

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventeenth day of the One Hundred Ninth Legislature, First Session. Our chaplain for today is Senator Dungan's guest, Pastor Juan Carlos Huertas, from the first Plymouth Church in Lincoln, Nebraska. Please rise.

JUAN CARLOS HUERTAS: Let us pray. Oremos. Eterno. Eternal One. Te damos gracias por las bendiciones, que han sido muchas. We give you thanks for the blessings that are many. Por la gente de nuestro estado. For the people of our state. Por nuestras familias y comunidades de fe. For our families and faith communities. Por los lugares [INAUDIBLE] que trabajamos, disfrutamos, y tenemos oportunidades. For our places of work, leisure and opportunity. [INAUDIBLE] en este dia, por estos, líderes electos. And on this day, for these, our elected leaders. We thank you that we're not alone, that even in difficult moments you are present with us. In our encounters with neighbors, in our day-to-day labor, and in our attempts at a better life. As we gather on this day, I ask you for these legislators, fellow citizens whose service helps order our common life. I ask you that you give them a spirit of wisdom; may they discern ways to guide our life together. I ask you that you give them a spirit of courage; may they seek to defend the most vulnerable among us. I ask you that you give them a spirit of humility; may they practice unity in diversity and common good over personal preference. I ask you that you give them a spirit of compassion; may the stories of their fellow citizens inspire more just laws. I ask you that you give them a spirit of holy imagination; may they work together towards a vision for all of our citizens experience human flourishing. I ask you that you give them a spirit of hope; may they lead confidently and thoughtfully through joyous days and mournful ones. And finally, I ask you that you may fill them with your love, a love that inspires each of them to work together towards a more prosperous, just, and whole community for all Nebraskans. Amen.

KELLY: I recognize Senator Ibach for the Pledge of Allegiance.

IBACH: Please join me in the pledge. I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

KELLY: I call to order the seventeenth day of the One Hundred Ninth Legislature, First Session. Senators, please record your present. Roll call. Mr. Clerk, please record.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

CLERK: There's a quorum present, Mr. President.

KELLY: Are there any corrections for the Journal?

CLERK: I have no corrections this morning, sir.

KELLY: Are there any messages, reports, or announcements?

CLERK: There are, Mr. President. Transportation Committee provides notice of committee hearings. Additionally, agency reports electronic filed with the Legislature can be found on the Nebraska Legislature's website, and report of registered lobbyists for January 30, 2025, will be found in the Journal. The notice that the Education Committee will meet in executive session in Room 2022 at 10:15. Education, 2022, 10:15 this morning. That's all I have at this time, Mr. President.

KELLY: Senator Meyer would like to recognize the physician of the day, Dr. Dave Hoelting of Pender. Please stand and be recognized by your Nebraska Legislature. Mr. Clerk, please proceed with the first item on the agenda.

CLERK: Mr. President, first item on the agenda, General File, LB208, introduced by Senator von Gillern. It's a bill for an act relating to revenue and taxation; changes provisions relating to sales tax collection fees, confidentiality of sales tax information, the streamlined sales and use tax agreement, a database for sales tax zip code information, annual limits for certain tax credits, and certain tax credits for parents and legal guardians; harmonize provisions; repeals the original section. The bill was read for the first time on January 14 of this year and referred to the Revenue Committee. That committee placed the, the bill on General File. There is nothing pending on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator von Gillern--

von GILLERN: Gavel.

KELLY: Senator von Gillern, you're recognized to open.

von GILLERN: Thank you, Mr. President. Good morning, colleagues, and good morning, Nebraskans. I rise today to introduce LB208, which I brought to the Legislature on behalf of the Department of Revenue. LB208 is a cleanup bill, the major selling point of which is its fiscal note-- this is a good way to start our day off today-- projecting over \$1.25 million in savings from now through the '26-27 fiscal year and \$1.6 million in the following biennium. The bill's

objectives can be broken down into several main points. First, to prevent certified service providers that perform sales and use tax functions for model 1 retailers and sellers from receiving any other collecting fees if they are already compensated through the streamlined sales and use tax agreement. The Department of Revenue has indicated that the cost of the additional collection fees that this bill seeks to eliminate is around three-quarters of \$1 million every year. LB208 will keep those dollars in our General Fund. Second, to protect, protect Nebraska taxpayers from violations of taxpayer confidentiality by employees of the state of Nebraska by extending the language in Revised Statute 77-2711, subsection (7) to include any person, including current and former employees of the Department of Revenue, who disclose information obtained in the course of any investigation into the records of activities of persons or retailers. This will close a gaping hole in our protections for taxpayer confidentiality. Thirdly, to update provisions for the streamlined sales and use tax agreement to include amendments through December 31 of 2024. Fourth, to clarify that eligibility for the refundable childcare tax credit passed in 2023 is to be limited to Nebraska residents. Fifth, to apply to the highest combined sales tax rate in any given area for online sales, in which only a 5-digit zip code is provided. Ensuring Nebraska isn't unnecessarily missing out on sales taxes in locales that share a 5-digit zip with a reduced sales tax area. Lastly, to convert the distribution of the nonrefundable food pantry tax credit and refundable Nebraska biodiesel tax credit from a pro-rata to a first come, first served basis in the event that the \$1.5 million annual cap is reached. This would harmonize distribution of these credits with the distribution of every other Nebraska tax credit and prevent major delays anticipated by the Department of Revenue in the distribution of these credits. Distributing on a first come, first served basis, we'll get applicants their credits sooner. I intend to have open dialogue with interested, interested parties through 2025 tax season and the rest of the year to monitor whether LB208 is producing its intended effects and if not to make reasonable, necessary adjustments in the next legislative session. With that, I thank my fellow members of the Legislature and ask respectfully for your less-- yes vote to advance LB208, save millions for our state. And I also want to note that this came out of committee 7-0 with 1 absent. Thank you, Mr. President.

KELLY: Thank you, Senator von Gillern. Senator McKinney, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

McKINNEY: Thank you, Mr. President. I just have one quick question for Senator von Gillern. For clarity on the, the, the tax credit for food banks, what is that?

KELLY: Senator von Gillern, will you yield to a question?

von GILLERN: Yes, I will. For clarity on which? I'm sorry, Senator McKinney.

McKINNEY: About the food bank tax credit in this bill.

von GILLERN: Oh, the food bank tax credit. I'm sorry.

McKINNEY: Yeah. Yeah.

von GILLERN: No, all it does is it says that the tax credits will be paid out on a first come, first served basis as they are applied for rather than throughout the year. And that's a-- that, that was a clarification that the original bill missed out on. It, it basically harmonizes it with every-- how every other tax credit is paid out by the Department of Revenue. And, and it was just the way the bill was originally drafted. It didn't have that clarity in it originally. And it also applies to the biodiesel tax credit same, same way.

McKINNEY: OK. Thank you.

von GILLERN: Yeah. Thank you.

McKINNEY: Yep.

KELLY: Thank you, Senators McKinney and von Gillern. Seeing no one else in the queue, you're recognized to close and waive closing. Members, the question is the advancement of LB208 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on advancement of the bill, Mr. President.

von GILLERN: LB208 advances to E&R Initial. Mr. Clerk, next item.

CLERK: LB108, introduced by Senator Jacobson. It's a bill for an act relating to Cities of the First Class Firefighters Retirement Act; changes provisions relating to contributions to the retirement system; repeals the original section; declares an emergency. The bill was read for the first time January 10 of this year and referred to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

Nebraska Retirement Systems Committee. That committee placed the bill on General File. There's nothing on the bill, Mr. President.

von GILLERN: Thank you, Mr. Clerk. Senator Jacobson, you're recognized to open.

JACOBSON: Thank you, Mr. President. Good morning, colleagues. I am here to introduce LB108 to address an oversight in LB686, which passed in 2024. LB108 amends Section 16-1024 of the Cities of the First Class Firefighters Retirement Act to adjust firefighter and city contribution rates for those absolute coverage groups in cities with a population greater than 60,000 and in counties with population greater than 100,000. At this time, only the city of Bellevue and full-time firefighters employed by the city of Bellevue are affected by the provisions of LB108. Let me repeat that, because I've had questions on this. At this time, only the city of Bellevue and full-time firefighters employed by the city of Bellevue are affected by the provisions of LB108. An absolute coverage group is required to contribute to both Social Security-- both the Social Security system and the retirement plan pursuant to the Cities of the First Class Firefighters Retirement Plan. LB108 would correct an inadvertent provision in LB686 passed in 2024 session related to the city of Bellevue and its firefighters since both the city and firefighters are required to contribute 6.2% to the Social Security system, as well as contribute to the firefighters' retirement plan as provided in the Cities of the First Class Firefighters Retirement Act. LB686, passed in 2024, provides an offset to the contributions required by the Cities of First Class Firefighters Retirement Act, equal to 6.2% paid by the firefighters and the cities 6.2% contribution to Social Security. LB686 ensures that all firefighters and cities of the first class contribute the same total amount towards retirement. However, there was an oversight in LB686 affecting the city of Bellevue, whose firefighters are one of the absolute coverage groups. And the city of Bellevue and the Bellevue firefighters did not want to change, did not want to change the amount of their respective retirement contributions in effect prior to passage of LB686, nor did they want any offset for their Social Security contributions. As a result, language was added to LB686 in, in 2024, to specifically include cities with the population in excess of 60,000 located in counties with a population of 100,000 or more for-- from receiving the offset. The unintended result is that cities such as Bellevue are now subject to the higher contribution rates established by LB686 without the benefit of the offset. This oversight was created and has created an undue burden-- financial burden on fire-- on Bellevue firefighters, since they are contributing more than intended and taking home less pay. This was

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

never the Legislature's intent. LB108 reinstates the, the prior contribution rate of 6.5% for firefighters and 13% for cities with a population greater than 60,000 located in counties with a population greater than 100,000. LB108 declares an emergency for immediate implementation. In closing, I urge you to-- your support in advancing LB108 which has the E clause to quickly correct this issue for those who risk their lives to protect their communities. With that, I would end my testimony.

KELLY: Thank you, Senator Jacobson. Seeing no one else in the queue, you're recognized to close. Senator Jacobson, you're recognized to close.

JACOBSON: I'll waive closing.

KELLY: Members, the question is the advancement of LB108 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 35 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB108 is advanced to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, next item, General File, LB21, introduced by Senator John Cavanaugh. It's a bill for an act relating to real property; adopts the Uniform Unlawful Restriction in Land Records Act. The bill was read for the first time on January 9 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File. There is currently nothing on the bill, Mr. President.

KELLY: Senator John Cavanaugh, you're recognized to open.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. LB21 is the Uniform Unlawful Restrictions in Land Records Act. For many decades in our past, the sale of homes was commonly restricted on the basis of race. In 1948, the U.S. Supreme Court ruled the practice unconstitutional and unenforceable, and the Federal Fair Housing Act of 1968 explicitly prohibited racially restrictive covenants. Despite this, such language still persists in deeds and land records of older homes. LB21 provides for a process for owners and associations to make a simple amendment to land records, which makes clear that such restrictions are illegal and unenforceable while still preserving the historical record. This will help clean up title records and make the process easier for buyers and sellers. LB21 was brought to me by the Uniform Law Commission after the adoption of the Uniform Unlawful

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

Restrictions in Land Records Act at their annual meeting in 2023. The Uniform Law Commission promotes a consistent framework of laws across all 50 states. LB21 advanced unanimously from the Banking, Commerce and Insurance Committee and had no opposition at the public hearing. I'd ask for your green vote on LB21. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Seeing no one else in the queue, you're recognized to close and waive. Members, the question is the advancement of LB21 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 36 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB21 advances to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, General File, LB187, introduced by Senator Dover. It's a bill for an act relating to real property; changes provisions relating to written agency agreements for brokerage services and restricted acts, issuance of licenses, and unfair trade practices under the Nebraska Real Estate License Act; provides operative dates; repeals the original section; declares an emergency. The bill was read for the first time on January 13 of this year and referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File. There's currently nothing on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Dover, you're recognized to open.

DOVER: Thank you, Mr. President, and good morning, colleagues. LB187 seeks to accomplish four goals. First of all, requires written buyer agency agreements with consumers who are using a buyer's agent. In a series of landmark settlements of antitrust cases against the National Association of Realtors and several, several large brokerages, settlement agreements entered into last year required affected agents and brokerages to enter into a written buyer agency agreement upfront to provide more transparency and opportunity for consumers to be aware of and negotiate commissions. LB187 makes these written buyer agency agreements a requirement for all licensees in a residential transaction, providing better disclosure of commissions and agency duties and responsibilities for all agents, and avoiding confusion of having different standards for written buyer agreements depending on whether a licensee is subject to the settlement or not. Secondly, the bill increases pre-license education requirements for real estate salespersons. The additional 30 clock-- 30-hour-clock-- class for a salesperson license can be completed in a week if classes are taken in

consecutive days or online, and total pre-license education requirements can still be completed in less than a month under the new requirements. The Commission saw an unprecedented increase in complaints in 2024, with nearly 60 sworn complaints being filed after averaging 40 to 50 a year-- year over year in the last several years. There are also an increased number of licensees cycling through or trying out a real estate career. The increased education would better prepare agents with the understanding of the License Act and agency requirements. The new law would make Nebraska similar to the surrounding states for pre-license education requirements. Thirdly, the bill would end an unintended consequence of the recently passed, quote, wholesaler or flipper legislation, LB892, from 2022 clarifying that such laws do not apply to the sales of options on vacant lots, which often occurs in the normal course of business between builders and developers. And, lastly, the bill clarifies that the payment of compensation to out-of-state licensees who do not hold a Nebraska real estate license is allowed for the payment of a referral fee only, and that out-of-state licensees may not participate in a Nebraska real estate transaction without a Nebraska real estate license. This is a very simple, simple bill that is mostly clean up and I would ask for your yes vote. Thank you.

KELLY: Thank you, Senator Dover. Seeing no one else in the queue, you're recognized to close and waive. Members, the question is the advancement of LB187 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 36 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB187 advances to E&R Initial. Mr. Clerk, next item.

CLERK: Mr. President, next item, LB197, introduced by Senator Storm. It's a bill for an act relating to the Employment Security Law; amends Section 48-628.09, 48-630, and 48-631; changes provisions relating to a disqualification for benefits due to a labor dispute, claim determinations, and claim redeterminations; and repeals the original section. The bill was read for the first time on January 14 of this year and referred to the Business and Labor Committee. That committee placed the bill on General File. There is nothing currently on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Storm, you're recognized to open.

STORM: Thank you, Mr. President. Good morning, colleagues. LB197 was brought at the request of the Nebraska Department of Labor. As you

know, the Nebraska Department of Labor serves as the state agency responsible for the review and processing of claims for unemployment benefits. The Department of Labor is tasked with ensuring its review of claims for unemployment benefits is not only timely and accurate, but is done as efficiently as possible. LB197 supports the Department of Labor's goal of efficiency in its review of claims for unemployment benefits by removing limitations on who and how unemployment claim eligibility is determined. Current law requires an adjudicator to issue the decision. This limits the department from using other staff in automation for efficiencies. LB197 would broaden the decision-making to the department as a whole. Furthermore, LB197 will allow the Department to use an automated system for making many initial determinations where the facts are not in dispute to expedite decisions. An example of this would be when a company performs a mass layoff of employees. LB197 also supports the Department of Labor's goal of ensuring the payment of unemployment benefits is as accurate as possible by allowing the Department of Labor to determine claims when an error in the claim process is detected by the department Benefit Accuracy Measurement division or BAM. Think of BAM as an internal auditor that reviews finalized claims filed in the previous quarter. Under LB197, if BAM discovers an error in how a claim was initially determined, the Department of Labor can use BAM's findings as a basis to redetermine that claim and correct the error. I ask for, I ask for a green vote on LB197 and its advancement to Select File. Thank you.

KELLY: Thank you, Senator Storm. Seeing no one else in the queue, you're recognized to close and waive closing. Members, the question is the advancement of LB197 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 39 ayes, 0 nays on advancement of the bill, Mr. President.

KELLY: LB197 advances to E&R Initial. Mr. Clerk, next item on the agenda.

CLERK: Mr. President, next item, LB229, introduced by Senator Hallstrom. It's a bill for an act relating to Employment Security Law; amends Section 48-604; provides that employment does not include service by a marketplace network contractor for a marketplace network platform; defines terms; and repeals the original section. The bill was read for the first time on January 14 of this year and referred to the Business and Labor Committee. That committee placed the bill on General File. There's currently nothing on the bill, Mr. President.

KELLY: Thank you, Mr. Clerk. Senator Hallstrom, you're recognized to open.

HALLSTROM: Thank you, Mr. President, and good morning, colleagues. LB229 defines the independent contractor status of individuals engaged in the marketplace network platform. These are people engaged in services utilizing tech applications such as Uber and Lyft. Uber drivers are currently treated as independent contractors under any test of that nature, and the bill simply specifies the nature of their employment as independent contractors, which would be statutorily based. 21 states have passed this type of legislation, including our neighboring states of Iowa, Missouri, South Dakota, and Wyoming. Drivers on rideshare platforms are independent. They choose if, when, where, and how long they work. There is no exclusivity so many workers use multiple apps. Anyone who passes a background check and meets the regulatory requirements can use the app. There is no minimum commitment or obligation to work. Drivers decide when they want to turn on the app and when they want to turn it off. For example, 80% of the drivers on the Uber app work fewer than 20 hours a week. The term "flexible work" is often used to describe a diverse range of working models. However, even in the most informal, flexible engagements, employers may establish rosters dictating when, where, and for how long someone must work. Rideshare drivers have nothing like that, and their work is critical. Studies have demonstrated that ridesharing can significantly reduce DUIs and drunk driving deaths, which have been on the rise across the U.S. According to the National Bureau of Economic Research, ridesharing has reduced drunk driving deaths by 6%. And in a Houston study of Uber's impact, rideshare volume was associated with a 67% reduction in vehicle collisions. Many bars and restaurants are among the most popular destinations in Nebraska, but Nebraskans also rely on rideshare for everyday needs. Uber has been connecting riders and drivers in Nebraska since 2015. Every week, thousands of people in Nebraska use the Uber app to earn income on their own schedule, and tens and thousands of Nebraskans rely on Uber to get to doctor's appointments, visit loved ones, and get home safely after a night out. In fact, last month, in partnership with the Nebraska Department of Transportation, Uber ran a promotion statewide to provide discounted rides to thousands of Nebraskans to help prevent impaired driving. Traditional employment simply doesn't work for everyone. The app-based work available through the Uber platform is critical for those who want to work but might not have the ability to handle a traditional 9 to 5. Workers on Uber's platform care for a family member and have to be on call to handle their needs. Others are retirees on a fixed income who want to make extra money. Others are students who support

themselves through school. At the core of these are people who want to work but need to do so on their own schedule. That flexibility is even more important as record inflation pushes Americans to look for ways to supplement their incomes. Virtually every poll, survey, and election has shown that this is what the overwhelming majority of drivers on the Uber platform desire. A 2023 FLEX Morning Consult poll found that app-based earners overwhelmingly 75% expressed their preference to remain as independent contractors. A Pew poll found Americans agree with 62% and a majority across every political party, saying that drivers are independent contractors. Even voters in California rejected the state's attempt to try and force drivers into traditional employment status. Flexibility doesn't just benefit workers, it's a big part of the reason Uber is able to serve rural, suburban, and urban communities across the state. If Uber were forced to switch to an employment model, less densely populated areas of the state would likely no longer benefit from on-demand rideshare. LB229 removes the uncertainty and ensures that workers on rideshare platforms in Nebraska remain as independent contractors. The provisions of subsection (6)(w)(iii) on pages 2 to 6 of the bill ensure that the bill is compliant with federal law. When similar legislation was introduced last session by Senator von Gillern, LB489, these provisions were included at the recommendation of the Nebraska Department of Labor to ensure conformity with federal law without impacting availability of federal funds for our state unemployment insurance program. LB229 is a narrow bill that only impacts transportation network companies. It does not change how any other industries or their employers operate. It solves an immediate and critical need. Nebraska has a critical opportunity to protect flexible work of thousands of app-based drivers and a critical service for tens of thousands of passengers. We support you-- we urge you to support LB229 and I look forward to answering any questions that you may have. Thank you.

KELLY: Thank you, Senator Hallstrom. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in opposition of LB229. I think I might have been the lone no vote out of committee, if I remember right. This bill would prevent individuals who do operate as drivers and, and workers of these platforms from ever exercising their right as workers. And Senator Hallstrom mentioned Uber, and I'll make a few points. The first one is control over work. Uber exerts significant control over drivers, including setting fair prices, determining which ride-- rides drivers can accept without penalty, and using performance metrics like ratings and cancellation rates to

regulate drivers' behavior. This level of oversight resembles an employer-employee relationship rather than an independent contractor arrangement. Two, lack of entrepreneurial independence. True independent contractors typically operate their own businesses, set their own rates, and build their own customer base. Uber drivers, however, rely on platform work and cannot negotiate fares, and have limited ability to establish their own brand and services. Three, a central role in Uber business. Uber's core business is providing rides and drivers are central to this function. In many legal cases, courts have ruled that workers who perform the primary service of a company such as drivers for a ride-hailing service should be classified as employees, not independent contractors. Four, restrictions on flexibility. While Uber promotes driver flexibility, the company effect-- effectively dictates work conditions through surge pricing, algor-- algorithmic management, and deactivation policies. Many drivers feel pressured to work during peak hours or in high-demand areas to maximize earnings, limiting true autonomy. And, five, because of this, there is a lack of benefit and protections by not allowing these individuals to be workers. If this bill passes and there's arguments saying, like, some of these individuals would like to be considered contractors, OK, so tomorrow when they wake up and, and say, actually, I feel like a worker. They're working us. If this bill passes, that will be impossible. We have to think about that. If business-- if, if Uber changes its business model after this, after this bill passes, those individuals will, will have their rights just taken away. But we're not thinking about, we're not thinking about people. We're thinking about business. We're putting business over people. We're supposed to be working for the people of Nebraska, not Uber, a corporation. And that's the problem with America. That's the problem with a lot of things we do around here. We prioritize corporations. But I guess there was a ruling that said corporations are people, which is weird, but neither here or there, corporations are not people. People are people. And we have to think like that. We can't come in here and say we're running for office, we're going to work for the people in Nebraska, and then-- and then do the total opposite. That's what this bill would do. We should think about that and you should think about that when you think about your vote. You should think about the people you represent because a, a green vote for this is going against the people of Nebraska and the people we were elected to represent, not Uber. You don't represent them. You shouldn't think about their interests. You should think about the people. So thank you.

KELLY: Thank you, Senator McKinney. Senator Sorrentino, you're recognized to speak.

SORRENTINO: Thank you, Mr. President. I rise in support of Senator Hallstrom's bill, LB229. For the past 35 years or so, my accounting and legal practice has focused intently on the determination of whether a worker was categorized as a common law employee or an independent contractor. For many years, the IRS used a 20-point test to determine whether a worker was an employee or independent contractor. Eventually, that gave way to a 10-point test, which is now, as of January of 2024, given away to a Department of Labor final rule, which includes a 6-factor test. Number one, opportunity for proper-- profit and loss upon-- based upon your managerial skill. An Uber or Lyft driver determines their own income based on the amount of times they want to work and how many rides they take. Two, investment by the worker. The Uber or Lyft driver buys their own car and insures their own car. Three, degree of permanence of the worker's relationship. An Uber or Lyft driver can come and go as they please. They can work 1 month and not work for 6 months and come back the following month. Four, the nature and degree of control. And I think this is important. It's a means to an end test. Uber or Lyft determines the end. Can driver get passenger A to point B? It's completely up to the driver as to how they get there, what route they take. Sure, they have their app on, but they can follow that route or not. Five, extent to which the worker perform-- work perform is an integral part of the employer's business. Well, certainly it is an integral part of the employer's business, but one worker alone does not determine the integral part of Lyft and Uber's overall corporate mission. And finally, skill and initiative. Drivers are not trained. If you open your app, you can go on there and be a customer, or you can apply simply to be a driver. It's very simple. There's no training and the initiative is up to the driver as to how much they do or don't want to work. Further, I would ask you to ask these more practical questions. Does the worker have an employer-based email or access to an employer intranet? The answer is no. Does the worker have a business card complete with contact information and a title? The answer is no. Are workers offered employee benefits? In the eyes of insurance carriers, and I can tell you this personally after 35 years in the insurance business, the workers are not offered employee benefits because they lack a sufficient logical nexus to the employer that creates an insurable interest. I cannot buy insurance on Senator Storm. He can't buy it on me. We don't have an insurable interest. It's the same with an independent contractor. So to suggest that workers are employees is, in my terminology, asking for a big plate of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

yes when the facts would indicate this is a big bowl of no. I would, I would ask you to support Senator Hallstrom's bill. Thank you.

KELLY: Thank you, Senator Sorrentino. Senator Jacobson, you're recognized to speak.

JACOBSON: Thank you, Mr. President. And thank you, Senator Sorrentino. He is probably the foremost expert in our body. And I think-- I hope everyone listens to the points that he made. He described precisely what it takes to qualify by the Department of Labor's definition of an independent contractor. And, and I think he made every point that needed to be made. And we could probably all just sit down now and vote. But I do rise in support of LB229. I think to the point with regard to setting prices and so on, let's remember that if you had a-- if you were a McDonald-- McDonald's franchisee, McDonald's going to tell you what kind of product you sell. They're going to give you the pricing. They're going to give you how you have to advertise it. There will be all of those conditions. But I can tell you that McDonald's, McDonald's franchisees are not employees of the McDonald's corporation. I think what Senator Sorrentino laid out is exactly what the Department of Labor has outlined as being an independent contractor. I think we all know what would happen if we tried to make these rideshare drivers employees. A, it would probably destroy the rideshare business because of the costs that would be involved. We're curbing free enterprise if we try to require that they all be employees as opposed to the independent contractors that they are. I think Senator Hallstrom laid out very precisely as well all of the ways in which they, they meet the context of being independent contractors. So I would urge everyone to vote in favor of LB229. Let's stay within the guidelines of the Department of Labor and let's make sure that this-- that these, that these rideshare drivers will continue to be able to work using that app and providing a very vital public service. Thank you, Mr. President.

KELLY: Thank you, Senator Jacobson. Senator Conrad, you're recognized to open-- or to speak.

CONRAD: Yes. Thank you, Mr. President. And good morning, colleagues, and happy Friday. In reviewing the agenda for today's floor debate, this matter brought forward by Senator Hallstrom caught my attention. Similar pieces of legislation have been introduced in the Nebraska Legislature over the years to accomplish many of the same goals. And I, I just want to make sure to put a marker down that even though this measure came out early with a considerable amount of support from the committee itself, this is a very highly technical, highly complex, and

somewhat controversial measure. This isn't your typical kind of early cleanup bill or, or technical shift bill that, that you might see early in legislative debate. There's a lot of complex issues here that I think my friend Senator Sorrentino and others have done a, a really good job identifying in regards to the interplay with federal law, with constitutional provisions, with very long-standing and confusing applications of a multipart test to determine whether or not somebody is an employee or an independent contractor. And I do just want to at least lift a few questions and raise a few points in regards to this legislation. So, number one, I think it's important just from a commonsense, practical perspective to note the folks that are working for Uber or Lyft, they're not out on their own soliciting fares. They're not-- they don't have their own advertising that says, hey, I'm an independent contractor. I'll give you a ride across town if you need it for whatever reason. This is happening through an aggregated platform within the context of, of course, Uber and Lyft, which is a newer but different business model. So it's, you know, just common sense tells you that they're not what you might think of in terms of what we might generally categorize as an independent contractor. They're, they're working under the umbrella of a large corporation. Additionally, what's not clear to me is why we would need this legislation at all. It is well established that Nebraska has in our state constitution what's colloquially known as a right to work provision that provides very, very broad protection for all employees against any sort of unionization sort of considerations that they may have concerns with. There are also very complex issues related to collective bargaining and a worker's right to organize and an individual's right to associate, to petition their government to advocate. And we need to, I think, tread lightly before we push through this measure without fully sorting out some of those considerations. And then one final question I have is I know that we're looking at this specifically in regards to Uber or Lyft or what have you, but there are kind of the traditional cab companies that are out there that underrate-- operate under a more traditional employment model. And I just want to make sure that this measure does not cast the net too widely to prevent any sort of ability for traditional employees and traditional taxi companies or limo services or otherwise from having the right to organize and associate and work for safe working conditions and decent compensation and benefit. So hopefully some of those questions will be answered in debate. And appreciate your, your time and consideration of some of those concerns. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

KELLY: Thank you, Senator Conrad. Senator Quick, you're recognized to speak.

QUICK: Yeah. Thank you, Mr. President. And currently, this bill kind of caught me off guard, too. I don't-- I haven't read through it yet, so I don't know a lot about it. I, I talked to Senator Hallstrom if he would yield to some questions.

KELLY: Senator Hallstrom, would you yield to some questions?

HALLSTROM: Certainly.

QUICK: Yeah, I wanted to since I haven't-- I don't even have the bill in front of me, but how far, wide reaching is this bill? I mean, does it only affect Uber and Lyft or does it affect other modes of transportation employees?

HALLSTROM: Thank you, Senator Quick. The, the bill relates to marketplace network contractors, which would be Uber and Lyft, any other similar digital application using that technology. When we talked off the mic, you'd, you'd indicated Federal Express, taxis, etcetera, they would not be covered or included under the legislation. There's a specific exemption or exclusion for what I'd call delivery companies.

QUICK: OK. All right. So like bus drivers, taxi drivers, FedEx, any types of those types of transport wouldn't be affected by this?

HALLSTROM: They would not fall under the marketplace network contractor definition.

QUICK: All right. All right, thank you, Senator Hallstrom.

HALLSTROM: Thank you.

QUICK: One of the things I'm going to talk a little bit about, and my son worked for a, for a company in, in Omaha, and I'm going to guess from when I spoke with him over the time when he worked for this company, they weren't doing things the right way. He was actually an employee of this person. They were looking for ways to get out from under or having to pay for work-- workmen's comp, also paying in his federal and state and local taxes and Social Security and all this type of things. So they classified him as an independent contractor. I told him what they were doing to him was probably wasn't legal, but he was scared to confront his employer and continued to practice that way. And then one year they went ahead and they did define him as an

employee and they paid all of his federal taxes, all, all the Social Security. I don't know that they got works comp-- workmen's comp, but the very next year they went back, right back to what they were doing because they found out that it was costing them too much money. So I'm really concerned about what happens to, to employees who, who-- so currently they're employees of a company, now all of a sudden they're independent contractors, understanding, understanding those rules that they're going to be under and what's going to happen to them. You know, what, what, what benefits do they have? You know, as an independent contractor, you're more or less your own boss. So how that plays out is, is-- could be somewhat, you know-- and I guess they'll have a choice whether they want to work there or not. I understand that. But I think employee protections are really important. You know, I've always worked as a blue collar worker working in a power plant. We had sick leave, vacation. We had, you know, 401(k)s, we could be on a safety committee. We could be part of the process and working with our employer to make sure we had a, a workplace that we were able to, to make sure every employee was, was-- that we had a good morale in the workplace and that we had, had safe working conditions and then we had good benefits. So we always had a say in what happened in that company. As an independent contractor, I'm going to say you really have no say so except for what happens to you personally. But my son's lived experience and what happened to him was really troubling for me. And I, I pushed him to more or less-- and I pushed him to reach out to his employer. So thank you, Mr. President. I yield the rest of my time.

KELLY: Thank you, Senator Quick. Senator Holdcroft would like to announce some guests in the north balcony, 30 pre-K to sixth graders from Community Home School in Gretna. Please stand and be recognized by your Nebraska Legislature. Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President, and good morning, Nebraskans. Good morning, colleagues. I have followed with some, I guess, passive interest for the last decade or so, kind of the saga of-- do you guys mind-- I'm sorry-- just the saga of Uber and Lyft and the process of people being interested in unionizing and the different court cases that have gone up and down throughout that process. But I don't know as much about this as it sounds like some people on the floor that do. Senator Sorrentino, with his background in insurance law, and things like that, was sharing some interesting information. But I think that the legal, you know, who can and can't unionize, and what Uber and Lyft is, are they independent contractors this and that? I don't think that that's really settled yet. I think that's something that's still

being challenged, you know, in different states and maybe in Nebraska, too, should this pass. When Uber and Lyft started, I kept using private or I kept using taxi services because they're unionized. When you're in different cities, I was always kind of interested in, you know, which public transportation workers are unionized. And then there's these private options to use Uber and Lyft. And I use those too, especially when I'm traveling. But as we see more and more and more services in our communities become privatized, we have fewer unionized options that we can use. These bills come up and it worries me because not only are-- do we-- are we taking away options to support unionized workers, we're taking away the right for these workers to even advocate for themselves, taking away the right to assembly, taking away the right to association guaranteed in the constitution. And then eventually all we're going to have is these gig workers, independent contractors, who would like benefits, who would like fair pay, who would like the right to refuse a ride or to have safety protections from their passengers that their company is denying them. But lawmakers are saying that you are not an employee, you're not working for Uber, you are an independent contractor. I don't agree that Uber and Lyft drivers have enough in common with independent contractors. They don't operate like independent business owners. Senator Sorrentino said-- you know, he was talking about-- what was the point he was making about-- like, if you have a business card or if you have an employee email or if you have benefits, you know, these are something that make you an employee and Uber and Lyft drivers don't have those things. Well, neither do baristas, neither do the people that-- you know, the people who work in my shop, they have benefits, but they don't have a business card. Like, what is this, 1990? What-- you know, they don't have an email for the business because they don't need one to do their job. Call that streamlining, call it efficiency. You know, you don't have to put all these bureaucratic steps on people to make them an employee. But Uber drivers, they look like employees. They act like employees. They cannot set their own prices. Uber and Lyft determine the prices and they take a significant cut of that. They also have dynamic pricing so they can use surge pricing to manipulate fares. Drivers have no control over that and they also don't see the benefit of that. When drivers are taking a ride and then they have a client and it's in surge pricing, they don't get any extra money from that. And if the rider doesn't tip, they don't get anything extra from that either. All that money goes back to Uber and Lyft. And so I don't, I don't really have a lot of interest as a lawmaker in intervening in that business model and saying we're going to prevent those employees of Uber from advocating for themselves. I think that's not our business. I can have

a private opinion about whether these drivers should be able to unionize, whether they should be able to advocate for themselves in certain way like we see in other industries. But, ultimately, since Uber is a private business, you know, I don't think that we have a lot of business getting involved in that. Talking about the work rules. You know, Uber and Lyft impose really strict guidelines. You can get penalties for rejecting too many rides. There's a mandatory level of acceptance that you have to have for certain drivers. And I think that that puts a lot of drivers in danger, too, particularly women. I admit, I admit I'm always a little bit relieved when I get a woman driver because without representation, without unionization and if these people are independent contractors and they're not really backed up by Uber and Lyft, they don't have safety protections either, and neither do riders. So I think, you know, that kind of sums up a lot of my opposition to this bill. I was part of Business and Labor Committee in the past when we prevented this bill from coming out of committee, and I think we got to put some drag on it, maybe work on it a little more, and see what we can do. Thank you, Mr. President.

KELLY: Thank you, Senator Hunt. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President, and good morning, colleagues. I do rise today, I guess, listening to the debate and unsure about LB229. As many pointed out, usually for the first few days of debate here on the floor, we have some pretty noncontentious bills. And so I think there's generally an assumption that if something comes up early, it's not really contentious. But I really appreciate my colleagues both on the, on the floor and also in the committee, Senator McKinney being able to dig into this and in sharing with us some of the concerns. The first I heard of this bill was, was last night. And I kind of read it and looked into the committee statement. And I do have some concerns that have been highlighted. Whether or not we as a state need to intervene in determining or classifying these folks as independent contractors versus employees seems to me perhaps to be a bit premature. In just a short analysis and looking at some case law, it seems to me like this has been an issue that's being debated across the country right now. So it doesn't seem like something that we need to, I guess, interject state law in, into defining them as such. And I think it's just an interesting conversation. I really appreciate Senator Sorrentino with his expertise and background sharing with us that test and the evolution of the test that has been used to determine whether or not somebody is, in fact, an independent contractor or an employee. But what I also find interesting is it sounds like in a lot of these lawsuits that have been brought to

determine whether or not these are, in fact, employees or independent contractors, the very test itself has been called into question by judges. And I think Senator Hunt did a good job of pointing this out. But the question is whether or not these tests to determine independent contractors versus employees, whether or not they're antiquated, are they appropriate in our current economy? We've seen a massive shift in the way that our businesses operate and work even in the last 5 to 10 years. And so, you know, these tests have evolved over time it sounds like going from 20 points to 10 points down to 6 points. But even that 6-point test that's being used by the Department of Labor, I think there's a big-- bigger question about whether or not that test is appropriate in the current online gig-based economy that we have. And I think that to try to box folks in as independent contractors as we evolve the way that employees operate is problematic. My understanding is that in some of the lawsuits that have been brought by drivers to, to have themselves classified as employees, Uber and Lyft have filed for summary judgment in those cases. And for those who don't know, summary judgment essentially is asking the judge to dismiss the case before they have a trial saying this case is so clear and cut and dry, the facts are so obvious that you should just dismiss the case. And in my short research, I've found that the judges have denied summary judgment. They have refused to grant that summary judgment to Uber and Lyft, essentially saying that they think there's at least enough weight to the allegations or to the assertions being made that the court needs to weigh in on that. What it sounds like is that although both judges-- what this says is: although both judges independently questioned whether the test was antiquated, they each determined that dismissal without a trial was inappropriate because the test suggested that drivers should most likely be classified as employees. The courts considered the most significant factor the ability of Lyft and Uber to control the manner and the means of accomplishing the task of driving passengers. So I think to say that these 6 points that have been brought up by Senator Sorrentino, which have been very helpful, are clear and cut and dry that they fall into the independent contractor. It's maybe a little bit murkier than that. I will admit, I, I have not read these cases in their entirety and I plan to dig a little bit deeper into this depending on how long this debate goes or if we do take this to another round of debate. But I do think it's important just to note that the actual law itself is not quite as clear cut, maybe, as it seems. And, in fact, judges have determined in these summary judgment motions that perhaps the, the test that is currently used implies that these are employees. So with that, colleagues, I do appreciate this debate. I think this is a really interesting conversation to dive

into. Again, I appreciate Senator McKinney's leadership on the Business and Labor Committee to bring this up to folks and make sure we're having this discussion today. We always have to make sure we're looking out for our workers and, and looking out for working families. So this is a good conversation for us to have as a Legislature. Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator McKinney, your name was inadvertently dropped from the queue. You're now next in the queue. You're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise to make some more points. So, one, Uber's profitability model relies on exploiting workers, not necessity. So the claim that reclassification to workers would destroy Uber, Uber assumes that the company's survival depends on denying fair wages and benefits. However, other industries operate profitability while paying employees properly. Uber's financial struggles are more tied to its unsustainable pricing model and investor-driven growth strategy than worker classification. Two, increased costs don't mean collapse. While reclassification will require Uber to pay for benefits like health insurance, unemployment insurance, minimum wage, companies adapt to regulatory changes all the time. Uber could adjust by slightly raising fares or reducing executive pay rather than exploiting its drivers. Study suggests that even a moderate fare increase would cover the, the additional labor costs without additionally reducing demand. Then, three, Uber already function-- and, and Uber already functions like an employer. So, Senator Jacobson, unlike restaurant franchise owners who run independent businesses with full control over pricing, hiring and branding, Uber drivers have little autonomy. Uber drivers have little-- Uber, Uber dictates fare prices, controls access to customers, monitors performance, and can deactivate drivers at will. This level of control mirrors an employee-- employer-employee relationship, not a franchisor and franchisee one. Four, other countries have already done it. Uber operates in countries where drivers have one worker protections, such as the United Kingdom in Spain and, and the company continues to function, actually. This disproves the claim that reclassification will make the business unviable. In many cases, Uber has adapted by offering benefits while maintaining its ride-hailing service. And, five, economic stability and customer demand would improve. Giving drivers employment status would lead to better wages, job security, which means consumer spending in local economies. Workers with stable incomes contribute more to economic growth, which would ultimately benefit Uber by creating a stronger base of riders and drivers who can afford to participate in the platform long term. Who are we trying to

protect here? Again, are we trying to protect a corporation or are we trying to protect people? That's the question we should ask ourselves, Senator Hallstrom, Senator Jacobson, Sorrentino. Are we here to work for people or corporations? Are we here to work for billionaires or people? That is the question that we should be asking ourselves. We talk about growing our economy. Our receipts are down. We're in a budget shortfall. We need to attract people to our state. We need to take care of Nebraskans. We need to bring in more tax revenue. We need to do all of these things to make Nebraska attractive. This won't do it. I guarantee it won't do it. But neither here or there. I'm probably preaching to the choir, but I would just like to let you know voting yes on this does not make the state attractive. Makes it less attractive than it already is. So with that, I'll close, but thank you.

KELLY: Thank you, Senator McKinney. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. Sorry, colleagues, I was printing the bill because I was reading it on my computer and feeling like I wanted to go more old school, but didn't get it done in time. So I've been listening to the debate this morning, and I didn't get a chance to look at this bill last night when the agenda was posted so apologize. I'm playing a bit of catch-up this morning. I will say for those that are new, we have these things that are sitting on our desks with the agenda every day and then there's this long white sheet. The white sheet is the worksheet. So when you hear us say we're going in worksheet order, that's-- this is the worksheet. And right now we are on-- at the top, it has A bills, 2025 priority bills, General File. So we are doing the General File worksheet order. So that's why we're on the bills that we're on today. And the ones that are on Enrollment and Review are the ones we moved yesterday and I think the day before. So, so we're on worksheet order. And it's typical to go through worksheet order. And the bills that get out of committee early usually move fairly quickly because they usually are not very controversial. And listening to the conversation this morning, this bill, I would say, probably falls into the more controversial category than the noncontroversial. As you can see, there's people raising some concerns. And I've been listening to the debate and then also reading over the committee statement and the bill itself. And reading over the bill itself, I get-- it's 14 pages. And, really, the bill-- the substance of the bill, statutory change starts at the bottom of page 11 of the 14 pages. Prior to that, it is outlining different services or individuals that fall under this sort of exemption, I guess. Most of those are about a paragraph long like services performed by an

individual who is a participant in the National and Community Service state grant program, also known as AmeriCorps. Because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in pursuant to 42 U.S.C. blah, blah. So, anyways, there's several of these that are about a paragraph long and then I get to the service by a marketplace network contractor. And describing that is several pages. Why I bring this up is it raises a concern for me that this might be what we would consider special legislation, because this is a gig economy and we are functioning much more and more in a gig economy. But I guess my question would be, and I can circle back to Senator Hallstrom, I know he, he just stepped away from his desk for a moment. So I will circle back with him. But my question is, is this just for Uber and Lyft drivers? Is this for DoorDash and Grubhub and Gopuff or, you know, what-- is this for Hy-Vee delivery services? Is this for-- now I'm forgetting all the names of the apps, but there's the app that you-- like, Instacart, Instacart or Postmates or all of those different things. Like what-- who does this cover? And then my other question is, why is this necessary? It feels like we are trying to proactively stop an industry of people from creating a better work environment for themselves. And I don't know why we would be doing that. It seems like we would be doing it for the employers, not the employees. And to Senator McKinney's point, we should be looking for ways to make employment in Nebraska more enticing. And I appreciate the flexibility that these jobs offer to individuals. I also appreciate the people that do this work. But I think proactively saying that this isn't anything other than contract work and it can never be anything other than contract work is a misstep on our part. And I hope that we can get to a point where we maybe just pass over this and move on to the next thing, because I think that this is going to continue.

KELLY: That's your time, Senator.

M. CAVANAUGH: Thank you.

KELLY: Senator von Gillern, you're recognized to speak.

von GILLERN: Thank you, Mr. President. Listening to the debate and really finding this interesting and comparing it to my past life as a general contractor, in that world, we hire subcontractors all the time. Subcontractors quite often will do 60-70% of the, the actual trade work on a project. And back in the day, the Nebraska Department of Labor regularly did audits of contractors to ensure whether we were hiring contractors, independent contractors, or individual employees

and trying to make them work as, as contractors. And it was a complicated conversation in the beginning, but they were able to break it down for us in the construction world in simple-- a simple test that we used in our office and that was-- the, the daily litmus test was whether you told them where to work, when to work, and what to do. That was the easy-- and Senator Sorrentino talked about a 10-point checklist and a 6-point checklist. That was our 3-point checklist. Rideshare apps do none of these. Rideshare apps give you the opportunity to decide on your own when to work, where to work, and what to do. We told subcontractors all the time how we wanted them to do their work, and we did it through contract documents or agreements, just like rideshare apps do. If you want to be a rideshare app driver, you have to get on and go through an application process and pass a background check. And you have to agree to terms of how you're going to provide that service. Just like we did as a contractor. A driver agrees to provide a service in a particular way. The app agrees to pay them a certain sum. Just like if I had hired a plumber or an electrician. We use technology all the time to solicit subcontractor interest, to solicit their bids, to receive their bids, to negotiate their scopes of work and pricing. Does the fact that we use the electronic platform to do all that work, make these, make these individuals-- make these independent employees-- independent businesses employees? No, it does not. The fact that we used a platform, the fact that Uber uses a platform, that Lyft uses a platform does not-- is not the clarifying factor. If an Uber driver turns down a ride or a shift, they don't get fired. That's clearly different than an employee-employer relationship. Senator Jacobson noted that making these people employees would crush the industry. Well, all we need to know to determine that that's true is look at what happened-- what's happened to the taxi cab industry? How hard is it to find a taxi cab? And the reason is not because it was a great business model, it's because there's a better business model out there today. We found a better way. And we found a better, a better way to do this service and brought disrupting technology that has made all of our lives better. And I bet there's probably no one in this room that has not utilized a rideshare app and, and marvels at the ease in which you can do it, and the economy in which you, you receive, and, and the positive driver experience. If, if the drivers were so-- I tell you, I don't think I've ever had a bad driver experience in a rideshare app. Man, I've had a lot of them in a taxi cab. Which one is an employee and which one is an independent contractor? How do they-- which one loves their job? Which one doesn't? Senator Dungan said we've seen a massive shift in our economy in recent years, and he's absolutely correct, which is why we need-- there's been questions, why do we need

this clarification? Well, the fact is this is a disrupting indus-- it's had been a disrupter in the industry and the law has not kept up and we need to keep up. Senator Dungan also mentioned that two suits against Uber were not allowed to be dismissed via summary judgment. I've had the unfortunate pleasure of being involved in more than one lawsuit. I can tell you we almost always ask for summary judgment and it's almost always denied. So that's not an unusual finding. Others have claimed that this bill is highly technical and complex, which it is not. Pull it up and take a look and read it. Everything that's in this bill has already been tried before the courts of the Department of Labor and are simply acknowledging this new technology fits into our world in a way that's already been established. I encourage you to read the bill. Probably the most frustrating thing for me is that some in the room would seek to kill the entrepreneurial spirit that has made our country great. I encourage you to vote green on LB229 when we get the opportunity to advance it. Thank you.

ARCH: Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I appreciate the conversation on this bill. I was not really paying attention to it. Senator Hallstrom came up and mentioned it to me basically right before the debate started. So I've been listening and trying to learn some stuff. And I guess my thoughts on it are I heard a little bit of what Senator Sorrentino talked about, and then I did have an opportunity to speak to him off the floor about the 6-factor test to determine if somebody is an independent contractor or not. And, you know, he made a pretty compelling argument that the folks we're talking about here don't meet the standard as articulated. And I'll do some more looking at the-- got the Department of Labor's site here where they go through it, and I'll take the opportunity to look through it. But the reason I bring it up is this bill looks like it is putting in statute what is already the current state of affairs in this employee-employer relationship of these tech, whatever you call them, mobile platform rideshare things. And I guess my thought or question on it is a "couplefold." One of them is we are inserting ourselves into this relationship between these folks and these massive corporations, and we're doing it on-- in the benefit of the corporations. So I think I'm just wondering if that-- if there's wisdom in that on our part and to shift the balance of power in that relationship. And, two, is all of you will probably hear some version of this over the course of your career here as you bring bills. But what, what problem is this seeking to solve? Or what-- the, the people who are talking about regulating already do what X-- you know, we hear that all the time from the departments. You know, I brought a bill to

require Department of Health and Human Services to apply for a waiver for Medicaid to provide additional services for people returning from prison. And the Department of Health and Human Services said, well, we don't need a bill. We can just do that. And I'm sure other people have had similar experiences on those sorts of things. Or I know there was the landlord-tenant bills were in Judiciary last night and I've brought some of those over my time here. And landlords that come and testify are the good landlords. I mean, not exclusively. I don't know who all testifies and I don't know how they run their business, but a lot of them are folks who are doing everything right and they come and say, why should we be regulated in this way? We're doing everything right. And we often don't pass those bills because everybody says, well, yeah, they're doing everything right, why would we pass the bill? So one of the questions we do ask when we're passing a bill is, is this going to change how things are being done? And so this is a bill that seeks to put in statute a codification of the current process. But as Senator Sorrentino articulated, it pretty clearly is the way things happen now. So I guess I don't, I don't know what problem this bill is seeking to solve, I guess. And then my other, I guess, thought, question is what happens-- I've, I've read through the bill a little bit and I think some folks have brought this up. I think it pretty clearly says if you're delivering packages or things that this doesn't apply to you. So if somebody can correct me if I'm wrong on that, if I misread that. But so I think to Senator Machaela Cavanaugh's question, it was if you get Hy-Vee, whatever delivered or maybe DoorDash even, I guess. I've never done DoorDash. I'm sorry if anybody thinks everybody's done these things. But if you have those sorts of things delivered, then that would not be somebody who's covered under this. And I guess I don't know what the difference functionally is between someone who does DoorDash and somebody who does Uber or Uber Eats, I guess. I don't know if this applies to Uber Eats. But my question is what of-- right now, this is advantageous to Uber to structure these relationships this way, where they want people to be independent contractors. And I know there's been some conflict in California at a very large scale about what is the nature of these employee-employer, independent contractor relationships. And that's one of the reasons, I think, that Uber is seeking this clarification. But what, what about what happens if we pass this bill and then 5, 10 years down the road these companies decide that it is more advantageous to them to have an employee-employer relationship as opposed to a contractor relationship. And so I don't have time to ask anybody that question. But if Senator Hallstrom has time to answer the question of does this preclude them from entering into an employee-employer relationship at a later date if we do pass this

bill? So I'm going to keep reading my stuff and I might push my light again. Thank you, Mr. President.

ARCH: Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. Just to further tease out some of the points that have been part of our deliberations this morning, I, I do just want to clarify, and I think Senator Sorrentino did an awesome job of kind of simplifying a rather complex concept about the current legal standard and test when there is an open question as to whether or not somebody is an independent contractor or an employee for various purposes. So I, I still just don't understand why we need to have this law in place when the existing legal standard exists, is well-understood, and can be applied. And by describing this standard, I don't think that is by any means a, a reason to vote for the bill. But it rather shows that this bill is not necessary. Additionally, I'm not quite sure and wanted to pose for the record if there was any other industry that is similarly regulated as proposed in Senator Hallstrom's bill. Is there any other particular industry where we say X is Y for a purpose of Z definitively when it comes to the independent contractor or employment context? That's something that maybe we could look to as potential other models to see if there is a valid public policy in having that broad statement of state law or if this is unique or sui generis in some regard, we should have clarity as to why. Additionally, I, I do want to think through a, a point that Senator Hunt mentioned during her time on the mic. There has been, I think, a fair amount of investigation and reporting and dialogue about criminal wrongdoing by Lyft or Uber drivers that does cause some consumer safety concerns. So what I'm wondering about is if we say for purposes of employment law that you're an independent contractor, if you work for Uber or Lyft no matter what, does that provide any sort of implication or shield or immunity in other contexts to if Uber or Lyft were to make a negligent hire, for example, and a passenger were to get sexually assaulted, do then they point to this area of state law and say they're independent contractors, we have no liability? I mean, I'm just trying to understand the intersections between tort law and criminal law and this employment law component. Finally, I think this is an issue that also, of course, implicates an interstate commerce. And I'm not quite sure if those issues have been completely teased out. And I'd like to think more about either today or in between General and Select File. And I just also don't quite understand if there's a significant problem in terms of employee classification or misclassification in any of our communities or particularly in our rural communities, which aren't even served by Uber and Lyft. So I, I just think there's a lot

to tease out here and we should take some time to kind of fully vet this, and I'll look forward to Senator Hallstrom's responses and, of course, work with him and others in good faith to see if any-- we can find some amendments during the course of this bill's deliberation to maybe provide some, some clarity or confinement that might be able to achieve better consensus. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Speaker Arch would like to introduce a group in the north balcony, visiting delegation of Red Cross officials from Iowa and Indonesia. Please stand and be recognized by the Nebraska Legislature. Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. I'm interested in a Nebraska-Indonesia exchange. I think-- they're here, I want to go over there and see what that's about. Thank you so much for being here for the Nebraska Legislature. One thing that I think about, and this is-- this has been such a theme in my experience as a lawmaker is kind of the way we try to stop a problem because we don't want the bad thing to happen when we don't even know if the bad thing will happen. For example, I would say we went through a process like this in our Committee on Committees process, kind of like squashing down any kind of potential for loss, even though there's not necessarily going to be one. Last night we had our, our hearing for the winner-take-all bill, saying, you know, a Republican might, might win one of our congressional district's electoral votes. It might not. But we want to take away the possibility that they even couldn't. And then with this bill, same kind of theme saying we have to prevent these people from unionizing. We can't let them be, you know, self, self-sufficient and associated and organize and do their own thing as employees. When, colleagues, we don't know if they even will. You look at what's happened with Amazon or Starbucks, there's been efforts for those employees to unionize and many other private companies as well. Sometimes they're successful. More often than not, they are not successful. So let's be clear, not every attempt to unionize even succeeds. Workers have fought for years to form unions, and they often fail. I don't even know of any specific effort in Nebraska for rideshare workers to be unionizing. I would support it. I'm sure there's people who are interested in it. But what's clear to me is that this bill was not introduced in 2025 because there's a active challenge to the corporations of Lyft and Uber. We've seen this bill introduced several times. And, you know, I'm just-- I can't be convinced right now that there's really a problem. If rideshare drivers try to form a union, there's no guarantee that they'll win. But that's not the point. They should have the right to try and the government should stay out of the way of preventing workers from the right to try to unionize. So this bill, to

me, it's not about protecting workers or ensuring fairness, it's about tilting the playing field even more in favor of billion-dollar corporations like Lyft and Uber, and making it impossible for drivers who are earning all the money for these corporations, not getting any benefits, often doing this work under, you know, danger and safety, you know, risks to themselves, making it impossible for these workers to advocate for themselves, workers like those who work for Lyft and Uber or who work for Instacart or any other of these gig economy corporations, which are going to be getting more and more prevalent in our society. In the last 15 years, we've had everything privatized. You can get everything delivered to your door. You can get on an app and get a ride anywhere you want to go. You can even book a private jet anywhere you want to go. You can do all kinds of stuff just from your phone that you would have had to, like, work with a, a company to do before. But workers are already up against these gigantic corporate interests and the increasing privatization of services in our society. And we don't need government making it even harder. These are companies, Uber and Lyft, that have spent millions of dollars lobbying lawmakers. I think I even-- maybe in 2019 or 2020 or something, I think I even got a check from Uber or Lyft. I think it was a good check too, and it was a surprise. So we know that these companies spend lots of money lobbying lawmakers to protect their business model, while drivers have almost no resources to fight back. The Uber and Lyft drivers don't have a lobbyist and they don't have a union. So why should the government step in and make it even harder for them? Workers who want to unionize, they already have tons of obstacles and the government doesn't need to put their thumb on the scale in favor of corporations to make it even harder for workers to advocate for themselves. If a union fails, it fails. If an attempt to organize fails, it fails. But workers in Nebraska deserve the right to try without outside intervention from the government preventing them from doing so. Thank you, Mr. President.

KELLY: Thank you, Senator Hunt. Senator Quick, you're recognized to speak.

QUICK: Thank you, Mr. President. You know, I'm still listening to all the debate and trying to find out more information about how the whole process works. And, you know, I'll admit, I don't know a lot about what Uber and Lyft drivers-- I know they give rides and I've-- and, and they do that, but I don't know how they're currently being paid and how that all works. And I talked to Senator Hallstrom off the mic a little bit, and I wondered if he would yield to a couple of questions.

KELLY: Senator Hallstrom, would you yield to questions?

HALLSTROM: Certainly.

QUICK: Yeah, thank you, Senator Hallstrom. So, you know, currently do you know how they're-- how actually Uber drivers and, and Lyft drivers are paid?

HALLSTROM: Well, my understanding, Senator Quick, would be that when you get on the app, you make payment in some manner, whether it's by credit card, Venmo or otherwise, and that there's an arrangement between Uber or the marketplace contractor and their drivers to provide for what I would presume would be electronic deposit of their, their share of the, of the fare into their bank account.

QUICK: OK. So, yeah, the, the, the, the company gets a, a portion of the ride and the driver gets the other portion.

HALLSTROM: Correct. And the, and the amount that's, that's charged to the, to the passenger is based on a number of variables. They've, they've got a concept called "surge pricing." When, you know, think of the College World Series in Omaha, when, when there's a great deal of traffic down in the downtown Omaha area that due to the demand, you may have a higher rate that's going to apply for rides during that surge-pricing period.

QUICK: OK. And does this bill, if, if this goes through, is that change how they're paid or how does that work?

HALLSTROM: No, there'd be no change either in how they're paid, the control that they have over when and how and if they take rides and so forth. And I do while, while I'm on the mic without taking too much of your time, Senator, one of the things that I think you, you indicated was some concern about changing them from employment status to independent contractors. That is not the case. They are clearly treated as independent contractors. There's presumably been any, any number of cases where if that's been challenged, the independent contractor status has been upheld. So we're not changing them from, from one status to another.

QUICK: OK. Do you know, like, for Social Security and Medicare, do they have to pay that in themselves or do you know how that works for--

HALLSTROM: There, there, there's none of the traditional employment-- employer-employee requirements for payroll that would apply.

QUICK: OK. And then like on their federal taxes, do they have to, they have to, like, pay quarterly or something or how--

HALLSTROM: Well, if they're independent contractors for tax purposes, they'd be treated as being self-employed. So they would be responsible for making quarterly estimates based on their annual income and so forth. And they, and they very well, many of these people may be employees in their 9 to 5 job, but they would be independent contractors and would report self-employment income here. And there's a self-employment tax that applies from, from that perspective when their tax return is prepared.

QUICK: OK. Yeah, thank you, Senator Hallstrom. I really appreciate--

HALLSTROM: Thank you.

QUICK: --you answering my questions. Yeah, I'll just keep listening to debate. I really appreciate Senator Hallstrom answering some of my questions. I'm just trying to learn more about, you know, how this all works and, and what their, what their current status is compared to what the future status is. And then, you know, I, I was reading the committee statement and seeing that-- on testifiers, I would love to have seen maybe an Uber driver come in and testify on how that, you know, what the process is for them and how they felt about the change. And I know the company was there, but it's always great to have that lived experience where someone comes in and, and talks to us in the committee hearing on how that actually is affecting them and how this current law might affect them as well. So I know on some other committee hearings, we've had people come in and testify on their lived experience. So I'm on HHS and so we hear from a citizen or a person that had something that, that directly affects them and that, that puts a lot of weight into my decisions on how I react to and vote on bills. So with that, I'll yield the rest of my time. Thank you, Mr. President.

KELLY: Thank you, Senator Quick. Senator McKeon, as some guests, family members under the south balcony, his mother, Connie, and his sister, Teresa McKeon Hendrickson. Please stand and be recognized by the Nebraska Legislature. Senator McKinney, you're recognized to speak, and this is your third time.

McKINNEY: Thank you, Mr. President. Interesting, interesting conversation. I still oppose this bill. I was wondering if Senator Hallstrom would yield to a question.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate January 31, 2025

KELLY: Senator Hallstrom, would you yield to some questions?

HALLSTROM: Certainly.

McKINNEY: Thank you, Senator Hallstrom. So I was listening to Senator John Cavanaugh speak, and he had mentioned the 7-point or 6-point test that Senator, Senator Sorrentino had mentioned that is already on the books or whatever. And if that is the case, why is this bill needed?

HALLSTROM: Because there's a tax in other states, Senator McKinney, on the independent contractor status. So this is preempting and acting proactively to put in statute that they will be independent contractors if they meet all the criteria that's in LB229 that would become the statute.

McKINNEY: So because of-- what you're saying is other attacks in other states, we're trying to prevent it in the state of Nebraska?

HALLSTROM: That would be part and parcel of it.

McKINNEY: All right. Thank you.

HALLSTROM: Thank you.

McKINNEY: So because other states are doing things, we want to do things. That is very novel. Well, other states have made recreational marijuana a thing and are taxing, taxing it and making a lot of money, the state of Nebraska should do that. Other states have legalized online sports gambling, the state of Nebraska should do that. Other states are not trying to prosecute 12-year-olds with felonies, the state of Nebraska should not do that. Other states are not building prisons, the state of Nebraska should not do that. I, I could go all day with what other states are doing and things we should do and shouldn't do if we're going to just do things because other states are doing and preempt the tax. But because a company, a billion-dollar company is supposedly being attacked in other states, we need to protect a billion-dollar company from being attacked in the state of Nebraska. We shouldn't protect the people of Nebraska. Think about that. Just think about it. A billion-dollar company is being attacked in other states, we should protect it, but we shouldn't protect the people of Nebraska. We shouldn't protect kids in Nebraska from budget cuts that is good-- that is-- that are being proposed and probably will hit this floor in the next couple of months from, from happening that are already in the depart-- oh, I have a new name for the department, the Department of "Hell, Harm, and Suffering." I, I fixed it because I, I couldn't figure out what to do with the "S" but it's

suffering. But we should protect kids that are under the purview of that department. We should protect them because we should. Other states are doing a lot, a lot of things. So if other states are legalizing marijuana, we should do that. If other states are legalizing online sports betting, we should do that. If other states are not trying to lock up 12-year-olds and 11-year-olds, we should not be doing that. If other states are decreasing their prison population, the state of Nebraska should be doing that. If other states are not building prisons, we should not be building prisons; wasting \$350 million, and we got a budget shortfall of \$432, and we're talking about we're fiscally conservative and fiscally responsible. If, if-- this is wow, this is crazy, because other states are doing things, we're going to do it or attempt to do it. Just think about it. Other states are doing things, so we should do it. So let's not build prisons. Let's protect kids. Let's not try to lock up kids at 12 years old. Let's legalize marijuana. Let's legalize online sports betting. Let's do things because other states are doing it. Thank you.

KELLY: Thank you, Senator McKinney. Senator Moser, you're recognized to speak.

MOSER: Thank you, Mr. President. Good afternoon-- well, I guess, it's still morning-- colleagues and Nebraskans. So I think the, the debate kind of centers around a union, anti-union kind of discussions here. Companies want clear definition of contractor and employee designations because it makes a difference in how they're compensated and how their business model works. And so as Senator Sorrentino said there are some basic clauses that determine whether you're an employee or a-- an independent contractor. So we follow those. But all of a sudden we come along and instead of following the rules we start talking about how we feel and how, you know, we're mad at big corporations because they make too much money and all this. We're getting into kind of a discussion of, of big business versus little. But one thing that I think is curious in all this is numerous times we have been chided in this body for not embracing the latest technology, not considering what younger people want in life and not wanting to move to Nebraska because, you know, we-- we're not embracing those new technologies and those new interests for young people. But yet here, Lyft and Uber, I would say, are used by primarily, I would say, younger customers and I would think that that would be a plus for our state is that Uber and Lyft are able to operate here, but instead we're trying to put extra burdens on them to help the unions so that people can unionize. If you want to drive to take people around, you can work for Uber or Lyft, or you can work for a union company. That's your choice. You're not required to work for Uber or Lyft. You, you

can pick either one. It's a, it's a free market situation. And I don't think that we should encumber Uber or Lyft with all of the requirements of employers if that's not what they're doing. Uber and Lyft are providing competition for the traditional taxi companies, and that's having an impact on rates. I think that it's-- the competition is a good thing. And I just traveled last weekend and I, I used Yellow Cab and cab driver was fabulous, knew where I was wanting to go, even though I didn't give him the exact address. He, he was experienced, knew where to go. Again, I think it's a matter of choice. Employees can work for a company as an employee or they can work for a company as an independent contractor if that's how they choose and if they follow the rules for those things. Thank you.

KELLY: Thank you, Senator Moser. Mr. Clerk, for items.

CLERK: Thank you, Mr. President. Some items. Your Committee on Enrollment and Review reports LB1, LB2, LB194, LB116, LB209, LB20, LB35, LB58, LB126 as-- to Select File. Additionally, amendments to be printed from Senator Rountree to LB144. Notice of committee hearing from the Health and Human Services Committee, as well as notice of committee hearing cancellation and notice of public hearing from the Revenue Committee. Committee report from the Education Committee concerning gubernatorial, concerning gubernatorial appointments to the Education Committee-- from the Education Committee to the Board of Trustees of the Nebraska State Colleges. New LR, LR36. That will be laid over. Additionally, name adds: Senator Bosn to LB15; Senator Rountree, LB108; Senator Sanders, LB266 and LB294; Senator Brandt, LB381; Senator Juarez, LB676 and LR21. Senator Ibach, name withdraw from LB665. Notice that the Business and Labor Committee will conduct its hearing on February 3 in Room 1524 at 1:00-- 1:30 p.m.; Business and Labor, 1:30, Room 1524. Mr. President, finally a priority motion, Senator Lonowski would move to adjourn the body until Monday, February 3, 2025, at 10:00 a.m.

KELLY: Members, you've heard the motion to adjourn. All those in favor say aye. Those opposed, nay. The Legislature is adjourned.