? Substantially more than that older worker who decides they're going to continue to try to work. And now, they're going to be artificially cut off within a number of years? It absolutely discriminates against the older worker. So with that, we'd urge against the, the passage of LB443.

RIEPE: OK. Thank you very much. Are there questions from the committee? OK. Seeing none, thank you, again.

MIKE DOWD: Thank you.

RIEPE: Additional opponents? You're welcome to go forward.

TODD BENNETT: Good afternoon. Todd Bennett, on behalf of the Nebraska Association of Trial Attorneys again, B-e-n-n-e-t-t. I have two hand-outs, one of them being a constituent from Omaha, Gary [SIC] Wortman, who specifically sets out the effect, the devastation, of removing his checks. The second one is what I take issue with, is how you look at the context of the states in the entirety. You've heard the majority of states have a limitation. And I can tell you, I can tell-- disagree with that, because the hand-out I gave you was from the American Association of Justice in the Workers Injury Law Group. They take attorneys' experience in every state and combine them and compare them. What you're going to find is the majority of states actually are not limited states. They're actually lifetime benefit states. States that are a wage-loss system, which is Nebraska, you have lifetime benefits because you don't get a retirement. There's no COLA adjustment, that you heard from Mr. Dowd. But I also take issue with the fact that limited-- there's only seven absolute states that have a dramatic cut-off. Those seven states, Nebraska would be one of the harshest cutoffs of the entire United States. The difference is,

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is what they call a rebuttable presumption. This is a retiree presumption that someone's going to retire. The states that have a limitation have a rebuttable presumption, where they have an evidentiary hearing in front of the compensation court in those states. And those considerations are, number one, if you've not been eligible for Social Security because you didn't work enough before you get hurt. I'm going to introduce you later to Annie Gibson, who's a client of ours. She did not-- she got hurt before her credits were earned and she couldn't get Social Security. The misconception of, hey, we're going to consider Social Security-- 48-130 is an existing statute that says you do not get to consider any source whatsoever in fixing the workers' compensation. That's a direct conflict with this bill. But getting back to the considerations, the number one is if you're still found permanently, totally disabled, you get the benefit. But I also want to go through that-- they look at financial need and whether there's sufficiency of retirement income. But I also want to address, this is the same bill that you saw last year, LB1062. The problem I have with that is the same people testified on behalf of that bill in support of it. They also, each one of them, recommended an amendment to the bill, because if anybody that is age 67-72, you get 300-- or 500 weeks of benefit. If you're partially disabled, you get 300. How is it fair that someone's permanently and totally disabled and they get 40 less weeks? There's been no discussion. You actually got the same bill in front of you from last year. And then, last thing that you saw, from, from Crete Carrier on behalf of Nebraska Equity, this is too expensive. Look at the fiscal report. Apparently, ten cases last year, 11 this year, 10.5. That's the problem we have, that we have to bring this bill to cut these people off? The fact is, too expensive? You don't see a work comp solvency issue. Crete netted \$790 million in 2021. They're not up here arguing that this is going to ruin them. And this is not a trend. The last time the state--

RIEPE: You have a red light.

TODD BENNETT: --passed this law was 2018.

RIEPE: If you could wrap [INAUDIBLE] up.

TODD BENNETT: My last little statement is the work comp act. They protect the best interests of the worker and they protect cost-shifting, Medicare, Medicaid, housing, etcetera. The Workers' Compensation Court does that.

RIEPE: Thank you.

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TODD BENNETT: This is purely passing the buck to the taxpayer.

RIEPE: Red light.

TODD BENNETT: Thank you.

RIEPE: OK.

TODD BENNETT: Be happy to answer any of your questions.

RIEPE: Are there any questions from the committee? Seeing none, thank you. If you'd state your name, please, then spell it for us and then, who you represent.

SHAWNA THOMPSON: Thank you. My name is Shawna Thompson, S-h-a-w-n-a T-h-o-m-p-s-o-n. I'm here representing myself, myself. I'm a registered nurse. I'm unable to work as a result of a workplace accident that was no fault of my own and I am here to testify against LB443. Much has already been said this session about the "second house" of the Nebraska Legislature, Legislature, the we the people of Nebraska. I believe everybody is aware of the controversial bills that have been introduced this session and much ado has been made about the pro-life, pro-choice individual right versus pro-government. And through it all, I have yet to hear any understanding that regardless of your position on these topics, there must be an understanding that life is from the cradle to the grave. LB443 is another way for work comp to escape the responsibility of actually paying for the workers that they're liable for. None of us asked to be disabled. Certainly none of us asked to be dependent on a system that denies us our basic human dignity and constitutional, constitutional rights. Yet here I am begging you to not pass a bill that stands to further diminish what meager income I have at a time in my life when I shouldn't be having to worry. But Social Security will take care of you. Really? Social Security is based on work. I haven't been able to work since I was 52. Twenty years of no raises, no bonuses, no longevity pay. Nursing wages will have doubled and more, and more. In many instances, those factors won't be reflected on my Social Security history. No work history from age 52-72, no quarters will be paid into Social Security. By current calculations, I stand to receive a whopping \$45. Based on the Social Security Administration life expectancy, life expectancy calculator, I can expect to live until the age of 86. LB443 would stop my benefits at 72, leaving me with little to no income until I die, 14 years, perhaps, if I exceed the average, 20, maybe 25. I could drown you in data and statistics, and statistics. None of it will mean anything at all. That can be skewed to satisfy the position of the presenter.

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Rather, I'm asking you, as a fellow, as a fellow Nebraskan, to say no to the proposed LB443. Legislation is far more than language. It has real-life consequences for the real people. The second house that you talk about so often, people who've had the misfortune of being hurt while contributing to our local and state economy, only to learn that we are valued at only two-thirds of the piece of the person we were before, just like slaves used to be in the 1800s. And then, only until the age of 72. You have 812 bills introduced in the 2023 legislative session to debate, creating and establishing holidays, providing for, providing for special license plates, adopting pet insurance. These are worthy and un-- undoubtedly important to some. Life altering? LB443 is life altering. Absolutely. I urge you to stand up for those of us who have worked long and hard and contributed to our great state's successes. Please stop LB443 in committee.

RIEPE: OK. Thank you. Are there questions from the committee? Thank you very much. And it looks like you've come a long way to get here.

SHAWNA THOMPSON: Yep, it was.

RIEPE: Did you come in from North Platte?

SHAWNA THOMPSON: We came in this morning. My husband and my brother-in-law took the a day off, since I'm not, I'm not to--

RIEPE: Well, thank you. Thank everyone.

SHAWNA THOMPSON: Drive anymore.

RIEPE: We appreciate your coming. Thank you.

HUNT: Thank you.

SHAWNA THOMPSON: Thank you.

IBACH: Thank you.

RIEPE: OK. Other opponents? If you'd be kind enough to state your name and spell it, please, and tell us who you represent.

DAN GIBSON: Good afternoon, Chairman Riepe and Business and Labor Committee members. My name is Dan Gibson, D-a-n G-i-b-s-o-n. I'm here on behalf of my mother, Annie Gibson, who you'll hear from in a bit. My mother's the hardest worker I've ever known. Her husband, my father, preferred that she not work, but she insisted. She wanted to provide, to be useful. She started her job at the bottom rung, barely

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speaking English, but willing to put in 110 percent every shift. They noticed and she was prompted-- promoted again and again, until she was leading a team. For over 16 years, she gave her job everything she had until she couldn't. Her injuries became too much. Her company fought her tooth and nail to deny her workmen's compensation benefits, but could only watch in the courtroom as witness after witness, coworker after coworker, even her own supervisor, testified on her behalf. The judge was furious at the company's attempt to clearly shirk responsibility for her injuries and immediately ruled in her favor. But even though she won, it was no victory for her. She wanted the job, not the checks. She loved to work, but now, could not. She hasn't worked since 2000. Because of her injuries, she was not able to work long enough to be eligible for Social Security, disability or retirement. She's lost her ability to earn, her ability to save and her ability to contribute to a pension or retirement. Recently, she just lost her husband, my father. Now the bills keep piling up, inflation continues to rise, options are very limited. She's received the same amount of her workmen's comp benefit check since 2000, with no cost-of-living adjustment. That alone is cruel, but the money is still important. If this bill passes, people like my mother will lose their income altogether. As worded, her benefits would have ended four years ago. The bill has some medical exceptions that are listed as severe, but her injuries would not meet that, as the word is not clearly defined. The results of her injuries, however, are still painful and devastating enough to make her unable to earn a living. For 16 years, she gave the best of herself to her employer, never missing a single day. And now, it appears they want to hurt her all over again. Whoever brought this bill forward should be ashamed of themselves. It is an exercise in cruelty. Under the guise of being reasonable and fiscally conservative, it ultimately serves the benefits of corporate interests, whose companies are built on the backs and sweat equity of the individual worker. I simply request that you do what is right, what is compassionate. Please oppose this bill. Thank you.

RIEPE: OK. Thank you. Thank you for-- let's see if we have any questions. Feel free. Are there any questions of the committee? Apparently not. Thank you. Next opponent. If you'd be kind enough, sir, to give us your name, spell it and state who you represent, please.

LARRY DREDLA: Yes, sir. My name is Larry Dredla, L-a-r-r-y D-r-e-d-l-a. I appreciate your guys' time today and everything that you're doing with this. I was a rambunctious, crazy young kid. I quit drinking 12 years ago and I went back to Hastings College, in 2007. I

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got two degrees, in psychology and English. And I have a master's degree in teaching from College of Saint Mary. I was a teacher at St. Peter Claver in Omaha. And the school shut down. In that time, I went to work for Valmont Industries. My aunt worked there. She got me on. I've always been a painter and I enjoyed my job. I worked there three years. In that three years, I did see a lot. And I'm going to cut to this bill, but you need to know. Companies that do a good job, companies that get behind the employer, those people get benefits that aren't very much. But what about the employer that doesn't get-- or the employer that doesn't get behind the employee? I was hit by an 1,800 pound pole that was released from pressure. I woke up, I was drug into our office. I sat there for 3 hours. I went to the onsite nurse, who told me to wait three-- wait and come back. We'll see how I do. My injuries I sustained were a broken back, broken testicles, a hernia that took 3 hours. And when I went to the doctor, finally, I thought I was going to get looked at. What they did was-- is started looking at my leg for about a month and a half, while I reported shooting pains going down it. I don't know the game, I don't know the players, but I do know what this bill does. I get \$440 a week. I was making over a thousand. I've done my part to society. But here I am. And when I-- if this were me now, if this bill were to pass, at 72, yes, let's give it to the taxpayer. That's always the answer. Let's give it to the taxpayer. I have a lot of reasons to be upset. I have three kids under the age of ten. My wife has finally left me. I'm going through a divorce. I don't make enough money to support my family. That's my reality. That's my life. And these people come in here and talk about how fair and close we are. We are not fair and we are not close. I suffer. I'm an English teacher. I know what the word torture means. They tried to get me to quit so they didn't have to take responsibility. Over and over, the doctors, the nurses kept telling me, you don't have to go through this pain. You can just quit your job. And then what happens? Full responsibility is gone. Right. I had a broken back for five months before I collapsed on the floor. And then, I finally went into the doctor and they still questioned whether my injury was real. I don't know about this system. I know, I tell people I'm a survivor of it. At 72, they just want to let it go. And I don't know what I'm going to do tomorrow, but I keep trying. I'm a good person and I keep putting that before everything else. Any questions, ladies and gentlemen?

RIEPE: Let-- let's see if there are some questions. Are there any questions? Apparently, none. Thank you.

LARRY DREDLA: Thank you. I appreciate your time.

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RIEPE: Thank you for being here. We appreciate it. Additional opponents? Yes, sir. If you'd state your name, spell it, please, and who you represent, even if that's yourself.

MICHAEL SIMMONS: All right. I represent, represent myself. My name's Michael Simmons, M-i-c-h-a-e-l S-i-m-m-o-n-s. I'm rep-- as said, I'm representing myself. I'm one of the young 44-year-old amputees that was asked about earlier. I was run over by a semi-trailer. It had a 200,000-pound piece of concrete. Pretty much destroyed everything between my rib cage, my knees. I only have about 10 percent left in my arm. My right foot's amputated. I have won numerous court to get my medical bills paid. I've had bill collectors call on me. I went through a lot of emotional stress from workmen's comp not doing their job, not giving me the medical needs that I needed. I hope this testimony helps people in the future. Everything-- I hope you guys look at my case and review it and see what I've actually been through. And I hope it's helped a lot of people in the future, these awards that I've gotten. Two of them have been through the Supreme Court. And it's helped me and it's helped a lot of people in the future. And I hope this testimony today helps even more people. Like he said, I was amp-- I've been disabled since I was 45. If worked till I was 72, that's 27 years of Social Security I didn't get paid in to. If I'm lucky enough to live to 72, I'm back-- \$565 a week is what I make now. I was awarded in 2011. That's \$14.44 an hour, if you count everything. In 2011, that was kind of sustainable. In 2023, it's very hard and I can't imagine people like Larry who's trying to take care of family. I'm lucky. I'm divorced and single and it's a little easier for me. What would I be making now as a truck driver? Six figures, pretty easy. You know, the \$20 bill in 2011 is the \$100 bill in 2023. Social Security, all these workers are getting cost-of-living raises, but workmen's comp's getting nothing. At 72 years old, what I-- at \$565 a week and you're paying \$1,200 a month apartment, phone, medical. There's no way it can be sustained. And then if you got kids you got to feed, you're not even going to pay your food bill on that. Oh, I've been very fortunate to have a good attorney that's gotten me this far, but it's been a fight. So thank you for your time.

RIEPE: Thank you for being with us. And let's see if we have any questions from the committee. It seems not. Again, thank you for being here. Additional opponents? Welcome.

ANNIE GIBSON: Good afternoon.

RIEPE: If you would be kind enough, please, to state your name and then spell it for us.

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ANNIE GIBSON: My name is Annie Gibson, A-n-n-i-e. I have been injured, 1996. I love work. That's me. I always-- I probably not injured, I still probably working. But oh, I'm not. I was injured in 1996 and, and not able to get Social Security at that time. Since, I still didn't get it. And I mean, I got no idea, no income's coming. I just lost my husband a few months ago. Inflation so high-- getting-- guess there is a \$30 [INAUDIBLE] going up. I don't know how I'm going to pay all those bill. I need the money to pay the bill. My husband helped me everything, but he is gone now. But he's still with me. I love him so much. You guys cut off this bill, no money coming. I cannot pay the bill. How am I going to do, I can't even work. Please understand me. I have to put these every night. This is going up. This one my leg. Every night, taking Tylenol P.M. before I could sleep. Thank you, sir. No money coming. I don't know how I'm going to live there. My husband passed away that day, I told him, God, why don't you take me first? I'm still running. Some language I don't understand, like these today. Most people are coming and talking and I don't know how to talk that way, but I still living my life. I gotta pay the bills, no matter what, keeps coming. So this bill would've-- so ashamed of-- to me, it was a shock. I've had them in 1990s; it was the same amount. Everything [INAUDIBLE] this bill-- one I got, started, 2000. Didn't even know it coming-- cover my bill at all. Oh, sometimes I got to struggle to pay them. So please understand this. My husband here, I probably not even here, but I have to be. I'm still living my life. I just got a little grandkid. I can't even hold her because I can't stand there. My arm, this one operated. I can raise this one. This one still, I can't even raise. So I can't even hold my granddaughter. But anyway, I don't like to live my life now. And counting this one, that is just torturing me. I don't know what to say. Please understand, you guys. This bill is just too cruel. They shouldn't be having this. How old do you age or not, I'm injured forever my life, until I die, I go with them. Doctor told me, you have to live with them. That's all he said to me. Now I got no husband. Kept bill, I'm still living here. I wish I'm just drop at any time. That's what I might hope for. Thank you, you guys understand. This makes us so ashamed with all these. So cruel, I couldn't stand it. Thank you.

RIEPE: Thank you for being here.

ANNIE GIBSON: God bless you all.

RIEPE: Bless you. Any questions, anyone?

HUNT: Thank you.

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RIEPE: Thank you very much. OK. Additional opponents? If you would, kind sir, if you would state your name, spell it and then share with us who you represent, even if that's yourself.

EUGENE TRUHLICKA: Mr. Chairman and members of the committee, my name is Eugene Truhlicka, E-u-g-e-n-e, last name Truhlicka, T-r-u-h-l-i-c-k-a, and I am representing myself. I am here in opposition to LB443, because I was permanently and totally disabled as a result of a work injury. When I was 19, I started working for Tenneco Automotive in Seward, Nebraska. Over the next 43 years, I worked there as a laborer. I loved my job and if I hadn't gotten hurt, I would still be there. I had no plans to retire. But that all changed on October 2, 2019, when I got hurt on the job. I ended up with bilateral torn rotator cuffs. My referral to an orthopedic surgeon was delayed by workmen's comp, who overruled my family doctor and decided I needed physical therapy first. By the time I was seen by the orthopedic surgeon, Dr. Tewes, my rotator cuff tear on the right side had become retracted and could not be surgically repaired. Surgical repair on the left was unsuccessful. Because of the severity of my condition, I was referred to the Mayo Clinic. I was told I needed reverse total shoulder replacements on both shoulders, but that I should hold off doing it until I could no longer stand the pain. The records I handed you are the office note and permanent restrictions from Dr. Tewes's office, when I reached maximum medical improvement. Note, it says bilateral irreparable rotator cuff tear and that I had been given permanent sedentary restrictions on both shoulders, with no overhead work and no reaching above shoulder level. I would like to know from whoever drafted this bill why my injury isn't good enough for you. What is the justification for why my injury would not be one of the kinds of conditions, conditions exempted from the limits on benefits this bill would impose? I gave my life to Tenneco and I don't have any training to do anything else. But Tenneco told me they had nothing in the plant for me to do and the light duty job I had was going away. My ability to work has been taken from me and my options for the future are limited. I don't have the choice to go out and work anymore and continue, continue to earn a living and yet, you would propose to cap someone like me out at age 72. That's wrong. And you shouldn't pass this bill.

RIEPE: OK. Thank you for being with us. Are there questions from the committee?

EUGENE TRUHLICKA: Thank you.

RIEPE: OK. Seeing none, thank you, sir.

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EUGENE TRUHLICKA: You're welcome.

RIEPE: Additional opponents. Welcome. If you'd be kind enough to state your name, spell it and then share with us who you represent.

EDWIN OVERGAARD: Edwin Overgaard, E-d-w-i-n O-v-e-r-g-a-a-r-d, representing myself in opposition of LB-- can I, can I go later?

RIEPE: I'm sorry.

EDWIN OVERGAARD: Can I come back up later?

RIEPE: Come back up later?

EDWIN OVERGAARD: Yeah.

RIEPE: Oh, sure. As long-- do we have other opponents? Thank you for being with us. If you would be--

KURT GROVIJOHN: Good afternoon.

RIEPE: --kind enough to state your name and spell it, please.

KURT GROVIJOHN: Yes, sir. Kurt Grovijohn, K-u-r-t, last name Grovijohn, G-r-o-v-i-j-o-h-n. I'm here representing myself and the rest of my brothers and sisters in the utility line trade, state of Nebraska. Basically, I'm 48 years old, just about 49. I started when I was 18 years old, paid my way through college in utility line at Northeast and went to work and worked for many years, traveling across this state, traveling across this country, restoring power in hurricanes, ice storms, fires, you name it, tornadoes-- helping other people. On May 30, 2018, just north of here, over by north of Wahoo, I was involved in electrical contact while working and took 7,630 volts for upwards to a minute. And from that time, my life's obviously changed. And I'm kind of sad to see here, it's kind of difficult, that under the guidelines of this and the language in this bill, I am not catastrophic enough. I'm not severe enough, which seems awful odd to me. I, I know, I know myself. I've been through a catastrophic injury and I just-- I have a hard time with, with the fact that I work. I made good money all these years. And when it comes to the, the, the-- what I get now from the workers' comp is not-- I was maxed out or whatever, capped off. So it was a big hit for me, financially and my kids and everything else. And you know kind of piggybacking on the other people here, it's the-- you know what, you get to a certain age and then you're done. And I don't feel that's right. I feel I have no other means to go and, and you know, far as employment and making

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wages and stuff. Now, why, when I turn 72, would I have any, any means at that time? I'd have to be-- I just don't understand why this bill was introduced. I, I think I know why, but I just want to voice my opposition to it and I don't want anybody else to have to go through what I went through and a lot of these other people in this place have went through for a long time. So--

RIEPE: OK.

KURT GROVIJOHN: --with that, I'll take any questions if anybody has any.

RIEPE: Thank you very much for being here. Are there questions from the committee? I see none.

KURT GROVIJOHN: Thank you.

IBACH: Thank you.

RIEPE: Thank you very much. Welcome back, sir. Would you be kind enough to read-- I know you did before, but if you'd restate your name and spell it.

EDWIN OVERGAARD: Edwin Overgaard, E-d-w-i-n O-v-e-r-g-a-a-r-d.

RIEPE: Thank you.

EDWIN OVERGAARD: Here representing myself in opposition of LB443. I apologize. Her story--

RIEPE: It's fine.

EDWIN OVERGAARD: This bill is bad. I worked for over 20 years for the city of Omaha before I was in a wreck. I was making, between me and my wife, we were in excess of \$160,000. We lived a great life. Boats, trips. [INAUDIBLE] I'm not getting-- since then, I've been divorced. This has caused divorce, this injury. I'm not kidding. I'm not rich. Sold my boat. Sold everything. I've never-- I've worked since I was 14 years old. This bill, at 72, would cause me and thousands of others to rely on the government programs that are already struggling now. I got to go-- you know, food stamps and everything else, for measly-- they make it sound like we're rich, like we're double dipping. We, we took huge hits. We took these-- these injuries are from work. We didn't do these on our own doing stupid stunts in our backyards. This not only affected us, it affected our families. And now, be-- being punished at 72 is not right. I had 17-plus years still, of time, that I could have

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made a lot of money. Instead, I'm stuck on this income now. It's not going to get higher. There's no raises every year. They don't-- since then, metro-area transit, their incomes have skyrocketed. They, they make great money. I'm still at the stuck pay that it was. I was number three in seniority, my department. Now, this is just wrong. So I would ask you that you reconsider and not advance this bill.

RIEPE: OK. Thank you, sir. Are there questions from the committee?

EDWIN OVERGAARD: Thank you.

RIEPE: OK. Seeing none, thank you. Thank you for being here. Additional opponents? Are there any others that wish to speak in opposition? If not, are there any that wish to speak in a neutral capacity? Seeing none, are you welcome to close or are you--

GLEND A WARD: I'm just here to listen--

RIEPE: --OK.

GLEND A WARD: --and hear testimony. And I will take notes back to Senator Albrecht.

RIEPE: OK. Thank you. So you're waiving closing. That concludes-- let's see. What do we have? We had zero proponents and 12 opponents to LB443. So that closes the hearing on LB443. And we will move on to LB191, is our last hearing for the day and we will welcome Senator Halloran. Senator, you are welcome to open when you please.

HALLORAN: Good afternoon, Chairman Riepe and members of the Business and Labor Committee. Thank you for your consideration of this bill. For the record, my name is Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, and I represent the 33rd Legislative District. LB191 is a bill to provide a measure of confidentiality for first injury reports on private citizens filed with the Nebraska Workers' Compensation Court. It, it accomplishes this purpose by requiring that workers' compensation first reports of injury to be withheld from the public, with certain designated exceptions for a period of 60 days from the date of the filing. Restricting access to workers' compensation records does not appear to be unique or unprecedented. At least 37 states have some form of restriction on access to workers' compensation court records, including neighboring states of Iowa, Kansas, Missouri and South Dakota. Nebraska currently grants confidentiality protection to unemployment insurance records, similar to those proposed for, for workers' compensation records under LB191. There would appear to be no justification for providing

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confidentiality to unemployment insurance records and not to workers' compensation records. LB191 is designed to delay the avalanche of solicitations which injured employees receive from attorneys, once a report of first injury is filed with a workers' compensation court. Protecting injured workers from this invasion of privacy should cause no harm to employees in need of legal representation. There can be little doubt that injured employees have adequate access to information regarding potential legal representation for their claims. Many lawyers advertise on TV and the radio. And a host of lawyers pop up on virtually any Google search of a workers' compensation-related issue. Employees' rights and access to information are further protected by the fact that the Workers' Compensation Court has an 800-number which employees may call to obtain information regarding court procedures and their rights under the workers' compensation system. In addition, the Workers' Compensation Court publishes a pamphlet, which explains the rights and obligations of both employers and employees. It appears that the vast majority of work-related injuries are handled between the injured employee and their, and their employer or insurance carrier without the need for litigation or legal intervention. And communications by lawyers pursuant to information contained within the first injury report, produce unnecessary conflicts and needless litigation, thereby increasing the cost to workers' compensation system and reducing the net benefits received by the injured employee. The first reports of injury often contain sensitive medical information relating to an injured employee. While workers' compensation is exempted from the provisions of HIPAA, it is safe to assume that most individuals have a greater expectation of privacy with regard to records relating to their medical condition and state law can and should provide protection for the confidentiality of these records. In addition, employers typically bear the brunt of the slew of attorney solicitations, as employees question why the employer is releasing information regarding their injuries, resulting in these unwanted communications. Employee retaining counsel, purely as a result of the solicitations, end up sharing a portion of the benefits to which they would otherwise be entitled with their attorney, whose service, in many cases, is not needed. LB191 contains a number of exceptions to the 60-day delay in release of first injury reports. The exceptions address situations in which the court is required to allow for the copying of and inspections of first injury reports. The reports would be required to (a) be released to parties to litigation whether employer or employee; (b) be given to state and federal authorities for research or investigate-- investigations purposes; (c) allow redacted information to be made available to third parties for the purpose of determining the nature of injuries sustained within a

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workplace, without identifying any specific individuals; and (d) be released to a nonprofit organization for the purposes of sending condolences to, providing general memorials for, and offering grievance counseling to family members of employees whose death was caused by a workplace incident. The bill address-- the bill addresses both the need for the disclosure of first injury reports in the specific instances described and to ensure that the first injury report will be withheld in all other cases for a period of 60 days. At the request of the Nebraska for Workers' Compensation Equity and Fairness, along with the Media, Media of Nebraska Inc., I am providing AM683 for your consideration. The amendment would allow the press to have access to first injury reports. This ends my testimony on LB191. I'd be happy to answer to the best of my ability, but as is often said, there may be people more qualified to answer after I'm done.

RIEPE: OK. Are there questions from the committee? I, I would have one. I see that this bill has been before this committee before, to be a veteran bill.

HALLORAN: I guess it's a veteran bill. There's a lot of bills that are repeat bills and this is one of them.

RIEPE: The second question I would have, how'd you select 60 days? Kind of curious, as opposed to 45 or 70?

HALLORAN: Well, it's a good question. And as I suggested to the Chairman, there may be a person that's better qualified to answer that than me. I, I, I will say the Nebraskans for Workers' Compensation Equity and Fairness brought me this bill, so I'm sure there will be someone to testify that we have.

RIEPE: Very good. Thank you, sir. I would-- are there any other questions? I see none. Thank, thank you. You going to be here for closing? Thank you.

HALLORAN: Yes.

RIEPE: Thank you. We would entertain proponents. If you'd be kind enough, sir-- you've been here, so you know the routine.

ERIC SUTTON: Mr. Chairman, members of the committee, Eric Sutton, that's E-r-i-c S-u-t-t-o-n, here on behalf of Nebraskans for Workers' Compensation Equity and Fairness. I am an attorney here in Lincoln, practicing workers' compensation defense. I'm here to offer testimony in support of LB191. As the committee is probably now aware, when a work injury occurs and is reported to the employer, they have to file

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a first report of injury with the Nebraska Workers' Compensation Court. This first report contains a lot of personal information about the injury, including the employee's contact information, their address and the nature of their injury and a few other things. Right now, all first reports are immediately publicly available to anyone that would like to look at them. And as was previously mentioned, employers, employer members of NWCEF had received some complaints from employees about publication of their information in the first report of injury. And therefore, this bill would keep that information confidential for 60 days, with the appropriate exceptions that are within the bill, for access by an employee's attorney, an employee's attorney and the other listed categories. And I think another benefit of this 60-day period would allow some claims investigation and claims handling to occur, so that the employee can decide, you know, if their claim is being handled appropriately, if they're not satisfied and whether they'd like to hire an attorney. It would essentially function as, maybe, a cooling-off period after the initial trauma of suffering work-related injury. Therefore, we believe it's in the best interests of both the employee and the employers and claim handling in general for this 60-day period of confidentiality to move forward. And therefore, we ask that the bill be advanced out of committee. And I'm happy to answer any questions.

RIEPE: Does a committee member have any questions? Seeing none, thank you very much.

ERIC SUTTON: Thank you.

RIEPE: Additional proponents?

BOB HALLSTROM: Chairman Riepe, members of the Business and Labor Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, here before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business, to testify in support of LB191. I've also been authorized to appear on behalf of the Nebraska Chamber of Commerce and Industry, the Greater Omaha Chamber of Commerce and the Lincoln Chamber of Commerce. Most of my written testimony was addressed by Senator Halloran in his opening. I would confirm that we are on board with the amendment that was proposed on behalf of Nebraska Media, Inc. A couple of other things, Senator Riepe. This is a repeat bill that's been before this committee on a number of occasions. There are, as Senator Halloran noted, the vast majority of states who have an outright confidentiality, the majority of them have outright confidentiality provisions in law and have had for many years. I would

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reiterate the provisions of 48-612 and 48-612.01, relating to unemployment insurance records already and since, I believe, 1945, have had similar confidentiality provisions and exceptions for unemployment insurance records. So it's curious that we don't have similar opportunities for workers' compensation records. I would agree with Mr. Sutton. We would prefer to have an absolute confidentiality provision. That's what's been in bills before this committee until about two years ago. We decided to take a slightly different approach and provide for a 60-day cooling off period, if you will, to at least provide the employer the opportunity that the employee is satisfied with the manner in which their case is being handled, that they may not get these solicitations and hire an attorney unnecessarily, in those cases where some of their benefits are going to be eroded because of that fact. I, I would also note of its importance: one of the exceptions allows for redacted information to be made available to third parties for the purpose of determining the nature of injuries sustained within a workplace, without identifying specific individuals. That was incorporated a number of years ago into this type of legislation, specifically because the trial lawyers were concerned that if an employer indicated or resisted the fact that they were having a certain type of injuries, carpal tunnel, for example, in a particular workplace, that they would like to get that type of information, so this exception would allow them to be able to prove without identifying a specific individual, whether or not those types of injuries were recurring in a particular place of business, which may have some impact on, on their representation. And with that, I'd be happy to address any questions the committee may have.

RIEPE: Any questions of the committee? Seeing none, thank you, sir.

BOB HALLSTROM: Thank you, Senator.

RIEPE: Thank you for being with us.

BRIAN BRADLEY: Good late afternoon, Senators. My name is Brian Bradley, B-r-i-a-n B-r-a-d-l-e-y, and I'm here on behalf of the independent Insurance Agents of Nebraska to testify in support of LB191. The Independent Insurance Agents of Nebraska are in strong support of this bill, because it limits the accessibility of the public to workers' compensation records and better protects the privacy of workers in general. This bill considerably limits the amount of outside, potentially negative commercial interactions that Nebraska workers may experience if they're injured or become ill on the job. And it does this by making the workers' compensation injury illness reports private for 60 days, which we are in full support of,

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as this would then provide a greater level of confidentially-- confidentiality and privacy. The bill also gives individuals and employers the ability to better focus on safety, wellness and healing instead of managing unsolicited constant-- contacts and distractions from companies or parties looking to profit off the workplace injury or illness. And one of our overarching goals as independent insurance agents is to look out for the welfare and overall health and safety of our clients, who are also-- also happen to be our fellow Nebraska citizens. This bill protects their private information longer and enables them to focus on what is important: their health. On behalf of the more than 500 member agencies of the Independent Insurance Agents of Nebraska, we strongly support this bill, LB191, and respectfully ask that you do too. I'd be happy to answer any other questions you might have at this time.

RIEPE: Are there any questions from the committee? OK. Seeing none, thank you very much.

BRIAN BRADLEY: Thank you so much.

RIEPE: OK. Any additional proponents? If not, are there opponents? Please [INAUDIBLE] forward.

BRODY OCKANDER: Good afternoon, Chairman Riepe and members of the Business and Labor Committee. My name is Brody, B-r-o-d-y, Ockander, O-c-k-a-n-d-e-r, and I'm a lawyer here in Lincoln. I'm here on behalf of the Nebraska Association of Trial Attorneys in opposition to LB191. Nebraska, rightfully so, has a long history of making the government open and-- by default. And usually the records of public interest, they want them to be public. And if there's a need to make something private, then there needs to be a good reason. And there just isn't a good reason to make this stuff private. There's no problem out there to justify this presumption of an open government in this bill. We need to call a spade a spade. And the only purpose of this bill is for insurance companies to reduce the number of informed workers. They want uneducated workers so they can pay fewer benefits and save money. That's what it is. The more educated-- or the, the longer that insurance companies can prevent injured workers from contacting lawyers, the longer they stay uneducated. It has the following scenarios which all benefit only the insurance companies and the self-insured employers. And that's-- number one, the injured worker doesn't even know he or she can hire a lawyer; two, the injured workers' not advised of his or her rights under the work comp act. The injured worker gives up trying to pursue benefits. Or I'll just run this through my health insurance because this is a headache. I, I

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can't deal with this. And the last thing, the injured worker doesn't know that he or she can see his or her own family doctor. And this might be the biggest one. The longer that they can delay this, the 60-days delay, the longer they prevent people from contacting lawyers and they can control the medical care. And under Nebraska work comp laws, an injured worker can see his or her own family doctor. But a lot of times these employers are pushing them off to their doctors who might be kind of questionable, run them through the meat grinder, get them back to work, pat them on the back, tell them they're good to go. Any problems that they have further, it's not from the injure-- injury. It's from something else. So again, I find it ironic that there's a strong proponent by the insurance companies for independent insurance agents using public records to solicit me. And if I'm shopping for a new policy, I'll use those solicitations. If I'm not, I'll put them in the, in the recycling bin. That's as easy as that. It's just a problem that does not need fixing. And because of that, I ask the committee to not pass LB191.

RIEPE: OK. Thank you. Are there questions from the committee? Seeing none--

BRODY OCKANDER: Oh, I'm sorry. I'd like to quickly explain the handout that I gave. The solicitations don't always even come from lawyers. They come from companies that try to prevent people from hiring lawyers. So that's the handout that I handed out, so I apologize for not mentioning that earlier.

RIEPE: OK. Thank you.

BRODY OCKANDER: Thank you.

RIEPE: Additional opponents?

MIKE DOWD: Good evening. Mike Dowd, D-o-w-d, speaking on behalf of the AFL-CIO in opposition to LB191. Education, advice, good things. Ignorance and silence is a bad thing. The more information that can be disseminated to someone in a situation such as this, that gives them informative understanding of their rights, is not a negative. It could dispel and it could prevent misunderstandings between themselves and maybe, an aggressive employer representative through health services that they may have. Why is 60 days important? That's one of the most important parts of the case, because within that first 60 days, there's a rule called rule 50. And what rule 50 is, is where you are supposed to be informed of your right to go ahead and see your own treating physician, if you've established a course of care with that

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doctor prior to the time of the accident or a family member has. What happens if you don't have a clear understanding of rule 50? The employer slips in, says listen, we want you to go ahead and see Dr. X, Dr Y, Dr. Z. And all of a sudden, you get to those doctors and now you have, in effect, giving up your right to go ahead and control your own medical care and treatment. That happens within those first 60 days. That's a very important time, where the employee should have someone that is going to give them a fair understanding of what the nature and extent of their injuries are, like the gentleman that spoke earlier today about having a broken back for five months. Information is information. If it's educational and it's going to be consistent with what their statutory rights are, there shouldn't be any argument about that. If someone is not interested in, as been, as been indicated earlier, they can go ahead and trash-can file it. But I do not see any downside in terms of providing further education to the injured worker.

RIEPE: OK. Let me see if there are any questions. Thank you. I see none. So thank you for being here.

JOHN LINGO: Good afternoon.

RIEPE: OK.

JOHN LINGO: My name's John Lingo, J-o-h-n, last name Lingo, L-i-n-g-o, private practice solo lawyer in Omaha. All I do is represent injured folks. You met a bunch of them today. I can't say it much better than they did in their own words, but that's what it feels like to be an injury lawyer all day, every day. And you get to sit across from, from real-life stories like those. I've kind of got an impossible goal. I want every injured worker in Nebraska to receive no more but no less than what workers' compensation law in Nebraska allows and requires. I come down here once a year and testify against this veteran bill. And you nailed it. You all probably don't remember Judge Novicoff. And you're saying, Lingo, what are you talking about? Well, maybe, maybe Mr. Riepe knows the name. Judge Ben Novicoff sat on the court, somewhere in the neighborhood of 20 years ago. And this bill started at about that time. And they put a few exceptions in now and they're trying to carve out 60 days. And Mr. Ockander and Mr. Dowd nailed that issue, point blank. And it's real simple, because the comp team for the insurance company, for the employer, is already set up. They've got a claim adjuster, they've got a nurse case manager. They might even have a nurse in the plant. They are absolutely up to speed. And in walks my client, who doesn't even know what he or she doesn't even know. So it's not a fair fight, not even from the beginning. And so,

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what really hit me today and I had to even add in to my notes, these bills today show you folks the full-court press against workers' compensation work in Nebraska and our fellow Nebraskan workers who unfortunately, through no fault of their own, become injured. I'm going to, I'm going to cut their benefits at age 72. But come back to this bill at the beginning of the process when the accident happens. I want to keep you ignorant and I want to keep you away from those dang on insurance lawyer-- from those daggone injury lawyers who are going to do nothing but take your benefits. Well, I tell you what, a client comes into my office already getting paid workers' compensation. I'm not entitled to any of those benefits and I don't charge any of those benefits. And they get my work for free, until such time as I can ever get them money that they did not walk in with. That doesn't get said in here often enough. And that's, that's an ethical requirement upon me. These letters go out. I've sent 50,000 of these letters. I've been practicing law for 32 years in Omaha. I've received one complaint phone call. I think these employers and these other folks who come in and say, well, we get a lot of complaints from our employees because they got this stack of letters from these shyster lawyers and they're just causing troubles. Talked to this gentleman on the telephone who called me and he said, how did you get my information? Of course, I told them the truth. And he says, well, can you help me? I said, tell me a little bit about your case and how much are you getting paid. Lo and behold, this poor gentleman was not being paid what he should have been paid under workers' compensation. One time in 50,000 letters. My time has expired. I got a lot-- some other folks I want to talk to you about this, as well. Please do not let this veteran bill get out of this committee. Thank you.

RIEPE: Thank you for being here. Are there questions from the committee? If not, thank you.

JOHN LINGO: Thank you.

RIEPE: Safe travel home. Any additional oppositions?

NICK GRANDGENETT: Good afternoon. My name is Nick Grandgenett. Spelled N-i-c-k G-r-a-n-d-g-e-n-e-t-t. I'm a staff attorney with Nebraska Appleseed, testifying in support of LB191. So I won't repeat what other testifiers have already said about this bill. I just quickly mentioned that Appleseed, we work across the state with meat and poultry workers and frequently hear about serious workplace accidents that result in people needing to find support through workers' compensation. In many of these cases, this requires them to secure legal representation. In Nebraska, immigrants are disproportionately

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represented in our meat and poultry industries. And frequently, there's a lot of misunderstanding about how to navigate the aftermath of a workplace injury. There's particular confusion about the differences between OSHA, workers' comp, unions and other entities that have a relevant role to play after an accident has occurred. Workers' comp is one of the most important resources, if not the most important resource for an injured worker and frequently it's one of the most misunderstood. One worker recently expressed to me his frustration about his work-- workers' comp case and said that he felt intimidated by his employer, because these companies have armies of lawyers on their side and many workers don't understand their rights. He also stated that after an accident, many workers are frequently encouraged to sign documentation that they do not understand. I think the bottom line is that successful workers' comp cases and outcomes require successful representation. And the first reports of injury are just a simple tool to make sure that workers are being connected to quality representation and for those reasons, we would urge this committee to indefinitely postpone LB191. Thank you.

RIEPE: OK. Any questions? Seeing none, thank you for being here.

NICK GRANDGENETT: Thank you.

RIEPE: Additional oppositions? Yes. Please come forward. If you'd be kind enough to state your name, spell it and tell us who you represent.

MIKE DYER: My name is Mike Dyer, M-i-k-e D-y-e-r. I'm an attorney here in Nebraska. I've got an office in Omaha and Lincoln. And for the past 20-plus years, this millennium, I've come to testify against this bill, different versions of it. John-- well, Mike Dowd's out of here. We all went to law school together. This is the only time we see each other once a year, is at this hearing. The, the reason that this has been shot down every year, I think, is because it, it's-- just shouldn't-- it's not in the benefit of the injured worker. And the laws should be liberally construed in benefit of the worker. The people who are getting hurt are, are driving our trucks, loading our shelves, cleaning our bedpans. And yeah, they might have a cell phone, but they don't know how to use the kind of information that-- that's on those cell phones. They can call the Workers' Comp Court and they can be told, yeah, here's where the statutes are. But the Workers' Comp Court can't tell them how the statutes apply to their case, because that would be practicing law. So if my computer breaks down and somebody hands me a book on how to fix computers, I could probably get it done, but I wouldn't do near the job a professional would do.

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The thing that the workers-- Section 48 brings out, in the workers' compensation statute, is they have a choice of their own physicians. They get reimbursed for their mileage, so they don't have to worry about paying for gas to go to the doctor. Temporary disability, permanent disability, loss of earning ability-- all of those things are not brought out by the insurance companies because the insurance companies have no obligation to advise injured workers of any laws. They don't have the obligation to tell the truth. Because as mentioned earlier, you can't bring a bad faith claim against an insurance company. So the injured workers are looking at, at the-- a lot of this stuff was already covered and I don't want to, don't want to repeat it. They look at themselves and they're injured and they don't want to be perceived as a whiner or a complainer, making a big deal about themselves. But when you're injured-- if you're injured today, March 6, 60 days from now is May 5. And if you have another ten days for the court to file, open the record and then you have the end of the week for the court to send the note out. And then the worker gets that information in June, after Labor Day-- after Memorial Day. And they want to go see their doctor, you've created all kinds of questions about did they really get hurt there? Is the injury from that or did they get hurt at home and all kinds of unnecessary issues that wouldn't be raised if the employer just-- employees just knew what their rights were. Well, I send out a lot of things, too. And people read them, they'll call and if I can't put them in a better position, I can't be hired. But here's what the laws are. Here's what you can do. So thank you.

RIEPE: OK. Thank you for being here at this hour. And are there any questions from the committee members? Seeing none, thank you very much.

MIKE DYER: Thanks.

RIEPE: Are there others speaking in opposition? Any speaking in opposition? If not, anyone speaking in a neutral capacity?

JILL SCHROEDER: Senator Riepe, members of the Business and Labor Committee, I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r. I'm the administrator of the Nebraska Workers' Compensation Court. We do receive first report of injury data electronically. These, historically, were paper forms. Now it's a collection of data. We do send an informational letter to each injured worker for whom we receive a first report or each, each, you know, person who's identified as the employee. When a first report is filed, we do have some concern that under the legislation as currently drafted, under

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LB191, we may not be able to send those unless we receive a request. So I did want you to know that we, we have that question. We receive approximately 8,720 requests for records. And I-- the vast majority of those requests are for first report information. Currently, we do not have to find out the purpose for which those requests are made and we do not have to track the timing of those requests. We anticipate that if this legislation is enacted, that will increase this process of fulfilling records requests. And we just ask you to think carefully and give thoughtful consideration to whether that is how the workers' compensation operations are best spent, to have to take the time to count days, to find out the purpose for which information is being requested and to send out [INAUDIBLE] letters if it is within 60 days or other [INAUDIBLE] communications. I, I want to clarify one thing. And that is that the-- the first report data does not include any medical reports. So it may include a data field as to the part of body that is injured, a knee, a head, a back. It may include the cause of the injury, a slip, a fall, something like that. And it does include a narrative description that is as close to, quote, medical information as would be produced in response to these public record requests. I also think it may be important for you to know that in terms of numbers, last Friday, there were 23 individuals who requested first report data. Eighteen of them were lawyers or law firms. Frankly, I was one of them. There were two researchers. There was one entity, I believe, was a health insurance company. And there was one request that we couldn't identify exactly where it came from. It may be helpful for you to know those numbers. Other than that, my red light is on.

RIEPE: OK.

JILL SCHROEDER: Do you have any questions that I can answer about first reports or our processes?

RIEPE: Thank you very much. Are there questions from the committee? Seeing none, thank you very much.

JILL SCHROEDER: Thank you.

RIEPE: Are there others testifying in a neutral capacity? If not, we did have letters in a-- zero for LB191 and one-- zero proponents and one in opposition. So, Senator, you're welcome to close.

HALLORAN: OK. I won't keep you long here. I feel pretty good. I should have some pats on the back from some of the trial attorneys for having a homecoming here today.

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RIEPE: You're brave.

HALLORAN: An interesting question might have been for some of the opponents, because I brought it up in the testimony that what-- whatever the judgment is for compensation for the injuries, the attorneys get a certain percentage, right. Well, it's-- I have no idea what that percentage is, but maybe I'll do-- was it 10 percent? 25 percent? A third? I don't know, but it does come out of the final net judgment for the injured person. And the question is, is whether or not-- it's-- the question is whether or not these people, these folks that have a legitimate workmen's comp, comp complaint or issue, whether or not they're inadequately capable of Googling or calling the compensation court-- Workers' Compensation Court and asking for information. I mean, it's almost as though we're treating them like rubes and they're incapable of doing that. Anyway, I will, I will close with that, but I think it's worth advancing. But I'll leave that up to the judgment of the committee.

RIEPE: OK. Thank you. Are there any questions from the committee to Senator Halloran? Hearing none, thank you very much. That will complete our hearing on LB191. And that will conclude our hearings for the day. Regarding Exec Committee, I'm going to see if we can do that tomorrow.