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Business and Labor Committee
February 25, 2008

[LB1019 LB1020 LB1073 LB1086 LB1105]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 25, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1019, LB1020, LB1086, LB1073 and LB1105. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: Ernie Chambers. []

SENATOR CORNETT: Good afternoon and welcome to the public hearing of the Business and Labor Committee. I would like to introduce you to members of the committee and committee staff and then briefly explain the procedures we will be following. First to my right is Senator Norm Wallman from Cortland; Senator Steve Lathrop will be joining us; to my immediate right is Lori Thomas, legal counsel; on my far left is Senator McGill from Lincoln; and Senator White and Senator Chambers will be joining us. Today our page is Kristen who is from Ainsworth. I'd like to tell everyone in the room that the proceedings will be recorded. That means I'd like you to turn all cell phones off or turn them to vibrate at this time. The procedure is the committee will first hear the bills or first hear the bill, the introducer, and then hear testimony in favor and then opposition and then neutral testimony. Everyone testifying needs to fill out a testifiers sheet and place it in the box. If you do not wish to testify but wish to go on the record, you can fill out a separate nontestifier sheet and say whether you're in favor or opposition to a bill. If you have printed materials to distribute, when you come up, we need ten copies of that. If you do not have ten copies, the page can make those for you. Just hand the copies to the page. Today's agenda will include, let's see, LB1019 correct? We'll start with LB1019. []

LORI THOMAS: Good afternoon Chairperson Cornett and members of the committee. For the record I'm Lori Thomas, T-h-o-m-a-s, introducing LB1019 on behalf of the committee. LB1019 contains claims against the state which were approved for payment by the claims board and are now presented to the committee for approval by the Legislature. The bill contains three types of claims, namely, miscellaneous claims totaling \$14,329.25, tort claims totaling \$9,950,100.60, and agency write-offs in the amount of \$393,552.22. There will also be two amendments to the bill which will encompass recent settlements reached after the bill was introduced. In your bill summary I referenced those two amendments but since then they have been modified so the amendment numbers I used in your summary are incorrect. Laura Peterson, the risk manager, will follow my testimony and will speak in detail about each of the claims and will be providing copies of the proposed amendments. So with that, I would turn it over to Laura. [LB1019]

SENATOR CORNETT: Thank you very much. Go ahead. [LB1019]

LAURA PETERSON: (Exhibits 1-4) Good afternoon Senator Cornett, members of the

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Business and Labor Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the State Risk Manager. I'm here today in support of LB1019 which contains claims approved by the Claims Board or litigated claims which were settled or in which a judgment was obtained against the state and which require approval of your committee and the Legislature. I believe you received a summary of each claim. As we've done in prior years, we'll go through the claims in the bill and provide a summary of each claim. I'll be happen to take questions as I go along or at the end of my testimony, whichever you prefer. In prior year I've simply paused after the summary of each claim to see if there are questions on that claim. Also representatives of the Department of Correctional Services, Department of Roads and Department of Health and Human Services are here to answer any questions you have that I cannot answer or that would be more appropriately answered by the agency. Section 1 of the bill contains one miscellaneous claim approved by the claims board that needs legislative approval. Claim number 2007-01741 was filed by WESCO Insurance Company requesting reissuance of a corporate tax refund in the amount of \$14,329.25. The company lost the original warrant and it was discovered after its expiration. The warrant expired and was never cashed or reissued. The Department of Revenue recommended that the claim be approved and the Claims Board did approve the claim. Section 2 of the bill includes tort claims which need legislative approval. The first tort claim is claim number 01-009 filed by Gail Fickle against the Department of Roads relating to an accident which occurred at an intersection. The court during litigation determined there was a faulty traffic light. The court further determined that the department had notice prior to the incident and therefore had liability under the Tort Claims Act. The Supreme Court remanded the case with an opinion that the original awarded damages were too low and with a supplemental opinion stating that the economic damages were over \$8 million. The claim was settled while on remand for a determination of damages. The settlement amount of \$9,900,000.00 was approved by the court and is to be...in the bill to be paid from the Roads Operational Cash Fund. Questions on that? [LB1019]

SENATOR CORNETT: Are there any questions on...okay, go ahead, Laura. [LB1019]

LAURA PETERSON: The second tort claim is claim number 03-132 which was filed by David Thacker against the Department of Correctional Services. Mr. Thacker is an inmate at the Nebraska State Penitentiary. He injured his ankle playing basketball. His ankle was broken but the break was not originally diagnosed. This claim was litigated and the claimant obtained a judgment against the state in the amount of \$70,000. The state paid the \$50,000 allowed under the Tort Claims Act and the \$25,100.57 identified in the bill is \$20,000 for the remainder of the judgment, \$2,479.67 for costs that were awarded to the claimant to be paid by the state, and \$2,620.90 for judgment interest. [LB1019]

SENATOR CORNETT: Any questions from the committee? Senator Wallman. [LB1019]

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SENATOR WALLMAN: Thank you, Senator Cornett. Do you think that we tried this case hard enough against this inmate? [LB1019]

LAURA PETERSON: You know, I think the Attorney General's office, in cooperation with the agency, does a good job of attempting to defend this case but ultimately there was a time period between the time that the ankle was broken and the time that the break was diagnosed and I think it was that period of time that led to a judgment. [LB1019]

SENATOR WALLMAN: The infirmary didn't take any action on it or... [LB1019]

LAURA PETERSON: I think they reviewed, they saw him immediately after the injury. There was a misdiagnosis and then I believe there were several requests for him to see a medical physician and I think there was a delay. [LB1019]

SENATOR WALLMAN: No x-rays or nothing? [LB1019]

LAURA PETERSON: I'm sorry. [LB1019]

SENATOR WALLMAN: In between that, no x... [LB1019]

LAURA PETERSON: I think...there was an x-ray but my understanding is whomever read the x-ray, misread the x-ray and the break was actually visible on the very first...on the x-ray from the very first, right after, immediately after the injury but the break just wasn't diagnosed properly. And I think that's part of it is that there was ultimately a misdiagnosis and because there was this period of time between when they first misread it and when they correctly read it, there was some pain and suffering by the inmate while he waited for a correct diagnosis. [LB1019]

SENATOR WALLMAN: Is this a long-time inmate or... [LB1019]

LAURA PETERSON: You know, I'm not sure exactly how long he's been incarcerated but this injury was in...or it was filed in 2003 and he remains in the Penitentiary now so I mean he's certainly sentenced for a while. [LB1019]

SENATOR WALLMAN: Okay. Thank you. [LB1019]

SENATOR CORNETT: Was there any attempt at recovery from the person that misdiagnosed this? [LB1019]

LAURA PETERSON: I do not believe so. The person who misdiagnosed this is a state employee and state employees under a different statute are indemnified for their errors unless there's gross... [LB1019]

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SENATOR CORNETT: Correct. I wasn't sure if it was a private hospital he'd been transported to. [LB1019]

LAURA PETERSON: It was actually at the facility. [LB1019]

SENATOR CORNETT: It was at the facility. Okay. Thank you very much. Any further questions from the committee? Seeing none, why don't you move on to the next claim. [LB1019]

LAURA PETERSON: The third and final tort claim that's in the original draft of the bill is claim number 03-492 against the Department of Health and Human Services. The claimant was a foster child and was placed in a foster home where the claimant was allegedly sexually abused by the adopted child of the foster parents. The foster parents had insurance and the insurance company did pay its limits to the claimant. The claimant obtained a judgment against the state in the amount of \$75,000 based on the court's finding that the state did not fulfill its duty of preplacement investigation of the home and failure to fulfill its duty to visit the claimant monthly during that placement. The state paid the \$50,000 allowable under the Tort Claims Act and the remaining \$25,000 is included in the bill for your approval. [LB1019]

SENATOR CORNETT: The only question I have is, you said allegedly. If we're paying, I assume it occurred? [LB1019]

LAURA PETERSON: This is an actual judgment so the court obviously felt that there was enough evidence, yes. [LB1019]

SENATOR CORNETT: All right. [LB1019]

SENATOR WHITE: How many times has Health and Human Services been hit for putting people who have been sexually abused in homes without proper warning? [LB1019]

LAURA PETERSON: I don't know that off the top of my head but we can certainly run a report for...based on the allegation and tell you how many that we've paid. I'd be happy to get you that information. [LB1019]

SENATOR WHITE: I would like to know that. [LB1019]

LAURA PETERSON: Okay. [LB1019]

SENATOR WHITE: Because I seem to recall a couple of really horrific examples and also seem to recall a firm commitment not to let that happen anymore and yet, here we

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go again. So I would appreciate that. [LB1019]

LAURA PETERSON: We will be happy to follow up and run a report out of our system. [LB1019]

SENATOR WHITE: Thank you. [LB1019]

SENATOR CORNETT: That brings me to a question. What year did this take place, this particular tort claim? [LB1019]

LAURA PETERSON: The claim was filed in... [LB1019]

SENATOR CORNETT: We have more than one in this same matter, correct? [LB1019]

LAURA PETERSON: I'm sorry. [LB1019]

SENATOR CORNETT: We have more than one claim that's dealing with this...this is [LB1019]

LAURA PETERSON: This is only one. [LB1019]

SENATOR CORNETT: This is the one. All right. [LB1019]

LAURA PETERSON: In the amendment there is a case where there were multiple children involved but this is...in the claim that's in the original bill, this 03-492, it's one individual. [LB1019]

SENATOR CORNETT: One individual, what year? [LB1019]

LAURA PETERSON: It was filed in 2003 and I think the allegation is that it occurred in approximately 1989. [LB1019]

SENATOR CORNETT: And I know you're not directly with Health and Human Services but what would the new administration of Health and Human Services plan that's been put in place for background checks on the children and on the families where they're being placed in regards to this so we can try and... [LB1019]

LAURA PETERSON: Well, I know that... [LB1019]

SENATOR CORNETT: I mean, if you read the paper, they're still going on. [LB1019]

LAURA PETERSON: I know even at the time of this occurrence if you read the court, the judgment, and HHS may want to address this in more detail, there actually was a

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plan in place regarding how frequent visits need to be occur...to occur and what kind of preplacement investigation needs to be done. [LB1019]

SENATOR CORNETT: Okay. Any further questions from the committee? Seeing none, go ahead. [LB1019]

LAURA PETERSON: Okay. That completes the tort claims section of the bill, the originally drafted bill. Section 4 of the bill includes agency write-off requests. First request 2007-01177 was made by the state surveyor to write off \$1,352.50. Registered land surveyor George Herrin passed away and the surveys were found in his office after his death. They were not timely filed. The agency made diligent attempts to collect from the executor of Mr. Herrin's estate. My office was also in contact with the executor several times. However, because the estate and executor are in Texas and the cost of collection would far exceed the amount due, the Claims Board approved the write off in the amount of \$1,352.50. [LB1019]

SENATOR CORNETT: Okay. Thank you. [LB1019]

LAURA PETERSON: Request 2007-01364 was filed by the Supreme Court. The original write off request of \$359.52 was reduced to the amount in the bill, \$130.01, because several debts were collected between the time the claim was filed, was submitted with our office, and the time the claim was heard by the Claims Board. The agency made several attempts to collect the remaining \$130.01 from 22 individuals with the largest individual debt being \$24.00 and most of the individual debts being under \$5.00. Because of the small individual amounts, it is not economical to pursue collection or legal action beyond the efforts that have already been made. The Claims Board therefore approved the write-off in the amount of \$130.01. Request 2007-01728 was filed by the Department of Health and Human Services, Hastings Regional Center. The request involves three trust accounts at the Hastings Regional Center for a total request to write off \$25.00. One \$10.00 account arose from a bad check from a resident's family member. The other two were created by an accounting error that credited excess funds to the accounts, one for \$5.00, one for \$10.00. The resident then received the money and was discharged from the center before the error was discovered and recovered. The small dollar amount of the claims and the time since the individuals have been residents makes it impractical and inefficient to pursue further recovery. Therefore the Board approved the request to write off \$25.00. Request 2008-02081 was filed by the Clerk of the Legislature to write off \$95.18 stemming from two individual debts for reproduction of legislative materials. The dollar amounts involved in these two debts are very small and unlikely to be collected. The cost of pursuing collection further would likely outweigh the amount collected, if any. Therefore the Board approved the request. Request 2008-02148 was filed by the Military Department to write off debt in the amount of \$3,516.04 owed by six individuals who were involved in the National Guard Tuition Assistance Program. Each of the students withdrew from the program and was

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therefore responsible for the cost of the course. The department bills the individuals who owe repayment and they sent numerous letters to each individual. Beyond voluntary repayment, the statute authorizing the military program, the department is to use the provisions of 72-1601 to collect the debt. Based on a review of the state's accounting system, it was unlikely that offsetting would be available in these cases so the Claims Board approved the request to write off the debt. Request 2008-02206 was filed by the Department of Health and Human Services. The request is to write off \$385,746.64 of bad debt incurred in the departments facilities and benefit programs. \$304,298.32 of the request represents debt from the developmental disability services, assistance to the aged, blind and disabled, aid to dependent children, childcare and children and family services programs. The remaining \$81,448.32 represents bad debt incurred at the departments facilities, the Beatrice State Developmental Center and the three regional centers in Hastings, Lincoln and Norfolk. \$112,324.93 represents debt that was uncollectible due to the death of the debtors. \$24,873.02 represents debt that was uncollectible due to the bankruptcy of the debtor. \$160,101.96 was uncollectible because the debtor continued to be on some sort of government assistance or had assets that were legally protected from collection and the statute of limitations for collection of the debt ran while the debtor was still in that status. The agency has made an understandable policy of not undertaking collection efforts against individuals who are receiving income based assistance as the likelihood of collection is very slim. The remaining \$88,446.73 represents cases that were settled for less than the full value of the debt and the remainder requires write off. The Board approved the write off request in the amount of \$385,746.64 as I've described. [LB1019]

SENATOR CORNETT: Any questions from the committee? Seeing none. [LB1019]

LAURA PETERSON: Request 2008-02286 was filed by the Department of Roads. The department requests permission to write off \$122.11 in uncollectible debt representing damage to a fence owned by the department. The fence was damaged in an accident. An agency investigation into the individual causing the damage indicates that he has no valid insurance to cover the costs, he is currently unable to be located and is believed he may live out of state. The cost to pursue legal action are likely greater than the amount of any potential recovery. The eighth and final write off request was filed as claim number 2008-02287 by the Department of Roads asking permission to write off \$2,564.74 in uncollectible debt. There was property damage to a department traffic control box as a result of a two vehicle accident. The total damage to the box was \$10,564.74. A lawsuit was filed on March 22, 2007 and there were multiple claims against the liability insurance of the at-fault driver, including the department's property damage, two wrongful death claims, medical expenses, subrogation claims, and trial expenses. The at-fault driver had \$1 million of liability insurance and the department determined that due to concerns over insufficiency of the insurance coverage, a settlement in the amount of \$8,000 was the best option. The \$2,564.74 contained in LB1019 is the difference between the total damage to the department of \$10,574.74

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and the \$8,000 the department agreed to accept as a settlement. Several claims have also been settled since the introduction of LB1019. I distributed two amendments I would ask you to advance with the bill to approve these late-settled claims. The shorter of the two amendments contains tort claim numbers 04-801 and 04-802 filed by Theodore and Mary Neubert as the result of an auto accident between the Neuberts and a State of Nebraska Department of Roads snow plow. The state snow plow changed lanes into the Neubert's vehicle, forcing them off the road. Mr. Neubert suffered extensive injuries in the accident resulting in over \$90,000 of medical bills. The claims were filed in district court but were settled Friday, February 15, 2008. The settlement is being submitted to the court for approval as required by the Tort Claims Act and we anticipate court approval. Because the court has not yet approved, in this case we have not yet paid the allowable \$50,000 and I am therefore including in the proposed amendment the entire amount of settlement which is \$225,000.00. [LB1019]

SENATOR CORNETT: Senator White. [LB1019]

SENATOR WHITE: I do have a question regarding, is this normal process that we would approve a claim legislatively that the court has not yet approved? [LB1019]

LAURA PETERSON: If we did not anticipate that that approval would come before final passage of the bill we likely would not be requesting that you include it, and we would not have you include it. But we have on other occasions brought to you an amendment where we think that the court will approve prior to the final passage of the bill. [LB1019]

SENATOR WHITE: Assuming the court says no, what happens? [LB1019]

LAURA PETERSON: We've never had one since I've been here. [LB1019]

SENATOR WHITE: Okay. [LB1019]

LAURA PETERSON: So but if the court would say no, then we would likely approach and ask you not to advance the amendment if it had not already been attached to the bill or we would ask you for an amendment to remove it. But because the claims bills go forward with, as part of the budget package and in fact after the mainline budget bills, they're generally very late in the session and generally when we file these requests to approve a settlement with the court where both parties are requesting the approval and really where liability is not in dispute, only damages, they generally are relatively quick to approve them. [LB1019]

SENATOR WHITE: Thank you. [LB1019]

SENATOR CORNETT: Seeing no further questions. [LB1019]

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LAURA PETERSON: The longer amendment contains several claims but essentially are two general occurrences, one involving a variety of allegations occurring at the Lincoln and Norfolk Regional Centers, the other relating to a foster placement. The first 11 claims totaling \$265,500 are by 11 claimants, all against the Department of Health and Human Services alleging essentially a failure to protect. Eight of these individuals were residents at the Lincoln Regional Center and were allegedly sexually assaulted by an employee of the Regional Center. Three of the individuals were residents at the Norfolk Regional Center and were allegedly assaulted by another resident. Under Nebraska law the state is not liable for the criminal acts of employees or others, and therefore, the state was not responsible for the assaults themselves but rather the allegation relates to the duty to protect individuals who in our care and custody. These claims were all filed in district court and were settled by the Attorney General's office and the claimants' attorneys the week of February 11. Because these were just settled, they are being submitted for approval by the court. We anticipate such approval prior to final passage of the bill but I have not yet received it. Each individual claim is less than the \$50,000 which requires legislative approval. However, because the total of these 11 claims exceeds the entire annual appropriation for the Tort Claims Fund, we are asking that you approve the claims as part of the claims bill to provide adequate funding to issue the payments once the claim is also approved by the court. [LB1019]

SENATOR WHITE: When did these assaults occur? [LB1019]

LAURA PETERSON: I believe they're 2000 and 2001. [LB1019]

SENATOR WHITE: Thank you. [LB1019]

SENATOR CORNETT: When you are talking about 11 claims, I assume you're talking about 11 separate individuals, correct? [LB1019]

LAURA PETERSON: Eleven separate individuals, yes. [LB1019]

SENATOR CORNETT: And eight of those individuals were at one facility, correct? [LB1019]

LAURA PETERSON: Eight at one and three at...eight at the Lincoln Regional Center and three at the Norfolk Regional Center. [LB1019]

SENATOR CORNETT: At Norfolk. Obviously, they did not occur at the same time. How were these found out to have happened? What was the time period from the first report what...I guess my questions is, why were eight assaults allowed to happen and not one or two? I mean, things happen but... [LB1019]

LAURA PETERSON: I believe they were over, I mean the same time period but

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obviously not all at one time. [LB1019]

SENATOR CORNETT: What was that time period? [LB1019]

LAURA PETERSON: It was...the years 2000 and 2001 but I don't know the exact date of the first... [LB1019]

SENATOR CORNETT: When was the first allegation of an assault? [LB1019]

LAURA PETERSON: And I don't know that. That may be something Health and Human Services could... [LB1019]

SENATOR CORNETT: Do you see what I'm getting at? What...was the first assault investigated? Did two or three reports have to come in before they started investigating? Why was it allowed to go on to that length of time? [LB1019]

LAURA PETERSON: I have a little bit of information in that area but I think that's probably a question that Health and Human... [LB1019]

SENATOR CORNETT: Better. All right [LB1019]

LAURA PETERSON: I do not have the detailed investigatory reports. I have only the tort claims information and so Health and Human Services would probably be better to answer that than I would. [LB1019]

SENATOR CORNETT: Okay. Sorry about that. [LB1019]

LAURA PETERSON: That's fine. [LB1019]

SENATOR CORNETT: Please go on. [LB1019]

SENATOR WHITE: May I ask a question? [LB1019]

SENATOR CORNETT: Oh, I'm sorry. Go right ahead. [LB1019]

SENATOR WHITE: Wasn't one assailant in Beatrice and one in Norfolk, were there multiple assailants? [LB1019]

LAURA PETERSON: It was, one was employee assailant at the Lincoln Regional Center and at the Norfolk Regional Center it was one patient allegedly assaulting the three individuals so it was, in Norfolk it was a patient on patient alleged assault and in Lincoln it was one employee. [LB1019]

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SENATOR WHITE: Is Health and Human Services going to testify in support of this bill? [LB1019]

LAURA PETERSON: They are here and given that you have questions, I don't think they had prepared testimony but I'm sure that they will come forward and answer questions. [LB1019]

SENATOR WHITE: Good. Thank you. [LB1019]

SENATOR CORNETT: Go ahead. [LB1019]

LAURA PETERSON: All right. Go on to the next one, that's fine. The second claim in the longer amendment or after the 11 that I just described is for tort claims 99-686 and 00-577. These are essentially identical claims. One was originally filed by the mother and then the second one was the same claim filed by the parents so just to explain why there are two claims numbers. And they were filed on behalf of their eight children against the Department of Health and Human Services. The eight children were allegedly sexually abused by a foster child who was placed in the claimants home by the department. The claimants allege they were not properly warned of the child's history. These claims were filed in district court and were scheduled for trial this month. These claims were settled by the Attorney General and the claimants' attorney on February 13, 2008. As with the other claims in this proposed amendment, because these claims were just settled, they're currently being submitted for approval by the court. We anticipate such approval prior to final passage of the bill but have not yet received it. Also, because we do not yet have court approval in this case, we have not paid the allowable \$50,000 and I am therefore including in the proposed amendment the entire amount of the settlement which is \$75,000. Additionally, in this case the court has determined that a conservator must be appointed to accept the funds on behalf of the minors involved. The conservator has not yet been approved so the amendment is drafted without the name of the conservator although the warrant that's ultimately drafted to pay this claim will contain the name of the conservator. [LB1019]

SENATOR WHITE: When did these assaults occur? [LB1019]

LAURA PETERSON: The claim was filed in...the two claims were filed in 1999 and 2000 and the alleged occurrence date is...well, it says discovered May of 1999. I don't know. [LB1019]

SENATOR WHITE: It took eight years to litigate these? [LB1019]

LAURA PETERSON: Well, I am not sure exactly when the court case was filed but it would have been presumably within the time frame after 2000 so...give or take, yes. [LB1019]

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SENATOR WHITE: And these kids are all...so eight years ago these assaults occurred these children are still minors? [LB1019]

LAURA PETERSON: Some of them are, yes. [LB1019]

SENATOR WHITE: Thank you. [LB1019]

LAURA PETERSON: At the time they ranged from 11 weeks... [LB1019]

SENATOR CORNETT: Eleven weeks? [LB1019]

LAURA PETERSON: Sorry. Eleven weeks to nine years old, if I'm reading this properly. [LB1019]

SENATOR WHITE: Eleven weeks? [LB1019]

SENATOR CORNETT: Senator Wallman. [LB1019]

SENATOR WALLMAN: Thank you, Senator Cornett. Yeah, realizing this here, has there any step been taken to take...make sure, you know, we know foster children have problems. I've sat through some of these, one of these review boards and do we have things in place to make sure that these foster parents know the children they're getting could be very abusive or you know, not very nice kids? [LB1019]

LAURA PETERSON: I know that there are practices and policies within the Department of Health and Human Services regarding what notice is due to foster parents who are taking in a child but I know they're also...that Department of Health and Human Services is going to come up and I'll let them talk about their policies in more detail than I can. [LB1019]

SENATOR WALLMAN: Thank you. [LB1019]

SENATOR CORNETT: What did they originally request per assault for the children? [LB1019]

LAURA PETERSON: I don't think that the claim was originally broken down by individual nor do I think the settlement is, but the original amount requested in the tort claim was \$500,000. [LB1019]

SENATOR CORNETT: And they were willing to settle for \$75,000 for a total of eight claims? [LB1019]

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LAURA PETERSON: There are eight claimants but I'm not sure that there was evidence that supported that eight were actually assaulted. [LB1019]

SENATOR CORNETT: Well, there's somewhat of a disconnect between the claim for the one child who was assaulted and the settlement of \$75,000 for one child and \$75,000 total for eight children. [LB1019]

LAURA PETERSON: There might be somebody who can better, you know, address that but I think there are certain different levels of damages and different levels of evidence within the cases about what occurred. [LB1019]

SENATOR CORNETT: Okay. Thank you. Any further questions from the committee? Seeing none, thank you, Laura. [LB1019]

CHRIS PETERSON: Good afternoon, Senator Cornett. My name is Christine Peterson, P-e-t-e-r-s-o-n and I am the CEO for the Department of Health and Human Services. [LB1019]

SENATOR CORNETT: Let me start off by clarifying for everyone in the room, not just the committee, that you have taken over after all these claims occurred and that you're...am I correct? [LB1019]

CHRIS PETERSON: Yes. And we're working on closing up as many as the past claims, the long outlined claims as we can. Okay. And thank you for the opportunity to answer some of the questions. Also Jodi Fenner is here who is the administrator of our legal department that has specific knowledge on these cases as well as David Cookson from the AG's office who helped with the settlements on those. Quickly what I would tell you is that of the three cases there are specific, obviously, specific information of those and we'll be glad to try and answer those. On the one in terms of the \$75,000 based on the court's finding that the state did not fulfill its duty of preplacement investigation of the home and failure to fulfill its duty. We lost this trial and that's the amount that was...the court had us pay to the claimant. We had in policy that there would be visits every 30 days. It was in the policy but was not being implemented across the system and so there was no way to actually prove that we were doing that on a regular basis. There is now and there has been for several years. There are required 30-days visits or updates on each of the children that we have as a state ward. In addition, we do do a preplacement investigation by an independent investigator that goes out and that information is then shared... [LB1019]

SENATOR CORNETT: Was that being done prior to now? What have we changed between when these occurred and now? [LB1019]

CHRIS PETERSON: Mandatory requirement that the child is visited or there is a

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visitation with the child every thirty days. [LB1019]

SENATOR CORNETT: No offense, but thirty days is a long time period. What steps are being done differently in regards to background checks on the children and notification of the people that are receiving a placement and/or where the child is being placed on both sides? [LB1019]

CHRIS PETERSON: We do background checks on all of our foster parents as well as there is a history... [LB1019]

SENATOR CORNETT: What about their children? [LB1019]

CHRIS PETERSON: We do that now too. Anyone that's in the family that's part of the home has to have a background check done on them. The children, any spouses, relatives living there, we do a background check on all of those. [LB1019]

SENATOR CORNETT: What about the notification to the family receiving a child? [LB1019]

CHRIS PETERSON: The notification is part of our process that is supposed to be done every time that we have either a change with the foster care child or a different placement. [LB1019]

SENATOR CORNETT: What I mean by notification, is notification of, say for instance, the foster child that allegedly abused eight children. Was the family notified that that child had a history of inappropriate behavior and if that was true, what steps are currently being taken not to place children that are at risk in homes where there are other children? [LB1019]

CHRIS PETERSON: We try not to do that, Senator, at all unless it's a relative placement. In addition, on this specific one let me take a step back. On this specific instance with the \$75,000, the policy that we had in place was being very laxly enforced. It was not being part of the accountable measurement on each caseworker's monthly file. It is now. [LB1019]

SENATOR CORNETT: My fear is we're going to be back here again in a couple of years based on some of the reports that we're receiving. The worker that was contracted for the state that sexually assaulted the 15-year-old girl. You know, we're going to be sitting here on a claim in a couple of years on that. What steps, because I know that you are new, what steps have you taken since you've taken over to protect both the children that are being placed and the children that are in homes where minors are being placed? [LB1019]

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CHRIS PETERSON: Specific steps that are new since I've taken over are kind of...we're building upon what was worked through with the Child Welfare Task Force about two or three years ago which was the supervisors doing the case reviews on a more regular basis than they had been before. That's probably the most essential piece that we have. We found that to be the most...it has the biggest impact on caseworkers to make sure that the case is being reviewed and being worked on, on an ongoing basis as the supervisor review of that. We also do background checks, as I said, on all of our foster parents and that information now is part of what we consider...it's not the foster parents rights but the information that is supposed to be passed on to the foster parent we include the foster parents in the preevaluation when there has been a home study done. They have access to that home study. They're aware of what the situations are in the house so I would say what it is, it's a sharing of the information that had been required before but now is being made sure that we're implementing that. The contract...I'm sorry. [LB1019]

SENATOR CORNETT: Oh, I was going to...now you're probably going to answer it now. [LB1019]

CHRIS PETERSON: The contract driver that we had, actually there had been a background check done on her and it was clean. [LB1019]

SENATOR CORNETT: Well, I'm referring to the sexual assault case not to the drunk... [LB1019]

CHRIS PETERSON: Oh, I'm sorry. And that one I would have to check on, Senator. [LB1019]

SENATOR CORNETT: Is there a policy in place to do background checks for criminal purposes? I mean criminal background checks on people that contract with the state? [LB1019]

CHRIS PETERSON: Yes. That's part of our contract with them. They do background checks on their workers. [LB1019]

SENATOR CORNETT: No, do we do it? Or the companies... [LB1019]

CHRIS PETERSON: We do not do it on theirs. We require the company to do it. [LB1019]

SENATOR CORNETT: And what standard do you have for the company? Because what they might find acceptable on a background might not be acceptable. [LB1019]

CHRIS PETERSON: Whether it's the State Patrol, right, or the NCIS. I'll check. I think

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it's the NCIS that we do. The international criminal... [LB1019]

SENATOR CORNETT: No, that's not what I mean. If you're contracting with a private company, that private company has hired this individual, their standards for hiring that individual might not be as high as they need to be. Do you see what I'm saying? [LB1019]

CHRIS PETERSON: Yes. [LB1019]

SENATOR CORNETT: They may only be looking for felonies in their background. They might overlook misdemeanors. They might not think that a DUI arrest would be a problem where if your...you need a higher standard. Do you have a set standard for people? [LB1019]

CHRIS PETERSON: I am sure there is, Senator. I'm not...I don't know that explicitly but I'll get that information and if I don't have it, possibly Jodi does if you have questions for her too. [LB1019]

SENATOR CORNETT: Okay. Any questions from the committee? [LB1019]

SENATOR WHITE: I have a few. Thank you for coming. How many other claims are you aware of where children have been sexually abused? Either foster children by their parents or people in their home or children in the foster parents home that have been abused by the ward? How many are there out there? [LB1019]

CHRIS PETERSON: I don't have a specific count. Can I just look and see if Jodi knows. We can get that, Senator. [LB1019]

SENATOR WHITE: Can you give me an estimate? [LB1019]

CHRIS PETERSON: I truly can't. I truly can't. [LB1019]

SENATOR WHITE: Can you please, when you provide that, break it down by the years the accounts have alleged to have occurred. I'd like to find out if we're making progress. [LB1019]

CHRIS PETERSON: Okay. The other, if I can turn around and look at Mr. Cookston? [LB1019]

SENATOR CORNETT: Well, he'll be...he can come up if he has any comments to offer. [LB1019]

CHRIS PETERSON: Okay. All right, great. Thank you. [LB1019]

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SENATOR WHITE: Thank you. [LB1019]

CHRIS PETERSON: The other thing I'd like to clarify on the issue with the David Murray case, in terms of when the reports were made about the allegation of assault at the Regional Center, there was roughly one month and after every report the State Patrol were immediately notified and those reports came back unfounded. After we had gone through several of those reports we investigated. We did our own supervisory suspension. [LB1019]

SENATOR CORNETT: After the first report was made, was he still allowed contact with patients? [LB1019]

CHRIS PETERSON: Yes, the report was unfounded. [LB1019]

SENATOR CORNETT: If it was unfounded, why are we here with this claim? [LB1019]

CHRIS PETERSON: Senator, I wish I knew the answer to that, I don't. We don't do that anymore. [LB1019]

SENATOR CORNETT: Okay. [LB1019]

CHRIS PETERSON: At all. They are... [LB1019]

SENATOR CORNETT: What is the policy now when there is an allegation against an employee? Until that is cleared up is that employee put on administrative leave, are they denied contact with patients until that is cleared up? [LB1019]

CHRIS PETERSON: Yes, actually at BSDC is there's a notice of...if there's a report of an abuse of, neglect situation, they're immediately removed from the campus until the investigation is done. [LB1019]

SENATOR CORNETT: All right. Until the investigation is complete. [LB1019]

CHRIS PETERSON: We don't put them in any other part of BSDC. We remove them from the campus. [LB1019]

SENATOR CORNETT: Just so we're clear on this. As soon as an allegation is made against an employee, they are removed from contact with patients, correct? Patients or inmates? [LB1019]

CHRIS PETERSON: My understanding...they are for sure at BSDC. My understanding is that it is system wide. I will definitely check that. [LB1019]

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SENATOR CORNETT: Okay. [LB1019]

SENATOR WHITE: How long has that been policy? [LB1019]

CHRIS PETERSON: That was implemented at BSDC approximately a year ago. [LB1019]

SENATOR WHITE: Okay. Thank you. [LB1019]

CHRIS PETERSON: I think all facilities have their own policies on that too as well as an HR policy which I'll find out. [LB1019]

SENATOR CORNETT: So generally speaking, we won't see aggregate claims like this again. [LB1019]

CHRIS PETERSON: No. No. [LB1019]

SENATOR CORNETT: Okay. Thank you. Oh, Senator Wallman. [LB1019]

SENATOR WALLMAN: Thank you, Senator Cornett. Thank you for being here Chris and I do appreciate the job you do and I don't have any hard questions today but in regards to BSDC I think you have made a turnaround and we know that's hard to do and we have some people that do like to work with disability people that we...it's hard to screen. I realize that but thanks for doing what you do. [LB1019]

CHRIS PETERSON: Thank you, Senator. The goal obviously, is to never to have to sit here and listen to this have happen to anyone, ever. [LB1019]

SENATOR CORNETT: Like I said at the beginning, we understand that you just took over not even quite a full year ago, or right at a year ago now, and that you've inherited a lot of these problems. My line of questioning simply has to do with what are you doing to prevent these occurrences happen again. [LB1019]

CHRIS PETERSON: Not to let it continue. Yes. [LB1019]

SENATOR CORNETT: Does the committee have any questions from legal counsel for Health and Human Services who is in the audience? [LB1019]

JODI FENNER: Good afternoon. My name is Jodi Fenner. That's F, as in Frank, e-n-n-e-r. [LB1019]

SENATOR CORNETT: Senator White. [LB1019]

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SENATOR WHITE: Do you know how many claims are out there either...even if they're not filed yet but under investigation or old tort claim depending on the situation? [LB1019]

JODI FENNER: I don't believe we have any existing under investigation. I have asked the Attorney General's office to assist me in providing a summary of any existing claims that are still pending. I've only been with Health and Human Services for three months and so we're trying to tabulate that information basically so that we can learn from the past again so that it doesn't happen again. And to clarify, we do have the same no tolerance policy at the Lincoln Regional Center and all the regional centers just as we do at BSDC. There's an immediate removal of any alleged abuser. [LB1019]

SENATOR CORNETT: And what is done with an alleged abuse from an inmate? Is that person put in isolation or how is that handled? [LB1019]

JODI FENNER: They're removed from the facility,...I'm sorry I don't know if I understand her. [LB1019]

SENATOR CORNETT: If it's a patient on patient or if it's an inmate assaulting another inmate, what is the...what is done with the patient or the inmate that is the accused to isolate them from the remainder of population? [LB1019]

JODI FENNER: Absolutely. They're immediately separated. We have to take care that we aren't violating an accused rights... [LB1019]

SENATOR CORNETT: Correct. [LB1019]

JODI FENNER: ...as well because they're entitled to a certain level of protection and sometimes we find those are unfounded but we do separate them and make the best efforts to protect those other individual rights. [LB1019]

SENATOR CORNETT: Until they're found to either the complaint is upheld or not, correct? [LB1019]

JODI FENNER: Absolutely, until the investigation is complete. [LB1019]

SENATOR CORNETT: One more question. There...the people that are in the Regional Center some of them are not...if you have someone that is an abuser even if they are incapacitated in some capacity, how are you treating those people because that's different than an inmate population at a prison? [LB1019]

JODI FENNER: We have limited capabilities of restraint there. [LB1019]

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SENATOR CORNETT: I know that's a problem. [LB1019]

JODI FENNER: We actually had a case recently where the court was going to place someone at the Regional Center that we didn't feel like we could protect the other patients from that individual and we went to the court and we arranged for alternative placement at the Department of Corrections. The court actually ended finding other placement so we have taken steps when the situation came or we didn't think we could protect that individual and other individuals who could be impacted by his presence. We've taken action in the district court to avoid that from happening. We haven't had a case yet, that I'm aware of, where we haven't been able to maintain the current staff but we would try to take actions internally and if that didn't work, we would go to the court for alternative placement. [LB1019]

SENATOR CORNETT: Okay. Thank you. David, why don't you come up and just maybe you can maybe enlighten it, answer Tom's questions, Senator White's questions. [LB1019]

DAVID COOKSON: Do the best I can. David Cookson, C-o-o-k-s-o-n, Chief Deputy, Attorney General. Just to give you a little background on the assault cases at the Lincoln Regional Center in Norfolk. Those were filed in 2001 as a potential class action and we spent two years resolving...the proposed class was not only current patients but former patients and future patients that was filed at the same time that the tort claims were filed in state court. There was a class action filed in federal court. We successfully resolved the class action and it came down to just the 11. There were claims for perspective relief, some of which Ms. Peterson and Ms. Fenner have elaborated on. There's additional information we can provide the committee to know the steps that we agreed to as part of the settlement of that perspective relief claim. [LB1019]

SENATOR CORNETT: Senator White. [LB1019]

SENATOR WHITE: Thank you, Dave. I'm concerned about how things are going now, where we're at and how we're moving forward. I think I hear stories of other institutions where there may be claims under investigation. Am I inaccurate on that or are you aware? [LB1019]

DAVID COOKSON: I am not aware of any specific cases but there may be and I know that the chief of our litigation bureau who represents HHS is working with Jodi on that. I'm not aware of any specific cases but given that we have 60 lawyers in our office, there may be. [LB1019]

SENATOR WHITE: The concern that I have is the money, of course, but even more so, the human beings. Are we moving towards doing better to protect those in our care from

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assaults? I know maybe we'll never be perfect, so what I would be very much interested from your office or Health and Human Services is a report showing number of alleged assaults per year from, let's say, the last ten years so we can see if there is a trend, whether they're going down. And including allegations, you know, while we've got ongoing investigations at Beatrice or other places, just so we can see how we're doing. [LB1019]

DAVID COOKSON: Right. Generally speaking, we won't see them until it's an actual claim filed. [LB1019]

SENATOR WHITE: So that would have to come from Human Services? [LB1019]

DAVID COOKSON: Right. But as Jodi said, she's transitioning in. Unfortunately, she was chief of our environmental section and we were sorry to lose her but it's a very good gain particularly to the issue that you're talking about now in terms of making sure that we learn from past mistakes. I'm very confident we can do that and we will work with them to get you the information you want. [LB1019]

SENATOR WHITE: Pretty tough to continue to just throw money knowing that the money's not going to touch what these people are going through. And even worse, in the case of sexual abuses knowing statistically that we're going to have additional problems with sexual abuse on down the line as these victims evolve from predators. [LB1019]

DAVID COOKSON: And to the sexual abuse in the Regional Centers which was the subject of the 11 claims that are before you, we worked on and settled the perspective relief cases, perspective relief portion of the cases about a year ago. And so there are a number of new safeguards put in place and there's also so you know, federal oversight because as we were litigating this case, HHS has accreditation that they have to comply with for these places and so there are a number of steps they had to take to maintain their federal accreditation so that they can get the federal funding that comes in through Medicaid and Medicare. [LB1019]

SENATOR WHITE: So we're basically now, hopefully, following federal regulations which we weren't before? [LB1019]

DAVID COOKSON: I wouldn't say we weren't following but I would say that there were concerns raised by the regulators with regards to our accreditation but I...but steps were being taken even before the claims were filed by HHS to remedy that and then a lot of the things that we were already doing were the basis of this settlement on the perspective relief. [LB1019]

SENATOR WHITE: I really appreciate your courtesy, Dave. Thank you. [LB1019]

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SENATOR CORNETT: Dave, you've covered what you're doing and that it was already...changes were in the making for the regional centers. What about the foster care system? To have basically nine claims in front of us even though one was one family for sexual assault of children, is, you know, it's a tough thing to argue. Do you see improvement in the system in regards to placement? [LB1019]

DAVID COOKSON: I do, and again I'll have to check and see if we have any pending foster care cases but I'm not aware of any at this point. But again I can get that information fairly quickly. [LB1019]

SENATOR WHITE: One other thing, is the lag time between the abuse and the report because we may say there are none for last year but traditionally we don't get them reported for two years or three years so I would like to know that as well. [LB1019]

DAVID COOKSON: Right. And oftentimes again we don't see them until they're... [LB1019]

SENATOR CORNETT: I was going to say, you can read the paper and know that we're going to have claims. [LB1019]

DAVID COOKSON: Yeah. That's pretty much where we figure out where most of our cases are coming from in our office. [LB1019]

SENATOR WHITE: That's a bad way to learn about them. [LB1019]

DAVID COOKSON: It is and, again, I'm confident with the leadership change, in particularly with Jodi and the legal department, because I have a great deal of confidence in her that we'll see improvement. [LB1019]

SENATOR WHITE: That would be helpful. Thank you. [LB1019]

SENATOR CORNETT: Thank you, David. You may reapproach. [LB1019]

CHRIS PETERSON: Thank you, Senator. For clarification the... [LB1019]

SENATOR CORNETT: Could you just restate your name for the record? [LB1019]

CHRIS PETERSON: Chris Peterson, P-e-t-e-r-s-o-n. On the foster care system in the implementation of protective pieces I'll get back to you on that but I do want to tell you very clearly on our federal...on our facilities that have oversight by federal, they have BSDC and the Regional Centers are reviewed by CMS, as well as our state surveyors any time there's a complaint, a concern. We also have to document every time there's

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an incident of abusive neglect or an injury of unknown origin as well as the use of restraint. And we, in addition to that, at the Regional Centers have JCAHO which is the joint accrediting commission. They were just there at the Lincoln Regional Center and we had passed, I believe, 380 of the tags out of 390. We did not pass the one on the forensic unit that had to do with an issue of security. They felt there was not enough visual contact right now, right there on that unit. It's an old...the hospital configuration is that you can lose line of sight if one person walks away, then loss of line of sight. We're working with JCAHO on that. We did not lose our accreditation but we've had a corrective action plan with them that has us putting in cameras as well as having security, new security staff on sight on the floor of the secured, of S5, which is the forensic unit. The other units did pass the JCAHO piece of it. [LB1019]

SENATOR CORNETT: How is Beatrice...how did Beatrice do? [LB1019]

CHRIS PETERSON: The feds showed up this morning. We did our corrective action plan on...had to have that say we were in compliance by February 5. We had hired a national company to come in. They've been on the floor with us since the last visit of the feds. We met with them in Kansas City on Monday morning to let them know what we've been doing in terms of the corrective action plans, staffing requirements, right sizing the facility. Keeping our fingers crossed, they showed up this morning. But we had 15 people brought in from Liberty Health Care that were experts in the four conditions that we failed and they've been there now running for two months helping with the staffing, helping...make sure the policy is in processes. The majority of them are all former CMS surveyors so they know what needs to be put in place not just to fix the situation now but to make sure it's good practices moving forward. So that's where we're at. [LB1019]

SENATOR CORNETT: Can you please keep us updated on that? [LB1019]

CHRIS PETERSON: The minute I know, you'll know. [LB1019]

SENATOR CORNETT: Thank you. That closes the hearing on LB1019. We'll now hear LB1020 and its disapproved claims against the state. [LB1019]

LORI THOMAS: Chairman Cornett and members of the committee. I'm Lori Thomas, T-h-o-m-a-s and I'm here to introduce LB1020 which contains the claims against the state which were denied originally by the claims board and the claimants have requested review by the Legislature. There's only two claims in LB1020 so once again I'll let Laura Peterson follow and describe them in detail for you. [LB1020]

LAURA PETERSON: Senator Cornett and members of the Business and Labor Committee. For the record my name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the State Risk Manager. I'm here this afternoon to ask you to support the State Claims Board's denial of the two miscellaneous claims identified in the bill. Again, like the prior bill, I'll

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just pause after each claim and see if you have questions. The first claim, miscellaneous claim number 2006-00946 was filed by the Douglas County Youth Center against the Department of Health and Human Services in the amount of \$510. The claimant alleges the department did not pay an invoice for care of a custodial youth in the amount of \$510. The agency provided the Claims Board documentation showing that it has paid the invoice, had already paid the invoice. Based on that information the Claims Board denied the claim and I would ask that you would support the board's denial. [LB1020]

SENATOR LATHROP: Any questions? [LB1020]

LAURA PETERSON: The other one is miscellaneous claim number 2007-01673 which was filed by attorney Allan Eurek against the Department of Roads in the amount of \$5,647.51. The claimant also filed an identical tort claim at the same time against the Department of Roads for the same amount based on the same allegation. The claimant represented a landowner in a condemnation and relocation case related to a road construction project. The board determined that the claim was appropriately a tort claim, not a miscellaneous claim, as the claimant alleges negligence on the part of the state employees of the Department of Roads. The allegation is essentially that they did not properly honor the claimants lien for attorneys fees in the condemnation and relocation matter resulting in payment to the claimant's client who ultimately did not pay his attorney, the claimant. Because miscellaneous claims are defined as claims for which there is no other statutory purpose, and because the board determined that this was appropriately filed as a tort claim, the board denied the miscellaneous claim and the claimant appealed from that denial. Therefore, I ask you to support the board's denial of the miscellaneous claim. The claimant retained any right to appeal this issue to court as part of the claims process. That completes my testimony on this claim. I'd be happy to answer any questions. [LB1020]

SENATOR LATHROP: Okay. Are there any questions? It don't look like it. Thank you. Anyone want to testify on this bill to disapprove claims? Anybody in favor of the bill? Anyone in opposition? Neutral capacity? Okay. That'll close our hearing. [LB1020]

SENATOR LATHROP: Moving on to LB1086 and that brings us to Senator Scott Lautenbaugh. [LB1086]

SENATOR LAUTENBAUGH: Good afternoon, Mr. Chairman, senators. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h and I'm here to testify regarding, introduce, I should say, LB1086. LB1086 would recognize the right of employer or workers' compensation insurance carriers to recover under its right of subrogation in the same proportion as the amount received by an injured employee from all sources other than the employer or workers' compensation insurance carrier. The carrier still bears the loss, the total loss suffered by...let me try this again here, the employer or the workers'

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compensation insurance carrier. This bill would simply modify existing law by providing that when a third party is responsible for injuries sustained by an employee, the employee and the subrogated employer would share the proceeds of such settlement or judgment on a pro-rata basis. I believe there are witnesses here who are prepared to answer questions regarding this bill and I would be happy to take any that you have, otherwise, I will defer to them. [LB1086]

SENATOR LATHROP: Any questions for Senator Lautenbaugh? Looks like we're going to take your offer to take the questions up with the people that follow. Thank you. [LB1086]

SENATOR LAUTENBAUGH: Thank you. [LB1086]

SENATOR LATHROP: Those testifying in favor of the measure? [LB1086]

DALLAS JONES: Good afternoon. Dallas Jones testifying on behalf of Nebraskans for Workers' Compensation Equity in Fairness. J-o-n-e-s is how my last name is spelled. I am here testifying on behalf of LB1086. This is a bill that's easier to scratch out on paper exactly how it works out than to tell you orally but I'll do my best. The question is in the context of workers' compensation when an employee makes a recovery against another entity that has caused that employee injury, which, of course, has then cost the employer the amount of benefits to which the employee is entitled under the Workers' Compensation Act, how much of that recovery should the employer receive back once the recovery is made by the employee? A real quick history lesson. First of all, many of you already know this quite well having practiced in the area but let me just cover real quickly where we are right now. The statute presently says that the parties, that is the employee and the employer, shall share fairly and equitably. It tells the district judge, you shall make a fair and equitable distribution as to that tort recovery and that's all that the statute says. So what happens now is the parties are left to try to figure that out on a case-by-cases, and it's not an easy thing to do because district judges without guidance, as you might expect, arrive at their own definition of what fair and equitable means. You don't get a consistent answer back from them and that's not a critique of the bench, it's just simply reality. There are no rules so everybody has to make them up as best they can as they go along. The only rules that we do have are as a result of two Supreme Court decisions in the past fourteen, eighteen months, something like that, where the court has said what fair and equitable does not mean is that the employee shall be made whole before the employers entitled to any recovery. The second rule that we know exists, again comes from the Supreme Court. And basically what the Supreme Court in the Burns v. FedEx case said, is an employers entitlement shall not be detrimentally affected by any equitable assertions that an employee may make such as unclean hands. If the employee claims the employer should have done something differently in handling the comp claim, that shall not affect what the employer gets back. It's a statutory right of subrogation. So as Senator Lautenbaugh said, what this is is an

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effort to bring some clarity in an area where there is virtually no clarity so that ultimately the goal is the parties know where they stand. It doesn't answer every question but what it does is it tries to fix the percentage that each party is entitled to recover of the tort settlement based upon the percentage that the employees recovery is of the entire settlement. So if there's \$100,000 tort recovery, for example, and the employee though has, if you can agree upon it for sake of discussion, a claim that's worth \$200,000 in the tort system, the employee has received 50 cents on the dollar. That figure, that 50 percent figure then drives the decisions or the determinations after that as to what the employer shall get. If the employer under the hypothetical has paid \$50,000 for example, the employer receives \$25,000 back. End of case. That's the easy case. The cases that are easy I can see are those where's there has been a settlement of the comp claim, where there has been a settlement of the tort claim, and you have fixed numbers. You know everything with the exception of what does it take to make the employee whole. That's the part that I don't think you can define in statute. That's the part where the parties will still have disagreement and may be subject to litigation but at least we have defined something further than what's presently defined in the law. I'll take questions rather than talk. I'm sure you have a few. Maybe not. [LB1086]

SENATOR LATHROP: Well, if I may. We have some. [LB1086]

DALLAS JONES: I assume so, Senator. [LB1086]

SENATOR CORNETT: Oh, no, I have a number of questions myself but I'll let you guys go first. (laugh) [LB1086]

SENATOR LATHROP: Actually your representation about the Supreme Court saying that the one rule is that the employee, the made whole doctrine doesn't apply. Actually the opinion said neither of the pro-rata formula nor the made whole doctrine apply in that opinion, am I right? [LB1086]

DALLAS JONES: Actually, I handled both of those cases I referred to and what the Supreme Court rejected was the opportunity to go further and adopt a pro-rata determination because it was very much what I was trying to suggest to them is, as I am today, the system will benefit if we know what the rules are and I proposed the rule. And the way I read the opinion is, they weren't saying that's good or bad, they were saying that's for the Legislature to decide. It did not say that, in other words it didn't... [LB1086]

SENATOR LATHROP: And I've read the opinion too and I would agree. It didn't define what fair and equitable is. It just said... [LB1086]

DALLAS JONES: What it's not. [LB1086]

SENATOR LATHROP: What it's not and it's not made whole and it's not pro-rata and

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this bill is a...you're pitching pro-rata here today. [LB1086]

DALLAS JONES: I am, Senator. I didn't read the...we can agree to disagree on the opinion but... [LB1086]

SENATOR LATHROP: But that's essentially what you're pitching today which is a pro-rata formula and that the beauty of it, if there's any beauty at all, is that it's simple. [LB1086]

DALLAS JONES: That is a significant beauty of it. [LB1086]

SENATOR LATHROP: Okay. Well, I mean that's a fair statement too, isn't it, that if it doesn't do anything at least it's simple and it provides some measure of predictability. [LB1086]

DALLAS JONES: Correct. [LB1086]

SENATOR LATHROP: But what pro-rata doesn't take into account is if the plaintiff makes the claim, and I had one of these over the summer, the plaintiff makes the claim, it is a very risky claim. It's a, you know, 1 in 10 kind of a proposition, the employer stays on the sideline, the employee takes all the risks, advances all the costs, that wouldn't be taken into account after this change is in effect, would you agree? [LB1086]

DALLAS JONES: I don't believe that's written into it, that's correct. That's correct. [LB1086]

SENATOR LATHROP: Okay. That's all I had. [LB1086]

SENATOR CORNETT: Dallas, what do you mean by all sources? And I know, you and I have had this discussion before. You'd come to me with this bill and I was very uncomfortable with that aspect of it. [LB1086]

DALLAS JONES: Correct. What's contemplated that, by that is any recovery that the employee makes from any sources whether than it underinsured, pardon? [LB1086]

SENATOR CORNETT: Life insurance? [LB1086]

DALLAS JONES: As a result of the accident assuming it's a death claim, very good question. We didn't answer that. [LB1086]

SENATOR CORNETT: And that was my question then. What about if they have a policy to pay off the mortgage on their house. If they are injured to the point that they can't work, then are they actually going to end up having to pay money out to their former

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employer? When they don't actually have cash, they're mortgage has been paid off. Well, I don't know if you can collect against Social Security but again Social Security is a question. See, I don't know if you can. [LB1086]

DALLAS JONES: There are kind of two questions that you pose there that... [LB1086]

SENATOR CORNETT: Well, there's a number of questions but these are the two that I'm going to focus on. [LB1086]

DALLAS JONES: As to whether life insurance or any other thing is all sources is one. But let's assume all those things that you have just said fit into that all sources bucket, the question is not whether the employer is getting something out of that bucket. Those sources shall be considered in determining the percentage that the employee made of the employees, the amount it takes to make that employee whole. So it counts if under the scenario, let's assume it takes \$200,000 to make the employee whole, however you get there we'll assume that. There's \$100,000 recovery made from the tortfeasor. Let's assume that we place a value of \$20,000 on Social Security disability benefits that that employee may receive by virtue of the injury. Another \$10,000 by virtue of uninsured or underinsured, however you want to get there. Those types of things under the language of the bill that is additive and ultimately what it does is, it affects the percentage of the amount that the employee has recovered of the total loss the employee has incurred. [LB1086]

SENATOR CORNETT: What if they're dead? [LB1086]

DALLAS JONES: What if they're dead? [LB1086]

SENATOR CORNETT: Life insurance, family, yeah. [LB1086]

DALLAS JONES: In life insurance. It's not addressed. Certainly there is an argument and there's room for clarifying in the bill. I think there is an argument that life insurance would be counted and it probably needs to be clarified in the bill. I can see that. [LB1086]

SENATOR CORNETT: Okay. Thank you. [LB1086]

SENATOR WHITE: I have a series of questions, Mr. Jones, and thank you for coming. My first is, who is Nebraskans for Workers' Compensation Equity and Fairness? [LB1086]

DALLAS JONES: Approximately 100 Nebraska businesses. There are a few, and I don't know the number, Senator, insurance carriers who write compensation policies in Nebraska, but it's principally businesses. [LB1086]

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SENATOR WHITE: Do you find anything ironic in the fact that you have a bill to get rid of equitable apportionment of resources when the title of your group is Nebraskans for equity? [LB1086]

DALLAS JONES: I have had that question a few times. [LB1086]

SENATOR WHITE: It's a little ironic don't you think? [LB1086]

DALLAS JONES: I've had that several times. [LB1086]

SENATOR WHITE: Okay. Let's talk about some of the realities of this bill. I mean, I understand you're offering it because you want it to promote clarity and simplicity in the law. Is that correct? [LB1086]

DALLAS JONES: Correct. [LB1086]

SENATOR WHITE: All right. We've already seen a number of questions Senator Cornett has raised, Senator Lathrop has raised, so this still will be a very unclear law, if we... [LB1086]

DALLAS JONES: You're not going to clear them all up, that's right. [LB1086]

SENATOR WHITE: Now if, for example, we, instead of doing pro-rata promoted clarity and simplicity by just adopting by statute the made whole doctrine, would your people support that? [LB1086]

DALLAS JONES: I doubt that. [LB1086]

SENATOR WHITE: So it wasn't for clarity and simplicity that was offered, it was for financial benefit. Just so we have truth in... [LB1086]

DALLAS JONES: It's both. [LB1086]

SENATOR WHITE: Okay. Now let's talk about something that concerns me about this and why I think it may not be equitable besides the things already raised. If for example, I'm driving in my car and I have a \$500,000 med pay policy on me and I'm in my car but I'm using it for work and I'm in an accident. My carrier, auto carrier is going to say, no coverage here for you because workers' comp is primary. Okay. So my med bills will be paid by work comp. Now if work comp had not been involved and I had an auto policy, they would be subject to try to recover the medical bills that they used to treat me to the made whole doctrine. So I'm actually as a worker in worse shape for having been injured on the job than if I was in private business and I made my claim under the med

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pay provision of my auto policy because in this case, in your case, if we adopt it, I would have to pay that back on a pro-rata basis but if it came from my own auto policy I wouldn't have to pay anything back. Don't you...do you think that's equitable? [LB1086]

DALLAS JONES: I understand the question but what's also left out of the hypothetical is because the employer is also not paying just the medical benefits but also all the indemnity benefits along. That is a significant difference than if you were just riding in your car and did not have that safety net that was available. [LB1086]

SENATOR WHITE: But your bill doesn't make any distinction for that does it? I mean, it's very...it's a procrustean bill, slap you on the bed, we'll stretch you until you fit or chop your legs off until you fit, right. So you don't make any distinction in the bill as to whether or not I could have gotten coverage under my auto policy but under existing law, my attorney could go forward and say to the judge, don't give him subrogation on all these medical bills. If they hadn't been there, Mr. White wouldn't have to pay him back because he had a health insurance that would have to be made whole and the court can say, yeah, in fairness and equity we're not going to go there. Had you been able to put the claim in under you're own policy, you keep this one. We can make those kind of arguments today but we couldn't under your bill, correct? [LB1086]

DALLAS JONES: That's correct. [LB1086]

SENATOR WHITE: Thank you. [LB1086]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you Mr. Jones. Next proponent. [LB1086]

KORBY GILBERTSON: Good afternoon, for the record my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America and Senator White and I spoke at a noon luncheon a week ago or so, and he said that the Revenue Committee was where ideas go to die and listening to earlier testimony, I'm guessing that this committee might be having the same ideas today. And since I do own a calendar I'm not going to go on any further and be happy to try to answer any questions. (Laughter) [LB1086]

SENATOR WHITE: I think it was dreams go to die but ideas work. (Laughter) [LB1086]

SENATOR LATHROP: I'm wondering, this isn't where good ideas go to die. (laughter) Some ideas may die here but not the good ones. Thanks for keeping it short, Korby. [LB1086]

KORBY GILBERTSON: You're welcome. [LB1086]

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SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opponents. How many opponents are there? Okay. [LB1086]

TOM DOWD: Good afternoon. My name is Tom Dowd. I'm counsel for the State AFL-CIO and for the reasons elicited by Senators Lathrop and White, we oppose the bill too. And I'd like to make just one further observation. The Supreme Court had a very good reason for reinstating the fair and equitable because the circumstances are so varied. Workers' comp and personal injury do not lock step. Personal injury has damages of pain and suffering, mental anguish, scarring, loss of enjoyment of life not contemplated by workers' compensation. So the pro-rata doesn't really work. Because it all depends on what aspects of the damage went into the pro-rata. You might have a case as was given by way of illustration, a \$200,000 claim sells for 150 cents on the dollar. But what was in that \$200,000? Maybe \$190,000 was in it that isn't in workers' comp so the pro-rata works adversely to you. So for all of those reasons, we oppose it. Any questions? [LB1086]

SENATOR CORNETT: Thank you, Mr. Dowd. Next opponent, please. [LB1086]

BRITTANY SHOTKOSKI: Good afternoon. Brittany Shotkoski, S-h-o-t-k-o-s-k-i on behalf of the Nebraska Association of Trial Attorneys testifying here in opposition to this bill for all the reasons that have been set forth this morning, or this afternoon, here. This is a terrible bill for the injured workers in this state. The fair and equitable distribution that allows the court to consider all the factors that we have discussed here today clearly creates a much better manner in which to handle these than an attempted black and white rule that really creates more confusion than it does answers. I would be happy to answer any questions that committee has this morning, this afternoon. [LB1086]

SENATOR CORNETT: Senator White. [LB1086]

SENATOR WHITE: Good afternoon. Thank you. If by force of just sheer personality, Mr. Jones, the Nebraskans for Workers' Compensation Equity and Fairness were to prevail that we need a hardline rule, could you live with made whole? [LB1086]

BRITTANY SHOTKOSKI: I could live with made whole. [LB1086]

SENATOR WHITE: Thank you very much. [LB1086]

SENATOR CORNETT: Thank you for your testimony. Are there any further opponents? Anyone in a neutral capacity? That closes the hearing on LB1086. We move to LB1073. Oh, never mind, Senator Lautenbaugh's back to close. I didn't think you were here. [LB1086]

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SENATOR LAUTENBAUGH: I'm tricky that way. Madam Chair, fellow senators. You've heard the testimony on this and obviously we're open to working with the committee on its numerous suggestions and possibilities for improving this bill. It's clearly a start of a dialog perhaps that may take us into the future and with that I'd be happy to take any questions you might have. [LB1086]

SENATOR CORNETT: Senator White. [LB1086]

SENATOR WHITE: Would you work with us in making the rule made whole? [LB1086]

SENATOR LAUTENBAUGH: I'm sorry. [LB1086]

SENATOR WHITE: Are you willing to work with us on making the rule made whole rather than pro-rata? [LB1086]

SENATOR LAUTENBAUGH: It would certainly be something we could discuss. I mean... [LB1086]

SENATOR WHITE: And I appreciate that, Senator. Thank you. [LB1086]

SENATOR CORNETT: Thank you very much. [LB1086]

SENATOR LAUTENBAUGH: Thank you all. [LB1086]

SENATOR CORNETT: Any further questions from the committee? No. Thank you, Senator Lautenbaugh. That now closes the hearing on LB1086 and we move to LB1073 and Senator Pahls is here to introduce that. [LB1073]

SENATOR PAHLS: Good afternoon. Thank you, Senator Cornett, and members of the committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31 in the Millard area of Omaha. Today I bring forth LB1073. It is a bill to address the prompt payment of parties on construction projects. Currently Nebraska has a statute for prompt payment of general contractors on projects for the state of Nebraska, excluding Departments of Roads. The payment of general contractors and subcontractors is the lifeblood of a construction project. Employees, suppliers, and subcontractors depend on the timely payment of funds to keep their business going and to complete the project. Prompt payment is an important issue in the construction industry. Almost every state in the union has some type prompt pay law covering either private work, public work, or both. LB1073 would cover all construction projects, private and public, and additionally address the payments made from general contractors to subcontractors and from subcontractors to lower tiered contractors. I do not believe that there is a consensus in the construction industry regarding this bill or the scope of the law that would be proper

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for Nebraska, so I am requesting that the committee take no action on this bill this session. I believe that LB1073 is an appropriate starting point for the discussion of this issue in the state of Nebraska and I intend to work with interested parties over the interim. I do know that there are a number of people here to present more information regarding this bill. Thank you. [LB1073]

SENATOR CORNETT: Thank you, Senator Pahls. Any questions from the committee? Seeing none, thank you. [LB1073]

SENATOR PAHLS: Thank you. [LB1073]

SENATOR CORNETT: I'll now open the hearing to proponents. How many proponents are there? Could you please move to the front of the hearing room and try not to repeat one others testimony. [LB1073]

RUTH CHERMOK: Good afternoon, senators. I'm Ruth Chermok, C-h-e-r-m-o-k, Executive Director of the National Electrical Contractors Association. I'm sorry that Senator Lathrop had stepped out because in the jest of our last conversation, I was going to suggest to him that we're hopefully bringing you a good idea or certainly a dream of our industries, and look for your assistance in trying to further develop that idea. In 2002, just for a little bit of backup in history here, we did attempt to solve this problem with Senator Connealy in a bill LB1265. And by the way, we intend to, as we move forward, make this a very broad coalition and engage a number of people so that we can in a final form bring you something that is very workable and usable for the industry. That bill had an opt out provision and that is similar to what's in the existing law. There is an existing state statute on prompt pay as it relates to state agencies but again there's kind of a unless other arrangements clause to that. It doesn't work very well. And as Senator Pahls indicated, we've found that almost every other state has some such statute. We've looked at Missouri, Kansas, Arizona, Minnesota, and numerous laws for ideas and we will continue to through an interim study process. We bring it to you today to gain your support and efforts in this dialog. We thank Senator Pahls for introducing LB1073. Also Senator White and Lathrop have been engaged in conversations with our industry. We are fortunate today that there's a few folks that have brought a really human face to this problem. I've traveled here to visit with you about their businesses. I want to stress to you that it really is a very serious problem. It affects all sizes and types of contractors and it's kind of an expediential thing. I have one member in Omaha right now who's a very earnest and sincere gentleman that's trying to get a business going. He has a national food chain who he did work for and they're in to him for about \$13,000. A traveling general contractor has filed some liens. Frankly, the business doesn't care that the liens (laugh) are on the project and he can get no assistance in chasing this money. It is truly the difference between whether or not his business will continue or not. So we look forward to working with all interested parties through an interim study and with the members of the committee to achieve

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solutions for our industry and I'll let some of the other experts visit with you about their specifics. [LB1073]

SENATOR CORNETT: Is one of the senator's on the committee going to request an interim study for this issue? Have you talked to anyone about that? [LB1073]

RUTH SHERMOCK: We haven't taken that step as yet. We were hopeful that with Senator Pahls, and then some interaction from the committee, we could get one ordered. [LB1073]

SENATOR CORNETT: Okay. [LB1073]

RUTH CHERMOK: Okay. [LB1073]

SENATOR CORNETT: Senator White. [LB1073]

SENATOR WHITE: Are you really comfortable with not taking action this year on it? I mean, we are at the end of the session but I mean, is that something that...because I understand this bill and I support it. That's no secret but are you okay with that? [LB1073]

RUTH CHERMOK: We would like very much to make sure that all the members of the industry, general contractors, mechanical contractors, owners, developers groups, attorneys, are involved in this litigation are all on board so it was my dream that we could get it done. I guess with the priority designations last week and some things like that, we've looked it and said you know, maybe we should really do it right as opposed to really rushing it. We've talked to a lot of the other states and we've tried to pinpoint with them what's working and what's not working. And so, you know, I guess if I could dream a dream, if I knew what for sure would work perfectly, no, I'd love to get it done. (laugh) But I think we need the time. [LB1073]

SENATOR WHITE: Would you like this committee to entertain the idea of an interim study? [LB1073]

RUTH CHERMOK: Please. [LB1073]

SENATOR WHITE: Thank you. [LB1073]

MARK MAHON: Hello, Madam Chair. My name is Mark Mahon, M-a-h-o-n. I'm the president and owner of Absolute Power and Communications, a subcontractor out of Bennington, Nebraska. I have over 20 years in the contracting world. Absolute Power and Communications supports over 100 families and LB1073 is very important to us and to owners, investors, and subcontractors. We all could be affected by general

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contractors who do not pay their subcontractors after they collect payments from their clients. This, in turn, causes liens to be filed against owners. The subcontractor is left trying to collect from investors and owners, ultimately you and I end up paying the bill that they are not paid. It happens a lot of the time like this. The general files bankruptcy after they misappropriate funds meant to pay subcontractors. Very similar to what you have heard in the news about the housing industry in Omaha. About large home builders in Omaha lately filing bankruptcy in the past few months. We, as owners, investors, and business owners, ultimately the consumers, pay for this through inflated prices. The general sometimes do not get paid by the owners and it trickles down so it's not only the generals who are at fault. LB1073 will reduce the amount of contractors and subcontractors not getting paid and ultimately protect the innocent and honest people who run legit businesses. In closing, in the last eight years, my company has lost over a quarter million dollars to general contractors and owners who file bankruptcy. The only option left is to file liens within a 90-day period of the work performed. If that is missed, we have to eat the cost and pass it on to future clients. Remember this could be you. Any questions? [LB1073]

SENATOR CORNETT: Senator Wallman. [LB1073]

SENATOR WALLMAN: Thank you, Chairman Cornett. Has this happened also with construction managers too? [LB1073]

MARK MAHON: Yes. Whoever handles the money, that trickles it down to us subcontractors, there's nothing stopping them from not paying us currently. We get left on the hook a lot. [LB1073]

SENATOR WALLMAN: Thank you. [LB1073]

SENATOR CORNETT: Senator White. [LB1073]

SENATOR WHITE: Do you also do residential work? [LB1073]

MARK MAHON: We did. I quit doing it about a year and a half ago due to... [LB1073]

SENATOR WHITE: The lien protection. [LB1073]

MARK MAHON: Yes. [LB1073]

SENATOR WHITE: Which, I have to say, you know, I support protecting residences but I have a real problem doing that and not having prompt pay legislation to protect you in that situation. If we got this in, would you reconsider, you know, if we had a good prompt pay law in, would you reconsider maybe being available to residential areas? [LB1073]

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MARK MAHON: Yeah. [LB1073]

SENATOR WHITE: So, we'd open up some competition. [LB1073]

MARK MAHON: Yeah. [LB1073]

SENATOR WHITE: Thank you, very much. [LB1073]

MARK MAHON: Thank you for your time. [LB1073]

SENATOR CORNETT: Next proponent. [LB1073]

DAN SMITH: Good afternoon, senators. My name is Dan Smith, S-m-i-t-h. I represent NECA, the National Electrical Contractors Association as the chapter president. I also represent my electrical firm as president and majority shareholder. Just to give you an idea of what some of the magnitude of this is, I've put together just a real brief cap. I have one... [LB1073]

SENATOR CORNETT: Is that something you're going to be handing out? [LB1073]

DAN SMITH: No, this isn't. This is just notes so I can remember. I have one general contractor that I do a substantial portion of my business with. They do the work for two of my customers that I do work directly for so I work for the customer direct. I also work for the general contractor. One of those facilities we did for the last three years running, it's a major insurance company multi-story building. We've done renovations on floors. When one floor is done we move on to the next one. I did a computation here of days past due on the monthly billings and the days that retention was held. It ranges from 33 days past due to 210 days past due. That's just on the monthly billing. Retention is out past a year. The current retainers that general contractor is holding is \$320,000. That's costing me \$2,402 a month in interest. That is on projects that are completed and retention is due on. On projects that the monthly billing is past due, amounts to \$306,000. Interest on that is pretty close to the same, \$2100 a month. For the one general contractor on one project total cost of interest borrowed to pay my suppliers monthly and my labor weekly was \$15,499. And it occurred to me yesterday, actually as I was putting these numbers together, that's a business expense that I deducted that from my taxes so the state lost the revenue on that. So that's something I'd like to bring up. [LB1073]

SENATOR CORNETT: Senator White. [LB1073]

SENATOR WHITE: That's a dream that would not die on the Revenue Committee, I want you to know, Dan. (laughter) We could hear that. I do want to thank you for coming but I'd like to raise another hidden cost to this. You have money that's due over a year

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now. Work's done. You put a lot of copper wire into it. What did the price of copper wire do in the year that they've had your money so you can't replace your stock? [LB1073]

DAN SMITH: Oh, in the past year, copper's gone up about 40 percent. [LB1073]

SENATOR WHITE: So, if you put \$10,000 in copper wire in there, and if they'd given your money back promptly, you could have bought that wire and put in back in your warehouse. [LB1073]

DAN SMITH: That's correct. [LB1073]

SENATOR WHITE: But they didn't give you that money so now that \$10,000 of copper wire, you have money that you lost interest on but now you've got to go pay \$14,000 for the same wire. [LB1073]

DAN SMITH: Correct. [LB1073]

SENATOR WHITE: A heck of a hidden charge. [LB1073]

DAN WHITE: Yes. [LB1073]

SENATOR WHITE: Thank you. [LB1073]

SENATOR CORNETT: Senator Wallman. [LB1073]

SENATOR WALLMAN: Thank you, Chairman. Now are you...you're not allowed to charge interest on your late payments as now, are you, or are you, can you? Late fees? [LB1073]

DAN SMITH: No. [LB1073]

SENATOR WALLMAN: You know, if I'm a seed dealer or a feed dealer, I can do that. But you can't, huh? [LB1073]

DAN SMITH: That's correct. There was one project that was seven months past due on the billing and I started making calls when it hit the 30-day past due mark, which was actually 60-day old bill, and it took me seven months to finally collect that and I had to go directly to the owner. Consequently, when the next floor was bid, I did not get that job so that's the fear of raising too much static is that you won't get the next job. And I've been asked, why would I continue to do business with someone like this, was I stated in the beginning, that's my customer to begin before this project ever started so I can't turn my back on him. [LB1073]

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SENATOR WALLMAN: Thank you. [LB1073]

SENATOR CORNETT: Is it fair to say that, also that it's become somewhat of an industrywide standard not to pay within a timely period, so if you're going to do business you know ahead of time that everyone's going to be late so you still have to do business with them anyway? [LB1073]

DAN SMITH: I would say that's partially correct, yes. It is industrywide and it has become the norm unfortunately. But you can't put that cost into your estimates or you won't get the work. [LB1073]

SENATOR CORNETT: Thank you. [LB1073]

DAN SMITH: Thank you. [LB1073]

SENATOR CORNETT: Next proponent. (RECORDER MALFUNCTION--SOME TESTIMONY LOST) [LB1073]

SENATOR CORNETT: Why don't we go ahead and start on LB1105. Senator Fulton, you are recognized to open. [LB1105]

SENATOR FULTON: (Exhibit 5) Okay. Thank you, Madam Chairman, members of the committee. For the record my name is Tony Fulton, T-o-n-y F-u-l-t-o-n and I bring before you today LB1105. This bill provides a greater level of confidentiality to Workers' Compensation Court documents and information available by electronic means. The intent behind this measure is to curb the solicitation of employees once a report of first injury is filed with the court. The solicitations by some lawyers pursuant to information contained within the first injury reports or other Workers' Compensation Court documents produce an environment compromising individual confidentiality. The information to be held confidential and therefore not open to public inspection or copying is that which reveals, (1) the identity of the employee, (2) the nature of the employee's injury, (3) the employee's medical condition, (4) the amount, type, or duration of benefits paid to the employee or (5) the application information for self-insurance. Inspection or copying would be permitted however, if the requestor is the employee or agent of the employee, the employer or the employer's insurance carrier or third-party administrator or if the information is used for governmental investigations or statistical compilations, is a pleading exhibit or final order, award or judgment of the court or merely identifies statistical information without revealing the identification of the employee or his or her medical condition. The workers' compensation information and records, which would be made confidential by this bill, often contain sensitive medical information relating to an injured employee. While workers' compensation issues can be exempted from the provisions of HIPAA, it is likely that most individuals have some expectation of privacy with regard to records relating to their medical condition. We do

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have an amendment for your consideration, AM1883 which I would have the page distribute at this time. AM1883 inserts the term, managing general agent into lines 16, 18, 20 and 22, section 1, sub 2, as insurance companies that are requestors under the bill may operate by a licensed managing general agent and such companies would be unnecessarily excluded from those entities who are granted authority to make such requests without this amendment. Concluding, LB1105 provides a means for greater confidentiality to workers' compensation records and I respectfully request the advancement of the bill. And I'd try to answer any questions if there are any. [LB1105]

SENATOR CORNETT: Any questions from committee? Seeing none, thank you, Tony. [LB1105]

ROBERT HALLSTROM: (Exhibits 6 and 7). Chairman Cornett, members of the committee. My name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraskans for Workers' Compensation Equity and Fairness in support of LB1105. I've also signed in on behalf of the National Federation of Independent Business, the Nebraska Bankers Association and the Nebraska Pharmacist Association in support of the legislation. The page is passing around an amendment right now that makes some technical changes to the bill that I've worked on with Mr. Glenn Morton of the Workers' Compensation Court to provide greater clarity for the bill and to address issues and concerns that have been raised by the Workers' Compensation Court through Mr. Morton. And I think, hopefully, he will testify today that those amendments will take care and address his concerns. Senator Fulton has gone through in great detail what the bill does and the reasons behind the bill. Only to add for the record, I would note that it appears approximately 40 states have some level of confidentiality of workers' compensation records on the books so it is not unique or unprecedented to find that type of protection for the sensitive type of information that can be contained within worker compensation records. Also attached to my testimony today are copies of existing law under Nebraska Sections 48-612 and 48-612.01, one of which sections were part of LB819 which was advanced by this committee earlier this session that have to do with very similar confidentiality requirements pertaining to unemployment insurance records with similar exceptions under state law to those that are proposed under LB1105. With that I'd be happy to address any questions that the committee may have. [LB1105]

SENATOR CORNETT: Mr. Hallstrom, Senator Fulton has put the bill forward as a means to maintain confidentiality of the injured employee, am I correct? [LB1105]

ROBERT HALLSTROM: Uh-huh. [LB1105]

SENATOR CORNETT: Doesn't this also have to do with attorneys not having access to those records so they can solicit work comp cases? [LB1105]

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ROBERT HALLSTROM: Yes, Senator, I think in his testimony he talked about the curbing the avalanche of solicitations from trial lawyers who utilize that information irrespective of the nature and type of injuries that may be involved to solicit people for legal representation. Our indications from employees are that oftentimes these letters are not the most favorably disposed in terms of describing the employers predisposing what the employer might or might not do that are not in the best interest of the employee and those types of things. So all in all, we don't think it's a good system to allow for that type of solicitation that comes as a result of potentially sensitive information that's out there in the public domain. We just think those types of things should be provided a greater degree of confidentiality. [LB1105]

SENATOR CORNETT: What if the records that were available were simply someone was injured or not that had nothing to do with the type of injury like a car accident where attorneys read about it in the paper and then send...solicit you. If you left the medical information out whether it was just a work comp claim was filed or not. [LB1105]

ROBERT HALLSTROM: Senator, I am not, I'm not exact sure what your question...I know we do have some... [LB1105]

SENATOR CORNETT: Okay. You're talking about sensitive medical information being accessible to people that it shouldn't be accessible to. I'm talking about, it...could we simply release information that someone filed a claim or not, not what the claim was, not what the medical information was, simply that a claim had been filed. Wouldn't that solve the problem also? [LB1105]

ROBERT HALLSTROM: I think, Senator, it will probably take care of the issue of wanting to protect the confidentiality of potentially sensitive information. It probably will not address the issue of people being offended by being solicited under those conditions because I would assume if I'm understanding your... [LB1105]

SENATOR CORNETT: That they'd still allow solicitation just the medical information would be private. [LB1105]

ROBERT HALLSTROM: Yeah. It gets us closer. [LB1105]

SENATOR CORNETT: Okay. Questions from the committee? Senator Lathrop. [LB1105]

SENATOR LATHROP: I do have a question for you and that has to do with the content of the letters that are coming. Basically what you're trying to curb is there are certain lawyers that will go down to the Workers' Comp Court, thumb through the first report of occupational injury, which by the way just has a thumbnail sketch of the injury. It doesn't really disclose real sensitive things other than, you know, yeah, hurt his back or hurt his

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knee, right? [LB1105]

ROBERT HALLSTROM: I believe that's correct, Senator. [LB1105]

SENATOR LATHROP: Okay. But your remarks suggested there was something offensive or inaccurate about the letters themselves? [LB1105]

ROBERT HALLSTROM: Generally Senator, what we've been told and I don't have any examples to provide to the committee but what we've generally been told are, it's not uncommon for those letters to suggest that the employer is going to somehow treat the employee unfairly and is not going to work with them in good faith, and there's a lot of different slants perhaps that those letters take. But they are derogatory towards the employer presupposing that the employer's going to do something that won't be in the best interest of the injured worker and that unless and until they have representation, they may be taken advantage of and that's kind of a generalization but I think that's pretty much what we've been told comes in some of the letters, certainly not all I'm sure but. [LB1105]

SENATOR LATHROP: There was...or the Supreme Court regulates in some sense lawyers solicitation letters, do they not? [LB1105]

ROBERT HALLSTROM: I think they've got some control. There's some Supreme Court determinations that probably place restrictions on what they can do but... [LB1105]

SENATOR LATHROP: Are they not required to have on the face of the envelope, this is a legal advertisement or some words to that effect? [LB1105]

ROBERT HALLSTROM: I don't know for sure but I think that's correct. [LB1105]

SENATOR LATHROP: Okay. Do you know if your group has reported any of these letters that are derogatory to employers or towards employers to the State Bar Association? [LB1105]

ROBERT HALLSTROM: From prior years, Senator, I believe there may have been some that were reported but I can't remember. It would not have been any large amount that have been followed up in that respect. [LB1105]

SENATOR LATHROP: It probably wouldn't surprise you that the debate rages in this...because this is like the, I don't know, the tenth time this bill has been offered. I mean... [LB1105]

ROBERT HALLSTROM: It's been around the block a few times. [LB1105]

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SENATOR LATHROP: It's been around the block and the argument always comes, even among lawyers, because there's plenty of lawyers who agree with this proposition that folks shouldn't be solicited by attorneys who waded through the first report of occupational injury but don't you have a first amendment sort of an issue there where you say, this is information that's available. They ought to have a right regardless of whether you find it distasteful or not to solicit people or to... [LB1105]

ROBERT HALLSTROM: Well, on its face perhaps, Senator, but I think clearly given the fact that close to 40 states have put something on the statutes to make that information not available, at least leads us to believe that it's the right and proper thing to do. [LB1105]

SENATOR LATHROP: Okay. [LB1105]

ROBERT HALLSTROM: Thank you. [LB1105]

SENATOR LATHROP: As always I appreciate your answer to the questions. [LB1105]

ROBERT HALLSTROM: Thank you. [LB1105]

SENATOR CORNETT: Bob, when you say 40 other states have done this, have 40 other states went to this measure or have they done something impartial? [LB1105]

ROBERT HALLSTROM: There are differing and varying...I've gone through, Senator. I looked over the weekend at 20 different states and there's not a boiler plate or a form type of statute that's out there but most of them have the general basics of saying that these records relating to workers' compensation claims and injuries are confidential, and then it becomes a question of how they back out the exceptions that are provided. For example, those that are in our bill are very similar to the general range that you'll find. We have one that I did not find across the board that we had worked with on the trial lawyers in prior years that has to do with their request to be able to obtain information regarding aggregate injuries in the workplace. From one of those four or five times that we've had bills introduced previously, one of the comments that was raised, I believe by the trial lawyers was, if we're in the midst of a discovery and the employer says we've never had any of those types of injuries, they would like to be able if they think and perhaps know that that is not an accurate reflection of what's happened in the workplace, to be able to go and get aggregate information. And I think sub-section 5 of our bill provides that aggregate information regarding the nature and type of injury and amount of benefits is available as long as it doesn't identify the employee in any relevant respect. So we've done some things differently in that regard. [LB1105]

SENATOR CORNETT: Senator White. [LB1105]

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SENATOR WHITE: Thank you for coming. This is an interesting area. The issue on whether you're protecting privacy versus controlling what's in the letter, is really problematic. Unfortunately, a lot of the problems that we face started with a case called Bates v. Arizona where the U.S. Supreme Court said we could not constitutionally control what lawyers do in advertising as long as it's truthful. In other words, and if the bill is to get us in to keeping them from communicating or saying...controlling what they're saying, it's unconstitutional on a federal level and that's where I became concerned during the course of the discussions and I wanted to point that out. [LB1105]

ROBERT HALLSTROM: Yeah, Senator, and I don't disagree with that. I don't think our concern is necessarily at this point. If the bill is adopted in its form or something similar, there may still be some letters that go out. And whatever happens to be in those letters we may not have any control over but we have minimized the ability for them to directly contact people who have been injured because we've handed them information on a silver platter that says, somebody's been injured and may be a prospective client. And I think there's probably a difference with the state's having controlled how much information you can get versus wanting to worry about what you put in your letter. [LB1105]

SENATOR WHITE: The legislative record of that is going to be a real problem if this bill ever does pass that we've said that and talked about that. It's an interesting area. Thank you for your courtesy. [LB1105]

SENATOR CORNETT: What would you say the difference between your name being published in the newspaper when you're in a car accident and attorneys having access to police records in regards to motor vehicle accidents and workers' comp injuries are? Where do we stop? Because you get in a car accident you get a letter of solicitation. [LB1105]

SENATOR WHITE: Multiple ones. [LB1105]

SENATOR CORNETT: Multiple ones. You...and I've had a work comp injury. You get multiple letters of solicitation. Why are we simply...if you feel this is a problem, why are we simply targeting work comp injuries? Why aren't we looking at it as a whole and can we even look at it as a whole? Would we want to? [LB1105]

ROBERT HALLSTROM: Well, Senator, there's probably, probably the distinction that I'd make at least in my own mind, is the fact that we at the state level have the ability to control or limit the amount of information that is put out in the public domain in connection with workers' compensation injuries as we've proposed under LB1105 and as many other states have done. If there's something that is newsworthy that makes it on to the front pages of the newspaper or is shown on the evening news and a lawyer chooses to follow up on that, we probably have less control over the ability to minimize

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access to that type of information. [LB1105]

SENATOR CORNETT: Okay. Thank you. Senator Lathrop. [LB1105]

SENATOR LATHROP: It may not surprise you to know that there was a time when I sat on the trial lawyer board and they have a disagreement among their members as to whether this is a good idea or a bad idea. It's not every trial lawyer thinks this is a good idea and every trial lawyer thinks that somebody ought to have a right to run down to the work comp court. But there are some pretty fundamental questions and I enjoy having the discussion with you because I think you appreciate the distinctions or the similarities. But when I buy a house and they put in the daily record in Omaha or in the newspaper that I've bought a house, then I get a bunch of solicitations from everybody from the, you know, the cleaner that lives in the neighborhood, to the pizza guy, to, you know, somebody that cleans carpets, whatever, all these commercial solicitations arrive. And I'm wondering what the difference is. I mean, it isn't a lot different than any other commercial...never mind that they're professionals that are doing this but it isn't any different than... [LB1105]

ROBERT HALLSTROM: I don't know that it's any different, Senator, although we've had a lot of different areas in which that type of issue has arisen and from time to time we have passed legislation to try and curb the ability to make those solicitations. I've been involved in some in the banking industry where people were sending you envelopes that led you to believe that it was your bank that was contacting you, and they'd comb the public records and we've done things legislatively to try and put some sanctions on folks that do that. So I assume within reason there are...and if you get the right people behind it that have an interest in addressing that particular area of the law, that it's certainly within the domain of the Legislature to look and see whether or not we ought to put some restrictions on those types of either pronouncements of public information or restricting them. [LB1105]

SENATOR LATHROP: And I think I asked you this first time but you have not talked to the Supreme Court, members of the court about... [LB1105]

ROBERT HALLSTROM: Our group has not submitted any formal complaints or anything of that nature, Senator. [LB1105]

SENATOR LATHROP: Okay. Thanks. [LB1105]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Hallstrom. [LB1105]

ROBERT HALLSTROM: Thank you, Senator. [LB1105]

SENATOR CORNETT: Next proponent. How many proponents are there for this bill?

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[LB1105]

CHRIS ROTH: Good afternoon, Senator Cornett and members of the Business and Labor Committee. My name is Chris Roth. I'm President of Reinke Manufacturing Company. I'm also member of the Board of Directors of the Nebraska Chamber of Commerce and I'm here on behalf of the state chamber and on Reinke Manufacturing. I'd like to testify in support of LB1105. We manufacture...just so everybody knows what we do, we manufacture large irrigation systems, center pivots, lateral moves and we also manufacture large flatbed trailers, drop deck trailers, 45 foot to 53 foot trailers. We also manufacture chassis trailers. And the chassis trailers are used in the ports on the coast when they bring the containers in or they're taking them out so that's kind of a basis of what we do. We will sell product in all 50 states this year and we will export to numerous countries, Australia, several countries in central Africa, China, Russia, and some of those places so that's kind of a background of our facility and our manufacturing and what we do. We do employ about 400 people. Most of those are located in our manufacturing facility right in Deshler, Nebraska. Deshler, Nebraska, is a town of 900 people so we have a tenancy to know a lot of our people pretty well because we're in such a small area. We had a situation come up with related to this where we were putting on an employee function. We put on various kinds of employee functions such as renting out the movie theatre at Christmas time and we show a Christmas movie for the kids. We come up here to the Salt Dogs game and we have the Reinke night up here. We do various things. One of the things that we like to do since we're in south central Nebraska we're very close to the Kansas border is whenever the game is every fall, we have a Kansas state, Nebraska, picnic basically and everybody dresses either in their red or their purple and we have a get together. Well, we had one of our employees we were getting ready for the event and she was basically just picking up a container of Kool-Aid to stick up on the table and she just tweaked her back a little bit. Nothing serious. She didn't miss anytime except for going to the chiropractor for about, you know, an hour I think is how long it took her to get there and get back. Well, he had gave her some prescription, IB Profen in case she wanted to use it at some point, which she did use the IB Profen and then once we...once it was communicated to us that she'd used a prescription IB Profen then it became an event within the workers' comp system because it was a prescribed medicine. Well it wasn't too much longer after that and she started receiving all the letters that you get with that and she was...she kind of asked us about that. You know, she was asking, I thought this was protected information. Why are your sharing this information because, you know, I know underneath HIPAA rules you're not supposed to be sharing this and so we...I wasn't...to be honest I was a little ignorant of the situation. I didn't know that this was really gone on and so I investigated it with our TPA and I had her bring in the letters so that I could see what the letters were saying. And, you know, she just felt, you know, that it was an invasion of her privacy. She didn't like receiving them. She just didn't really like the whole situation at all. And I know in the testimony here just a little bit ago we were talking about some of the language. I did write down one paragraph off of one of the

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letters that we had received which I thought was...well, I'll just say, it was interesting. It basically says, don't think for a minute that you're not being watched. Insurance adjusters and their lawyers often hire private investigators to videotape you. You will never know until it's too late that you've been caught on tape doing something you have testified to being unable to do. She particularly didn't like that sentence in there. She thought that was just...again going back to the early testimony about trying to create some sort of an environment that employer was going to try to do something negative to the employee. And there's other instances in there. So she...we've communicated with her and everything is, I think, is fine at this point with her. She didn't miss any work. She's fine but she did bring it up and so I told her that I would do what I could do, at least communicate it to someone so that's what I'm doing. [LB1105]

SENATOR CORNETT: Thank you. Questions from the committee? Senator White. [LB1105]

SENATOR WHITE: Thank you and my son was recently rear-ended by a drunk driver, totaled his car, so I've gotten a ton of these solicitations and I didn't like them either. But one of the things so you understand, and it's important that the business community and the state understand, Chief Justice Warren Burger wrote an opinion, I think in the 70's, called Bates v. Arizona, and Chief Justice Burger, just so you know, was appointed by Richard Nixon, very conservator judge, and he said basically, the states can't stop it. Because we're trying to control what they say, you know, and as long as it's truthful, there's not a thing we can do and if we try to act to stop it, then we get sued for infringing on free speech. I agree with you, it's unfortunate. And I'm a plaintiff's attorney and I work with jurors like your employee ends up on a jury and she's bitter, and then I have people who are legitimately hurt who need to have a fair trial and they don't get it. So I don't like this any more than other people do. I'm one of the people who was at Senator Lathrop's board meeting. I really don't like this because it hurts a lot of innocent injured people as well but I struggle with what we can do. [LB1105]

CHRIS ROTH: Right. Well, and again I did some of my own research. Probably not as thorough as the previous gentleman's research was but I did do some research and again I didn't come up with exactly 40 because I didn't get through all 50 states but I know there's lots of states that have enacted some form of legislation on this. And I guess on the, you know the...you know, as far as the, you know, the information in the letters using word truthful, again I would go back to this about, you know, be careful about what you're doing because if you've been videotaped doing something that you been...provided testimony that said you were unable to do it, then the whole truthful thing, I've got a little bit of an issue with. [LB1105]

SENATOR WHITE: All I can tell you is, in fact, it's fairly common when these move forward that they do, in fact, hire private investigators and they do videotape them and, you know, and it's not a bad thing because if people are abusing the system. If I've got

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people making a claim who are lying, they're the worst enemy of the truly injured.
[LB1105]

CHRIS ROTH: I agree. [LB1105]

SENATOR WHITE: So I mean, I know, it's not fun, I...believe me. But again it's one of those areas where what we can do is maybe limited. [LB1105]

CHRIS ROTH: Okay. [LB1105]

SENATOR CORNETT: Any further questions? [LB1105]

SENATOR LATHROP: Thanks for coming down here. [LB1105]

CHRIS ROTH: Thank you for your time. [LB1105]

PETE McCLYMONT: Madam Chair, members of the committee. I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm Vice President for Legislative Affairs. Our board voted here three weeks ago to support this bill and that's why I'm here and the basis for that support hinges on the privacy that should be afforded both the employee and employer. So with that, I'll try to answer any questions if you have any. [LB1105]

SENATOR CORNETT: To the earlier question I asked Mr. Hallstrom, if we simply limited it to injury or that a work comp claim was filed but no notification of the type of injury was included in that, would that be a step in the right direction or are you looking at limiting the number of letters that actually go out to the injured workers? [LB1105]

PETE McCLYMONT: The basis for our board's opinion is based on privacy. You know, you can't get somebody's medical records and right now it also exists maybe this is an apple and oranges comparison but you can call up the do not call list and have your cell phone and home phone taken off. So I see Senator Lathrop's point that it's inconsistent but from our board's perspective that's... [LB1105]

SENATOR CORNETT: Do you consider a work comp claim a court action? [LB1105]

PETE McCLYMONT: Potentially, sure. [LB1105]

SENATOR CORNETT: Potentially. [LB1105]

PETE McCLYMONT: Right. [LB1105]

SENATOR CORNETT: What is the difference between that and filing for divorce which is in the paper or any other type of legal action that is printed in the newspaper? What is

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the difference in your mind? [LB1105]

PETE McCLYMONT: I agree with you that the inconsistency is there. That it's one way and not that way throughout so I'd agree with that. [LB1105]

SENATOR CORNETT: Okay. Thank you very much. Thank you. [LB1105]

PETE McCLYMONT: Thanks. [LB1105]

SENATOR CORNETT: Are there any further proponents? We'll move to opponents. How many opponents are there? [LB1105]

TOM DOWD: Senators, my name is Tom Dowd. I'm counsel for the AFL-CIO and we are opposing this bill not because it curbs solicitation. I personally don't like the solicitation and my client is not supporting solicitation but there's a second result of this bill perhaps unintended and that's where it limits and curbs the ability of a lawyer to properly represent his client by securing information that's within the records of the Workers' Comp Court. I'll give you an example. My son, Tim, or Mike, had this very experience. You have a repetitive trauma injury, individuals working on a machine in a processing plant and they develop epicondylitis, an arm injury. And the employer says, no one's ever had that before. This type of operation, these types of movements do not cause this type of injury. He went and secured records from the Workers' Compensation Court that in fact did show that a number of claims had been filed by employees for similar, if not identical injuries, doing the same processing. That information in turn was used to supply to the doctor to get him a foundational basis to establish causation on the basis of that repetitive trauma. Now, a gentleman before me said we...he alluded this generally, he said, we kind of took care of that in paragraph 5 of the exceptions. Paragraph 5 doesn't go far enough because paragraph 5 just talks about statistical information as to the nature and number of injuries. That first report of injury form will say arm injury. It's not going to go and necessarily in detail what you were doing or what machine you were operating on. So if you want to get down and do a good job as a lawyer and try to get that causation fixed, you've got to have that identity and that identity may require getting ahold of the injured employee. Otherwise you won't be able to establish it. That's the reason we oppose the bill because it hampers the ability of counsel representing an employee to do the proper job and providing the information necessary for its case. Any questions? [LB1105]

SENATOR CORNETT: Thank you, Mr. Dowd. Any questions from the committee? Seeing none, thank you. Next opponent please. [LB1105]

LEE LOUDON: Good afternoon, Madam Chairwoman. My name is Lee Loudon. I'm here on behalf of the Nebraska Association of Trial Attorneys. My experience is...excuse me, last name is spelled L-o-u-d-o-n. My experience is very similar to that of

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Mr. Dowd's. I had a case a few years ago where an employer claimed that they had never had a torn rotator cuff injury at this particular employer. I went to the Workers' Compensation Court and looked up other first reports of injury and found out that that was false. Subparagraph 5, as Mr. Dowd mentioned, doesn't go far enough because it would conceal the identity of the other injured worker. In my particular case, I tracked down the other injured worker who had had another rotator cuff injury, was able to talk to that individual and use his testimony at the trial of the case that I had, and was able to refute the contention of the employer's physician that it was impossible for this injury to have occurred because it had never happened before. I think that when we make this type of information secret, it's going to make it more difficult for us to bring forth the truth in these cases and that's what we're looking for. Thank you. [LB1105]

SENATOR CORNETT: Thank you, very much. Are there any further opponents? Anyone in a neutral capacity? [LB1105]

GLENN MORTON: Senator Cornett, members of the committee. My name is Glenn Morton, M-o-r-t-o-n. I'm administrator of the Workers' Compensation Court testifying really, very briefly today, just to say that...to point, or to say again that the amendment that Mr. Hallstrom referred to was drafted to address some technical concerns the court has with the bill. I would encourage you, if you're going to forward the bill that you do consider that amendment. I won't get into the details. They're technical issues but some important ones for us so. And with that I would also just answer any questions you may have about what happens now with the court with these records or anything else in background information I'd be happy to try to answer. [LB1105]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you, Mr. Morton. [LB1105]

GLENN MORTON: Thank you. [LB1105]

SENATOR CORNETT: Is there anyone else in the neutral capacity? Seeing none, Senator Fulton, you're recognized to close. [LB1105]

SENATOR FULTON: Thank you, Madam Chair. I'll be brief. One of the points that was raised in opposition, a legitimate point, that a lawyer building his case as counsel for an injured employee might be deterred under this bill. I don't think that's the case. A lawyer building his case as counsel for an injured employee is not deterred under this bill. He wouldn't be deterred from doing his job on behalf of his client. It's Section 1, sub (1), I'll begin on the green copy, page 2, in line 9, or line 8, the compensation court shall deny any request to inspect or copy a record that is confidential under this section unless the requestor is the employee who is the subject of the record or an attorney or authorized agent of such employee. So the employee could authorize his lawyer as his representative to access this information. When this bill was first brought forward to my

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attention I looked at it with regard or with respect to the do not call list. And an earlier testifier brought that up also. At some point in recent history the national do not call list became effectual as a means of limiting certain marketing activity in our country. The main principle affording this policy is a recognition of an individual's right to privacy and his expectation thereof. It's not so much the content or even existence of solicitation material that I'd be targeting with this bill. It's the information which I believe should be under the purview of the individual to whom the injury occurred. So just as a point of clarity, the free speech concerns that Senator White has legitimately brought up, is not the topic of this bill nor the subject of this bill. It is the information from which that speech could be derived and that is a...I think, that's a legitimate point to put forward. I'd appreciate your consideration of this bill. Perhaps there's ways we can work together. We have some top-notch attorneys here who might be able to tell us how we could accomplish the same intent, perhaps with a different vehicle. So I thank you for your time today. If there are any questions, I'd ask them...answer them. [LB1105]

SENATOR CORNETT: Seeing none, thank you, Senator Fulton. [LB1105]

SENATOR FULTON: Thank you. [LB1105]

SENATOR CORNETT: That closes the hearing on LB1105. I make a motion to go into Executive Session for a few minutes. Do I have a second? [LB1105]

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Disposition of Bills:

LB1019 - Advanced to General File, as amended.

LB1020 - Indefinitely postponed.

LB1073 - Indefinitely postponed.

LB1086 - Indefinitely postponed.

LB1105 - Indefinitely postponed.

Chairperson

Committee Clerk