

Transcript Prepared by Clerk of the Legislature Transcribers Office
Business and Labor Committee March 10, 2025

KAUTH: --Business and Labor Committee. I'm Senator Kauth from Omaha, representing the 31st Legislative District. I serve as chair of the committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone, tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, by anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates your time has ended. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page will make sufficient copies for you. Please silence or turn off your cell phones. You may see committee members using their electronic devices to access more information. Verbal outburst or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of a submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my right.

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McKEON: Go ahead, Jane.

RAYBOULD: Good afternoon, everyone. I'm Jane Raybould, from Legislative District 28, which is central Lincoln.

McKEON: Dan McKeon, District 41, central Nebraska. I have 8 counties.

SORRENTINO: Tony Sorrentino, Legislative District 39, Elkhorn and Waterloo.

McKINNEY: Oh, sorry. Terrell McKinney, District 11, north Omaha.

KAUTH: And Senator Sorrentino is the vice chair of the committee. Also assisting the committee today to my right is our legal counsel, Thomas Helget, and to my left is our committee clerk, Julie Condon. We have 2 pages for the committee today. Pages, please stand up and introduce yourselves.

EMMA JONES: My name is Emma Jones, I'm a junior at the University of Nebraska-Lincoln, studying political science, science.

LAUREN NITTLER: I'm Lauren. I'm from Aurora, Colorado, in my second year at the University of Nebraska-Lincoln, and I'm studying agriculture.

KAUTH: Thank you. With that, we will begin today's hearings with LB361, Senator Conrad.

CONRAD: Thank you. Chair. Thank you. Members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent north Lincoln's 46th Legislative District in the Nebraska Unicameral Legislature. I'm pleased to introduce LB361 to you today. This is the reintroduction of a measure that I brought forward in the last biennium, as well. As you know, learned members of this committee, in a quick nutshell, the workers' compensation system was developed as a grand bargain between employees and employers when workplace injuries occurred, wherein the injured employee foregoes, waive some of their rights through the civil court system otherwise. In exchange, the employer agrees to pay for medical expenses resulting from the work injury and perhaps some other limited benefits, like vocational rehab or, or weekly benefits if the worker is unable to return to work due to the injuries. And the goal of the workers' compensation system is efficiency and a return to work overall for the employee-- in the employee that's involved. That is a very general assessment, but just wanted to reaffirm that for the record. So additionally, this measure touches upon an intersecting area with the Fair Employment Practices

Act, our nondiscrimination provisions in Nebraska state law, and then also administrative law practice issues, as well. So it's kind of a-- an intersection between a host of different laws in relation to and adjacent to workers' compensation. So basically, in a recent Nebraska Supreme Court case that emanated from our high court in about 2022, about 3 years ago, an employee who was employed at the Department of Corrections, frontline employee was involved in some workplace training. She was injured during that workplace training and went through the workers' compensation system. That-- her needs in regards to the workers' comp system were essentially settled, but unfortunately, she suffered a lasting disability in need of additional accommodation when she was injured on the job. And she was unable to get the appropriate level of accommodation at the Department of Corrections and so she saw an additional remedy for employment discrimination or lack of accommodation through our typical legal structures, where you bring forward a disability discrimination claim under the Fair Practices-- Fair-- let me make sure I get it right-- Fair Employment Practice Act. That case went all the way up to the Nebraska Supreme Court, and they essentially focused on the fact that since her claim was part of arising under her injury that she had pursued in the workers' comp claim that she was not able to bring that forward in the disability nondiscrimination components of our law. So I actually passed out a one-pager on that very case to you all. It does-- it's a really nice synopsis of the Dutcher case that this legislation is, is responding to. And I know that you-- there is going to be really smart practitioners on all sides of these cases, both sides of these cases that will be behind me and can share their perspective as well. But I think what's really important to note is that if you go and you look at the case itself, essentially the court was inviting legislative remedy and additional legislative action. And so that's what I'm taking up, that invitation, with this measure. You'll hear later today, I anticipate, much as we heard in the committee hearing last biennium, you'll hear really both sides of folks representing employers, folks representing employees typically, will not only share their expertise, but will generally cite to many of the same relevant cases on point in Nebraska in relation to this issue. And so, at first blush, it might seem that we're a little bit farther apart or in our traditional camps where we line up for employment rights kinds of issues. But I actually think maybe with a little bit of additional discussion and negotiation, maybe we could find a way forward to just kind of clarify existing law from a long line of court cases to ensure clarity for all parties in-- where these, these issues intersect: in workers comp and employment nondiscrimination. So happy to answer any questions. And, and now

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would be a good time to ask them because I will probably waive my closing. Also happy to run for the hills, over to education, that is.

KAUTH: Thank you for your testimony.

CONRAD: Yeah.

KAUTH: Are there any questions from the committee? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Thank you, Senator. My questions deal more with the second piece of the-- regarding jury trial.

CONRAD: Yeah.

SORRENTINO: I'm curious [INAUDIBLE] expanding this to opportunities for jury trials. We've-- typically, this has always been a bench trial, and judges-- and we have judges for the workers compensation. I'm just curious as to the-- why the reason for that.

CONRAD: Yeah. Thank you, Senator. And I-- my understanding is that component really would focus on the actions that come through the Fair Employment Practices Act, not through the, the workers comp component. And I think that, you know, as it's well established, there's a strong right to jury trial under both the United States and Nebraska Constitutions. And I do think that it's meant to clarify that option and opportunity under the, the typical nondiscrimination component, not in the workers comp component, is my understanding. If I misstate that, somebody can correct me if we need to clarify. We can definitely clarify if the committee sees fit to move this forward. The other thing I would point to, and I had an opportunity to follow this case and actually went to a conference on this, in regards to regulatory reform, with the Platte Institute this interim season as well, is-- this interim period, as well. You may be aware that it's long been an issue to try and restore the right to a jury trial, particularly in regards to many aspects of administrative practice, as we've seen bureaucracies expand in power and reach and how that limits individual rights and freedoms. So one of the most recent cases on point, SEC v. Jarkesy, which came down from the United States Supreme Court in 2024, really reinvigorated that right to jury trial in the civil context when it comes to administrative procedures. So I think this is actually a really interesting timing to, to open up that concept.

SORRENTINO: Thank you, Senator.

CONRAD: Yes. Thank you.

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KAUTH: Any further questions? Seeing none--

CONRAD: Thank you so much.

KAUTH: Oh, so, so, so sorry.

CONRAD: Yes.

KAUTH: Senator Raybould.

RAYBOULD: Thank you, Senator Conrad. Could you tell us a little bit about the history? You said you had introduced it.

CONRAD: Last biennium.

RAYBOULD: And, and then what happened?

CONRAD: Yeah. So the Dutcher case came down from the Nebraska Supreme Court in 2022. And then, in 2023, right on the, the tails of that case being issued, it was brought to my attention from the Nebraska Association of Trial Attorneys because it involved employment nondiscrimination, because it involved rights to jury trial, it fit in nicely with the work that I had done in the Legislature in the past and as a civil rights attorney. So that's how it got on my agenda last biennium. We had a good hearing at the Business and Labor Committee, and it-- the measure failed to move forward. So it was indefinitely postponed at the end of the biennium, and I thought it was important to reintroduce.

RAYBOULD: OK. Thank you.

KAUTH: Thank you, Senator Raybould. Any further questions?

CONRAD: OK. Thank you.

KAUTH: Will you stay to close, or are you--

CONRAD: I will, I will not.

KAUTH: OK.

CONRAD: I will head over to Education. I know you have a full day and it's 70 degrees, so I'm doing my part.

KAUTH: Thank you.

CONRAD: Yeah.

KAUTH: First proponent. Good afternoon.

JENNIFER TURCO MEYER: Good afternoon. My name is Jennifer Turco Meyer, J-e-n-n-i-f-e-r T-u-r-c-o M-e-y-e-r, no hyphen. I am the current president-elect of the Nebraska Association of Trial Attorneys. I'm here today to speak on behalf of NATA and actually on behalf of myself as a practicing attorney who handles these types of cases, in support of LB361. I'm kind of an unusual person to speak on this topic, because I'm one of just very few attorneys that probably handle both types of cases. And when I talk about that, a lot of times you'll have a workers' compensation practitioner or you'll have a civil rights attorney. And the way that those two worlds intersect a lot of times, we call them the Bermuda Triangle, because they often, often kind of bleed into each other. Because people are hurt if they get a limb amputated or if something happens, it becomes a disability. And then, how they are returned to work is affected by our discrimination and retaliation laws. So what I want to do today is just explain a little bit about why this is such a big deal. There is basically a whole section of workers out there right now that have rights, but they have no way to achieve a remedy. So if we really do believe that workers' compensation should put workers back to work and we also believe that people that are disabled can be just as productive of those who are not and they can earn and they can support families and we should protect that right, then we have a whole section of people that are hurt through no fault of their own that cannot achieve any kind of remedy. And this bill fixes that. And the way it fixes it is it gives a remedy under the Nebraska Fair Employment Practices Act for injured workers who are discriminated against or retaliated against for their work-related injuries to pursue that in a district court. Right now, the way it stands is the Supreme Court has left those workers with bringing that to a workers' compensation judge. And when that's happened, since Dutcher has come down, the workers' compensation judges do not have the authority under that statute, the workers' compensation statute, to actually give a remedy to these employees. So what then happens is if they don't get returned to work or they don't-- and-- or they get terminated because of their disability, they have no remedy to then pursue. And those things are important, because you do have a right to a jury trial when you're discriminated against, and you do have a right to compensatory damages and a bunch of different, a bunch of different remedies, that, as a Legislature, we passed in 1965 that are still in effect today that a whole segment of our Nebraska citizens are not realizing. And I think, as a conservative voter myself, for me, there's a whole group of people out there that we want to be working. If that's the goal of the workers'

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compensation system, and this is an impediment to getting people back to work and taking care of their families. I am now open for questions.

KAUTH: Thank you very much Senator Sorrentino.

SORRENTINO: Thank you. Chairwoman Kauth. Thank you for your testimony. Are you say-- I'm looking at the legislative intent of this bill, and it talks about discrimination and retaliation under Nebraska Fair Employment. That's not my area of practice. It is your-- are we seeing a lot of that?

JENNIFER TURCO MEYER: Are we seeing--

SORRENTINO: Is this something common where there's a retaliation or discrimination based on somebody bringing an action for, you know, workers' compensation or whatever it might be?

JENNIFER TURCO MEYER: I don't know if you feel this is anecdotal or not, but I see a lot of it and that's be--

SORRENTINO: That, that-- I want to know what you're thinking.

JENNIFER TURCO MEYER: Yeah. Yeah I do. And here's how. Because I handle both cases, usually someone will come to me after something happens in their workers' compensation case. They get treated and then it's time to go back to work. They may need an accommodation. For example, if somebody has a pretty significant spine injury, which are very common in work comp cases. And they work as a retail cashier, and they ask for the ability to get a stool to be able to change positions between sitting and standing, which is if you have back pain or you've ever treated for back injury is very common. To be able to sit and then stand and kind of move positions for comfort. If their employer won't accommodate that, then they don't go back to work. Right. And so if that discrimination happens right now, we can't do anything about it. Now, I know that the opponents will come up and say, this is a brand new thing, a brand new claim. But actually, before Dutcher, we had the opportunity to bring those cases, so this really is just returning us to the way that it was before.

SORRENTINO: So did the Dutcher claim change the whole landscape of this?

JENNIFER TURCO MEYER: Yes.

SORRENTINO: Is that why we're bringing in the bill--

JENNIFER TURCO MEYER: Yes.

SORRENTINO: --because of the Dutcher case?

JENNIFER TURCO MEYER: Yes. Because the court said the only remedy the worker has is in work comp court, which we know is an administrative court. It's not state district court. It's a state court. But those judges, like you were alluding to earlier, those judges are constrained by what legislative statutes have given them power to do, and they're not given power to receive any evidence or make any decisions on discrimination or retaliation. If you bring it up, you know, there's several opinions and I can get them if you want. Even Judge Stine has recently written one, where somebody was saying I was retaliated against and I wasn't returned to work. And he says, I cannot-- I don't have the authority to decide that. And so, there really is this group of people that have no way to effectuate their rights right now, that did prior to Dutcher.

SORRENTINO: So this really affects both standing and venue. And I don't know-- Senator Conrad is not here to speak for herself, but she brought this last biennium. That would have been post-Dutcher, I'm guessing?

JENNIFER TURCO MEYER: Yes. It was actually in response to Dutcher.

SORRENTINO: OK. Thank you.

JENNIFER TURCO MEYER: Yeah. Thank you.

KAUTH: Thank you, Senator Sorrentino. Senator Raybould.

RAYBOULD: So is it common to have a, a jury trial in cases like this or in wrongful termination cases?

JENNIFER TURCO MEYER: Yes. It is a right that our Nebraska Fair Employment Practices Act-- that's the discrimination statute that covers race, religion, disability, age, you know, marital status. All of the protected discrimination categories affords somebody the right to a jury trial. And in this particular fix, I think, is trying to just make clear that also somebody that brings a retaliation or discrimination for work comp would also get a jury trial, so there's just no confusion that maybe if you have a gender discrimination claim, you can get a jury trial, but if you have a work comp, you know, disability discrimination claim, you can't.

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RAYBOULD: But I guess the language that Senator Conrad provided was claims for wrongful term-- termination.

JENNIFER TURCO MEYER: Yes. And that is-- so this is kind of an interesting thing. So people use the word wrongful termination all the time because we're an at-will employment state. So when we talk about wrongful termination and we talk about discrimination, so if you're discriminated against and they fire you because you're over 40, that would be discrimination and you'd be wrongfully terminated. Same with retaliation. If you get terminated because you have a workers' compensation injury, that would be wrongful termination. So it's, it's a term of art, and I believe that term is used throughout the statute. So I think it's probably just in line with what we've used in the Nebraska, we call it FEPA, Nebraska FEPA statute. So.

RAYBOULD: OK. Thank you.

JENNIFER TURCO MEYER: Yeah.

KAUTH: Thank you, Senator Raybould. Senator Sorrentino.

SORRENTINO: Thank you, Chairman Kauth. I want to follow up on your example, the individual that has the back injury, has to stand. Employer won't get them a stool. I'm assuming the next chapter of that story is because they wouldn't get him a stool, the person has to quit or he's no longer employed, et cetera. And that's where the wrongful termination comes in, correct?

JENNIFER TURCO MEYER: Yes, because they don't accommodate a reasonable accommodation.

SORRENTINO: So--

JENNIFER TURCO MEYER: So that would-- and they don't quit. They just-- the employer says you can't come back to work.

SORRENTINO: You can't come back to work.

JENNIFER TURCO MEYER: Yeah.

SORRENTINO: So this bill would apply-- provide the venue. What would-- since we can't go to workers' comp court anymore--

JENNIFER TURCO MEYER: Correct.

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SORRENTINO: --because of the case that we talked about before, where, where do you want them to go? Are we going to county court, district court? Where are they going?

JENNIFER TURCO MEYER: Well, under the Nebraska Fair Employment Practices Act, they go exactly where all the other discrimination or retaliation cases go, which is district court.

SORRENTINO: OK. Thank you.

JENNIFER TURCO MEYER: Yeah.

KAUTH: Thank you, Senator Sorrentino. Any further questions? Seeing none, thank you for your testimony.

JENNIFER TURCO MEYER: Thank you.

KAUTH: Next proponent.

JUSTIN HUBLY: Good afternoon, Senator Kauth, members of the committee. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees, NAPE/AFSCME Local 61. Our union represents over 8,000 state employees. They work for 43 different code and noncode agencies, performing more than 450 jobs in all 93 counties, and we're in support of this bill for some of the reasons why you just heard. I'll try to give you the state employee's perspective. When a state employee is injured on the job, they file for workers' comp. They go to the workers' comp court. When they return to work, as you heard, either they're not provided reasonable accommodations to continue to perform their work or they could be straight retaliated against. We see that more often than you would think. Because you filed this workers' comp claim, we're going to try to terminate your employment in some way, shape or form. And if those employees have gone to workers' comp court, my understanding is they cannot, because of the Supreme Court case that was previously referenced, go to the district court through FEPA, the Fair Employment Practices Act. So typically, when a state employee is discriminated against, they file a claim at the Nebraska Equal Opportunity Commission. The commission investigates whether there's discrimination or not, issues either a determination that you can sue or that they're dismissing your case. Either way, that gives you the access to the court system. And so the other piece that I would just share that you might see in the text of the bill, is that this would clarify that state employees, public employees have the right to, to go to the court under this bill, and that's why we are in support of it.

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KAUTH: OK. Short and sweet. Are there any questions? Seeing none, thank you for your testimony. Next proponent. Hi there.

JOHN CORRIGAN: Good afternoon. Madam Chair, members of the committee, my name is John Corrigan, C-o-r-r-i-g-a-n. I am here to testify on behalf of the Nebraska AFL-CIO in support of Senator Conrad's bill. And the real reason that this is a necessary change to the law is that in a sen-- in, in essence, what has happened is there's a hole in the law that allows people who suffer work accidents to be discriminated against, in the sense that they have lost a legal right that everybody else has. If my employer discriminates against me because I am disabled, I can sue them under the Nebraska Fair Employment Practices Act. If my employment, my employer discriminates against me because I am disabled from a work comp accident, I can't. That makes no sense. It's just unfair. And it is whether you are a private sector employee or a public sector employee, they should have access to the courts for this very reason. If it's our public policy that we don't discriminate against people because they're disabled, we shouldn't be able to leave them in this, this limbo where the workers' compensation court says, I can't help you, but I'm in charge of all of your legal rights except this one. And because of the Dutcher case that the Supreme Court is saying, Legislature, if you're going to create this right, you have to change the law. And we think that's why this bill is necessary. I am happy to answer any questions that you may have with respect to the AFL-CIO's position on this bill. But we represent-- the AFL-CIO represents thousands of workers in this state, and they shouldn't give up legal rights just because they got hurt in a work accident. Thank you.

KAUTH: Is there any questions from the committee? Seeing none, thank you for your testimony. Next proponent. Seeing none, first opponent. Hello, Mr. McIntosh.

RYAN MCINTOSH: Good afternoon, Chair Kauth, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear, appear before you today as a registered lobbyist for Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business to testify in opposition to LB361. As Senator Conrad described for this committee just a moment ago, where the workers compensation system in Nebraska is part of a grand bargain between employees and employers. On one hand, employees are able to access medical treatment and indemnity benefits to compensate them without the hurdles that would generally be in place through going through civil litigation. On the other hand, employers receive a form of cost certainty for benefits that may be owed to an employee as

represented in the schedule of compensation in Nebraska law. The exclusive remedy provision of Nebraska's workers' Compensation Act states that the workers' Compensation Act is the employee's only remedy for an injury that arises out of their employment. This has been the case under that grand bargain for many, many years. LB361 proposes a significant change to this grand bargain in the Nebraska workers' compensation system. If passed, LB361 would make insurers and employers subject to additional litigation under these new grounds of employment discrimination. If the concern is that employees are being fired for filing a workers' compensation claim, that's simply filing one, the Nebraska Supreme Court has already recognized a remedy for that for more than 20 years ago, in Jackson v. Morris. NWCEF and NFIB remain opposed to this bill because of the rather systematic and large change that it represents to the current balance of the Workers' Compensation Act and the precedent it would set. With that, we would urge the committee to take no action on the bill, and I'd be happy to answer any questions.

KAUTH: Thank you for your testimony. Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Thank you for your testimony. Come back any time. One question we've heard from several people about the Dutcher case, how it provides a situation where they have no remedy, and we need to create a new venue. Your thoughts on that case, please.

RYAN McINTOSH: There are still remedies there. The case explicitly represented an NEOC claim. And there's still-- this has, has nothing to do with the federal remedies available.

SORRENTINO: So the Dutcher case didn't unlevel the playing field in your opinion?

RYAN McINTOSH: No, I do-- no. It did not overturn any existing precedent.

SORRENTINO: Thank you.

KAUTH: Other questions? Seeing none, thank you for your testimony.

RYAN McINTOSH: Thank you.

KAUTH: Next opponent.

PHOEBE LURZ: Good afternoon, Chairperson Kauth and members of the Business and Labor Committee. My name is Phoebe Lurz. That's

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P-h-o-e-b-e L-u-r-z. I'm an assistant attorney general in the Civil Litigation Bureau of the AG's Office and we are here in opposition to LB361. We have 4 principal concerns. First, as many people have or as others have mentioned, this is a deviation from the compromise represented by the Nebraska workers' Compensation Act. That compromise-- or that compromise resulted in employees giving up the complete compensa-- compensation that they may receive in tort law in exchange for no-fault benefits that they quickly receive for work-related injuries. Employers give up their normal defenses and assume automatic liability with limited exceptions, while the employee gives up their right to a common-law verdict. I think it's important to note that employees who file workers' compensation claims receive substantial benefits: All related medical expenses, indemnity benefits are paid for compensable claims, temporary total disability benefits during the times where an employee is not able to work, partial benefits where they are working part time, and also, for permanent partial disability benefits, they receive benefits based on lost earning capacity, which is similar to what someone might receive in a civil suit. This compensates them for lost earning potential and loss of access to the market. Another thing to note is that employees who are injured at work also receive vocational rehabilitation benefits, which includes job retraining, education, job placement services, as well as their lost wages while they're undergoing that rehabilitation. So to allow unemployed to pursue both relief under the Compensation Act and FEPA would allow them to double recover and essentially negate the intent of that compromise. So, relatedly, it allows employees to recover twice for injuries that occur in the course and scope of their employment and would subject the state and its taxpayers to being held financially responsible for the same injury and types of damages twice. We think this would also result in increased litigation costs for the state and its taxpayers if this change were enacted, because the state would have to defend both the workers' compensation lawsuit as well as the employment lawsuit. We've noted what we think our initial fiscal impact would be in my testimony. And finally, on the proposal to add a jury trial right under NFEPA, it's been our office's experience that that already existed, so we just don't think it's necessary. And I am happy to answer any questions you have. One point that I wanted to make to a couple of the senator's comments about the Dutcher case. I think it's important to note that the employee in that lawsuit received \$200,000 in benefits under her workers' Compensation Act. She received all of her medical care, which included 3 surgeries, she received over \$70,000 in indemnity benefits, and she received an associate's degree,

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which was paid for by the state, and she received lost wages while she received that degree. And I will stop because I'm out of time.

KAUTH: Thank you very much for your testimony. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Thank you for your testimony. Regarding your last comment on the Dutcher case, was-- I believe it was a she?

PHOEBE LURZ: Yes. Ms. Dutcher.

SORRENTINO: Was she terminated from employment?

PHOEBE LURZ: She was-- I believe she was terminated because they could-- the employer could not accommodate her restriction. She was not allowed-- she had a lifting restriction. And because of the inmate contact that she-- her job position required, they did not think that it would be safe to allow her to return to that position. So she was terminated. But that was part of the consideration for vocational rehabilitation, as well as any lost income that she might have. So she receive-- as-- because she could not return to that job, she received an associate's degree in accounting, I believe.

SORRENTINO: Coming from an accountant.

PHOEBE LURZ: Ultimately decided not to pursue using that accounting degree and returned to working with a family business, but she was compensated for her wages while she was receiving that 2-year degree and received that degree at no, at no cost to her.

SORRENTINO: OK. One further question. And I, and I think I know the-- I think the answer is yes, but the Nebraska Workers Compensation Act is applicable to employer-employee relationships, both in the private sector and governmental. Right? For instance, the state.

PHOEBE LURZ: The state is the state's largest employer, and I represent the state in comp cases every day.

SORRENTINO: So the answer is yes, it's applicable to both.

PHOEBE LURZ: Yes. Yes.

SORRENTINO: Thank you.

KAUTH: Thank you, Senator Sorrentino. Senator McKinney.

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McKINNEY: Thank you. Thank you. So why are the proponents saying this is going back to how it was before that case? What's the-- I'm, I'm trying to understand.

PHOEBE LURZ: You know, I'm, I'm not really sure why proponents think that Dutcher represented such a strong deviation from past precedent. I think it could be that everyone who does work comp or-- knows that it's the exclusive remedy for these type of situations, employee injuries. So every once in a while in the law, we have one of those cases where it's, it's just known but we don't have any case law on it, because everyone accepts it as true. So I don't know the answer to that, but that would be my guess.

McKINNEY: All right. Thank you.

KAUTH: OK.

PHOEBE LURZ: Thank you.

KAUTH: Thank you very much. Next opponent. Good afternoon.

ELAINE MENZEL: Good afternoon, Chair Kauth and members of the Business and Labor Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l, appearing today in opposition to LB361 on behalf of the Nebraska Association of County Officials also known as NACO. I won't be repetitive of the prior testifier, Ms., Ms. Lurz. She spoke from the state perspective, and those would be the issues that we have, from the political subdivision's perspective. I will just comment with respect to-- the court in the Dutcher case did comment about the Legislature having the ability to make modifications for workers' comp laws. And we acknowledge that and do not dispute that. However, we would ask that you not do so in this case. And with that, I would be receptive to any comments, but also the offer to Senator Conrad that if we can come up with agreement that we've got, to do so.

KAUTH: Thank you very much. Are there any questions from the committee? Seeing none, thank you for your testimony. Next opponent. Seeing none, are there any who wish to testify in the neutral? Good afternoon.

PAULA GARDNER: So I can read. So good afternoon, Chairperson Kauth and the members of the Business and Labor Committee. My name is Paula Gardner, P-a-u-l-a G-a-r-d-n-e-r, and I'm the executive director of the Nebraska Equal Opportunity Commission, and I'm speaking in a neutral capacity on LB361. So as you've heard, the Nebraska Equal Opportunity Commission has jurisdiction over the Nebraska Fair

Employment Practice Act, and we also have a work share agreement with the federal EEOC, and in that work share agreement, 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 the federal laws, 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 often filing a claim related to disability. And in those instances, there is a federal charge filed as well as a state charge, resulting in reimbursement under the work share agreement. We do understand that somebody would be able to file a charge alleging discrimination for having exercised their rights under the Workers' Compensation Act without alleging a disability or another basis covered under federal law, and we do not believe at this time that those filings would be so many that we cannot handle that additional state-only work. Also, having protections greater than federal law will not impact our substantial equivalency with the EEOC. And my only suggestion would be that if this does move forward, Section 1 is this kind of a standalone. And as it's written, we would ask that it be moved to 48-1113 in the Nebraska Fair Employment Practice Act, because that's the section that's reserved for retaliation. And if you have any questions, I'll do my best to answer.

KAUTH: Thank you for your testimony. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Could you please comment again on the moving, it's Section-- to 1113. Is that what you said?

PAULA GARDNER: Yes. So 48-1113 under the Nebraska Fair Employment Practice Act is the sec--

SORRENTINO: I know. I have that act right in front of me. Help me out.

PAULA GARDNER: It's OK. It's the section that speaks specifically about retaliation.

SORRENTINO: OK.

PAULA GARDNER: So it speaks if you oppose or refuse to carry out an illegal activity, if you engage in a protected activity under the act, so you complained about sexual harassment and then something happened to you, or you participate in some type of investigation or court

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proceeding relative to the discrimination laws, or you complain about your wages. That's the, the Wage Retaliation Act that was added to the laws a few years ago. So we would just ask that this section, because it talks about having protections, because you participated in workers' compensation, it reads as retaliation, as a protection that-- to put that in that section.

SORRENTINO: Was any of that the result of this Dutcher case or completely, totally separate issue?

PAULA GARDNER: I, I mean, I-- this? I--

SORRENTINO: Yeah, what you're asking to move to 1113. Did it have anything to do with the Dutcher case?

PAULA GARDNER: Oh, no. I'm just-- I just think it's a more-- if, if this were to move forward, the more appropriate place for it to be in the statute would be 48-1113.

SORRENTINO: Thank you.

KAUTH: Thank you, Senator Sorrentino. Other questions? Seeing none, thank you for your testimony. Anyone else wishing to speak in the neutral? Seeing none, there are 10 proponent letters and 2 opponent letters, and Senator Conrad has waived her closing. So we will close on LB361. Thank you. And now, LB522. Good afternoon, Senator Guereca.

GUERECA: Good afternoon, Chairwoman, colleagues, members of the Business and Labor Committee. My name is Dunixi Guereca, D-u-n-i-x-i G-u-e-r-e-c-a, and I represent District 7, which includes the communities of downtown and south Omaha, here in the Nebraska Legislature. Today, I bring to you LB522, which creates a more reasonable waiting period for workers' compensation. As you all know, the purpose for this workers' compensation is to support Nebraskans injured on the job be able to recover and get back to work, which ensures a healthy workforce and economy. In many critical ways, Nebraska law already lags behind workers' compensation systems in other states. In 1913, when the Nebraska workers' compensation system was created, it was unlikely the drafters of the Nebraska Workers' Compensation Act foresaw the detrimental impact inflation would have on the value of an injured person's wage loss support and many other, many other states combat this problem by periodically adjusting wage loss support to guard against inflation. Additionally, Nebraska has some of the longest waiting periods in the nation for-- before people injured on the job can access workers' compensation support. Many are

deterred by the long wait periods and pressure to prematurely return to work, because they need to pay the bills and put food on the table, risking further and permanent injury and shifting the costs onto families, communities, and ultimately, the taxpayers. This bill would ensure injured Nebraskans can reasonably access workers' compensation support and recovery. The bill is partially-- particularly important for immigrant Nebraskans who are disproportionately affected by on-the-job injuries and unsafe working conditions. There are 2 waiting periods for workers' compensation wage support. Nebraskans must wait 7 days before receiving wage support after a workplace injury, putting people in difficult financial situations as they try to heal. What week is missed pay is retroactively reimbursed, only if the injury lasts longer than 6 weeks. Many states, including Nebraska's neighbors, provided initial benefits for injured workers after 3 days, versus Nebraska's 7-day wait. 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. So this is what LB22 [SIC] brings us. The bill follows a practice used in most states, including Iowa, Missouri, Colorado, Wyoming, by reducing the initial wait period from 7 days to 3 days, and the retroactive wait period from 6 weeks to 2 weeks. Our workforce has been through a lot these last several years. Every year, Nebraska families and workers are forced to bear the physical trauma and financial hardships 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 to the importance of these updates, but in the meantime, I'm happy to answer any questions. Thank you.

KAUTH: Thank you for your testimony. Are there any questions from the committee? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. One quick question.

GUERECAL: Sure.

SORRENTINO: My experience is way more in the private sector than the public sector. But in that sector, during those 7 days of potential workers' comp, most workers are allowed to use any PTO they've stored up, sick days if they've used them. Has that been your experience, or do you have some other experience that I might learn from?

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GUERECAL: I-- off the top of my head, I can't quite remember. Maybe some of the folks behind me can answer, but I'll try to get you an answer.

SORRENTINO: Yeah. I know, I know they can't use certain kinds of leave, but--

GUERECAL: Sure.

SORRENTINO: --typically, they cover that. OK. That was my question. Thank you.

KAUTH: Thank you, Senator Sorrentino. Other questions? Seeing none, are you staying for close?

GUERECAL: Yes, I will.

KAUTH: OK. Thank you. First proponent. Good afternoon.

NICK GRANDGENETT: 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 LB522. Often described as we've heard today as the grand bargain, workers' compensation was established with the wise purpose of ensuring faster and more certain wage and medical support for workers injured on the job, while at the same time sparing employers the expense of costly tort litigation and large damage awards. First enacted in 1913, our state's Workers' Compensation Act fails to account for the economic realities facing workers and their families in 2025. So this bill recognizes this and addresses 2 key shortcomings. First, as Senator Guereca said, our state has the longest waiting periods in the nation. Injured Nebraskans must lose 7 days of pay before wage support may begin. Those 7 days of missed pay are only retroactively reimbursed if the injury lasts longer than 6 weeks. All of our neighbors from Colorado, Missouri, Iowa, Wyoming, and Minnesota used a system where an injured person loses only 3 days of pay, and those 3 days of lost pay are retroactively reimbursed after 2 weeks. Second, LB522 creates a cost of living adjustment, or COLA, for any workers' comp benefit that lasts longer than one year. Without a COLA, the reality is that inflation erodes the value of an injured worker's wage support over time. In the year 2000, for example, a totally disabled Nebraskan earning the state's average wage would have received a benefit of \$325 per week, which is about \$17,000 per year. To have the same value today this benefit had in 2000, a worker would need to receive \$536, which is about \$27,000 per year. Safeguarding wage support from

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inflation is common in our legal system. LB522's proposed COLA is modeled after the COLAs in South Dakota and Wyoming in their workers' comp system, the COLA used in Nebraska's state pension plans, our workers' compensation burial benefit adjustment, and the federal social security system. Generally, whenever there's a workers' comp bill in front of the Business and Labor Committee, a common theme in opposition testimony is concern for insurance premiums. I think there's 2 points to make about that. First, workers' comp premiums are foremost a reflection of workplace safety. If employers maintain a safe working environment, accidents won't happen and premiums won't be adversely impacted. And second, Nebraska's premiums have been declining for decades. Today, they stand at their lowest recorded levels. 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 per \$100 of payroll. So when we're at these-- a time where we have these historic lows, it's a good moment in time to try and shore up and strengthen our workers' comp system. And with that, I am happy to answer any questions. Also note that we sent some fact sheets and some worker quotes along with our testimony. Thank you. And again, happy to answer questions.

KAUTH: Thank you for your testimony. Senator Sorrentino.

SORRENTINO: Chairwoman Kauth. Thank you for your testimony. Have you done any research as to what the potential cost to employers for adding the COLA and shortening the wait period are?

NICK GRANDGENETT: So I think the, the best way to do that, if you look at footnote 8 in our testimony, we cite to the Oregon Department of Consumer and Business Services. So every 2 years, they survey every state in the nation to figure out what the average worker-- workers' compensation premiums are. And when you look at them, you can figure out which states have COLAs, which states have waiting periods like ours. And you can see that if we were to adopt those measures, we wouldn't be markedly different from like Iowa, Missouri, Colorado, any of these other states. It would-- we would still be on par. And I think, in part, that reflects the fact that we are, by and large, in the bottom half of the states when it comes to workers' compensation and premiums. So we tend to be on the cheaper end, in other words.

SORRENTINO: But you would agree we would probably increase the premiums.

NICK GRANDGENETT: You-- I think it's still foremost, a reflection of workplace safety, though. I think the incentive is to ensure that

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employers have a safe working environment, injuries don't happen, and they don't have to file a claim. But on the periphery, I think there could be some, some shifting.

SORRENTINO: Thank you, sir.

NICK GRANDGENETT: Sure.

KAUTH: Thank you. Senator Raybould.

RAYBOULD: Thank you for your testimony. So I'm guessing that based on the comments about the COLA increases, it looks like Colorado, Missouri, Iowa, and Minnesota do not have a COLAs built onto the--

NICK GRANDGENETT: I think about half the states do. I don't know specifically if they do, but we didn't include specific states that have COLAs. I'm happy to get that to you, though, if you're interested.

RAYBOULD: OK. Because it says it's modeled after South Dakota and Wyoming.

NICK GRANDGENETT: Yeah. Oh, so yes. That, that's fair. Yes. So I don't believe those states do. But I think, overall, I think it's like 20 or 21 states have a COLA.

RAYBOULD: OK. Thank you.

KAUTH: Thank you, Senator Raybould. Any further questions? I guess we're only over here. Seeing none, thank you for your testimony.

NICK GRANDGENETT: Thank you.

KAUTH: Next proponent. And if you're testifying, come up closer to the front so I know kind of who's, who's here. Hello, again, Mr. Hubly.

JUSTIN HUBLY: Good afternoon, Senator Kauth, members of the committee. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y, still the executive director of the Nebraska Association of Public Employees, at least to my knowledge in the last 10 minutes. Thank you. I'll just echo our sentiment of support in this bill. There's 2 main things that really frustrate frontline state employees who suffer on-the-job accidents. The first is that waiting period, and we've been able to negotiate in our state contract 5 days of paid leave. And, Senator Sorrentino, to your point, an employee under our contract would be able to use their sick leave, as well, during that waiting period. But it's always been

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our position that if you're injured at work by no fault of your own, why should you have to wait at all? But that's another story for another time. The second thing is the COLA. For folks who are-- become permanently disabled, it's not super common at all, but we've had members of our union from Corrections, Veterans Affairs, DHHS, especially at 24-hour facilities where they're working with the incarcerated population, folks with mental disabilities, where they've been assaulted on the job and have suffered really serious injuries and have been permanently disabled. And without a cost of living adjustment. It's just hard to keep up with the rising cost of living. And for those reasons, we're in support on this bill.

KAUTH: Thank you, Mr. Hubly. Are there any questions for the committee? Seeing none, thank you. Next proponent.

JOHN CORRIGAN: Good afternoon, Madam Chair, members of the committee. John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, testifying in favor of the bill on behalf of the Nebraska AFL-CIO. I think it's important to understand what these benefits are that we're talking about. When you get injured in a, in a work accident, your benefits are based on your average weekly wage. That is the wages that you earned in the 26 weeks prior to the date of injury. So they go and they look back and, and there's a little bit of, you know, English that can be put on those numbers. But for the most part, the numbers are what the numbers are, and we find out what the average is, and then you get two-thirds of that average weekly wage. And when somebody loses that benefit for a period of 7 days or, or maybe longer, because it takes a longer to figure out whether this is a work accident, you name it, that, that shifts this burden onto the injured worker. Most people in this country who are working for an hourly wage are living paycheck to paycheck. It's, it's simply too long of a period to have an injured worker bear that burden, particularly the set-- going back and making up that, that amount. So if I'm making 600 bucks a week, I'm getting \$400 a week in comp if I-- if I'm temporarily totally disabled. So it's not wage. It's not that they're getting back wages. They're getting wage replacement. But it's not replacing all of the wages and then having to wait another six weeks. Most people are not off that long on a work comp. [INAUDIBLE] employers, they know and the evidence supports the idea that if we get people back to work in light duty position, they're likely to return to work with full duty sooner. And every employer I've ever encountered wants to do that. On the other side of it, you have the issue of the cost of living. And let's say that that poor worker that made \$600 a week is now earning a \$400 a week benefit, and they are permanently and totally disabled. They can't come back to any gainful employment. That's the benefit they're

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going to receive if they die in the course of the job or the accident. The spouse, if there's a, a, a spouse, that's what the spouse is going to receive and it never goes up. So we have permanent and total disability cases or death cases, where the weekly benefit is \$300 a week, and that's very difficult to live on. Those are also a very small minority of cases. That doesn't happen very often that people become totally disabled. And so, it is important that we acknowledge that if you're in a situation where your wages or your wage replacement is tied to this accident, there should be actual wage replacement instead of wage stagnation. And that's what we live under now. So with that, we'd ask that you move this bill on to the Legislature and thank you for your time.

KAUTH: Thank you very much. Are there any questions? I have one, actually. So wage replacement is not taxed, correct?

JOHN CORRIGAN: The--

KAUTH: Is that why it's lower?

JOHN CORRIGAN: --work comp benefit is-- it's part of the reason.

KAUTH: OK. So when you say they, they are working. They're getting \$600. Their take home is not \$600. Their take home is less. And so when they get the \$400, that's not taxed, so it's probably closer to what their take home is then.

JOHN CORRIGAN: And they're not paying into Social Security at the same time.

KAUTH: OK. OK.

JOHN CORRIGAN: So there-- it, it is not wage replacement. I mean-- or it's not back wages. It's wage replacement. But with the motivation that you're going to get back to work so you can earn your full compensation--

KAUTH: OK.

JOHN CORRIGAN: --rather than, rather than living on this reduced wage. And then you get into positions where there's a dispute about it. Now, in order to get the wage, the gentleman or the injured worker has to go to court, pays an attorney fee out of those wages, and they're that much further behind the eight ball, tho-- tho-- particularly on permanent and total disability cases. That, that has to be adjusted, in my judgment, morally, on a cost of living advancement, because you

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can be totally disabled for 30 or 40 years, and yet you're stuck at the same amount of money to live on that you earned in those 6 weeks or 6 months before your injury, and that's just not feasible for most people.

KAUTH: OK. Thank you for your testimony.

JOHN CORRIGAN: Thank you.

KAUTH: Any further questions? Seeing none, next proponent. Good afternoon.

BROCK WURL: Good afternoon, Chairwoman Kauth. Excuse me. Members of the committee, thank you for your time. My name is Brock Wurl, B-r-o-c-k W-u-r-l. I'm here on behalf of the Nebraska Association of Trial Attorneys, as well as a number of my clients. I'm a practicing attorney in North Platte representing injured workers as part of my practice. And I, I support the positions and the, the statements of those that have come before me and want to tell you a few stories about a few of my clients that are, are dealing with this exact issue, espec-- specifically on the COLA question. First client I'd like to mention to you is a gentleman who was injured at 45 years old in 2017 while he was working for the state of Nebraska. He, at the time, was in between jobs and took a part-time, minimum wage job with the state, suffered a traumatic, traumatic brain injury that has affected his eyes, where he is unable to be in sunlight without multiple layers of sunglasses, hat pulled down. He was declared by the Workers' Compensation Court to be permanently totally disabled. At the time of his injury, he was making \$360 per week, or roughly \$18,720 annually. With the way the work comp system works, two-thirds of that is approximately \$240 per week. So that gentleman, who was a hard-working guy, working out in a field for the state of Nebraska, will make \$240 per week for the remainder of his life. Now, that is \$6,000 less per year than what he would have been making at the time from that exact same job. So he's currently making \$12,400 every year. Second client was injured in 2007 at the age of 53. Her average weekly wage was \$422, which translates into \$27,000 annually. So she was making \$27,000 in 2007. Her weekly benefit is approximately \$348. She is making currently, \$18,096 annually, and she's unable to work. So she has taken a \$9,000 per year hit, just on her wages. That doesn't mention lost Social Security benefits because these folks are no longer paying into that system. This doesn't mention any life insurance or health insurance or, or any of those premiums. The third gentleman I want to tell you about is another worker for the state of Nebraska, who was injured in 1995 at the age of 49. He was making \$613

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per week. His weekly benefit is \$409 currently, and that's what it's been since 1995. So 30 years ago, he was making \$31,000. He's currently making \$21,000 a year. I believe this COLA, COLA adjustment is necessary to continue to protect not only our Nebraska citizens, but also the state of Nebraska. Every one of these folks, because they had lost their health insurance through their employer, went on Medicaid. They're rising up the cost to the state because they're unable-- they lose their employment, they lose their benefits. They lose access to, to other benefits the insurer provides. Some of them have gone onto SNAP benefits, as well. So I, I see I'm out of time, so I'll, I'll yield to any questions. I apologize for going over by a little bit. So.

KAUTH: Thank you for your testimony. Are there any questions from the committee? Seeing none, thank you very much.

BROCK WURL: Thank you.

KAUTH: Next proponent.

TODD BENNETT: Good afternoon.

KAUTH: Good afternoon.

TODD BENNETT: I apologize for sounding like Robert Kennedy, Jr. today. I lost my voice a month ago. I'm totally healthy, but this has not come back. So if I growl, please bear with me. But my name is Todd Bennett. I'm an attorney in Lincoln, Nebraska. I'm here on behalf-- excuse me-- B-e-n-n-e-t-t-- on behalf of the Nebraska Association of Trial Attorneys, and was the past president in 2023, and I practiced for 30 years. And I certainly echo the sentiments of everybody that has testified in favor of this bill. And I certainly thank the, the Senator for bringing this, because-- what you're going to hear from the opponents, typically-- this is about the sixth time in my career that this COLA adjustment has been submitted to the Business and Labor Committee. And most of the time, its premiums are up, costs are up, and so forth. But behind these numbers-- and I will tell you, I was the first one-- I wanted to go to law school because I wanted to avoid math like the plague. And here we are, talking about math. But the-- this math has a human face to it. And I want to introduce 3 people to you. One is Miss Annie. She had her hands mangled 30 years ago. Her work life was cut short. She couldn't even be eligible for Social Security disability because she didn't work that long. And for 30 years, she's received \$200 a week with no adjustment. The second one, her name is Delores. Her husband died of mesothelioma 30 years ago.

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And to this day, her contribution from her husband was cut short after 30 years, and her Social Security benefit was over 50% reduced. She, after 30 years, is still receiving the same amount. And the last one is probably the saddest one. Her name is Judith. She was 6 years old when I first started representing her. Her father died here in Lincoln. She came with no mother. She went through the foster system from Guatemala to El Salvador, back to [INAUDIBLE]. She's received the same payment for 11 years. And God willing, she goes to school, which allows her to get a benefit check from age 19-25. But each time, none of these people receive any adjustment in their benefit. The cost of living obviously has gone up for each of us. We complain about car insurance. We complain about property taxes. For these people, they live it. And just like the speaker before me, every one of these were on Medicaid. They tried to get Medicare, but they don't qualify because of Social Security disability. One, they're not 65 just yet. But Social Security disability, they're not eligible because they didn't work that many quarters. This is a compassion for the most effective. And in this bill, it's only benefits after one year. Most people, if you get hurt for a loss of earnings or a 2-member injury, you received 300 weeks of benefits. If you're a widow, you get it until you remarry or you die, bottom line. The second one is the child, through age 19 or 25. But these benefits are not going to change and they're going to continue. The public policy behind the Work Comp Act is to not have a cost of burden shifting to the state, to the federal, and to the taxpayer. That's exactly what this does. And in the backdrop of premiums and costs, which you probably going to hear for administrative costs, workers' compensation insurers for the-- since COVID, historic profit, record profits. That's the elephant in the room that won't be spoken. But to Annie, Dolores and Judith, I simply ask you to look at the COLA. If the math is a problem, work the math. But it, but it's needed, and I appreciate it.

KAUTH: Thank you for your testimony. Are there any questions? Seeing none--

TODD BENNETT: Thank you.

KAUTH: Thank you. Next proponent. Seeing none, are there any opponents?

DALLAS JONES: Good afternoon. My name is Dallas Jones and I am appearing on behalf of NWCEF and NFIB in opposition to LB522. I am an attorney in Lincoln practicing workers' compensation law and have done that my entire career. I want to focus your attention first on that piece of LB522 and some of the comments about presenting to you that

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it's as if these are very small dollars that are really important to the folks who are-- which seek them and receive them per the bill. And it's not much of a cost to the employer. That's a canard, and let me explain. There's a handout that I gave to you which talks about how this, in fact, does affect premiums. The point, the overall point is that the dollars that would flow to an employee under this act, if it became law, would be far smaller than the dollars it would cost the employer if this became law. That becomes very complicated. But it basically goes to there's a, there's a formula that, that NCCI uses, national compensation carry insurance, where it basically assesses the percentage that employers are paying on their payroll premium. But what it really focuses on, and this is where the public policy debate comes into play. Yes?

KAUTH: Can I interrupt you real quick? Can you spell your name for the record?

DALLAS JONES: Yes. My apologies. D-a-l-l-a-s J-o-n-e-s.

KAUTH: Thank you.

DALLAS JONES: So back to that point. The reason why we have a waiting week to begin with, period, it's apparently an opponent back there, who doesn't-- or an opponent-- or a proponent who doesn't like what I'm saying. No. The reason that we have a waiting period is so that claims do not move then, into indemnity. Employer pays medical from the very beginning. As soon as the first dollar is paid by the employer to the employee for lost time benefits, that immediately triggers an entirely different formula that escalates the cost of that claim and others to the employer. That's really what we're talking about here. It's not several hundred dollars to the employee. It is far greater amounts that, that cost to the employer to pay that. That's the real point. The, the shorter that waiting period becomes, the sooner that first dollar is paid, the sooner that first dollar is paid, the sooner that, that premium for all of these smaller claims then causes the employer's premiums literally to skyrocket. Tom Champoux is an insurance broker who authored the handout that I gave to you and, and explains it better than I can, and certainly in less time than it would take me. I encourage you to read that, that he makes that basic point with regard to the COLA. Again, you've heard about that bargain. And I'm about out of time, so I'll just conclude. This is just another attempt to increase the cost. That is true. But that bargain is a balancing act and we continue every year to try to maintain that balance. This one tries to increase the cost to

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employers, and there's no requisite benefit then, to the employer to keep that balance in place. Thank you.

KAUTH: Thank you for your testimony. Are there any questions from the committee? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. If you can find a question here, good luck. All these surrounding states that are 2 days and 3 days on waiting, and they don't like [INAUDIBLE]. I hear a lot in testimony, Nebraska is the only, Nebraska is the only. We do a lot of onlys. Is everybody else wrong and we're right or is it vice versa? Why does everybody else do it different?

DALLAS JONES: Remember, every one of those states, it's not just dealing with this issue. They have multiple issues that they're balancing. And in relation to those issues, all of which affect employers' obligations and employees' benefits go into play. They have made the determination, I presume, based upon that balancing act in their respective states, to decide, OK, this is what's right for our employers. I will submit Nebraska is right. I will submit that one of the reasons why Nebraska employers don't have to pay premiums to the extent that a lot of other states do, is because this committee and this body has watched that very carefully over the years, recognizing that it becomes a very real economic development question. So I don't know if that answers your question, Senator, but that's, that's really what's going on.

SORRENTINO: So what the rule here is, or the lesson is don't look at this bill or waiting periods or COLAs in a silo. You take it into consideration with some other things.

DALLAS JONES: Precisely.

SORRENTINO: Thank you.

KAUTH: Thank you for the question-ish. Are there any further questions? Seeing none, thank you.

DALLAS JONES: Thank you.

KAUTH: Any other opponents? Is there anyone who wishes to testify in the neutral? Seeing none, Senator Guereca. And while you approach, there were 11 proponent letters and 3 opponent letters, letters for the record.

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GUERECA: Thank you, Chairwoman. Let's put it in action quick so we'll keep it short. Yes, it is a balancing act, and that's why I brought this forward. And I think that we should take into consideration to look out for our workers. That's short.

KAUTH: Any questions for the committee? Seeing none, thank you very much.

GUERECA: Thank you. Thanks, all.

KAUTH: And that closes our hearing on LB361. And we will open our hearing on LB400, Senator Wordekemper. Good afternoon, Senator Wordekemper.

WORDEKEMPER: Well, I got a couple handouts here.

KAUTH: Thank you. Whenever you're ready.

WORDEKEMPER: OK. Good afternoon, Chairwoman Kauth, members of the Business and Labor Committee. My name is Senator Dave Wordekemper, D-a-v-e W-o-r-d-e-k-e-m-p-e-r. I proudly represent Legislative District 15. I'm here today to introduce LB400, a bill that would provide compensation for certain types of cancers under the Nebraska Workers' Compensation Act for cancers experienced by firefighters. As someone who has served as a firefighter for 38 years, 30 years as a professional firefighter and 8 years as a volunteer, this issue is deeply personal to me. After nearly 4 decades of service, I can assure you that the risks inherent to the role are numerous. Our firefighters are being exposed to cancerous materials at every turn, on every call. We take an oath to do this job to protect our citizens and communities. In doing so, we understand there is no escaping the dangers associated with the role. We also understand that we are one of a few groups of individuals ready to respond when the public is in danger. This is a trade-off the men and women of the firefighting profession are willing to undertake. It is often thought that our exposure to cancer-causing chemicals happens exclusively when we arrive on a call. While this is absolutely true, many people do not know that we are exposed as soon as we put on our protective gear. Unfortunately, recent studies have found that our turnout gear contains a number of forever chemicals that have been proven not only to cause cancer, but to cause harmful genetic effects. I can assure you that the protective gear is washed, but we can only remove 50% of the chemicals in our extrication process. I tell you this, Senators, to illustrate the fact that our firefighters cannot escape these dangers. It is well known that firefighters are developing cancer at

an incredibly high rate compared to the general population. I would like to share 2 chilling statistics. First, according to the International Association of Firefighters, cancer caused 66% of the career firefighters line of duty deaths from 2002 to 2019. Second, the National Institute for Occupational Safety and Health recently concluded 2 studies on this topic. They found that firefighters face a 9% greater rate of diagnosis and a 14% increase of cancer-related deaths compared to the general population in the US. The data clearly shows that there is no escaping the dangers associated with the job. Unfortunately, after years of dedicated service, firefighters often face their cancer diagnosis without adequate support. We owe our firefighters proper healthcare protection and the least we can do is recognize the data. LB400 offers a long overdue expansion of compensation by creating a presumption of duty readiness-- relatedness for certain types of cancers, known as the associated with firefighting. LB400 would provide for compensation under the Nebraska's-- Nebraska Workers Compensation Act for certain types of cancers commonly experienced by firefighters. This change would allow firefighters diagnosed with certain types of cancers to be eligible for workers' compensation benefits, which adds temporary disability and medical care. LB400 is modeled after legislation from the state of Nevada that has been successfully implemented since 1987. The bill requires at least 5 years of employment as a firefighter to be eligible for the presumption, and would apply to cancers diagnosed within 5 years after separation of employment. LB400 will bridge the gap and redirect medical costs and lost work time, and are currently put on our firefighters. We have a duty as a state government to protect those that protect us. Firefighters risk their lives to serve the public in a wide variety of ways. At least we can do is expand coverage for them for a disease they develop because of exposure during their service to their communities. LB400 provides necessary medical care and acknowledges the sacrifice these public servants have made. There are experts and advocates behind me that-- who are willing to share their stories and expertise on this critical issue. The amendment you have received simply adds one additional cancer-causing chemical to the list. I ask for your support of LB400 to advance out of committee and onto General File. I'll happily answer any questions. Thank you.

KAUTH: Thank you very much, Senator Wordekemper. Are there questions from the committee? Senator Sorrentino.

SORRENTINO: Chairman Kauth. Thank you, Senator. Wordekemper. I'm not-- you may not be the right person to ask this to, but let's say this unfortunate situation happens and their-- have cancer and they receive

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this workers' compensation benefit. If they are ret-- I use an active employee and a retired employee. If they're retired, I'm assuming they're drawing their benefit from their defined benefit plan because they're retired. Would receiving this, if it happened during 60 months after they retired, would receiving this workers' compensation benefit offset their pension amount and lower their pension amount so they are no further ahead, or would this be in addition to their pension amount?

WORDEKEMPER: I, I can speak to part of that. In my, my circumstance, as a firefighter in a first class city in Nebraska, which would be the cities that have paid firefighters other than Omaha and Lincoln, we have a defined contribution plan. So for my--

SORRENTINO: [INAUDIBLE] or is that a defined benefit, correct?

WORDEKEMPER: Yes. Omaha and Lincoln have defined benefit plans.

SORRENTINO: All right.

WORDEKEMPER: So mine is a defined contribution plan. If I die on the job, line of duty, whether accident, illness, or I am disabled on the job, all of my retirement benefits go back to the city to pay out my 50% benefit. So I, I don't get those. So basically, in essence, my retirement funds, my disability or my death, if it happens on the job. So I-- in essence, without this legislation, I'm funding my own death and disability, and there's no workers' comp.

SORRENTINO: In the example that-- well, it's in my package, of a 30-year-old. Are you familiar with the-- what example I'm talking about, a 30-year-old?

WORDEKEMPER: Go ahea-- explain it and I'll see if I can answer.

SORRENTINO: Well, there's a 30-year-old with a 52-year life expectancy, lived to 82 years old. Becomes disabled, and then it goes through-- that's 2,704 weeks at \$28 and 91%. Anyway, this individual, by the time they were 82 years old, received \$2 million. That's under this bill. My question--

WORDEKEMPER: OK.

SORRENTINO: --since he was 30 years old or she was 30 years old, during that period of time where they would get this workers' comp benefit, is there any other benefit that a firefighter in a class 1 city or metropolitan would be getting? Do they take your cash balance,

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[INAUDIBLE] and annuitize that and pay you that, too? I'm just not-- I'm trying to figure out how much money's going to the individual before I can figure out where I want to be on this.

WORDEKEMPER: Certainly. I think there's a couple people behind me that may be--

SORRENTINO: OK.

WORDEKEMPER: --able-- answer that question--

SORRENTINO: Perfect.

WORDEKEMPER: --specific with their, with their cities.

SORRENTINO: OK. Thank you.

WORDEKEMPER: Yes.

KAUTH: Thank you, Senator Sorrentino. Any other questions? Can you-- before you go, can you tell me what the rebuttable presumption means? It's mentioned a few times in here.

WORDEKEMPER: It is. So, so what this bill would do is-- it's a presumption that because of our job and, and the-- our job has been considered a class-- Group 1 carcinogen. It's, it's bad to be in our job. So what this bill does is you're presumed to have cancer if you're on the job and your job caused it. Well, there is rebuttable presumption that, you know, if you were a, a 30-year smoker or, or something else that they can prove that there's a possibility that your cancer may have been derived from something else, you're not going to get this claim. So there, there is a, a process to where there's checks and balances.

KAUTH: OK. Thank you very much.

WORDEKEMPER: Sure.

KAUTH: Are you staying to close?

WORDEKEMPER: I will.

KAUTH: OK. Thank you. First proponent.

JUSTIN HUBLY: Good afternoon, again. Justin Hubly, J-u-s-t-i-n H-u-b-l-y. Who missed me? I'm back. And thanks to the actual firefighters for letting me sneak in. I have to get down the hall to

another hearing. I mentioned that we represent 8,000 state employees, and a lot of people don't know that 35 of them are firefighters for the Nebraska Military Department. They provide the fighting-- firefighting services at the Lincoln Airport as part of the Air National Guard, but they are civilian state employees. And I'm sure the firefighters behind me will speak much more articulately about why this is so important, with all the chemical terms that are listed in the bill, but I'll share on behalf of our airport firefighters. The foam, the firefighting foam that they used to use to put out aircraft accidents that they have to train with, was determined to, to cause cancer. They no longer use that type of firefighting foam. They use a different foam that doesn't cause cancer. But had this law been in effect at the time, I think a number of our members in the past who are suffering from cancer or passed away from cancer, likely linked to that firefighting foam, would have had access to these benefits. And for that reason, I would just remind you that there are some state employees who are firefighters and would benefit from this legislation, so thank you.

KAUTH: Thank you, Mr. Hubly. Are there any questions? Good luck in your next testimony. Next proponent. Go ahead.

GARY BRUNS: Good afternoon, Chair Kauth and members of the Business and Labor Committee. My name is Gary Bruns, G-a-r-y B-r-u-n-s, and I'm here today as the president of the Nebraska Professional Firefighters Association, which represents 1,400 paid municipal firefighters, EMTs, and paramedics across the state. First, we'd like to extend our gratitude to Senator Wordekemper for introducing LB400. Captain Ryan Lohr should have been celebrating 20 years of service with the Scottsbluff Fire Department. Instead, at just 47 years old, Ryan was fighting a devastating battle of cancer. In December of 2021, just days before Christmas, Ryan was diagnosed with stage 4 colon cancer. Less than 9 months later, his funeral is held with full line of duty death honors. While his passing is tragic, it is the story of his final months that I want to share with you today. Captain Lohr continued to serve throughout his battle with cancer. In fact, the only days he missed from work were from-- for chemotherapy treatments. On several occasions, Captain Lohr even showed up to work with his chemo pump still attached. Despite his declining health, Ryan felt compelled to keep working. Why? Because he had no other choice. He was denied coverage by workers' compensation. Ryan, a previously healthy 47-year-old with no significant health issues, was told he had to prove his cancer diagnosis was related to his duties as a firefighter. Instead of focusing on his health, he chose to continue working to protect his community. His condition worsened rapidly. But each day,

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no matter how sick he felt, Ryan showed up for his family, his coworkers, and the community he served. Everyone around him could see how frail he was, but Ryan continued to report to duty, knowing that he had been-- should have been at home, focusing on fighting his cancer. He had received-- had he received worker compensation benefits, he would not have had to muster the strength to respond to structure fires, car accidents, or assist with lifts to provide emergency medical care. Instead, he could have spent the remaining time fighting cancer with the dignity and care he deserved. Captain Ryan Lohr left behind his wife, Andrea, and 4 children: Cassandra, Rawlyn, Allee and Alexee. I'd like to share, share a few more stories of those who have fought similar battles. One of my best friend's father's, Captain Ron Trouba, Sr., served this community for 36 years. Within one year of his retirement at the age of 59, he was diagnosed with bladder cancer and passed away in 2017, leaving behind his wife, Susan, and children, Michelle, Ron, Jr., and Ariel. My own father, Jack Bruns, served 35 years with Lincoln Fire and Rescue as a fire investigator. While still actively protecting this, this community, he was diagnosed with melanoma and passed away a few months later. Jack left behind his wife, Jodell [PHONETIC], and his children Jeff [PHONETIC], Alan [PHONETIC], Heidi [PHONETIC], myself, and Lucy [PHONETIC]. And just this past Saturday, we laid to rest David Burritt, age 60, a 29-year veteran with the Columbus Fire Department. David succumbed to occupational can-- cancer, contracted during his years of service to the community that he loved. He left behind his wife, Gail, and daughter, Erika. While these stories are difficult to share, they're far from unique, and you'll hear other testifiers behind me who will share personal experiences. But I want to end by saying this: The nation's professional problem-solvers, us, we are committed to changing the culture of the fire service. We are implementing policy changing-- policy changes, raising awareness about cancer risk, supporting initiatives for firefighters' health, and providing nutritional guidance. And more-- most importantly, we are advocating for annual comprehen-- comprehensive screenings that will allow for early, early identification and early intervention. And I see that my time is up. So.

KAUTH: Thank you very much for your testimony.

GARY BRUNS: You're welcome. Any questions?

KAUTH: Any questions from the committee? Seeing none, thank you for all of these charts.

GARY BRUNS: Thanks.

KAUTH: This is great. Next proponent.

JOHN CORRIGAN: Good afternoon, members of the committee, Madam Chair. My name is John Corrigan, J-o-h-n C-o-r-r-i-g-a-n. I'm here to testify in favor of LB400 on behalf of the Nebraska Professional Firefighters, as well as the Nebraska AFL-CIO. And the, the simple truth of the, the problem with this condition or this epidemic of cancer in the fire service is that in Nebraska, under Nebraska Revised Statutes Section 35-1007, I believe-- and you'll get a copy of that. I'm going to have-- we're going to provide to each member of the committee and committee counsel, a notebook, which is-- contains white papers demonstrating the state of the evidence associating the particular type of cancer that is, that is provided for in LB400 with firefighting, and why those, those cancers are considered associated and duty-related. But we have a bill, a law in the state of Nebraska, which is on the first page of your notebook. The-- which is the retirement statute, and that creates a presumption in favor of duty-relatedness for cancers in the fire service when an individual has 5 years of service and can show that they were exposed to a known carcinogen in the course of their work. That's never a problem. We can always show that a firefighter was exposed to a known carcinogen in the course of their work. But that-- the problem with that benefit, and really the reason we're here is because we create this presumption in Nebraska, if the firefighter is dead or disabled from firefighting. We don't create that presumption if-- when they're diagnosed. And if we-- if you're working and you're diagnosed, you're-- the firefighter is responsible for paying the medical. They may have medical coverage through their, through their employer, but they're going to-- they're responsible for all the out of pocket. Then they start to burn their leave. And our position simply is this: If we're going to presume that it's duty-related for the purposes of death, then it should be presumed to be duty-related for the purposes of living through this cancer, to get the medical care that they need. Now, if you have somebody who's disabled, luckily, you know they didn't die. Great, but they can't come back to firefighting. That's a 50% benefit in, in-- slightly different in Lincoln and Omaha, but basically the same percentage of benefits in the first-class cities, but no medical care in Lincoln and Omaha. And there's 100% offset in Lincoln-- I'm sorry-- no medical care in Lincoln and in the, the first-class cities. And there's 100% offset in those communities for any workers' compensation benefits that are being paid. Now, we can go file a lawsuit, and we can prove, many times, that the-- that this cancer is duty-related. But in that sense, the injured worker now has to pay a lawyer. They have to pay an expert, maybe many experts to testify regarding the

duty-relatedness. All this bill does truthfully, is put the onus on the employer. If they think that it's because that guy, you know, had a 50-year smoking habit, or maybe they had a job working at a lead factory before they came to work for the fire department and that's really the problem, then you prove it. Let's not have that burden on the firefighter, who showed up for years to, to basically risk his or her health for the citizens. I see my time is up. I'm happy to answer any questions. I'm happy to address the questions regarding retirement that, that Senator Sorrentino had.

KAUTH: Thank you for your testimony. Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Thank you, Mr. Corrigan. Question. I-- and I don't-- I apologize. I don't know the history of this bill. Has this been brought up a number of times before?

JOHN CORRIGAN: No. One other time. This bill was first offered in 2023, and it was actually in front of the Judiciary Committee, which I don't-- I can't explain that, but that's where it went. And, and it did not come out of committee at that time. And so, Senator Wordekemper, obviously an experienced person in this field, he designated this as something he wanted to get back on the hopper and get, get this bill, LB400-- well, it's LB400 now. I think it was LB501 at that time. Because the conversation is real. I mean, we're, we're go-- we go to these funerals. We have to go talk to the families and explain what their rights and their, their benefits and obligations are. And it's an important thing to do, because those notebooks that I've provided to you, that's the, the product of millions and millions of dollars and time and resources of experts from the National Institution of Health, the National-- the International Association for Research on Cancer, which, as Dave mentioned, Senator Wordekemper mentioned, they've designated firefighting as a job in and of itself as a carcinogenic occupation for humans. That, that occurred in 2022, and that's one of the reasons that bill was brought in 2023. But all of this effort has been made to substantiate through scientific study what firefighters inherently know-- and their families-- is that they're dying young from cancer. And all we're asking in this bill is to shift the burden to the employer if they're going to disprove it. We already do that when it comes to disability benefits. If you, if you die, the pension systems have to-- if you die from cancer or you become disabled in Nebraska today and you are a firefighter with sufficient service, the system has to presume that it's duty related now. And we just can't imagine a situation where it's OK to presume duty relatedness at the time of death, but not at the time of life, and that's why we've asked for this change.

SORRENTINO: Thank you.

KAUTH: Senator Raybould.

RAYBOULD: Thank you, Mr. Corrigan. Thank you for this huge binder of information that we are sure to read.

JOHN CORRIGAN: I used to say if I have a lot of binders, that's a bad thing, but trust me.

RAYBOULD: No, it's not. No, it's not. So can you tell me, was this legislation being proposed by Senator Wordekemper, was it-- is it similar to other states' language in terms of--

JOHN CORRIGAN: Yes. Well--

RAYBOULD: --defining all the chemicals as carcinogenics?

JOHN CORRIGAN: There-- in, in the vast majority of states, there is one level or other of presumptive legislation for workers' compensation and for death and disability for firefighters. In, in the, the model that has become LB500 [SIC] is the situation in the state of Nevada today, and they have approached it from the standpoint of, you know, there's a lot of different types of cancers, and we will place a type of cancer in our presumptive body of law when there is evidence in the science to support that. And that's the, the approach, the approach that we took. And that's why I'm providing you each of those white papers on bladder cancer, colorectal cancer, brain cancer, non-Hodgkin's lymphoma. You-- there-- there's 19 different types of cancers that are, that are accompanied in this bill, and they're all supported by medical and scientific evidence as being associated with firefighting, as opposed to the numbers you would see in the general public.

RAYBOULD: So I don't want to-- I want to make sure that I understood you correctly. So it was really modeled after Nevada's--

JOHN CORRIGAN: Correct.

RAYBOULD: --in, in Nevada. And, and do other states besides Nevada have this?

JOHN CORRIGAN: Yes. Iowa has a, a comprehensive presumption for workers' compensation and, and pension. And I, I think Trevor Towey's here from the Nebraska Professional-- from the Omaha Professional Firefighters Local 385. He also can provide you-- and we could provide

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you-- we, we have a, a spreadsheet that shows what the state, state of the law is in, in each of these states, whether it's presumptive because of-- for, for pension only, or if it's presumptive for pension and work comp. But we are in the minority in the sense that we don't cover for work comp.

RAYBOULD: OK. Thank you very much.

JOHN CORRIGAN: You're welcome.

KAUTH: Thank you. Any other questions? Thank you for this binder. I appreciate it.

JOHN CORRIGAN: Thank you. You're welcome.

KAUTH: Next proponent. Good afternoon.

MICHEAL DWYER: Good afternoon. Nice to be back. Good afternoon, Chairman-- Chairperson Kauth and members of the Business and Labor Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r. Thank you to my friend, Senator Wordekemper, for introducing LB400, and I appreciate the opportunity to testify in support of this important work. I'm a 40-year veteran, a volunteer firefighter, and an EMS with a resume of 2,800 calls. I'm co-chair of the Nebraska EMS Task Force, a member of the Nebraska State Volunteer Firefighters Association's legis commit-- legislative committee, and I'm testifying on their behalf and the Nebraska State-- excuse me, the Nebraska Fire Chiefs Association. Fighting fires is dangerous on a good day. In addition to the heat, the smoke, the darkness, and the risk of the whole thing crashing down on your head, there is another risk-- cancer. According to the National Volunteer Fire Council's Lavend-ary-- Lavender Ribbon Report, copies of which you have now-- which are smaller than that notebook, by the way-- firefighters are exposed to carcinogens every time they respond to a fire or hazmat event. LB400 won't fix that, but it does at least acknowledge that responding to modern fires exposes us to arsenic, asbestos, benzene, formaldehyde, chloroform, radon, and more. The agents cling to our skin, our lungs, our clothes, and our gear that's designed to protect us. Career firefighters certainly-- I don't want to diminish what was said previously-- are certainly at, at significant risk to cancer because of their repit-- repetition and the number of exposures they get. However, I have long argued that the risk is just as significant for volunteer firefighters, not-- there-- because there's not a hard line in our response between work and home. Imagine that you're working a fire until 2 a.m., knowing that you have to be up for work in 3 hours. You wash up before collapsing in bed.

Now your car, your clothes, your house, and your partner are contaminated. To be clear, volunteer fire service does a much better job than it did just a few years ago. But sometimes, it's not just possible-- that possible. Few volunteer departments can afford the decontamination rooms, the extra sets of bunker gear that are essential in reducing the risk of exposure. I would remind the committee that, quote, volunteer firefighters and rescue squad personnel have provided fire and emergency response services to their communities for over a century at a fraction of the cost to taxpayers that would result from implementing a system of paid fire and EMS response, quote-- unquote. Excuse me. Those aren't my words. Those are from Nebraska Statute 35-1301 that was passed in 1999. LB400 is a commonsense protection for men and women that choose to protect Nebraskans and I would strongly encourage your support. I would be happy to take any questions. I see Senator Sorrentino has left, but I was going to [INAUDIBLE] his question, perhaps.

KAUTH: Thank you very much, Mr. Dwyer. Are there any questions from the committee? Seeing none, thank you for your testimony.

TREVOR TOWEY: Good afternoon, Madam Chair, members of the committee. My name is Trevor Towey, T-r-e-v-o-r, last name Towey, T-o-w-e-y. I'm the president, Omaha Professional Firefighters, representing 700 firefighters and paramedics in Omaha. Thank you for your time today. I also want to thank Senator Wordekemper for bringing this important legislation. What I'm here today for is to ask your favorable consideration on LB400. As you've heard from previous testimony, the facts are clear. Firefighters get cancer. OK. For those reasons, the state has established benefits to protect firefighters with those cancers, but only if they die. What LB400 will do will provide them with those benefits for the same cancers, so they can keep working, to help them when they recover, hopefully make a full recovery, and return back to work, helping the citizens that they were sworn to protect. In Omaha, over the last 2-3 years, I've had 3 members with a diagnosis. In 2 of those cases, we had to file a lawsuit, what John mentioned, to fight for those work comp benefits that we thought they deserved, because the cancer that they had was caused by the job, one of those 19 cancers. In 2 of those cases, after the evidence was presented, the evidence was so clear that the city decided to drop the lawsuits, accept the compensability for it, and started providing those firefighters with work comp benefits. One of those firefighters has returned to work fully, doing the job that he was sworn to do, that he wanted to do. Now, in a day and age where it is becoming harder and harder to recruit firefighters, because we need more of them, it's really hard for me as a veteran firefighter to say, hey,

young worker, come do what I do. Come do this dangerous job. You're going to increase your risk for cancer. Sadly, you're not going to have any benefits to protect you, but you should come to it anyway. That's a really hard argument to make to keep up with the workforce of firefighters that we need. I think our cities and our counties and our states should do better. We should start coordinating our efforts and doing a better job of streamlining them. For example, to your question, Senator Raybould. I know the question is often what other states and what is, you know, the federal government doing to address these issues? And I'll tell you, I was just at a conference last week where they addressed that in 2022, the federal government started providing these same work comp benefits, similar to LB400, to its federal firefighters, some of which maybe Justin represents. They are currently considering death benefits for those cancers, much like the state of Nebraska already provides. So what they've done is they've made the considerations that you're considering now, but just in reverse. I think if we were to pass LB400, it would be a good first step into bringing all those benefits together. And so that's why I ask your favorable consideration of this. I thank you so much for your time today, and I'm available for any questions.

KAUTH: Thank you very much. Are there any questions from the committee? I do have one. So you believe that, that passing this bill will be an effective recruitment and retention tool?

TREVOR TOWEY: Absolutely. I think it's just-- it's-- we're, we're already asking them to do a dangerous job. And as this evidence becomes more clear, you know, the more cases that we examine, the more it is determined that, yeah, firefighters are going to get cancer. That's a hard sell to a, a young, you know, worker to come do this job knowing it's already dangerous, but this is even more clear that they might get cancer. And I think that's a pretty hard sell. We need to provide the protections that they know that if they get those cancers, they're going to be taken care of, and they can focus on keeping our community safe and doing the job that they signed up to do. That's-- it's, it's hard for people to want to do that in the first place, so yes. I do believe that. Thank you for the question.

KAUTH: Thank you for your testimony. Any further questions? Seeing none, thank you.

TREVOR TOWEY: Thank you.

KAUTH: Next proponent. Seeing none, first opponent. Good afternoon, again.

DALLAS JONES: Good afternoon again, Senator Kauth and members of the committee. My name is Dallas Jones, D-a-l-l-a-s J-o-n-e-s. I am appearing on behalf of NWCEF and LARM-- that's L-A-R-M-- in opposition to LB400. To appear in opposition to this bill is not anti-firefighter. There are good public policy discussions to be had by this body, just not this committee, whether or not and how firefighters should receive more compensation for the terrific work that they do. My primary point that I want to start with in opposition is to talk to you about why the structure of LB400 does not belong in the Workers' Compensation Act. It's the rebuttable presumption that it is compensable and it's up to the employer cities, villages to disprove that. I will tell you that there is no other rebuttable presumption in the Workers' Compensation Act for any kind of employee or condition. That is a brand new concept to the act and it really invites-- our concern is if this were passed, then what comes next? What's next? Firefighters do outstanding work. Nobody in this room is going to debate that. No opponent will challenge that assertion. But there are lots of, lots of other employees who also are essential employees for society. Once that door is opened, the door can't be closed and the entire structure of the act changes. I will add that I, I understand the science, and I'm not an expert in it, that there is substantial evidence that all these cancers, in fact, are contributed to by employment. My point is, if true, you don't need this bill. If true, a firefighter, like any other employee asserting an occupational disease, has the ability, and if the science is that clear, to prove that and a judge is going to award benefits, if it ever gets that far. But if it's not true, then having a rebuttable presumption that it's compensable is not the direction to go. Secondly, I think it's important to-- that you understand there are some serious mechanical problems with the bill. The bill says that it's rebuttably-- or it's a-- it is an occupational disease, period. If you have a cancer, it is an occupational disease. It's compensable. The rebuttable presumption though, narrowly talks about the bases to rebut that, and it doesn't talk about anything other than arising out of. I'm about out of time. An employee has the obligation to prove a number of things before the court: Notice, causation, does it arise out of, in the course of, and so on, and so on, and so on. The rebuttable presumption right now doesn't allow, the way I read this, to raise anything of that arising out of which is not causation, by the way, which is the whole point of the bill, I think.

KAUTH: OK. Thank you very much for your testimony. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairperson Kauth. Would you do me a favor and, and finish that last thought, and then I'll ask you a question about causation, et cetera, and rebuttable presumption. It didn't sound like you were finished.

DALLAS JONES: Sure. In an employee's burden of proof to prove an occupational disease, the employee has several things that they prove. One is they gave notice of it. I don't even know how that works in the context of this. Every employee in the workers' compensation system has to give notice of an injury. I don't know how this works. In an occupational disease, what really matters for purposes of compensation is what's the date of disability? I have no idea what that's going to be under this act the way that it's written. The employee has the obligation to prove the not-- the causation, as I mentioned, as well as arising out of. The way this is set up, is the employer has the opportunity to try to rebut that presumption, but it can only do so, according to the language, by showing that it's-- that it can only rebut arising out of. But that's not the whole picture. The whole picture has a lot of other things that has to happen before it's compensable. I don't know how you rebut that under this. If I am in front of the judge and I am arguing one of these, the judge says Jones, I only want to hear about arising out of and in the course of, because that's all-- that's the only basis for the rebut-- for you to be here rebutting that, where, in fact, the real issue is causation, causation, causation. It doesn't even allow that opportunity. It gets complicated in terms of all of those things. But my primary point is mechanically, I don't know how this is going to work, as somebody who has been in the system for almost 40 years now. And, and my concern is, again, the, the, the opening the door.

SORRENTINO: So if the Workers' Compensation Act or court is not the proper venue, what is? Is it the current status quo? You pursue them that way, or is there another way?

DALLAS JONES: Well, I'm not going to hold myself out as an expert there, but I will say this body certainly has the ability, if it chooses to do so, to respond to public policy, if that's the determination. We need to do something on a state level. There is something we need to do for this class of employees for retention purposes, for fairness purposes. Others behind me will speak to existing other provisions in state law that may be a placeholder for that or a vehicle for that, if you will. That's not my foray. What I could say is this is not the place.

SORRENTINO: Thank you.

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KAUTH: Thank you for your question. Are there any other questions? Seeing none, thank you for your testimony.

DALLAS JONES: Thank you.

KAUTH: Next opponent.

CHRISTY ABRAHAM: Senator Kauth and members of the Business and Labor Committee, my name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities. And we just wanted to lift up just a couple of concerns that we have about the bill. Number one, I don't know that this is a big surprise to this committee, municipalities are always concerned about cost, and this would be an increased cost to municipalities in order to pay for these additional benefits. The other thing I want to mention is-- and Mr. Jones did such a great job. There are other municipal employees that are also exposed to some of the carcinogens that are listed in this bill. I'm going to lift up shop workers, people who work in the shop. They're going to be exposed to diesel fumes almost on a daily basis. Our park employees, they are going to be exposed to pesticides on a regular basis. These also are carcinogens. And I promised myself I would not use the phrase slippery slope, but there it is. It came out of my mouth. And so it's just the concern of how far does this go? The final thing I want to mention that I think addresses your question, Senator Sorrentino, is there is already, in law, the Firefighter Cancer Benefits Act. That went into effect in 2022. And this may be a better mechanism in which to compensate firefighters. That program provides benefits in lump sum benefits of \$25,000. It provides monthly benefits, and it also has a \$50,000 benefit to beneficiaries. There's also some guardrails in that act that municipalities like. For example, the firefighter needs to have a physical exam saying that they are free of cancer before they're eligible for the benefit. Last year, this committee heard a bill, LB459. It was brought by Senator McDonnell. In that bill, the state was asked to pick up the costs of that program. The State Fire Marshal was going to implement and pay the costs for that. That is certainly something that we would like to explore and, and think that's a good alternative. So again, I-- we really appreciate Senator Wordekemper and, and allowing us to have these conversations. As always, we want to work with the committee as much as we can, and I, and I-- sorry, Senator Sorrentino. I wanted to answer just one other question that you had. I see I'm on the amber light. On page 6 of the bill, lines 9-13, as I read that, if you are a retired firefighter, what you're going to get is medical benefits, but you're not entitled to any other compensation. So if you're a retired firefighter and you're covered under this provision, the only thing

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you're going to receive is medical benefits. So I hope that answers that question.

SORRENTINO: Thank you.

CHRISTY ABRAHAM: Thank you, Senator.

KAUTH: Thank you for your testimony. You slid right under the wire.

CHRISTY ABRAHAM: Thank you. Yay.

KAUTH: Are there any questions from the committee? Senator Raybould.

RAYBOULD: Thank you, Ms. Abraham. Can you tell us-- can you-- tell me a little bit more about the Firefighter Cancer Act that you said was passed in 2020? Does-- those are benefits upon death, or you-- I thought you said something about workers comp on a monthly-- did I get that right?

CHRISTY ABRAHAM: Sure. And your excellent legal counsel, I'm sure can provide this to you. It's in Section 35-11-- OK. Senator Raybould, I apologize. Let me start one more time. 35-1002 is where the act starts, and it's called the Firefighter Cancer Benefits Act. And this is a separate sort of insurance program. But-- and I want to be clear. It is-- it's permissive. It-- it's not mandatory for entities to have firefighters, to have this benefit for their firefighters. And so what it includes is, and I'm just reading from the act again-- a lump sum benefit of \$25,000 for each diagnosis pay-- payable to the firefighter. There's also a monthly benefit of \$1,500 after they have total disability, and then a \$50,000 payment to beneficiaries. And again, your excellent legal counsel will be able to provide you the entire act, but that's where it starts and those are the benefits that it has.

RAYBOULD: So it's more of an insurance policy that you can get once you go through that initial exam to prove that you're healthy, cancer free, and then--

CHRISTY ABRAHAM: Right. Right. And so what it says, is it says before the firefighter is entitled to the benefits, you have to have a physical exam, you have to serve at least 24 consecutive months as a firefighter, you have to be actively engaged in fire suppression, you have to wear personal protective equipment. And then, if you meet that definition, then you are eligible for these benefits.

RAYBOULD: OK. Thank you.

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KAUTH: Thank you, Senator Raybould. Any further question-- oh, Senator Ibach.

IBACH: Thank you very much. Do you have any idea how used that account is, or how many firefighters have actually tapped into it?

CHRISTY ABRAHAM: Senator Ibach, that is a great question. And so, forgive me. This could be just inadequacy of myself, which is always an option on this table. But this act does say that a report needs to be made by the Fire Marshal, about how many firefighters are covered. And I apologize. I could not find that report. So it could mean none, or it could mean, again, I'm back to I just couldn't find the report. So I'm, I'm sorry. I don't know.

IBACH: Thank you.

CHRISTY ABRAHAM: That, that is a very long answer to say I don't know.

IBACH: Thank you.

KAUTH: Thank you, Senator Ibach. Any other questions? Seeing none, thank you for your testimony.

CHRISTY ABRAHAM: Thanks so much, Senator.

KAUTH: Next opponent. Good afternoon.

MADDIE HASLEY: Good afternoon. My name is Maddie Hasley, M-a-d-d-i-e H-a-s-l-e-y. I previously worked as a workers' compensation insurance adjuster, and I'm currently a labor and employment attorney at Cline Williams. And I want to reiterate the point that Mr. Jones had made of the important work of firefighters in this state. LB400, however, creates a rebuttable presumption that more than 30 types of cancer are work-related. This is contrary to the basic principles of the Nebraska Work Comp Act. The first step in any claim is an investigation to evaluate whether the injury arose out of the course and in the scope of employment, and one key component is a doctor's diagnosis attributing the injury to the workplace. LB400 contains no such requirement for causation. As Mr. Jones indicated earlier, the act does not create a rebuttable presumption for any other type of injury. So even when causation is clear, an investigation and a medical diagnosis are still needed before any benefits are paid, and shifting this burden to employers to prove they were not the cause is contrary to the act. I also want to point out that some of the exposures listed in Section 3 are unrelated to work. Paragraph (3)(c) lists digoxin as a known carcinogen, but digoxin is a medication that is used to treat

heart failure. Heart medications are unrelated to exposures in a firefighter's occupation. Employers will be forced to defend frivolous claims and spend resources on obtaining independent medical examinations and expert reports to opine that cancer from someone's heart medication is not work related. The cancers listed in LB400 may also not be linked to work alone, but could be influenced by family history, genetics, previous employment, lifestyle, environmental causes unrelated to firefighting, or, as listed in LB400, medication for heart conditions. There are no provisions in LB400 that require a baseline physical examination. There are no apportionment guidelines to determine if an employer is fully responsible for cancer treatment for a life line-- a lifetime smoker, and this presumption unnecessarily places cancer treatment within the coverage of work comp. This presumption means that a firefighter does not have to present any evidence that cancer is linked to their job. And LB400 provides coverage for volunteer firefighters, with no requirement that the firefighter was ever actually called up to duty or a threshold for frequency or severity of exposure. An, an employer can rebut this presumption if someone was only called up to duty a couple of times, but LB400 does not provide a procedure or judicial mechanism to rebut that presumption, nor does it outline the standard of proof an employer must meet. LB400 does not outline whether an employer can suspend benefits unilaterally or with court approval. And other states like Alaska, Indiana, Louisiana, Texas, and Washington all provide judicial and procedural mechanisms and other considerations that factor into the equation to rebut this presumption. Without this guidance, LB400 essentially creates an irrebuttable presumption and might allow access to unfettered benefits that they might, might not be otherwise entitled to. And I'm happy to answer any questions the committee may have.

KAUTH: Thank you very much for your testimony. Are there any questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. In your experience as a trial attorney, are you aware of any other situations where a serious illness is a presumption without proof?

MADDIE HASLEY: I am not. And it would-- it's my position that, that is contrary to our legal system. If someone sues me for breach of contract, there's no presumption that I breached the contract until the proper standards of proof and causation thresholds have been met.

SORRENTINO: The only thing I can think of as an attorney is there's a doctrine called *res ipsa loquitur*, which you use in plane crashes. And

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if the plane crashed, we assume that the individual is deceased because of the plane crash. Is that tantamount to what we're doing here, that it's just a presumption?

MADDIE HASLEY: I don't think it should be. I think we need--

SORRENTINO: But is that what it kind of seems like, in your opinion, that there's just a presumption? But heavens no. I, I appreciate firefighters and I certainly don't want any of them to have cancer. But your, your issue is it just needs to be proved. Is that correct?

MADDIE HASLEY: Absolutely. There needs to be some sort of expert, expert to say that there was causation to the work itself.

SORRENTINO: So there is a proximate cause, that being the firefighting which resulted in the damages.

MADDIE HASLEY: Correct.

SORRENTINO: Thank you.

KAUTH: Thank you, Senator Sorrentino. Other questions? Seeing none, thank you for your testimony. Next opponent.

KORBY GILBERTSON: Good afternoon, Chairwoman Kauth, members of the committee. 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, appearing today as a registered lobbyist on behalf of the American Property Casualty Insurers Association in opposition to LB400. I want to repeat what the other opponents said about we're in no way, shape, or form trying to make light of cancer diagnosis in the work that firefighters do. Folks that know me know that I am married to a retired firefighter. And we-- all of this has touched my own family. So-- but what APCIA wants to point out is some of the issues regarding reinsurance for, for the cities that would have to cover this, and the rather difficult time or the fact that we'll have to be underwritten in a way to make sure that all of the potential risks will be covered, which, if you read the fiscal note, could be quite high per instance. The second issue that has been come-- that has come up, which was the, the causation. And if you look at the workers' compensation statutes, they are already to be construed in a light most favorable to the employee. So requiring proof to be made for the causation would seem to already go in light of the employee, and we believe it should stay that way. I-- Christy also brought up our-- the Firefighter Cancer Benefits Act. And when that bill, when that was discussed, when it passed, that was kind of a negotiated piece of legislation, looking at it as this is a state

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issue and making sure that these things are taken care of. And I would suggest that the committee look at something like that, rather than having this be something that falls under workers' compensation. I'd be happy to try to answer any questions.

KAUTH: Thank you very much, Ms. Gilbertson. Are there any questions from the committee? Seeing none, next opponent? Seeing none, are there any who wish to testify in the neutral? And while Senator Wordekemper comes up to close, there were, for the record, 9 proponents and zero opponents.

WORDEKEMPER: Thank you, Chairman Kauth, members of the committee, for listening to everybody that testified on this bill. And I-- I've been doing this for a while, and I've heard several times opposition to a lot of different things that firefighters have brought. We really like what you do. We appreciate it. Thank you. You guys are the best. Everything else. Couldn't do it without you. Man, you guys are great. Guess what? Prove, though, that you want something. That-- that's ridiculous. And, and I sit up here and that-- that's, that's hard to hear. I mean, I'll address a couple things that were brought up. You know, when we bring kids to the fire station, they all like firefighters. We used to let them all put our gear on. It was great. They could act like they're a firefighter. Well guess what? We don't do that anymore because the chemicals that are in our gear causes cancer. It changes our genetics, and we're not going to do that to our kids. There are, there are studies out there that say these chemicals, PFAS and PFOS--you got the definitions in your things. There are studies being done that thinks that it changes our genetics. There's a overwhelming amount of firefighters' kids that are starting to have brain cancer. So to look at this lightly and say, hey, it's great what you guys do, but while you're on the job, we don't want any liability. We don't want any reason to have to provide anything for you. So, you heard stories and-- a guy on my job got cancer, and-- lung cancer. He beat it. It, it went into his leg. Bone cancer. City made him get a, a metal rod in his leg. He got that done. Passed his test to come back to the job, because he wanted to come back to the job. And he knew that if he didn't come back to the job, he didn't have any benefits. He had 2 young kids, had a wife. So he comes back to the job. The first day he comes back, he hits a working fire, hits a working fire with another guy. We were short-staffed. It was just two of them. That was the last fire and the last call that guy went on. It tasked his body so much, the cancer come back. He died shortly after that. So to think that firefighters won't do the job-- we're going to do the job. We're not asking for anything. And you know, they say, well, we shouldn't need this presumption. We shouldn't need this law because

the city has to do what's right or, or-- you know, we shouldn't have to prove it. You heard the legislation. You see the data in the binder. The chemicals that are listed there have been studied, researched, proven that firefighters are exposed to them and they cause cancer. What more do you need as evidence for a firefighter to hire an attorney, fight his case, to prove that's what it is? The data is out there. And so, I, I don't, I don't understand it. So the, the other question, Senator Raybould and Senator Ibach, you talked about the, I believe it was 35-102, the Firefighter Cancer Disability Act. The League testified that that's-- it's out there. It's optional. No cities have ever adopted that. It is not in effect. No money has been paid out of that account. They didn't adopt that. They don't follow that. So no firefighters have gotten any money out of that fund because they didn't adopt it. So to think that they're going to step up and take care of this, it's irrelevant. That's why we need this legislation, because they won't do it. And you know, another thing that kind of hits home, my son was looking to get into firefighting. Everybody wants their kids to take over the family business, get into firefighting, I'm thankful they're not because of this. Why, why would I want him to suspect his body to this and all the other things, and it's like-- because there's no support. The, the International Association of Firefighters that I belong to, we're on the forefront of trying to fix this problem. We're in gear research. We're trying to find out how we can get rid of these PFAS and PFAHS out of our gear. They've been putting them in our gear since the '60s. They've known it's caused cancer. This product that they put in there is a water repellent, basically. And you think, well, what's that got to do with anything? Well, if you've ever had a washcloth that's wet and you grabbed a hot pan like a cast iron pan, the heat goes through it pretty quick. It's important for our gear to stay as dry as it can. But yet, these chemicals are next to our skin all the time. So that's why they're in there. The firefighters are on the forefront of trying to find an alternative to this gear. This isn't just a United States thing. It's Canada, all over the world. We're trying to figure this out. And so I say that to the tune that nobody else is helping us find this. I don't know of any cities that have donated money. I don't know of any other people that are donating money to find an alternative to this and research it, but we are because it concerns us. So to think that they want to be on the forefront, and you know, we shouldn't have to prove this, the data is there. We have to fight for everything. And that's all this bill is asking, that if I get cancer-- you know, it's probably coming, according to the statistics-- why should I have to hire an attorney, fight and prove it when we have plenty of data? Every year, the professional firefighters have a memorial in Colorado

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Springs. Last year, we put 306 names on that wall that died in the line of duty in one year. 230 of them were from cancer, 75%. And since-- in my opening, 66% of the names we're putting on that wall die of cancer. And what you heard from the opposition is we have to prove it. I don't understand that. So I'll answer any questions if I can. I know there's a fiscal note with this, and I guess I'll speak a little bit to that. There are state employees that are exposed to these chemicals. We talk about the fire marshals, inspectors, the guys that do fire training for our volunteers. So, so they are exposed. I guess my only concern is that I don't know if the fiscal note is truly accurate, because I don't know, I don't know that they're exposed to it at the same level we are every day that we go to work. And I guess just to throw a, a-- another thing on that, so for me, as many of you know, and I, I just retired with 30 years. And for the hours we work-- 2,920 is what we're scheduled to work in a year. If you divide that by 2,000 hours that a 40-hour-a-week employee works, I put in 44 years. That's how long I was exposed to cancer. So it-- it's not like we go there and we choose to put that gear on. We have to. We have to put that gear on to go into your house to extricate you. We don't have an option. And, and we do whatever we can with our exhaust systems in our buildings, our gear extractors, to minimize it, but we can't get away from it. So I'll answer any questions. I would appreciate this getting advanced to the floor. And at least-- you know, we fight to stay alive every day we go to work. We shouldn't have to fight for a benefit. Thank you.

KAUTH: Thank you, Senator Wordekemper. Are there any questions from the committee? Senator Ibach.

IBACH: Thank you, Chair Kauth. Are there any federal programs or guidelines that this is modeled after, or is there any-- are there any federal programs in place that speak to this same language?

WORDEKEMPER: I believe there could be, as a-- testifying for the federal firefighters and things like that. And, and I would have to-- I don't know for sure if this is modeled after that. I know we modeled it off of Nevada. And, and I'll speak to another part. Nebraska has the opportunity to join 23 other states. 23 other states have already enacted similar cancer presumption laws for firefighters. So I think, I think it's out there. I don't think this legislation is unreasonable. If, if we have to model something off of the federal, I'm certainly, you know, open to look at some options, but I don't believe there's anything wrong with this legislation, but, but I'm willing to look at it.

IBACH: Thank you. Thank you, Chair.

KAUTH: Thank you. Any further questions? Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Senator, I-- I'm trying to-- I'm not as familiar with, obviously, yours, the firehouses-- EMTs.

WORDEKEMPER: Yes.

SORRENTINO: Many times, they're housed within the firehouse. Is that not true, or do they-- my question is, would that cover them?

WORDEKEMPER: Yes. If, if you're a firefighter. So like for our department-- and I'll speak what probably the majority of the departments here in the state. Most firefighters probably, I'll say on the paid side are at least EMTs, paramedics. A lot of the volunteers are firefighters, EMTs, paramedics also, so most, most of them are all cross-trained, they're all wearing the same gear. Because if they go on a car accident, they have to wear the protective gear to be out on the car accidents. So it, it covers everybody that's basically designated as a firefighter, so EMTs, paramedics, if you're, if you're still doing the firefighting job.

SORRENTINO: All right. Thank you.

WORDEKEMPER: Yes.

KAUTH: Thank you, Senator Sorrentino. Any further questions? Seeing none, thank you, Senator--

WORDEKEMPER: Thank you.

KAUTH: --Wordekemper.

WORDEKEMPER: Have a good afternoon.

KAUTH: For the record-- oh, I already said that. We have 9 proponents and zero opponents. We are going to take about a 7-minute break before our next case-- case-- yeah, our next bill. So we will start at 10 minutes till 4. My case. I know. I left my gavel upstairs.

[BREAK]

KAUTH: --ahead and get started on LB455. Before we do, I would like to say Happy Birthday to my dad who is watching out in California. Thank you.

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SORRENTINO: Hi, dad. Oh. OK.

THOMAS HELGET: You guys have the same dad? I didn't know that.

SORRENTINO: No.

KAUTH: Wait a second.

SORRENTINO: I'm old, I'm old enough to be her father.

THOMAS HELGET: Grandfather.

SORRENTINO: Grandfather.

KAUTH: Senator Hallstrom.

SORRENTINO: Oh, here's trouble.

KAUTH: Fit for [INAUDIBLE].

HALLSTROM: Right. [INAUDIBLE].

KAUTH: There you go.

THOMAS HELGET: We did them in chron-- or numerical order.

SORRENTINO: I feel a filibuster coming.

KAUTH: Welcome.

HALLSTROM: Welcome.

SORRENTINO: Sort of.

THOMAS HELGET: Sense and force.

RAYBOULD: I was doing that, too.

MCKEON: Let's find out where we [INAUDIBLE].

HALLSTROM: Are we ready?

KAUTH: We are ready. Julie, you good? OK.

JULIE CONDON: Yeah.

HALLSTROM: Chairman Kauth, members of the Business and Labor Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I am

state senator representing Legislative District 1, here today to introduce LB455. LB455 is designed to provide confidentiality for first injury reports filed with the Workers' Compensation Court. It accomplishes this purpose by requiring that workers' compensation first reports of injury be withheld from the public with certain designated exceptions. Restricting access to workers' compensation records is not unique or unprecedented. At least 37 states have some form of restriction on access to workers' compensation court records, including our neighboring states of Iowa, Kansas, Missouri, and South Dakota. In addition, the provisions of Neb. Rev. Stat. 48-612 and 48-612.01 grant confidentiality protections to unemployment insurance records, similar to those proposed for workers' compensation records under LB455. There would appear to be no justification for providing confidentiality to unemployment insurance records and not to workers' compensation records. LB455 is designed to delay the avalanche of solicitations which injured employees receive from attorneys once a report of first injury is filed with the 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, radio, Yellow Pages, and more recently in virtually any Google search of a workers' compensation-related issue. Employee 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 employer or insurance carrier without the need for litigation or legal intervention. The communications by lawyers, pursuant to information contained within the first injury reports, produce unnecessary conflicts and needless litigation, thereby increasing the cost of workers' compensation system and reducing the net benefits received by an 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 their employer is releasing information regarding their injuries, resulting in these unwanted communications. Employees 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 services in many cases may not be needed. LB455 contains a number of exceptions to the confidentiality of first injury reports. The exceptions address situations in which the court is required to allow for the copying and inspection of first in-- injury reports. The bill allows an employee also to waive confidentiality of the first injury report. In addition, the reports would be required to be released to parties to litigation, whether employer or employee, be given to state and federal authorities for research or, or investigation purposes, allow redacted information to be made available to third parties for the purposes of determining the nature of injuries sustained within a workplace, without identifying any specific individuals, and be released to a nonprofit organization for the purpose of sending condolences to, providing memorials for, and offering grief counseling to family members of employees whose death was caused by a workplace incident. The bill is designed to both address the need for disclosure of first injury reports in the specific instances described above, and to ensure that first injury reports will be withheld in all other cases. I would note for the committee, we were contacted by the administrator of the Workers' Compensation Court within about the last week to 10 days. I don't believe the court has any objections to the substance of the bill, but they have raised some questions with regard to their administration of the bill and how they carry out the requirements for confidentiality and release of information in those instances where there are exceptions under LB455. And we have been working diligently with the administrator to put together some amendments to address those concerns. We also had Mr. Colby Coash from the School Boards Association, and I believe Suzanne Geist from the Attorney General's Office that had requested some, some clarification in the bill, as well. And we have cleared with them some language that will address any concerns that they have, and it will be part of the amendment that we bring to the committee after the hearing, once we've achieved consensus with the administrator of the Workers' Compensation Court. So I'd be happy to address any questions of the committee.

KAUTH: Thank you, Senator Hallstrom. Senator Sorrentino.

SORRENTINO: Chairwoman Kauth, thank you. Thank you, Senator Hallstrom.

HALLSTROM: Yes, sir.

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SORRENTINO: Going along with the premise that the only thing more dangerous than a law breaker is a lawmaker, I have some questions.

HALLSTROM: OK. Fair enough.

SORRENTINO: You've-- as a state senator, but in your prior life, you've pursued this bill before--

HALLSTROM: Yeah, I--

SORRENTINO: --or some version of it?

HALLSTROM: I did a little research. And probably for the last 20 years, each biennium, with the possible exception of one biennium, this legislation or some iteration thereof has been introduced. And even before that, for many years, the legislation was introduced. And in fact, going back to its inception, a gentleman named Judge Ben Novikoff actually brought the first version of this to the Business and Labor Committee. At that time, as I recall, the trial lawyers initially came in, in a neutral capacity. That didn't last very long, and has continued to render them opposed to the bill since that time.

SORRENTINO: And it's kind of run into the same speed bump each time?

HALLSTROM: The, the speed bump was probably based on the number of votes that were on the Business and Labor Committee to get the bill out. And--

SORRENTINO: OK.

HALLSTROM: --other than that, here we are now.

SORRENTINO: Well, I ask that, being new to the committee and the committee being new. So, help me. It sure seems to me, and I'm not a worker's comp attorney, but that making the first injury report public does serve as a valuable marketing tool for certain parties. How is the current practice in the best interest of my constituents? I mean, why would I, as the injured worker, be better served for having this be made public?

HALLSTROM: Well, I'm, I'm not sure I can concoct a rationale for that. I'm sure you'll hear some from the opponents of the bill. My understanding is-- and, and there will be some testimony in support that shows some of the downside of what happens with the solicitations that inevitably occur because of the way the system is set up. I don't recall the exact numbers, but I believe when I visited with the

administrator of the Workers' Compensation Court, they actually have a list of individual attorneys who are signed up to receive this information on an ongoing basis. We had-- years ago, I had a individual who happened to be an attorney, who had a nanny that performed services in his residence. And she cut her finger on a rosebush and all they did was put a Band-Aid on, but through an abundance of caution, that attorney decided, and rightfully so, that an first injury report needed to be filed, and there was a multitude of solicitations for that individual based on those facts. And, you know, obviously there are other situations that occur. But Senator Galen Hadley was the chairman of the Revenue Committee years ago. He tripped over a TV cable on his way away from the chair to go to another hearing room, and he was astonished at the number of solicitations that he got, suggesting that he needed to have representation to, to address his, his situation. And as I indicated, you know, a lot of times when you have even sensitive injuries in particular, but any type of injury, most often what happens is the employee comes to the employer and says, why are you releasing my information, not knowing that it's the law and we're required to do so absent the passage, and hope for passage of LB455.

SORRENTINO: Thank you.

HALLSTROM: Thank you.

KAUTH: Any other questions from the committee? Senator McKinney?

McKINNEY: Thank you. And thank you, Senator Hallstrom. How are the employees, I guess, going to get access or get help trying to navigate this process if it's not public?

HALLSTROM: Well, I mean, the issue is the first injury report is not public. In my testimony, I indicated that, number one, the Workers' Compensation Court gives extensive information to the employees regarding the rights of the employer and the employee. And I think in, in today's marketplace, there's plenty of avenues if someone is hurt that they, they have plenty of opportunities to obtain legal counsel without making the first injury report and the potentially sensitive information contained therein.

McKINNEY: When do they get that information, just process-wise?

HALLSTROM: I think they get that information at the inception of the, of the, of the case.

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McKINNEY: OK. And how are they going to-- last, how they're going to sign the waiver if nobody reaches out to them?

HALLSTROM: Well, they-- I, I presume what will happen when we've talked about this in the past, there will be a, a process established. They, they get paperwork from the Workers' Compensation Court and, and they would have the description of the waiver of confidentiality option that's out there for them to, to sign.

McKINNEY: OK. Thank you.

HALLSTROM: Thank you.

KAUTH: Any other questions? Seeing none, will you stay to close?

HALLSTROM: Yes.

KAUTH: Yes. OK.

HALLSTROM: Got the next bill. Thank you.

KAUTH: First proponent. Go ahead.

RYAN McINTOSH: Good afternoon, Chair Kauth, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business in support of LB455. I've also been asked to sign on in support of this bill by the Nebraska Chamber of Commerce and Industry, the Lincoln Chamber of Commerce, the Greater Omaha Chamber of Commerce, and the Nebraska Grocery Industry Association. Senator Hallstrom really took all of my talking points during his opening on how this works. But in this day and age, I think the expectation of privacy for the workers outweighs the ability for attorneys to contact them. It's, it's incredibly easy. You know, any number of attorneys are at the-- by hitting go on a Google search. What I'm handing around, this has happened to, to come to me after this bill was introduced. The addressee of that letter was injured at work, was shocked as Senator Hallstrom described, at how many solicitations he received. But that's all of them except for one. One of them went to his neighbor, and his neighbor was kind enough to let the entire neighborhood know that he had injured his back at work. And so these reports do contain what most people would reasonably believe is protected health information, yet it's, it's broadcast any, any member of the public that asks for it. Senator Hallstrom said there is a number of clarifications, amendments that we're working on with Ms.

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Gradwohl Schroeder from the Workers' Compensation Court. And so we do-- we will work quickly to get an amendment done to this committee that's agreed upon with the Work Comp Court. And Dallas Jones will follow me and can answer many of the more technical questions. But I'm happy to answer any that this committee may have right now.

KAUTH: Thank you for your testimony. Are there any questions? Seeing none, thank you very much.

RYAN McINTOSH: Thank you.

KAUTH: Next proponent.

DALLAS JONES: Good afternoon, again. Dallas Jones, D-a-l-l-a-s J-o-n-e-s, on behalf of NWCEF in support of LB455. I don't have a lot to add to what Senator Hallstrom and Ryan just mentioned to you. What I wanted to share is one point. NWCEF is an organization of employers across the state, and it exists for purposes of, of advocating for reasonableness and fairness in the system. It will poll its members every year in terms of what concerns you about workers' compensation, because that's, that's, that's all it does. I will tell you that while I can't give you documents that will corroborate this and prove it, every single year since the organization has existed, the one issue that continues to be at the forefront of the concerns raised by employers is this one. And it goes down to the employers have the obligation. They will complain, we have to file these reports and we have to include certain information in them which is otherwise private and confidential, and our employees frequently come to us and complain to us, why are you handing that information out? If I would have known that, I would have not told you that. And then, here we are. We have been here, as the Senator said, many times before. The issue remains the same, and certainly on behalf of the members of NWCEF, they would like to finally see resolution of it. I would be happy to entertain any questions.

KAUTH: Any questions from the committee? Senator McKinney.

DALLAS JONES: Senator.

McKINNEY: Thank you. What is the possible impact on employees, I guess? Do you think you would see less employees being represented if this passes?

DALLAS JONES: As the Senator, Senator Hallstrom mentioned, multiple opportunities for employees to find counsel. It's not like they're hiding. I think not. Certainly, there will be a number of my friends

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from the other side who are probably going to give you a different answer to that, but I doubt it.

McKINNEY: OK. What is the potential benefit for the employer if this passes?

DALLAS JONES: Well, certainly one of them is to the extent that employees know that their information is going-- that's private, or at least they assume it is, and is, is-- has the potential to be out there if they actually report an injury. That's one. They also don't have to deal with their employees complaining to them, why are you telling everybody about my injuries and what happened to me?

McKINNEY: OK. And last one, is there a potential financial benefit if this passes, for employers?

DALLAS JONES: I don't know if I can quantify that for you. I suppose possibly. I mean, to be abundantly honest, if there are fewer claims that shouldn't have been filed that are not filed, that would be a financial benefit. But if there's a legitimate claim, a legitimate claim is going to be filed, it's going to be paid, and it ought to be paid at the level that the ad provides, so my answer is maybe a little.

McKINNEY: All right. Thank you.

KAUTH: Thank you, Senator McKinney. Are there fur-- any further questions? I have one. Have employers been sued by their employees for releasing this medical data?

DALLAS JONES: I am not aware of that ever happening, Senator.

KAUTH: OK. Thank you. Thank you for your testimony.

DALLAS JONES: Very good. Thank you.

KAUTH: Next proponent. Seeing none, first opponent. Good afternoon.

AARON BROWN: Madam.

KAUTH: Go ahead.

AARON BROWN: My name is Aaron Brown, A-a-r-o-n B-r-o-w-n, and I am speaking on behalf of the Nebraska Association of Trial Attorneys, and personally, on behalf of myself, because I enjoy arguing with Dallas Jones about anything and everything. I am here to make the

conservative case for the workers' compensation system that we have here in Nebraska as a general matter, and then tie that back to why we want to keep these first reports of injury public. The workers' compensation system is supposed to cover injuries that occur at work. It is important that the expense of industrial injuries are paid by industry, because that gives the incentive to make the workplace safer. To their credit, Nebraska employers as a whole have done a great job of that, as we've seen serious injuries and death trending downward over the last 50 years, and I would like to see that trend continue. There are 2 alternatives to workers' comp paying for workplace injuries. The first is that the injured employee gets tired of fighting with the insurance adjuster and just runs the medical care through their health insurance. That is unfair to the worker because they have to pay the co-pays and deductibles, and it drives up the cost of health insurance for everyone else. The other alternative, and one that we see often is that the injured worker also loses their job as a result of their workplace accident, and their health insurance goes with it and they end up on Medicaid. That's not what Medicaid is intended for, and obviously not fair to Nebraska's taxpayers. With that perspective of the work comp system and how I see it from a conservative perspective, I urge you to keep the first reports of injury public. The handout that I provided is the first 10 reports of injury that the Workers' Comp Court sent out last week. Those were sent out Friday. That is the exact information provided, although I did redact the address and then changed everybody's last name to Smith. But other than that, that's exactly what was sent out. You're not going to find any salacious details. You're not going to find private medical records or, or information in there. This is a camouflaged attempt to reduce benefits paid to Nebraskans masquerading as a privacy issue. When I first met my wife, besides noticing her overwhelming beauty and kindness, the other thing that stood out to me was that she had never met a lawyer before. She did not know a single attorney. She came from a blue class, working-class family, and that's what I've found almost all of my work comp clients to be. They're plumbers, they're electricians, they're working-class people who don't have a, a-- an attorney in their phone that they can call up and ask questions. And that's what we do. I know that this sounds self-serving because I do send out letters, but I would say less than 10% of the people I talk to do I ever sign up as a client. I answer their questions. I tell them that they are supposed to be allowed to go to their family doctor, which I assume if all of you were injured, you'd want to go to your family doctor and not the doctor the insurance company is telling you to go to, and we answer those questions. And I see that my time is up. I wish I had more because I have a lot more to

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say about this issue. But if you have any questions, especially easy ones, I'd be happy to answer them.

KAUTH: Thank you for your testimony. And you know this is recorded, so if you need to play that back for your wife, I'm sure she would appreciate it. Are there any questions from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. If this passes, who stands to benefit the most?

AARON BROWN: Injured workers. As I was trying to tell you-- I mean, I know that you guys probably talk to lawyers all the time. The average plumber or the average electrician doesn't have a, have a lawyer friend that they can call. And, and I know that you can Google. I know that all that stuff is out there, but to get something in the mail that says, hey, I'd like to talk to you about your workplace accident, I, I think that invites conversation and, and makes it easier for people who otherwise do not want to talk to lawyers-- which I don't blame them one bit. But cold-calling an attorney that you have never met that you don't know, I just think this makes it easier to make sure that injured Nebraskans gets the benefits that you guys, by the way, have decided that they're entitled to under the Workers' Compensation Act.

McKINNEY: Thank you.

AARON BROWN: Thank you, Senator McKinney.

KAUTH: Thank you, Senator McKinney. Any other questions? Seeing none--

AARON BROWN: Senator Sorrentino, you asked everybody.

KAUTH: Thank you for your testimony.

SORRENTINO: Losing my voice.

AARON BROWN: I am, too. Everybody's trying to be Bobby. Thank you.

KAUTH: Thank you. Next opponent.

JILL SCHROEDER: Senator Kauth and members of the Business and Labor Committee, I'm Jill Schroeder, J-i-l-l S-c-h-r-o-e-d-e-r, and I am the administrator of the Nebraska Workers' Compensation Court. The court is testifying in opposition to LB455, based on concerns as to certain aspects of the bill as it is currently written. The court is not

weighing in as to whether the information that's the focus of LB455 should be confidential, but rather asserts that if this legislation is enacted, it needs to align with the court's processes for fulfilling public records requests, and it should be tailored to the situations it seeks to address so it doesn't unduly limit the court's use of its data. I have discussed, as Senator Hallstrom said, I've discussed these concerns with him, and I have provided proposed amendments to him. There is a requirement under Section 48-144 that within 10 days after an employer has notice or knowledge of an injury that they must report to the Workers' Compensation Court. Years ago, the first report of injury was a specific piece of paper, and that is-- you'll receive 2 items. That is the document that looks like this that should be on top. That used to be a handwritten report that, that employers or insurers would mail to the court. Now, and particularly since 2019, the court has enhanced its system for receiving data. And you'll see the other version of the report that is labeled at the top, First Report of Alleged Occupational Injury or Illness. But if you read all the way to the bottom, you see that it's a disclaimer that explains that this is a collection of data, and this information on this report is extracted. The court does send a copy of this first report, the extract of data, to each injured worker, together with a letter providing contact information for the court. This is also a document that is loo--used for legal purposes to establish that an employer had notice of a claim. The court uses this data in other ways. There are 18 attorneys, 2 reacher-- researchers from the Department of Health and Human Services, 1 third-party administrator in the United States Office of Child Support Enforcement, who receive a weekly extract of first report data pursuant to public records requests. In fiscal year 2024, the court also received approximately 6,500 public records requests, the vast majority of which were for first report data. Those were from subsequent employers, prospective employers, or attorneys who were litigating cases in the court. At--

KAUTH: Can I-- I'm going to have you wrap up your testimony. I'm sure we'll have some questions.

JILL SCHROEDER: Thank you. The court also uses it for purposes of providing contact information to medical providers who might need it for billing purposes. I have a statutory duty to report to consulates if a citizen of a foreign country has a fatal injury at work in America. I have a statutory duty, so I do provide the first report to those entities for, for all of these reasons. First, we think the injured worker should not have to request a copy of the first report, which they would have to do under LB455. And because the language, as the bill is currently phrased, does not align with our public records

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statutes, we are asking that you at least revise this language. May I make one other very quick comment?

KAUTH: Thank you. Let, let me see if anyone has any questions. Thank you.

JILL SCHROEDER: OK.

KAUTH: Senator Raybould.

RAYBOULD: Thank you. Ms. Schroeder, could you please make your one additional comment?

JILL SCHROEDER: Thank you very much. I wanted to just say that in terms of the medical information, if you look at the version that is the current data extract, on the second page toward the bottom of the page, there is a category, nature of injury. And in that code there is a, there's a system for reporting. So those are numeric codes that are reported to the court and then translated into a description. So it would be something like the employer or insurer might report code 03, and that would be translated into an arm injury.

KAUTH: And since, since we don't allow props because we can't record it accurately, can you just say what that form was?

JILL SCHROEDER: Yes. There, there are 2 data fields.

KAUTH: No, no. Tell, tell me the name of the form.

JILL SCHROEDER: And the, the form is the-- is labeled as a-- the First Report of Alleged Occupational Injury or Illness. It is an extract of the data that is reported to the court.

KAUTH: Thank you very much.

JILL SCHROEDER: So the court believes that the, quote, first report is the collection of data--

KAUTH: OK.

JILL SCHROEDER: --and this document has been prepared solely for legal purposes.

KAUTH: Thank you. Are there any other questions? Senator McKinney.

McKINNEY: Thank you. Just curious. When this all gets filed, what information does the court give the employee?

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JILL SCHROEDER: So currently, the emp-- the court sends a letter with contact information to each injured worker and also sends this data extract that is one of the, one of the handouts that was given today. So currently, the employee does not have to request that. The letter from the court provides contact information for the court, lets them know about the court's website, which does have frequently asked questions, definitions, other information, and it provides a statement that they may be entitled to vocational rehabilitation benefits, and it also provides a statement of what we would call their options-- that if you have a dispute with your employer about this, you may request informal dispute resolution or you may file a petition with the court, those sorts of things.

McKINNEY: Do they-- are, are they provided information about lawyers?

JILL SCHROEDER: No. They are not.

McKINNEY: OK. Thank you.

KAUTH: Thank you, Senator McKinney.

JILL SCHROEDER: Any other questions?

KAUTH: Seeing none--

JILL SCHROEDER: OK.

KAUTH: Thank you very much--

JILL SCHROEDER: Thank you very much.

KAUTH: --for your testimony. Next opponent.

HOLLY MORRIS: My name is Holly Morris. That's H-o-l-l-y M-o-r-r-i-s. I am here on behalf of myself and my firm, Shasteen, Morris, and Ockander. One of the senators asked earlier, who stands to benefit from this bill passing? And I think the answer is resoundingly, insurance companies are the ones who would benefit from limiting first reports of injury access. The reason is there are a lot of people, as you've heard, who just don't know that an attorney-- they don't know an attorney, period. They may not know an attorney is really an option for a work comp case. I've heard from people who had no idea that when a surgery was denied that they could fight that denial, that they could, they could seek, seek further decision about that. So a lot of people think that the work-- that the adjuster from the workers' compensation company is their, is their advocate. Some of them

identify themselves as case workers or case managers, and there are things called nurse case managers, too. It gives people a sense that they are somehow protecting them, when, when really they are working on behalf of the workers' compensation insurance company. I've also heard from a handful of people over the years who actually had an employer who encouraged them to find an attorney because it's a small employer. They need every worker on the floor. And when your benefits are denied by the worker's compensation insurance carrier and you can't get the treatment you need to get back to work, the employer is affected, just like the injured worker-- well, maybe not quite to the extent the injured worker is who's suffering for the injury. But a lot of businesses would want their injured worker back to work, too. So I think the resounding answer is insurance companies, maybe self-insured employers. But the injured workers are getting mailers, much like-- and hopefully, I won't offend anyone, but I get a lot of political mail at certain times of, of the year, real estate mailers, all kinds of things we throw in the trash. And finally, attorneys are governed by ethics rules. Every advertisement that's mailed from my office says this is an advertisement on the envelope, which I don't-- you may have gotten some copies of mailers, but I don't think you probably received envelopes. They say this is an advertisement on the envelope. A lot of people don't have cell phones. Well, a lot of people don't have access to the Internet. They may have a cell phone. They may have limited access to the Internet. This is how we get our services and the ability to retain us known to people who may live in a rural area where there are few attorneys, or to people who just are not sophisticated enough to know that an attorney is an option for them. I see I'm running out of time. Any questions?

KAUTH: Thank you for your testimony. Any questions from the committee? I had one, and now I can't remember what it was. Sorry. I'll think of it and come and find you later. Thank you.

HOLLY MORRIS: Thank you.

KAUTH: Next opponent. Good afternoon.

RON BROWN: Good afternoon. My name is Ron Brown. I am a lawyer from Omaha. I have been practicing for 47 years. I was a judge of the Workers' Compensation Court for 18 years. I was the chief judge of the court for 4 years. I've done workers' compensation work for 45 of the 47 years I've been in practice. Last Friday, I got a letter responsive to a public records request from--

KAUTH: Excuse me.

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RON BROWN: --the Office of the Attorney General.

KAUTH: We can't use props.

RON BROWN: OK.

KAUTH: Thank you.

RON BROWN: In the, in the--

KAUTH: Oh. And you didn't spell your name. Can I have you spell?

RON BROWN: R-o-n B-r-o-w-n.

KAUTH: Thank you.

RON BROWN: --responsive to the request for a ruling from the Attorney General's Office whether a, a document I wanted was a public record. The Attorney General told the other party that the current law is that all Nebraska residents and other interested persons have the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda abstracts from those records, and obtain copies of records, and directed them to-- or advised them that they should turn over the record that I requested. It was a public record. The law favors openness. The law favors public disclosure. President Trump promised us on the federal level that he would have the most publicly transparent government in the history of the country. This bill is going the other way. It is closing the door to access to a public record. You've got a first report of public record that was provided to you by Jill Schroeder, the administrator for the court. The description of the injury is often less than a full sentence. There is no widespread disclosure of private medical records when a first report of injury is obtained. When a person is hurt on the job, the employer notifies the insurance company, their own HR department, and maybe, the insurance company then employs a lawyer. All that happens before the injured employee gets the letter from the Nebraska Workers' Compensation Court. If the people that say that they're in favor of workers' compensation equity really are in favor of workers' compensation equity, we want our citizens to be fully advised of their rights under the Workers' Compensation Act. The most important right, I think, provided by the Workers' Compensation Act is to advise that person you have the right to go to your primary care provider to obtain evaluation regarding your injury. That primary care doctor will then make a referral if, in their opinion, it's necessary, to a specialist who that primary care doctor has a long-time relationship with, they know who the best specialists in the area are,

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and they make the referral. The injured worker does not know that information 99% of the time. If any of you were hurt or your family member was hurt on the job, or you have a serious medical condition of any kind, you want to go to your primary care doctor and obtain a referral from your primary care doctor to the best specialist in the area that you can see. That is in the best interest of, of, of, of all Nebraskans.

KAUTH: Thank you for your testimony. Are there any questions? Seeing none, thank you for being here.

RON BROWN: Thank you.

KAUTH: Next opponent.

JOHN CORRIGAN: Good afternoon.

KAUTH: Hello.

JOHN CORRIGAN: Madam chair, members of the committee, my name is John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, and I'm here to testify in opposition to LB455 on behalf of the Nebraska AFL-CIO. AFL-CIO is the voice of working people in the state of Nebraska, so you've heard it from the voice of the Chamber of Commerce. We're here to tell you that we represent thousands of people on the front line of every profession covered by our collective bargaining groups, from people working in meatpacking to firefighters to cops to nurses and in the construction trades, you name it. They are our members, and their family members are our priority when it comes to seeking fairness in the, the workers' compensation process. And I can tell you, it's true. You might get a lot of pieces of mail if you get into-- if you have a work accident. You also get a lot of pieces of mail if you get into a car accident, because those police reports are public record. The, the insurance industry, in the work comp sense, they want you to stop that. The reason they want you to stop that is because they can reduce the number of claims. I want to reiterate that, you know, we talked about people not having access to legal advice. And Aaron Brown pointed out, a lot of times the attorney's job-- time is spent advising people their legal rights but not actually getting involved in the case. And that happens all the time. I grew up in a household where there was a lawyer, and I was just surrounded by people in the law. And I walked past the Workers' Compensation Court every day for 3 years when I was in law school as a law clerk. I had no idea what it was. There are things like whether or not you're entitled to a loss of earnings benefit analysis if you injured one foot and one hand, one

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hand. They don't teach you that in law school. They don't teach you that in high school. They don't teach you that anywhere. There's only a small handful of people that know that, and that is the people that are adjusting the claims who are going to give you a 3% impairment to the hand and a 3% impairment to the foot and a pat on the back and go find a job, in the plaintiff's bar in the worker's compensation context. And so, on behalf of the labor movement, I'm here to tell you, we'll tolerate pieces of mail that maybe somebody throws in the garbage because it equalizes the playing field when it comes to rights and benefits under the Workers' Compensation Act. I'm happy to answer any questions.

KAUTH: Thank you for your testimony. Are there any questions from the committee? Seeing none, thank you very much. Next opponent.

JENNIFER TURCO MEYER: Thank you.

KAUTH: Hello.

JENNIFER TURCO MEYER: It's me, again. Hello. Jennifer, J-e-n-n-i-f-e-r, Turco, T-u-r-c-o, no hyphen Meyer, M-e-y-e-r. I'm here today testifying on behalf of my clients who are injured workers. I'd like to challenge this committee to start with the presumption that this is actually an educational issue and a public education issue. If we all agree that workers are entitled to the benefits that our law gives them, imagine whether or not this bill will enhance the opportunities for people to get benefits or if it will restrict them. I am a new business owner. I opened my own law firm January 1. I used to work for an employer who sent out letters for work comp cases, and I've spent hours, literally hours a week for 10 years giving free legal advice to people who needed it. And that letter does invite ordinary people to call a lawyer because they're not afraid they're going to get charged. And they get calls back, which, if you've ever tried to call a lawyer, sometimes you don't get. As a new business owner, I've received countless solicitations because of my public records filing with the state of Nebraska. Insurance companies want to sell me insurance. People want to send me employment posters. And the, the really terrible part of this is none of that's regulated, whereas the information that are going to these clients, it-- it's regulated, and it's done in a way that's compliant with our ethical rules. Lastly, I just want to bring up the point that Ms. Schroeder gave you some information that attorneys' offices, current employers, and prospective employers are the ones requesting this information. If this is a privacy issue, I'd like you to ask yourself when we talk about the next bill, LB456, what privacy we're concerned about. I'd

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also like you to ask yourself why we're just limiting access to attorneys. If a prospective employer is reaching out to the Workers' Compensation Court to find out what injuries I've had, the reason they're doing that is to find out if I'm disabled, if I have made claims against my employer when I'm hurt, and the idea that we're only restricting this information for this very small category of individuals seeking it does not serve any significant privacy interests. It serves business interests. And all of the small business owners that have appeared in front of you today that are attorneys are small business owners, too. So if you're going to be pro business, it's, it's not-- it's disappointing that a small business using materials to market their services to people who need it would be something you'd want to restrict in favor of big business. Thank you.

KAUTH: Thank you for your testimony. Are there any questions? Seeing none, thank you very much. Next opponent.

LEANN TINSLEY: Can I read from my phone?

KAUTH: Sure.

LEANN TINSLEY: OK. [INAUDIBLE]. My name is LeAnn Tinsley. It's L-e-A-n-n, last name Tinsley, T-i-n-s-l-e-y. I come here on behalf of myself. And I'm a registered nurse in the state of Nebraska, and I no longer practice as a nurse. I am an injured worker who is still in the middle of a case. I don't think I see any other people who might be injured workers here. I was injured-- what is it-- in the scope of and in the cour-- in the course of employment. And I remember when I was injured, I had no idea my rights. I did not have any time built up from earlier, so I didn't have any wages. I didn't have medical care that I knew of. I knew I had to go to a doctor. I was working at the hospital here in town, and I was confused. I didn't know what was going on. I'm young. I don't know anybody. I don't know anybody else who has been an injured worker before. Nobody. No-- nobody who has, has been injured, been through medical care, been through a, a lawsuit. I, I didn't know anything. But I do know that when I went to employee health, they said, you're going to get a lot of different-- it was either employee health or, or, or, or it was the mailing that came home from the adjuster. And it said to me, you're going to get a lot of different mailings from lawyers, and just throw them out. You're not gonna need those. So, I did. You know, I was naive. I didn't know anything. Over the next couple of months, my injury got a little bit better, but got worse. I ended up herniated discs into my spinal cord at C4, C5, and C6 levels. I rapidly began paralyzing from the legs up. I lost feeling and sensation in my foot and my leg, and

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beginning in my torso. I was losing movement. I couldn't go up the stairs. And all throughout this time, I asked questions of my employer. I asked and questioned-- questions of HR, of my manager, of employee health, of the adjuster, of gosh, my doctor, of their staff, my physical therapist, my doctor. I asked everybody. Do I get paid? Can I do this? Can I do that? And what did I get? I got no answers. None. Zero. None. We do not know our rights. Just like the speaker before me said, the attorney said, we don't know our rights. And we are 1 up against 100-- an army of 100. Entire companies, insurance companies with legal teams and adjusting teams with doctors. They have machine learning and databases and data scientists and algorithms. They know more about me and my case than I'll ever know. And all we want is to get better. So if you remove allowing lawyers to be able to send things to people so that they know that they have someone they could maybe reach out to, who can maybe direct them. If shit's going down the tube on their case, on their case and they need help, then you've just tied their hands completely, and their hands were already tied to begin with. They were already tied to begin with, because everybody at the employer is on their side and you don't know that.

KAUTH: I'm going to need you to wrap up your testimony.

LEANN TINSLEY: So most of my mailings have not been through the mail. It's been through Mark Zuckerberg's Facebook and other things. Please protect workers. Please educate them and fill my mailbox.

KAUTH: Thank you. Wait, wait, wait, wait, wait. Hold, hold on.

LEANN TINSLEY: Do you have any questions?

KAUTH: There we go. Are there any questions from the committee?

LEANN TINSLEY: You can ask anything. If you have questions, I won't--

KAUTH: Senator McKinney.

McKINNEY: Thank you. And thank you for sharing your story. Did your employer ever, like, offer you any information about finding a lawyer or anything?

LEANN TINSLEY: I don't remember.

McKINNEY: OK. All right. Thank you.

LEANN TINSLEY: Thanks.

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KAUTH: Thank you, Senator McKinney. Thank you very much for your testimony. Next opponent. Seeing none, are there any who wish to testify in the neutral capacity? And Senator Hallstrom, while you are coming up to close, for the record, there were 3 proponent- proponents and 2 opponents.

HALLSTROM: Chairman Kauth, members of the committee, thank you for your attention and patience this afternoon. Just going to touch on a few things. The first one is I've never had the pleasure to meet Mr. Brown's wife, but if my wife is watching, I think she's equally kind and beautiful as his wife is. Seriously, just a couple things. Number one is with regard to the employee choice of physician and the opportunity-- there's a thing called a Form 50, which is required to be provided when there's a workplace injury involved. Years ago, there was quite a battle over the employer versus the employee choice of physician. The resolution, I think, probably as far back as 1995, perhaps, was that the compromise was that the Form 50, in essence, was created, would be provided. And if it's not provided with regard to its contents that say that the injured worker has the right to utilize their family physician, that then they are free to go to any physician that they want to. And that was the grand compromise back in 1995, if I remember the year correctly, along with a number of other things. As I started out my testimony, I believe that we will continue to work with the Workers' Compensation Court administrator to get amendments worked out to address some of the concerns. I would be remiss not to express my surprise and disappointment that they appeared in an opposition position today. As I indicated in response to Mr. Sorrentino-- Senator Sorrentino-- excuse me-- question, this has been around for 20-some years. It's probably been introduced at least 2 or 3 times since the court changed from the first injury report to what the administrator described as being extracted data. And as a result, I don't recall either in the last 2 or 3 times, or any time before that that the Workers' Compensation Court appeared in opposition to the bill. But nonetheless, we will work with the administrator. We will get those amendments to the committee in advance of any priority designation, priority bill designation deadlines, and I would be happy to address any questions that the committee members might have.

KAUTH: Thank you, Senator Hallstrom. Senator Sorrentino.

SORRENTINO: Thank you, Chairwoman Kauth. Just one point of clarification. LB45 [SIC] would allow the employee to waive the confidentiality to make the report public, correct?

HALLSTROM: Yes.

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SORRENTINO: Thank you.

KAUTH: Any further questions? Seeing none, that closes our hearing on--

HALLSTROM: Thank you.

KAUTH: LB455. And we will open the hearing on LB456. We'll wait until Senator Hallstrom arrives.

SORRENTINO: He's taking forever.

KAUTH: And there he is.

SORRENTINO: What took him so long here?

KAUTH: Just--

SORRENTINO: [INAUDIBLE] officer.

KAUTH: --hand them to Julie.

HALLSTROM: Thank you, Julie.

SORRENTINO: I don't know where they went.

KAUTH: Good afternoon, Senator Hallstrom.

HALLSTROM: Thank you, Chairman Kauth and members of the Business and Labor Committee. My name, again, is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, state senator representing Legislative District 1, here today to introduce LB456. LB456-- yes-- excuse me-- amends Neb. Rev. Stat. 48-146.02 to provide that an employee filing a claim for workers' compensation benefits must provide the employer, compensation insurer, risk management pool, or self-insurer, upon request, a patient waiver entitling the employer, compensation insurer, or risk management pool or self-insurer to obtain all of the employee's previous hospital and medical records. I'll go into more detail in just a moment on this, but it's a little bit of a misnomer to say that it's required, in that if the patient chooses not to provide this information, then we simply suspend the ability to get penalties, attorney fees, and interest for failure to timely investigate or to pay benefits in a timely manner. Under current law, that statute, Neb. Rev. Stat. 48-146.02 imposes an obligation upon an employer, compensation insurer, risk management pool, or self-insurer to promptly investigate workers' compensation claims filed by employees.

Failure to promptly investigate workers' compensation claims can lead to the revocation of an insurance license or self-insured status. Accordingly, employers and their insurance carriers should be provided with the means to investigate claims in a timely fashion. LB456 is designed to provide employers and their insurance companies with the means to timely investigate claims for workers' compensation benefits, requiring a patient waiver to be provided upon request by an employee filing a claim for workers' compensation benefits will allow the employer or its representative to review an employee's prior hospital and medical records, enabling them to determine whether a claim is compensable or, in the alternative, whether there is a possible defense for a preexisting condition. Presently, the employer or their representative has limited means to obtain an employee's previous medical and hospital records in the absence of a consent or release and must generally 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 the state of Nebraska. The legislation provides protection for sensitive medical records by providing that records relating to an employee's previous treatment for sexual abuse, human immunodeficiency virus, reproductive health conditions, mental health conditions, unless the employee is seeking benefits for mental health injuries or alcohol or controlled substance abuse would not be subject to disclosure pursuant to the patient waiver. The consequences under LB456 for an employee who does not provide the employer or its insurance carrier with a patient waiver upon request is that the 30-day period within which to pay benefits is tolled, eliminating the potential risk of penalties under Neb. Rev. Stat. Section 48-125. LB456 would reduce costs associated with workers' compensation litigation by minimizing the need to obtain subpoenas and, in the case of an out-of-state medical provider, minimize the need to file lawsuits in other jurisdictions to obtain proper subpoenas from that state. LB456 will serve to expedite the claims investigation process and enable employers and their insurance carriers to make timely and informed decisions regarding compensability of a claim prior to commencement of litigation, or in the alternative, not to be subject to penalties for failure to do so. The benefits of this legislation should accrue equally to both employers and employees. And I would respectfully request that LB456 be advanced to General File, and be happy to address any questions of the committee.

KAUTH: Thank you for your testimony. Any questions from the committee? Senator Raybould.

RAYBOULD: Yes. Thank you, Senator Hallstrom. I what-- I'm not quite clear on what this means, but in your second to last page, you say

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the, the employee that does not provide the waiver is that the 30-day period within which to pay benefits is tolled. Is-- are you referencing like, money is withheld?

HALLSTROM: Yeah. Basically under, under the other statute that I referenced, there's a bunch of-- a number of obligations that the workers-- the employer or its insurance carrier or self-insured employer has to undertake. And one of them is to investigate the claim and make decisions within a 30-day period, is one of the elements. And if the, if the employer or its insurance carrier doesn't have sufficient information upon which to make a decision within that 30-day time frame, there is a potential at the back end of the proceedings that if they did not make the right decision or were unreasonable in, in making the decision that they made, that they could be subjected to penalties, interest, and attorney fees. And so what this is basically saying is-- you know, currently, I think what the employer is faced with is I either pay the benefits and if I shouldn't have paid them upon getting additional information that leads me to believe or actually results through litigation that I wasn't responsible for paying those benefits, the employer probably has a very limited opportunity to recover those benefits once they're paid out. On the other hand, if they don't pay them without having adequate information, then they could be subject to those penalties under 48-125.

RAYBOULD: OK. Thank you.

HALLSTROM: Thank you.

KAUTH: Thank you, Senator Raybould. Senator Sorrentino? No? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Hallstrom. Why 30 days for the waiver?

HALLSTROM: Well, it's not a 30-day waiver. It's provide the waiver, and if you don't provide the waiver-- because the employer or the insurance carrier has a 30-day time frame within which to make that initial determination. So if the, if the waiver isn't provided within that time frame, then they, they would not be subject to the penalties for failure to make the right or the wrong decision.

McKINNEY: OK. So the previous bill kind of dealt with a public record of the, the claim and lawyers being able to see it. And then this one makes me feel like they definitely need some legal representation just

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because of process, especially, especially if this was to pass.
Wouldn't you agree?

HALLSTROM: I don't know whether I agree. A lot of cases, one of the issues that we always deal with is if you have representation when you don't need it and you lose some of your benefits because of representation when you didn't need it, then, then you've lost some of your benefits unnecessarily.

McKINNEY: I guess, how do you know if you don't need it or if you-- I, I think that could go both ways, though, right?

HALLSTROM: It'd be potentially good, Senator. And, and I assume we could look at whether or not there's other mechanisms with regard to the last bill, if, if there's some other-- one of the last witnesses talked about education. And if there's more education that can be provided to make them more aware of, of the, the potential need for representation, that's better than having them get a slew of solicitations in my mind.

McKINNEY: OK. And last question. How do you protect, I guess, the employee from undue harm of like, this information being negatively used against them?

HALLSTROM: Well, I don't know what you mean by negatively used against them. If there's information in the record, for example, that reflects a preexisting condition, that is something that may very well be relevant to the employee's right to recovery. So that, that may be you may view that as being negatively used against them, but it's, it's appropriate under the circumstances that if it gives rise to the employer potentially not being responsible for all of the injury or any of the injury, then it's, it's certainly relevant. And the, the issue that I'm sure you're going to hear is that, you know, you can, you can get that through discovery. And while that's true, what we're looking is at the front end of the, of the process that if you have a 30 day period within which you could possibly face penalties, interest, and attorney fees for jumping the wrong direction or making the wrong decision, that's why it's important for that purpose to have that early on, or if it's not provided early on at the discretion of the, of the injured worker, at least the employer is not going to be subject to those penalties.

McKINNEY: All right. Thank you.

HALLSTROM: Thank you.

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KAUTH: Thank you, Senator McKinney. Other questions? I actually have one. So I, I have concerns with the, the word all the employee's previous hospital and medical records. Doesn't that mean they'll scrape anything that that person has ever had happen or has experienced, even if-- if you break your leg on the job, I don't think they need information about depression or eating disorders or, you know, cancer treatments. I just-- I'm really concerned that that would open up a whole can of worms.

HALLSTROM: Yeah. With, with the exception of those items that I referred to in my testimony as sensitive, regarding sexual abuse, substance disorders and so forth, the answer would, the answer would be yes. Those other records would be, would be available. Certainly, we can look at that if that's a concern of the, of the chairman, if we need to narrow the, the scope of that.

KAUTH: OK. Thank you. OK. No further questions.

HALLSTROM: OK Thank you.

KAUTH: Will you stay to close?

HALLSTROM: Yes.

KAUTH: OK. Thank you. First proponent. Go ahead.

DALLAS JONES: Good afternoon, again. Dallas Jones, D-a-l-l-a-s J-o-n-e-s, appearing in support of LB456 on behalf of Nebraskans for Workers' Compensation Equity and Fairness. Senator Hallstrom pretty much covered it, it really well. What I want to do is tell you a very quick story of how this oftentimes works and why this bill is necessary to fix the problem. As he explained, employers' insurers have the obligation to quickly investigate whether an injury causes certain-- or an accident causes certain injuries. The way that they do that is, of course, asking the employee all the questions, asking the employer what happened, but it also involves very heavy medical information. Workers' compensation, you probably figured out if you haven't been connected with it, is, is a very medical-heavy arena, and that's because we're talking about injuries. The reality is, as I mentioned in previous discussions of other bills, I've been doing this a very long time. The reality is, unfortunately, there are times when employees do not fully disclose what their medical history is that's relevant to whether this particular injury was caused by the accident. I will agree with you. I think that is the min-- minority situation. I don't-- I'm not here to assert that employees over and over and over

again are just simply not telling the truth. But I am telling you that it is frequent enough that I'm kept very, very busy. And the most common defense that I have as a defense lawyer is that the employee says they hurt themselves and hurt this particular body part. They deny that they've ever had problems with that before. It's in litigation. I then subpoena all the records, and guess what? It simply wasn't true. And then the question is, OK, well, if you have this history of treatment and injury for your whatever body part, is it really true that the accident that you claimed caused you to have more problems with it? And sometimes the answer is they're able to prove that it was an aggravation, but sometimes they're not. This is not putting onerous obligations on employees. This is simply let-- letting the-- ensuring that there's release so that the adjusters can do their job. Don't be fooled into assuming that every time they're doing their job is to try to find a defense, because the reality is, that's simply not true. What this does is it enables the adjuster to do their job on a timely basis and confirm that, in fact, what the employee says is correct and pay the benefits. Yeah, if the employee is untruthful, they won't. But as I said, most of the time, I think the employees are telling the truth. And it's important that they get paid benefits timely when they should. Otherwise, the adjuster has no information to do her or his job. And you have to-- she has to trust, he has to trust the employee is saying the right thing and either take the risk, I'm going to deny benefits because I don't have information and be subject to a penalty if it's later determined I should have paid benefits, or I'm going to pay benefits that I shouldn't have. Thank you.

KAUTH: Thank you for your testimony. Are there any questions? Seeing none, thank you.

DALLAS JONES: Thank you.

KAUTH: Are you off the hook for the rest of the day?

RAYBOULD: One more.

KAUTH: Mr. McIntosh.

RYAN MCINTOSH: Chair Kauth, members of the committee, my name is Ryan Macintosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraskans Workers' Compensation Equity and Fairness and the National Federation of Independent Business. The primary purpose of me testifying in addition, without having a whole lot else to add, is that I'm also testifying on behalf of the Nebraska Chamber of Commerce and Industry, the Lincoln Chamber of Commerce, the

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Greater Omaha Chamber of Commerce, and the Nebraska Grocery Industry Association. Unfortunately, those individuals could not be here today, so it's my pleasure to read them into the record in support of this. The only thing that I'll add, and I think, Senator Kauth, Mr. Jones cleared this up, but those records do become available once litigation commences. Unfortunately, that's just the system that we live in and there's no way around it. Really, this is just about making things timely on the front end, so those employees can either get their benefits if they're entitled to them. So with that, I will conclude my testimony and I'd be happy to answer any questions.

KAUTH: Thank you very much. Are there any questions? Seeing none--

RYAN McINTOSH: Thank you.

KAUTH: --enjoy your day. Next proponent. First opponent.

TODD BENNETT: Good afternoon, again. Todd Bennett, B-e-n-n-e-t-t, on behalf of the Nebraska Association of Trial Attorneys. Halfway through this, I'm going to be for myself and, and kind of disband from the NATA brethren, and I'll tell you here in a minute. But there's 3 things. This bill is unnecessary, and we oppose it as unnecessary, but oppose it as written. But I also have some recommendations. Because prior to the legislative session, I reached out to Dallas Jones, who's the head of-- that just spoke, because there is a problem that's not being addressed by this bill. But where it's unnecessary is-- what people don't understand is HIPAA doesn't apply to work comp insurance carriers, administration of the court. It doesn't apply at all. It's an exception. The information is readily available. Nebraska's own statute, 4820 [SIC], specifically states there's no privilege to information. You request it, you pay the fee, and the requester gets that. If the provider refuses, then you can file a motion. And actually, if they refuse to provide the documents, then you can file a motion where they forfeit their actual medical charges. I've done that a few times, and trust me, there's more ways to skin a cat, and they start producing. The problem with this is this form. The providers are not a part of this process. I can tell you, everybody in the work comp arena, whether you're a plaintiff, defendant, insurance, we're doing 8-12 different releases for different providers. They have-- they go by their own rules, their own policies. I can't tell you how many fact checks I get. Oh, you didn't follow through, you missed this comment, or you didn't check this box. We have a different form. You need to do it this way. That's the, the biggest problem in, in this arena. But as far as what they're, they're-- what they're trying to address as far as penalties, it's called a reasonable controversy. If you have prior

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records that someone had lied about and that's the reason, I can promise you I've never had one where, where there was penalties awarded for failure to acknowledge a prior injury. And I can't imagine anybody in this room has. But it's called a reasonable controversy and there's many decisions addressed in there. The second one I'm going to jump to real quick, is this release is a blanket release. There's no timetable. There's no method when is it offered, when is it accepted, when it's complied with. And it's a blanket release of what's the time period? Is it good for the duration of the employment? But there's also an immunity clause. I can tell you how many people get records: an adjustor, a HR person, a supervisor, a safety director, the company nurse, a case manager, a supervisor, a lead person, and that information goes within the employer. There's no way that should be immune by giving it to other employees that are not entitled to that information. But the solution and recommendation is if they need a form, it should-- it be directed by the court, but the provider should be part of the process, where they're bound by the release. And if they don't follow the release, you've got the motion mechanism to forfeit the billing charges. That's how you get around it. Now everybody has a problem with how to stay providers. That's a misnomer, in my opinion, because it's just the nature of the beast. But an employee should get a free copy of everything they obtain with the release. The second part is you have what they call a medical list audits. You should know who that employer is sending the release to, what records they reviewed, what records they obtained, who they sent it to because there's many times they sent it to non-medical people. The employee should know that. And then the last one--

KAUTH: Mr. Bennett.

TODD BENNETT: What's the duration of this release? It's got to be cut off. It's got to be a timetable.

KAUTH: Thank you.

TODD BENNETT: I'd be happy to work with him. I, I reached out to him, but I'd like to work with--

KAUTH: Let's see if anyone has any questions.

TODD BENNETT: --Bob and get him his 20-year release.

KAUTH: Thank you very much. Are there any questions from the committee?

TODD BENNETT: Very good. Thank you.

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KAUTH: See none. Thank you for your testimony. Next opponent. Hello.

BROCK WURL: Good afternoon. Chairwoman Kauth, committee, my name is Brock Wurl, B-r-o-c-k W-u-r-l. I will try to keep this brief. My, my testimony is similar to what Mr. Bennett just testified to, with a, a, a few additions. I believe this is a burden shift. The, the burden right now, as Mr. Bennett testified to, is currently on the medical providers. And what this is doing is this is a shift to put the burden onto the employee to, to sign a form that they don't even know exists. So, as, as one testifier testified to on our last bill, the employee-- the employees oftentimes don't know what's going on in the worker's' compensation realm. They get hurt. They're being told so many things. They're trying to get better. They don't know what's going on. And the way this is written is if they don't provide this release, releasing all of their, all of their medical information, they may not get paid. The one hammer that the Workin-saw-- Worker's Compensation Court has to ensure that benefits get paid timely is that 30-day penalties window laid out in 48-125. That-- this, this, LB456 takes that out. It takes that hammer out. So if an employer does not provide the employee or inform the employee of this form, the employee doesn't sign the form, when does that, when does that employer start to have pay benefits? If there's no penalty for them to delay paying benefits, what's their, what's their incentive to do that in a timely manner to benefit the employee? In many cases, there's not. Now, you would have some small employers that, that certainly would because they take care of their people. I'm not chastising all employers, by any means. Please don't take it that way. But it does create the situation where employees can be taken advantage of. Mr. Jones had also testified earlier that workers' compensation is a give and a take. I think he, he had talked about that as a compromise, a give and a take. This bill does-- there's no give to the employee. This is only a take. With that, I'll submit to any questions anyone has.

KAUTH: Thank you very much. Are there any questions? Seeing none, thank you for your testimony.

BROCK WURL: Thank you.

KAUTH: Next opponent.

JOHN CORRIGAN: Good evening, members of the--

KAUTH: Good evening.

JOHN CORRIGAN: --Business and Labor Committee, Madam Chair. John Corrigan, C-o-r-r-i-g-a-n, on behalf of the Nebraska AFL-CIO in opposition to LB456. And we do have concerns regarding just simply the imposition of an additional invasion of privacy. The vast majority of work comp cases don't involve disputes, but work comp injuries, and now we'll have this Form 50. Maybe that's given to the employee. Maybe it's not. And a lot of times, I-- that's a matter of dispute. Employers say, well, you didn't sign the Form 50, and the employee says, they never gave me one. Now we have another area of dispute, which doesn't necessarily need to be created by law. And that is, did you give me the form or not? And, and then the employee is given a choice: Do I sign this form and they can read my medical records about everything-- every time I've ever had a, a, a, you know, medical treatment, just so I can get this problem fixed or do I not what to really tell them about that? And there may be reasons why they don't want to release that information. But if you want to seek workers' compensation benefits, if there's a dispute and somebody files a lawsuit, they're going to get everything anyway. So we just see this as being an unnecessary move to disclose information that is normally not disputed over and, and then, creating another area to fight about, as to whether the release was actually given. And so with that, we'd ask you to oppose LB-- or to, to not take any action on LB456, and I'm happy to answer any questions if you have any.

KAUTH: Thank you for your testimony. Are there any questions? I have one. Hold on. Sorry. You said that if there's a dispute, there'll be a lawsuit and they'll get everything anyway. Will they get all of that individual's medical records or only medical records pertaining to that injury?

JOHN CORRIGAN: Generally speaking, they're gonna get everything.

KAUTH: Everything.

JOHN CORRIGAN: Now, if-- you know, the-- because the question is going to be asked in the interrogatories. Oh, I need a list of every doctor you've seen in the last 15 or 20 years or, you know, where did you go to high school? Name the doctors you've seen. And then, people have to provide that information, and they'll send the subpoenas out, and they'll get that. And so, you know, when somebody comes into our office and we know we're going to file a lawsuit because of the nature of the dispute, it's going to be something that will probably go in front of a judge or at least have to be litigated, we, we tell people. Your-- all of your medical records are going to be fair game, because you are saying, my physical structure, my body has been impacted by

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this work injury. And so, they're going to look to see whether there's any previous treatment, mental health treatment, all, all of that's going to be fair game. So why would we start with the, the run-of-the-mill, you know, slip and fall at a meatpacking plant, go get your ankle looked at, get it X-rayed, back to work in a week. And now the employer has access to all of the employee's medical records when, really, there wasn't any dispute. But that's what's going to happen, and it's, it's just not necessary. And so with that, we'd ask you not to move the bill.

KAUTH: Thank you very much. Next opponent. Seeing none, are there any who wish to testify in the neutral? And while Senator Hallstrom makes his way back up, for the record, there were 2 proponents and 2 opponents.

HALLSTROM: Chairman Kauth, members of the committee. Again, thank you for your patience and attention past the 5:00 witching hour. I do appreciate, particularly Mr. Bennett coming up here and indicating that he's made some contact with some of the parties that are interested in the legislation, and we certainly will pledge to work with them quickly to see if we can address some of the concerns that were expressed. I think we lose sight of where the ball is when we talk about the discovery that's, that's obviously allowed through the, the course of litigation once a case is filed. I'm focusing on the front end of this, where the employer or the self-insured or the insurance carrier is put in the position of either having to pay or not pay without sufficient information to make that decision. I would not disagree with the one witness that indicated that if you're-- if you have failed to disclose a prior injury, this certainly is probably not going to be grounds for a penalty under the reasonable controversy type of situation. But again, the other side of the coin is when I'm making a decision as an insurer, an employer or self-insured party, that when I'm making that decision upfront, once I pay that out, those benefits probably are not likely to come back to the employer if they do find out later, because of the records that were given at a later course in the-- or stage of the proceedings that they, in fact, shouldn't have and weren't required to make the payments. So once they're out-of-pocket, they're not coming back. This simply says if you don't give that information to us, we have the luxury of having that penalty provision suspended or tolled. And simply put, that's what we're, what we're looking for here.

KAUTH: Thank you very much. Are there any questions? Seeing none--

HALLSTROM: Thank you.

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KAUTH: --that conclude LB456, and move on to LB313. Good evening, Senator Ibach.

IBACH: Good afternoon, Chairwoman Kauth and fellow members of the Business and Labor Committee. My name is Teresa Ibach, T-e-r-e-s-a I-b-a-c-h, and I'm here today to introduce LB3-- LB313 for your consideration. LB313 updates the distribution of proceeds for judgments or settlements against third party-- against third parties in workers' compen-- compensation subrogation cases. A workers' compensation subrogation claim is a legal action where an employer, a workers' compensation insurance carrier, or an injured employee seeks recovery from a third party that caused the workplace injury. For example, this could occur when an employee is injured in a work related car accident that is caused by a negligent third party. LB313 changes the awarding of damages from a fair and equitable distribution of proceeds to a statutory model of one-third to the employee or their personal representative, then the, then the balance remaining to the employer or workers' compensation insurer for all compensation payments, and thereafter to the employee or his or her personal representative. I'm sorry if that was confusing, but that's-- the goal is to divide it more equally. I'm providing you AM582, which helps clean up the statutes. AM582 accomplishes the following: Page 1, line 17-- I think she's handing out. Excuse me. Page 1, line 17 makes clear that attorney's fees are included in the expenses of making such recovery and subrogation claims. This does not change exist-- existing Nebraska precedent. Page 2, line 3 clarifies that uninsured and underinsured motorist insurers providing coverage to injured employees are included as a third party that may be liable in the subrogation claim. Page 2 lines 17 and 25 adds a provision for out-of-court settlements where no subrogation action is actually pending to allow a district court, which would otherwise have dis-- jurisdiction, to order the distribution. And page 3, lines 9-22 provides a statutory framework for the advance payment to the credited-- to be credited to the employer or workers' compensation insurer. Once exhausted, the employer or workers' compensation employer would resume those payments. This provision further provides a method to dispute whether an advance payment is exhausted by making application to the Nebraska Workers' Compensation Court. I believe that LB313 and AM582 provide certainty to all parties involved in these claims, but testifiers following me will be better equipped to address why these changes are needed. Thank you for your time, and I'd respectfully ask that you defer any questions to those who are following me, because I know they can explain it better than I can.

KAUTH: Thank you, Senator Ibach. Will you say to close?

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IBACH: Yes. For sure.

KAUTH: Thank you very much. First proponent. Good evening, Mr. Jones.

DALLAS JONES: Good evening. Dallas Jones, D-a-l-l-a-s J-o-n-e-s, testifying in support of LB313 on behalf of NWCEF. I want to focus right on the core of this and what we're really talking about. This has-- this whole arena where the employee is injured while doing his or her job by a third party and that third party has some liability to the employer for damages, the question has been, for now, a very long time, how do we distribute that? What's the right way to do that between the employer and the employee? Back in '97, the Legislature decided, let's take a stab at this, and we adopted that fair and equitable distribution language. Since then, I will submit to you it's not worked particularly well. And the reason is you tell me what fair and equitable means to you, and I'll tell you what it means to me, and it's going to be probably different than what it means to anybody else you ask the question. And the, and the decisions bear that out, decisions meaning from district judges who are charged with deciding this, as well as the Supreme Court. I-- what this does is it really causes significant disputes. And the, the folks behind me and I end up spending lots of time arguing about this, which is probably not the best for the system. Maybe if I were self-serving, I would tell you that's a great thing. It's good for business, but it's not for my clients and the members of NWCEF. So the point of this bill is really to bring some sanity, some clarity, and to reduce the disputes that exist, instead of having an undefined term that is, is constantly litigated before district judges, as well as the Supreme Court. I've been there 3 times, the Supreme Court, on this very language. Instead of that, what it proposes is OK, why not this: The employee makes a recovery, or perhaps the employer makes the recovery, because it has that-- they have equal rights to do that, to bring an action against the party that injured the employee. The attorney's fees, cost of recovery are first paid out of that to whoever it was that was doing the work. Fair enough. What happens to the remainder? What happens to the remainder is one-third of that goes to the employee. Then the employer, to the extent there's enough money in the pot, is reimbursed for what it's paid in workers' compensation benefits. And what if there's more left over, because sometimes there is. What that does is it serves as a credit. Basically, the employer suspends payment of ongoing benefits if there's an obligation to do that. Sometimes there is, sometimes there isn't-- until the money has been spent by the employee, because they've been advance paid for all the indemnity and the medical. When it's gone, the employer resumes payment of benefits, just as if nothing had happened. The point of that is to try to bring

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some clarity. Have a formula that everybody understands. I suspect you may hear from some folks saying, well, that's going to hit the employee harder than the employer. I would dispute that. I don't think anybody knows. And that's not what's behind this bill is to try to, to benefit one side or the other.

KAUTH: OK. Thank you for your testimony. Are there any questions from the committee? Senator Sorrentino.

SORRENTINO: Chairwoman Kauth, thank you. Just to be clear, you're testifying in support of not only LB313, but the amendment, AM582?

DALLAS JONES: That's correct. I've not seen the amendment, but I, I was in the discussions that led up to it, so I'm presuming it reads consistent with what I just said in my testimony.

SORRENTINO: OK. Thanks.

KAUTH: Any further questions? Seeing none, thank you for your testimony.

DALLAS JONES: Thank you. No more this evening.

KAUTH: Next proponent.

RYAN MCINTOSH: Good evening, Chair Kauth, members of the Business and Labor Committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today, the final time, as a registered lobbyist on behalf of the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business. And I'm also testifying on behalf of the Nebraska Chamber of Commerce and Industry, the Lincoln Chamber of Commerce, the Greater Omaha Chamber of Commerce, and the Nebraska Grocery Industry Association. Senator Ibach and Mr. Jones did a very nice job of summarizing how this works. I'll hopefully add a little bit more background. So under long-standing Nebraska law, employers or their insurer has statutory right for subrogation for recovery by an employee against a third-party tortfeasor for his or her work-related injuries. This current standard of fair and equitable has been around since 1994. And I would-- I've gone back and reviewed the legislative history, and including the committee transcript. I would submit to you that, while well-intentioned, this standard has not resolved any of the issues that led to LB594 in 1994 and has only led to confusion and inconsistency. As Mr. Jones stated, there is no set rule as to what constitutes a fair and equitable distribution. The Nebraska Supreme Court has specifically rejected a claim that an employee must be made

whole before a consideration may be given to a workers' compensation segregation interest. This is because employers or workers' compensation insurers are rightly entitled to reimbursement or credit for payments required under the Nebraska Worker's Compensation Act. And as such, the Nebraska Supreme Court has stated that Section 48-118 includes language providing for fair and equitable distribution. It does not, however, adopt the "made whole" doctrine, nor does it specify any rule for determining how to fairly and equitably distribute the settlement. Instead, the language is plain. The court shall order a fair and equitable distribution. That's from *Turco v. Schuning*. The citation is in my written testimony they handed out to you. As you can imagine, this has produced wildly different results from judge to judge and county to county. LB313 provides a statutory formula for distribution that provides certainty for all parties involved, not just employers. As introduced, Section 1 merely provides clarity for-- that work-- that workers' compensation insurers may also seek recovery. This is nothing new. It's, in my mind, just a clean up for what's existed in the-- for a very long time. LB582 is the result of, following the introduction of this bill, we did consult with national work comp litigators who provided some feedback, and the result of that is LB-- or AM582 that Senator Ibach described for you. I'll wrap up. I will be fascinated here if we, if we do have opponents, assuming we do with those in the room, I'll be fascinated to hear what they had to say about why this would be bad for employees. With that, I would urge the committee to adopt AM582 and advance LB313. Thank you.

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

RYAN McINTOSH: Thank you.

KAUTH: Next proponent. If there are no more proponents, first opponent.

TODD BENNETT: Good afternoon, again. Once again, Todd Bennett, on behalf of the Nebraska Association of Trial Attorneys. And I'd like to address a few things that were said by the senator and the proponents. The Bacon decision of the Nebraska Supreme Court specifically said an employer subrogation has never been modified or diminished by a fair and equitable remedy. The second thing that they addressed, adding an amendment to include uninsured and underinsured motorist coverage, that is a complete violation and contrary to what Nebraska and 8th Circuit federal law, and the reason is, is because those are contract actions. A third party is not based on a contract that somebody gets a

car insurance policy with a company. That's totally irrelevant and off limits. To include that as a third party, you're redefining what a third party is. And to say that the fair and equitable-- it's funny how many decisions: Thomas, Turner, Nakhuda, Kamin, Kramer, Schuler, say fair and equitable is fair and reasonable. But I find it interesting that the Nebraska work comp equity and fairness want to remove the words of fairness and equity. All they want to do is call it a formula. Let's go to the formula. This-- what they did is plagiarize it out of Wisconsin. And anybody who does any kind of Google search, you talk to anybody in Wisconsin, the access to attorneys who want to pursue a PI case because they might have a work comp subra, the work comp, it's a race to the court. Because when a PI settles first, the comp is wiped out because it's just a straight credit. And to jump to the future credit, that is my biggest peeve. Where does it define what a future credit-- who gets to decide? When do they get to say what that obligation is? That section of the statute clearly violates Nakhuda v. Waspi Trucking, which was decided by Nebraska. All these decisions from 1963, this future credit should be boiled down to a present value, because the employer gets to suspend and discharge a work comp obligation into the future. They owe a percentage of the fee of recovery to the person who procures that judgment. They confer that benefit. What this does, there's no incentive to settle a case or reach an agreement, because they'll just say forget it. No, we'll go to the formula. And who gets to decide the future credit? What is, what is the future credit? What's it based on? All the decisions talk about indemnity benefits payable in the future. Specifically, this just means let's just do what Wisconsin does. Offset medical care? That goes directly against the public policy of the Work Comp Court, which is designed to say, don't shift the burden to Medicaid, Medicare, and the taxpayer. And the, the discretion of this, there's no discretion. The way this is set up, the-- anybody can file a hearing in front of the district court judge, where they weigh not only the liability damages and the ability of a third party to pay, they're the ones determining the facts of each case, especially when there's not enough money to go around. That's the discretion of a district judge. This, throw it out. They removed fair and equitable and fair and reasonable, because they just want the formula, because it benefits stakeholders who benefit with a historic profit. That's simple.

KAUTH: Can I have you wrap up your testimony?

TODD BENNETT: You bet. And there's one last one. Reasonable expenses. They don't address who, who it is, except what I heard, if I heard right in the amendment. That's the one who procures the settlement.

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But they don't address future care fees because they get a benefit of suspending the work comp benefits and discharging them. They pay that by the Bacon decision.

KAUTH: Let's see if anyone has any questions for you. Thank you for your testimony. Are there any questions from the committee? Seeing none--

TODD BENNETT: I wish there was because I got plenty more to say.

KAUTH: Thank you very much for your testimony.

TODD BENNETT: I don't know why they would be surprised.

KAUTH: Next opponent. Good evening, Ms. Meyer.

JENNIFER TURCO MEYER: Hello. Jennifer Meyer-- Turco Meyer, T-u-r-c-o M-e-y-e-r. I'm glad Mr. Jones brought up the Turco v. Schuning case. That's my father. And he ended up taking that case to the Supreme Court. And my father was not fully compensated for over \$600,000 of his injuries, and I'm taking care of him now. And so, this turned into a little bit more personal than I thought it would be today, so I apologize for that. But what I really would like to do is just explain how this all works. OK, because I think we're in front of Judiciary a lot, and sometimes we just kind of assume you know. But what happens is you get workers' compensation benefits, and if somebody hits you at work or you slip and fall at work, you have a case against whoever the wrongdoer was in tort. So what happens is you don't get 100% of your damages-- we've talked about that all day-- in work comp. You don't get pain and suffering. You actually don't get a third of your wages, which you can recover, earlier, in Dutcher, when we were talking about it. It's not a double recovery, actually. You get-- you can get your wages. And the only time we see these cases, I know that Mr. Jones probably litigates it a lot, but I think that's a litigation strategy for his clients because I have done workers' compensation for 10 years. I've never had to file one of these cases. The only time you have a situation like this is when there's not enough insurance coverage by the tortfeasor. If they have \$25,000 in coverage and you bought a policy for \$100,000 and your damages are \$600,000, then everybody starts fighting over the money, and that's when these actions are filed. I found 11 orders, 11 orders by district court judges making exec-- equitable and fair distributions. And in those cases, they run the gamut. Some of them don't give work comp any money because the person has 40 years of pain and suffering, because they've been, you know, basically significantly injured and they deserve the

money, or there-- one case I saw where work comp got all of their money paid back after it was taken to a judge. And I think the most important reason why we need to keep this fair and equitable and not a formula, is it gives the judges the responsibility to use discretion on a case-by-case basis to make sure what happens is fair. And you can't do that with a formula, especially with a formula that says you get a third and oh, now we'll amend it so attorneys get paid, so maybe they won't be mad at us. But honestly, for someone like me, I'm more worried about the clients. And if work comp gets everything else they've paid back, it's to the detriment of the Nebraskan who got injured. And there's no reason to change this. It's working. I think there's been some situations, probably, where workers' compensation insurers thought they should have gotten more money, but this is not a huge problem that we're seeing every day. And I'd be happy to provide some of these orders to you so you could see them and get some context. And I'm open for questions.

KAUTH: Thank you very much. Are there any questions from the committee? Seeing none, thank you for your testimony.

JENNIFER TURCO MEYER: Thank you very much.

KAUTH: Next opponent.

JOHN CORRIGAN: [INAUDIBLE] Committee, Madam Chair, John Corrigan, J-o-h-n C-o-r-r-i-g-a-n, on behalf of the Nebraska AFL-CIO in opposition to LB313. I think it's important to remember where judges come from. Judges generally have to be a practicing lawyer in the state and licensed by the Nebraska Bar Association. If the judge has enough experience and, and qualifications, they might put their name into the hopper, and then they get through the Judicial Qualifications Committee, and then their names may get referred to the governor. And the governor then gets to decide, after being elected by the people in the state, who gets to be a judge. And then that judge has to sit for retention every 6 years, to decide whether they still should be a judge. And when they screw cases up, you get to appeal it to maybe the Court of Appeals or the 7 Supreme Court judges. That's justice in the state of Nebraska. And we trust those judges to make decisions like maybe who's the best parent in a, in a, in a divorce case, or what should we do in whether a parent doesn't want to give lifesaving medical care to a child because of their religious beliefs? These are hard cases we trust the judges to make. And this context, the Legislature rightly said, when there's a dispute about the subrogation interest, the court should make that decision, and that's where it belongs, because each of these cases is different. But the vast

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majority of the problem is the fact that, you know, we have car accidents where the minimum amount of coverage is \$25,000 in liability. There's not enough coverage. Guy probably caused \$200,000, \$1 million, or \$10 million worth of damages, and there's \$25,000 of coverage. Now we're going to apply a, a formula to that, so that the person that got injured has to give it up, and then the employer gets a credit against future medic-- work comp payments. Work comp is payer number one. First, if it's a work-related injury, work comp is payer number one and that's the, that's the way it ought to be. And we ought to trust those judges to make those decisions, because there's a backstop. There's an appeal. On top of that, we haven't had a democratically elected governor in the state since 1999. So there ought to be some political accountability for the court systems, whether you like that fact or not. That's how it works. We should trust those folks to do that. And we're talking about fixing it with a cookie cutter, rather than letting the Justice of Solomon apply to the cases that are before the court. So with that, I'd answer any questions that you may have.

KAUTH: Thank you very much, Mr. Corrigan. Are there any questions from the committee? Seeing none, thank you for your testimony.

JOHN CORRIGAN: Thank you.

KAUTH: Next opponent. Seeing none, is anyone wishing to testify in the neutral? And seeing none, Senator Ibach.

IBACH: Thank you, Chair Kauth. Excuse me. And thanks to Mr. Jones and Mr. McIntosh for clarifying some of the legal intent of this bill. 1997 was a long time ago, and, and fair and equitable, probably back there may-- then maybe something different. But I think that what this bill does is help us define what that fair and equitable distribution would be, and it creates a formula-- or I think it provides for a formula that everyone understands. Mr. Bennett certainly had some very interesting observations. He referred to the future credit, which clearly in this bill and in the, in the amendment sets a-- it sets forth a-- the future in the credit and how that should be applied, and so I would just call his attention to that. We'd also be interested in hearing from the opponents on what formula would work for employees. Because currently, I think when they explained that the formula works now, the formula clearly does not work because sometimes the employees are the ones that suffer. So anyway, appreciate everyone's feedback. I appreciate everyone's comments, and I'll look forward to visiting more about this bill when we exec on it. So, thank you very much.

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KAUTH: Are there any questions for Senator Ibach? I'd like to read for the record, 1 opponent, zero proponents, and no neutral. Thank you very much. That closes our hearing on LB313, and we'll open on LB617. Good evening, Vice Chair Sorrentino and members of the Business and Labor Committee. My name is Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'd like to introduce LB617, which I intend to use, if needed, as a shell bill for the committee.

SORRENTINO: All right. I'm guessing there would be no questions of Senator Kauth, but I will ask. Seeing none, I would have to assume there are no proponents, nor opponents, nor anybody in the neutral. So Senator, there, there is-- OK. Any--

IBACH: You just need to ask if there--

THOMAS HELGET: Oh, you still need to ask the question officially.

MCKEON: [INAUDIBLE] ask if anybody--

SORRENTINO: Is there any proponents? Are there any opponents? Is there anybody testifying in the neutral? Seeing none, Senator Kauth, you're-- prepare to close.

KAUTH: I waive my close.

SORRENTINO: Waive your close. We have, for the record, we have 2 proponents, zero opponents, and zero neutral, which would concludes the testimony on LB617.

KAUTH: Thank you, everyone, for a good hearing day.