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Business and Labor Committee
February 09, 2009

[LB51 LB194 LB243 LB630 LB631]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 9, 2009, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB51, LB194, LB243, LB630, and LB631. Senators present: Steve Lathrop, Chairperson; Brenda Council, Vice Chairperson; Tom Carlson; Amanda McGill; Ken Schilz; Norman Wallman; and Tom White. Senators absent: None. []

SENATOR NANTKES: (Exhibit 1) (Recorder malfunction, testimony lost)...without approval of the Nebraska's Workers' Comp Court, provided that the employee is represented by counsel. Current law only allows a lump sum settlement agreement if approved by the court. The bill would further require that the employee signs a release approved by the court discharging the employer from further liability including future medical expenses, unless specifically excluded in the release. I introduced this bill as a way to help injured employees received their benefits more quickly. If the employee agrees to a lump sum settlement from their employer and are represented by counsel they should be able to receive their settlement without the further time and review imposed by the Worker's Comp Court. Again, this would only apply to employees who are represented by counsel. It's my understanding, members of the committee, that similar legislation has been introduced in the past and most notably there has been some opposition from the AFL-CIO and some other labor groups. After I introduced the bill this session, I had the opportunity to bring together some of the members of the bar who brought this legislation to me and then also members from organized labor to try and seek that common ground that we all know exists on so many issues before us. It's my understanding that there has been an amendment drafted that seeks to clarify some of the questions that were originally presented on the past legislation and that there are people here today to help me fully explain that amendment in more detail. I believe that we presented that to the committee, so you should have that for your review. In conclusion, the general purpose behind this legislation, it is really about efficiency. When an injured person is fully represented by competent counsel both parties have been able to reach agreement on what would be an appropriate settlement and that injured worker is waiting, many times in dire circumstances without income coming in and their receiving, for example, notifications that maybe their utilities might be turned off and they have no resources available to them until the settlement is granted. So by erasing the undue burden that this additional administrative step could impose, it just seeks to improve efficiency within the system. Again, I urge your strong consideration of LB194 and I am happy to answer any questions but again, it's my understanding that some practitioners in this field will be following behind me to fully explain some of their experiences in terms of why this legislation is necessary. [LB194]

SENATOR LATHROP: Very good. Thank you, Senator. Are there any questions?
Senator Carlson. [LB194]

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SENATOR CARLSON: Senator Lathrop. Senator Nantkes, on page 3, and you can answer this or you can tell me that somebody coming behind would better be able to address it, but so that I can grasp it a little bit better, the difference between being represented by counsel and not represented by counsel. And I understand there could be some people that don't want to be represented and they know what they want and if they get that, that's good enough. And it says refer to subsection 2, and then it looks like it's all done in the same manner. What's the difference? [LB194]

SENATOR NANTKES: Well, I think basically, Senator, is that we would be seeking the removal of this administrative barrier for parties that are fully represented and who have the advice of counsel to rely upon as to the sufficiency of the award and the settlement that the parties are able to come to. If a party is unrepresented, it might be an important safeguard to keep that review in place. But I do want to highlight for the committee that it is my understanding after talking to people who do practice a great deal within this field that the administrative review is really just that, administrative. It's not a review for fairness or adequacy and so I think when both parties are zealously and appropriately represented that those parties should be able to come to those terms on their own. [LB194]

SENATOR LATHROP: Very good. Any other questions? Seeing none. [LB194]

SENATOR NANTKES: Thank you. [LB194]

SENATOR LATHROP: Do you want to stick around and close? [LB194]

SENATOR NANTKES: I will. [LB194]

SENATOR LATHROP: All right. Let's have the first proponent prepared to testify. [LB194]

STEVE HOWARD: Good afternoon, I am Steve Howard, S-t-e-v-e H-o-w-a-r-d, counsel for the state of Nebraska AFL-CIO. And to follow up on Senator Nantkes' comments the history that brings this amendment before the committee is accurate. Initially the state AFL-CIO had concerns about the language in LB194 because it seemed that just a simple blanket sort of a release saying I'm giving up all of my rights was how it was initially presented and I would thank and congratulate the Senator and the other individuals working behind the scene to come up with the amendment. State AFL-CIO now favors and comes in support of this bill with the proposed amendment. Essentially the purpose for the amendment was sort of to help trigger a dialogue or to cause the person that's signing off on the release to consult with their lawyer and ask some questions. There may be some things listed in there that the person needs to have explained to them. So it's really a broadening of the disclosure of the rights that the person is giving up on. In support, I would point out that the Nebraska Workers'

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Compensation settlement approval process is really the only one in the personal injury setting that requires this lengthy and, with all due respect to the court, somewhat cumbersome process. If you have a medical malpractice claim, if it falls under the Hospital Liability Act there is a procedure to get it approved, but it's usually a one-sentence matter that goes before the judge. If the provider doesn't qualify under the act, you just sign a release. If you're in a car accident and you have millions in dollars in medical bills, all you do is sign a release and there isn't this sort of overview or this sort of process that you have to go through with the court to determine whether or not all of the criteria have been met. And so, therefore, it sort of...it leads to the question, why should the process be any different? In fact, if you have that product liability or that terrible injury case or malpractice case you can settle it without a lawyer and there's no oversight by the judiciary, no oversight by the court. And, you know, there would still be oversight with children or with a probate matter, something like that. Those are subject to court approval. But if an individual wants the benefit of their bargain, it should not take the two to four or upwards of a month or two to have the settlement work its way through the court. I'm sure we'll probably hear about the time from filing until approval by the court or the average date but what this has led to is discussions among the plaintiff's attorney and the defense attorney as to just what the settlement language would have and that causes a further delay. And so it doesn't seem that the workers' compensation system should be any different. It's true that many settlements do come back from the court with a letter for some explanation, but I'll give you some examples of those. My partner had a settlement that came back where there was a question about the middle initial because some of the medical reports didn't have the gentleman's middle initial--the claimant's middle initial--and the settlement documents did. Now, that was quickly remedied with a call to the judge to say, you know, this is too sort of nit-picky, if you will. But a rounding error, if one person's computer rounds the dollars up and the other down that could lead to a letter and a delay and, you know, in the end with this lump sum settlement process the Legislature never really has told the Workers' Compensation Court what criteria should be followed in determining whether a settlement's approved. The criteria has been set up by the court through its rules rather than through a directive from the Legislature and the original settlement process just simply said it will come with court approval. And, you know, in the end I guess I would just say that I think that the lawyer that knows best--what is in the best interest of the client--is that person's counsel. And a case from the mid-1990's or so, involving a claimant named Mr. Bruning stands for the proposition that just because the court has approved a settlement, just because everything's been fine, that's not a bar to a legal malpractice claim against the lawyer. So that person would still have that remedy. So the state AFL-CIO comes in support of this bill with the amendment as proposed and thank you for your consideration. [LB194]

SENATOR LATHROP: It might be helpful just to...for people that serve on the committee that have never been through a work comp, to give a little bit of an overview and I'm going to lead you through that. [LB194]

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STEVE HOWARD: Understood. [LB194]

SENATOR LATHROP: Just to make it quick. You get hurt at work, you're entitled to have your medical expenses paid by the employer or the employer's insurer, is that right? [LB194]

STEVE HOWARD: Correct. [LB194]

SENATOR LATHROP: You are entitled to have temporary total disability benefits, which is two-thirds of your average weekly wage, for the weeks that you're off work completely. Right? [LB194]

STEVE HOWARD: Yes, yes. [LB194]

SENATOR LATHROP: And then you're entitled to have...be compensated for your loss in your earnings ability. Sometimes confused with the physical impairment but it's actually a loss of your earnings ability provided it's a body as a whole injury. [LB194]

STEVE HOWARD: Provided for body, yes. [LB194]

SENATOR LATHROP: And then there are...if your loss of earning capacity is sufficient you may well qualify for vocational rehabilitation. [LB194]

STEVE HOWARD: Correct. [LB194]

SENATOR LATHROP: And the previous opposition you've had to this in the past is that some lawyers who might be unscrupulous and might want to turn these things over real quickly might not care about all of those rights and make sure that their clients receive all of these benefits and today we recognize with this bill--assuming that it moves through here--that if two lawyers or a lawyer and an insurance company can sit down and cut a deal for a client that that ought to be carved out of the requirement that that agreement be approved by the court, which typically takes six weeks. [LB194]

STEVE HOWARD: Correct. [LB194]

SENATOR LATHROP: Is that about it? [LB194]

STEVE HOWARD: That's about it. It's not always the unscrupulous lawyer that...it may be the uninformed lawyer, but yes. [LB194]

SENATOR LATHROP: Yeah. Okay. Yeah, because there are some nuances to the work comp law that can make significant differences in what somebody receives.

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[LB194]

STEVE HOWARD: Correct and that goes to the amendment. It's just sort of trigger a dialogue so the person knows they're giving up mileage, or the right to go to school, books, tuition, things like that, so. [LB194]

SENATOR LATHROP: Very good. [LB194]

STEVE HOWARD: Very good. [LB194]

SENATOR LATHROP: Thank you, Mr. Howard. [LB194]

STEVE HOWARD: Thank you. [LB194]

SENATOR LATHROP: Any other questions for Steve? Seeing none, thank you and thanks for coming down. [LB194]

STEVE HOWARD: Thank you very much. [LB194]

SENATOR LATHROP: Anyone else here as a proponent? [LB194]

ABIGAIL WENNINGHOFF: Members of the Senate, my name is Abigail Wenninghoff, W-e-n-n-i-n-g-h-o-f-f. And I'm here to testify on behalf of this bill as a member of the defense bar. I represent insurance companies and I have done so in exclusively workers' compensation for approximately the last nine years. And it is not just plaintiff's side that has suffered and incurred expense as a result of delay on the part of the lump sum approval process. In fact, I think defendants are as anxious to resolve the cases as plaintiff but when we're set back two to three weeks, sometimes a month, over issues relating to a decimal point, it frustrates all parties to the point that it has actually almost caused settlements to fall through completely, which is something the court doesn't want either. I was asked to give a couple examples of how this has frustrated the process somewhat. We had a case that we settled for \$1,000 and the plaintiff really didn't have much medical treatment. We settled it, agreement of both parties, both represented by counsel. The Workers' Compensation Court requested and required that we have a doctor's opinion regarding this woman's condition before settlement was approved. But this woman hadn't gone to the doctor for several years and had no interest in going back to the doctor no matter who had to pay for it. And, at this point, that settlement is still pending so we need to make a decision whether we want to pay \$1,000 for an independent medical exam or abandon the settlement entirely leaving his client with nothing. I think you'll see a quicker response if the requirements are somewhat lessened given that both parties are represented by counsel. [LB194]

SENATOR LATHROP: Very good. Thanks for your testimony. Are there any questions

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for Ms. Wenninghoff? I don't see any. Thank you. Anyone else here as a proponent?
[LB194]

JACK DIKE: Senators, thank you. My name is Jack Dike, I'm a defense counsel here in Lincoln. I represent Transportation Claims, which is a claims administration arm for Crete Carrier Corporation. Crete is a Nebraska self-insured company for workers' compensation purposes and my practice is limited exclusively to the defense of the workers' compensation claims for Crete Carrier Corporation. I, too, am in favor of...or I'm asking you, I guess, I'm here in support of this bill. My experience has been that the oversight that is done by the compensation court with our lump sum settlements is mere formality over substantive procedure. And a lot of times that formality causes us a lengthy delay, as you've heard from the other witnesses here before you today. My other concern is, frequently we're asked to prove something that we can't prove. In other words, I've had lump sum settlements that we submitted to the court and been asked to provide evidence that this person doesn't have an injury and I can't prove a negative. And that happens all too frequently. I think that the legal staff of the compensation court, while they do a very good job, I think sometimes because they don't engage in the actual litigation of the workers' compensation cases sometimes miss the subtleties that are involved in that litigation. Those of us who practice exclusively before the Workers' Compensation Court are aware of the subtleties both in the evidence and in the judge's who sit on that court and we take that into consideration as we reach a settlement. And I think that's the thing, the piece that's missing out of this oversight. [LB194]

SENATOR LATHROP: Very good. Are there any questions? I don't see any. [LB194]

JACK DIKE: Thank you. [LB194]

SENATOR LATHROP: Thanks for coming down, Mr. Dike. Mr. Shasteen? [LB194]

ROLF SHASTEEN: I'm not going to testify. [LB194]

SENATOR LATHROP: You're not. You keep moving in your chair, I'm waiting for you to jump up and testify. (Laughter) [LB194]

ROLF SHASTEEN: Oh, I just like to watch things roll along. [LB194]

SENATOR LATHROP: Good. Good. Well, I hope we're doing everything right. (Laughter) [LB194]

ROLF SHASTEEN: I'm sure I wouldn't know. [LB194]

DAN FRIDRICH: Dan Fridrich, F-r-i-d-r-i-c-h, testifying on behalf of Werner Enterprises,

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Nebraska Chamber of Commerce and Industry and Nebraskans for Workers' Compensation Equity and Fairness. I'll try not to be repetitive. I think one item that hasn't been brought up by anyone so far is the increased cost for employers on having these settlements approved by the Nebraska Workers' Compensation Court. They have to hire a lawyer to do these settlements, and granted, they probably still will but these documents that we produce are several pages and while they are forms, they have little nuances to them that you have to change on each form and when we get these letters back from the court asking for us to provide more information or get a medical report, that takes time. And it costs money to employers. So by having or by passing this bill, I think it will reduce costs for employers to some degree. It's not going to be a marked decrease, but it will be a decrease and that will be helpful. I would echo a comment made by Mr. Dike, that a lot of this is form over substance when you have these settlements approved by the court. Two points on that is, I've been practicing workers' compensation law exclusively--meaning that's all I do--since 1999 and I've had only two rejections. So that the approval rate right now, at least from my experience, is well over 99 percent. And when we get these letters from the court about the settlements, a lot of them aren't about points that really protect the injured employee, which I assume is the point of having the approval process. I got a letter last week because they wanted me to submit a medical report showing the diagnosis and the injury sustained by the injured worker even though I'd already stated the injuries in the application and I'd already forwarded every medical record I had on the claim, just none of it was readable. The doctor didn't write in any legible handwriting and they wanted me to produce something I didn't have. So I don't know how that really helped the injured employee in this case. So, as a result, I think really the protection being offered by the approval process really isn't protection and it really just slows down the inevitable. Any questions? [LB194]

SENATOR LATHROP: Okay. Thanks for your testimony. I don't see any questions. I see none, thanks Dan. [LB194]

DAN FRIDRICH: Thank you. [LB194]

SENATOR LATHROP: Are there any other proponents? Anybody here in opposition to LB194? [LB194]

GLENN MORTON: (Exhibit 3) Senator Lathrop, members of the committee I think I'm probably the lone one in this group that has some concerns about this bill and the court does, so. So I do have, if you would... [LB194]

SENATOR LATHROP: Why don't we start with your name? Sorry. [LB194]

GLENN MORTON: I'm sorry. Glenn Morton, M-o-r-t-o-n. I'm the administrator of the Workers' Compensation Court appearing today on opposition to this bill on behalf of the court. I do have a significant handouts for you...for your reading in your leisure. I would

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first note that the court has not been part of any discussions about this bill. We weren't aware that the bill would be introduced. We haven't seen any amendments so this is the first that we've really had any opportunity to provide any comments to anyone about this bill. As you know, the court normally appears neutrally on workers' compensation bills that are before the committee other than bills requested by the court, of course, which we have one today. However, on a matter of this importance to the work comp system and public policy in general, we feel the need to speak out more forcefully and more clearly. The bottom line is that we believe the public has an interest in the settlement process that is not always adequately protected by the parties. And further, in our experience, the long-term interest of the employees are also not always adequately protected even when the employee is represented by an attorney. The handouts and materials you have, list several examples and statistics to support those conclusions. And I'll touch on just a few of them in my testimony here. By way of further background to what Senator Lathrop has already mentioned, all lump sum settlements in Nebraska workers' compensation cases now have to be approved by the court before they become effective. We receive approximately 2,000 settlement applications each year. About 70 percent of those cases the employee is represented in, and almost 100 percent of the cases the employer is represented by an attorney. Each application is initially reviewed by a staff attorney as has been noted, but any approval or disapproval decision is made by the presiding judge of the court or by another judge sometimes acting in the presiding judge's place. All the guidelines that our attorneys follow in approving these settlements are approved by the presiding judge, by our current presiding judge, or previous presiding judges. And whenever there is an iffy situation especially when we get pushed back from, as we frequently do, we review those situations with the presiding judge. So I think it's important to realize that these decisions are made by a judge of the court, not by the staff attorneys. All right. The standard of review, they stated there is no standard, but there is. A standard of review in the statute is that the settlement must be in conformity with the compensation schedule established in the act and must be in the best interest of the employee under all of the circumstances. If a settlement is inadequate, has been noted, our attorneys will notify the parties of what the problem is, give them an opportunity to fix the settlement. And if that cannot be done then to the satisfaction of a presiding judge again, the settlement application is disapproved. With regard to the public interest, public having an interest, I won't do extensive quoting here but there is a well-known, well-respected legal author named Arthur Larson, which I'm sure the work comp attorneys are familiar with. He has a treatise entitled Larson's Workers' Compensation Law that's frequently cited as authority by the Nebraska Supreme Court, other appellate courts all over the country. And Professor Larson states in his treatise, I'll just run through a bit of what he says, in some jurisdictions excessive and indiscriminate use of lump summing device has reached a point where it threatens to undermine the real purposes of the work comp system. If a partially or totally disabled worker gives up reliable, periodic payments in exchange for a large lump sum of cash immediately at hand, experience has shown that in many cases the lump sum is soon dissipated and the worker is right back where he or

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she would have been without the work comp. Professor Larson goes on to say, one reason for the persistence of this problem, which he calls the excessive and indiscriminate use of lump summing, is that practically everyone associated with this system has an incentive--at least, a very highly visible short-term incentive--to resort to lump summing: the employer and the insurer are glad to get the case off their books once and for all; the claimant is dazzled by the vision--in Professor Larson's words--of perhaps the largest sum of money the claimant has ever seen in one place; claimant's lawyer finds it more convenient to get his full fee promptly out of the lump sum rather than out of weekly payments; claimant's doctor, other creditors, as well as the spouse and family all typically line up on the side of lump summing. So Professor Larson asked, who then is to hold the line against turning the entire income protection system into a mere mechanism for handling cash damages over the to plaintiff? He answers, the only solution lies in conscientious administration with unrelenting insistence that lump summing be restricted to those exceptional cases that can be demonstrated that the purpose of the act will be served. Supreme Court of Nebraska has also made similar comments and I quote two or three cases here that I cite. In the approval of commutation of compensation to a lump sum settlement, the public has an interest which it is the duty of the court to protect without regard to the wishes of the parties. Another several cases, another quote, the Nebraska Workers' Compensation Act is one of general interest not only to the worker and his or her employer, but as well to the state. So we believe it's well settled that the public has an interest that's different from those of the parties, and that that interest has to be protected by a close scrutiny of the court by all lump sum settlements. Okay. [LB194]

SENATOR LATHROP: Good. Thanks, Glenn. Are there any questions for Mr. Morton? Sure, Senator Carlson. [LB194]

SENATOR CARLSON: Senator Lathrop. What's the longest on a permanent disability, what is the longest a payment can go on if it's a periodic payment? [LB194]

GLENN MORTON: For life. [LB194]

SENATOR CARLSON: For life. [LB194]

GLENN MORTON: Um-hum. Permanent total disability. [LB194]

SENATOR CARLSON: How would, say a 50-year-old... [LB194]

GLENN MORTON: Um-hum. [LB194]

SENATOR CARLSON: ...who's going to get \$1,000 a month, how would that be capitalized in the lump sum settlement? [LB194]

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GLENN MORTON: It is factored in, it's reduced to present value on their present value tables that are followed with that. [LB194]

SENATOR CARLSON: What kind of interest rate is typical? [LB194]

GLENN MORTON: About three percent, is that correct? It's five percent, I think, by statute. It's set by law. [LB194]

SENATOR CARLSON: Five percent then set in such a way that that payment would last to life expectancy? [LB194]

GLENN MORTON: Um-hum. Yes. [LB194]

SENATOR CARLSON: Okay. Thank you. [LB194]

GLENN MORTON: That's the idea anyway. Yeah. [LB194]

SENATOR LATHROP: You know, these bills come before this committee on a regular basis and they seem to be driven by the frustration, I know the defense bar, the defense lawyers don't like doing them. [LB194]

GLENN MORTON: Um-hum. [LB194]

SENATOR LATHROP: The insurance companies would rather not have to because they're paying the defense lawyers and the plaintiff's bar has frustrations that it's taken six weeks and you're now throwing the number around, and I don't do a lot of this anymore, but four weeks. We've seen it a lot longer than that, haven't we? [LB194]

GLENN MORTON: We have in many years past. In recent years, if there is not a problem with the settlement, our attorneys turn it around in seven days and it's usually ten days. If there's a problem, it will depend on how long it takes the parties to fix it. [LB194]

SENATOR LATHROP: Okay. I appreciate your concerns and, of course, I don't know that there's universal agreement that this is a good idea. There's always some concern that some things will be lump summed that shouldn't be and that the court might be able to intervene in certain cases, but if somebody's going to pick their own lawyer and the insurance company's got a lawyer and we let them settle injury cases of every kind of magnitude, that might be the logic behind this. But we do appreciate your testimony today, Mr. Morton. [LB194]

GLENN MORTON: I, quite frankly, the meat of my testimony was still to follow. I know you have a very limited time, but I would encourage... [LB194]

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SENATOR LATHROP: We do have five bills today. [LB194]

GLENN MORTON: I understand. I encourage you to closely read these examples because we went to very extensive efforts to document the kind of cases we're finding here. Cases and there's also an issue with Medicare and Medicaid. [LB194]

SENATOR LATHROP: I was going to ask you about that... [LB194]

GLENN MORTON: You haven't gotten into that yet. [LB194]

SENATOR LATHROP: ...I did see that on your list. Medicare if the case is lumped for more than \$250,000 and the person is Medicare eligible, then you've got to do the set aside. And does the court have any involvement in making sure the set aside is done? [LB194]

GLENN MORTON: Yes, we do, and that's a major issue. [LB194]

SENATOR LATHROP: Of course the lawyer is going to get sued for malpractice if he hasn't accounted for the Medicare set aside, am I right? [LB194]

GLENN MORTON: An employee can be required to use every amount of the settlement. Again, there is a lot of data here and striking data. Cases in which, especially at the end, we talk about a Medicare settlement set aside situation, which there's an employee represented, and the employee and the employee's attorney has attempted to take attorney's fee, not only out of what the employee would get, but also out of the Medicare set aside amount which is required to be set aside for medical expenses. There is many thousands of dollars that are involved with this and the employee and all parties can be nailed because of a failure to satisfy Medicare's interest. It's a huge issue all over the country, it requires close scrutiny. And just as one final statistic and again, I encourage all of you to look at this, in the last three years because of court review we've acquired over half a million dollars of additional payments to employees as a result of that review. And the bottom line there is the presiding judge determined in those cases that the parties--and those are all cases in which the employee and the employer were both represented--that the parties have simply not adequately taken in the employee's interest or the public's interest in these settlements. [LB194]

SENATOR LATHROP: Very good. Senator Carlson. [LB194]

SENATOR CARLSON: Senator Lathrop, two other quick questions. Whether it's a periodic payment or a lump sum, because it's damages, it's all tax free. [LB194]

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GLENN MORTON: It's not considered damages under the work comp law. That's an important point to make because it's very different than auto injuries and other situations. It's a public entitlement, but to get back to your point, it is tax free. Yes, yes. [LB194]

SENATOR CARLSON: Now I had another thought and I lost it. Oh, and none of these payments are coordinated with, I gave you an example of a 50-year-old, they're not coordinated with Social Security payments or anything? They're totally separate. [LB194]

GLENN MORTON: There is no Social Security offset currently. But they are coordinated and Medicare is coordinating them with Medicare payments now and they're requiring that...in fact, as of July 1, Medicare is requiring anyone who makes a payment in work comp whether it be a private insurance company, a self-insurer, or the court itself--we make payments from a trust fund--we have to report those payments to Medicare. They're being very vigorous in enforcing what are very complex requirements and there is one handout here that's on our Web site that you can look at to determine how complex Medicare's requirements are. And quite frankly, the attorneys who are practicing, don't understand it. We're finding it's getting better, there is a huge learning curve and for the last few years many of these settlements, in fact a large majority of the problems to settlements relate to medical expenses. And the medical providers have no standing before the court, the parties don't have a whole lot of interest in protecting the medical providers' interest and if the medical issues are not straightened out, you can be sure the employee is going to have further problems after the settlement comes out. All right, thank you. [LB194]

SENATOR LATHROP: Got it. Thank you very much for coming down today. We appreciate your testimony. Anyone else here in opposition? Anyone here in a neutral capacity? Senator Nantkes, would you care to close? [LB194]

SENATOR NANTKES: I would, thank you. Senator Lathrop, members of the committee, and particularly for those of you who are new to the committee, welcome to the feel good legislation of the year. It is so rare, particularly in our workers' comp system to work on a piece of legislation that enjoys broad support from members of the plaintiff's bar and members of the defense bar, from injured employees and organized labor to business organizations who have all come here today in support of this legislation. A couple of points that I do want to note for the record before we wrap up. There was some discussion at the end about some concerns that the court itself had in regards to this bill and I'm hopeful that when we have a chance to share the amendment with them that we have been drafting over the weekend that maybe that will allay some of those concerns. However, in regards to specific notice being presented to them, I see the legislative process as sufficient to providing that notice. Additionally, I think it's important to note in your fiscal note, look at the fiscal note provided on LB194. What this bill does

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in terms of the structure in that administration is would allow staff attorneys to better utilize their time assisting the court and note on duties that are not currently being performed. It doesn't have a fiscal impact otherwise. But from an appropriations perspective, as you know I serve on the Appropriations Committee, I think it's important that we as a Legislature challenge those within all state agencies commonly known as the bureaucracy to search and seek hard within their agencies for efficiencies that they can find. We have members of the bar here today from both sides talking about how important it is to remove this artificial barrier to real settlement for injured employees. And we have, what I believe to be, a bureaucratic opposition to relinquishing any sort of power and I think that that's misguided in terms of what our workers' compensation law is intended to do. That being said, I think that we're all concerned in promoting the public interest. But to reiterate, the workers' compensation system and the legislation that I bring before you today currently does not allow the court to review these types of settlements in terms of fairness or adequacy, but instead has just imposed administrative bureaucratic barrier to real reward and settlement for injured workers. Thank you. [LB194]

SENATOR LATHROP: Got it. Thank you. Oh, we have a question. [LB194]

SENATOR COUNCIL: Yes, Senator Nantkes. [LB194]

SENATOR NANTKES: Yes. [LB194]

SENATOR COUNCIL: Thank you for that explanation. I'm going to direct your attention to page 5 and you indicated during your testimony that there is some amendment language... [LB194]

SENATOR NANTKES: Yes. [LB194]

SENATOR COUNCIL: ...still being addressed but if you were to look on page 5, subsection 3(d), that last sentence that doesn't...that shouldn't be there, should it? Shouldn't that be a stand-alone paragraph because it suggests...because under the language that says what should be specifically addressed with an employee who is waiving their rights under the Workers' Compensation Act...and then that sentence, the release shall provide for a full and complete discharge. It comes in the subsection that deals with the right to ask a judge to decide the parties rights and obligations. Shouldn't that be a stand-alone sentence? Was it...is it intended to relate to the right to ask the judge of the compensation court... [LB194]

SENATOR NANTKES: Senator Council, I am happy to work with the committee to advance the technically most correct version of this legislation as we can craft. As you know, in the process, and I'll be clear, I'm not a workers' compensation expert. I've never handled one of these cases in my private practice or otherwise. This idea was

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brought to me by members of the bar and then we worked with bill drafters to put forth legislation that would harmonize with the existing statutory framework. If it would be more clear or better suited to be a stand-alone section, I'd be happy to work with the committee in that regard. [LB194]

SENATOR COUNCIL: Okay. I just want to bring that to your attention. I don't think that that's what the intent was based upon the...what's recited. And then, I guess my second question goes to the statements with regard to easing the administrative burden. I understand the desire to accomplish that but my one concern is that this legislation appears to be premised on the assumption that whoever the injured employee retains as his or her legal counsel knows and appreciates and understands all of the nuances of workers' compensation laws. And that's kind of troubling to me because sometimes, you know, individuals end up with, you know, the best-intentioned legal counsel who has no understanding of the nuances. And just now, I mean, when Senator Lathrop was talking about the Medicare set aside, I mean if somebody came to me with a workers' compensation case, first of all I would say I don't do them. You know, I can refer you to someone else but even in referring them to someone else I'm not, you know, entirely confident because I've never handled them, I've never dealt with other legal counsel who's handled them. But it seems to put a burden on the employee to make sure he or she gets appropriate legal counsel, because if they get any legal counsel and they sign up a settlement agreement without that layer of court approval we could be placing employees at greater risk. And I appreciate the fact that they can bring a malpractice claim, but what does that do in terms of providing for them if they've lost substantial benefits as a result of entering into a lump sum settlement agreement? [LB194]

SENATOR NANTKES: Senator Council, if I may, two things come to mind in response to, I think those very valid concerns and those are some of the same concerns that the AFL-CIO has had with similar legislation in the past, and why I felt it was important as an introducer to try and bring the disparate parties together and seek that common ground prior to coming into your committee. And I think we were able to accomplish that, again, with the amendment that has been circulated around to the committee. Number one, it would really bring the level of informed consent for the injured employee up to a greater standard. And secondarily, to address those concerns I think that we can't forget the separate and distinct obligations that we as lawyers are under in terms of our ethical codes and additional considerations. For example, just very recently the Nebraska Supreme Court issued a disciplinary sanction on an attorney who was practicing in an area which they did not have expertise. And so there's additional safeguards within our legal profession and ethics which I think would help to circumvent any potential concerns about inexperience or unscrupulous counsel as it may be. [LB194]

SENATOR LATHROP: Thank you. [LB194]

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SENATOR COUNCIL: Thank you. [LB194]

SENATOR NANTKES: Thank you. [LB194]

SENATOR LATHROP: You're up next, don't go anywhere. [LB194]

SENATOR NANTKES: Aren't you lucky? [LB194]

SENATOR LATHROP: We're going to segue straight into...that closes our hearing on LB194. (See also Exhibits 2, 4) And that brings us to LB243, I believe, yes. [LB194 LB243]

SENATOR NANTKES: Again, good afternoon, Chairman Lathrop, members of the committee. And welcome, Senator White. It wasn't quite the same without you here at the first bill. But my name is, again, Senator Danielle Nantkes, that's N-a-n-t-k-e-s, still representing the "Fighting 46" Legislative District and I'm here today to introduce LB243. This bill would apply only to workers who have been determined by the Workers' Compensation Court to be totally disabled. According to those who work in the system, fewer than 5 percent of the petitions that are filed result in a determination of total disability. And not many injured workers receive total disability payments for very long, but there are some who do. And because of an oversight in the system, they never have their workers' compensation adjusted for inflation. LB243 would provide that adjustment. One of the basic concepts within workers' compensation law is that it is intended to provide income replacement to keep an injured worker close to where he or she would have been had they not been injured on the job. The maximum benefit is capped at two-thirds of the wages received at the time of injury. This two-thirds figure is supposed to encourage the workers to return to work where, presumably, they would be restored to their previous wage rate. Here's where the system fails. There have been some devastating injuries that have resulted in total and permanent disability. My statement of intent notes, for example, that if a worker were making \$575.00 a week in 1999 and was totally disabled because of injury within the workplace, he or she would have been at about \$383.00 a week in 1999. Today that worker would still be receiving \$383.00 a week, even though our cost of living has risen by almost 30 percent or 29.71 percent within that time period. The Legislature wisely changed the law to allow for an annual increase in the maximum benefit for the total disabled based on Department of Labor statistics. However, the Legislature neglected to recognize the problem faced by those whose disabilities do not allow them to return to work, and the compensation to which the court determined that they were entitled became frozen at the amount set in the year of their injury. I'm not asking that we go back and correct past injustices created by this omission, but I do feel strongly that we need to change the law in a prospective manner to start recognizing the reality of inflation and its effect on those already damaged and living on a fixed income. I would urge you to report LB243 to the floor and I'm eager to help ensure its passage. Thank you. [LB243]

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SENATOR LATHROP: Thank you very much. Are there any questions for Senator Nantkes? And you'll want to close? [LB243]

SENATOR NANTKES: I'm actually going to waive, snap my closing and return to the hard work of the Appropriations Committee. [LB243]

SENATOR LATHROP: All right. [LB243]

SENATOR NANTKES: Thank you. [LB243]

SENATOR LATHROP: Save some money for the work comp court, I guess. [LB243]

SENATOR NANTKES: I'll try my best. [LB243]

SENATOR LATHROP: All right. Are there any folks here as proponents? [LB243]

MICHAEL DOWD: Good afternoon, Senators, committee members. My name is Michael Dowd, D-o-w-d. Representing the AFL-CIO. Llonas (phonetic) Aguilar is a young man I represent. He was 19 years of age when he fell from a roof. He's a quadriplegic. He lives in assisted living. He's trying to establish an independent living situation for himself and his family whom he actually supported at age 19. His father is disabled, his mother has never worked, she doesn't speak English and actually provides for a lot of his day-to-day care. Llonas Aguilar, if he were to work through his working life expectancy, that's about 45 more years. He will be forever trapped in a system where his compensation that he'll receive weekly will be set in basically where it was back in 2006 and he's stuck there. His ability to go ahead and provide some level of independence for himself and his family is hurt with every passage of a year and the increase in inflation and the cost of living. If we were to talk about the realities of the economic devastation endured by those who are most hurt, this is probably the most fair change that I've seen come around in a long time where we're trying to advance the beneficent purposes of this act, protect those that are most injured. This is a fair bill, it's a correct bill and it should be one that should have been implemented a long time ago. [LB243]

SENATOR LATHROP: Thanks, Mike. Any questions for the witness? Senator Carlson. [LB243]

SENATOR CARLSON: Senator Lathrop. Mr. Dowd, once a person is determined to be totally and permanently disabled, that never changes, does it? [LB243]

MICHAEL DOWD: No, it does not. [LB243]

SENATOR CARLSON: So in his case if, unlikely but a possibility through technology or

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whatever, he could recover to...in some way have some earnings which would be wonderful, that would not affect the payment he's receiving in any way? [LB243]

MICHAEL DOWD: Not at this point. There is some case law where someone has been found to be totally disabled where if there is some unique job that is provided to them...there's a case of Schmokel (phonetic) Foods, I think it is, and someone was found to be totally disabled, but they ended up going back to a grocery store to be a greeter, and it was a part-time position. They couldn't do that everyday. The court found that they were still totally disabled at that juncture. So there are cases in which someone has been found to be totally disabled where they might just get out and provide social service work, volunteer work, but they're still...the capacity and the reality is that they will never work in a regular occupational base. [LB243]

SENATOR CARLSON: Okay. Thank you. [LB243]

SENATOR LATHROP: Any other questions? Seeing none, thanks, Mike. Next witness in support. [LB243]

ROD REHM: Good afternoon, I'm Rod Rehm from Lincoln. I'm a lawyer here on behalf of the Nebraska Association of Trial Attorneys and we support this bill. I sat at this table 17 years ago when the last big revision was done, LB757 and one of the things that never even made it to this room was worker and laborers' request that we have this same thing in that bill 17 years ago. I've got a little different story to tell. I represent a gentleman that didn't want to be named publicly, his first name's Adrian. He had a 1,000 pound beam drop on him in 1981 and he's been paralyzed ever since. Back in 1981 he was making \$40,000 a year managing a steel plant. He hasn't worked a day since. And he's only receiving \$180 a week now just like he did when he became totally and permanently disabled 27 years ago. He wouldn't even be covered by this bill because it was so obvious that he was totally disabled he has never been found or ordered to be totally and permanently disabled. That's one of the things I think we'll do. Not that it really matters, but there's not a lot of people that are covered by this section, which is a good thing. That there aren't that many people that are devastated and just can't work but they're out there. We've got several we represent in our office. One gentleman I found kind of interesting the juxtaposition of mileage increases and medical increases. We have a fellow that was hurt in 1995, voluntarily being paid total disability, the mileage rate's doubled since then. When he goes to the doctor, he gets reimbursed twice as much as he did when he went to the doctor in 1995, but he's stuck in the time warp on his pay. And this just isn't fair the way it stands now, and if anything, it can be improved by putting some language in there along the idea that if a person has been on total disability or accepted on total disability for...you know, pick some number of reasonable number of years, five, six, seven years, something like that, they ought to be protected by this too to make it really fair. [LB243]

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SENATOR LATHROP: Thanks, Rod. Any questions? Seeing none. Any other proponents? Anyone here in opposition to LB243? [LB243]

DAN FRIDRICH: Dan Fridrich, F-r-i-d-r-i-c-h, in opposition to LB243 on behalf of Werner Enterprises, Nebraska Chamber of Commerce and Industry, Nebraskans for Workers' Compensation Equity and Fairness, Nebraska Retail Federation, and the Nebraska Restaurant Association. I'm legal counsel for Werner Enterprises. I testified earlier. I handle nothing but workers' compensation cases. I'm testifying in opposition to this bill, but I'd like to point out that obviously there is some fundamental fairness to the bill. I'm not here testifying that this is a completely bad idea. Obviously, someone who was injured 17 years ago and still receiving \$180.00 or whatever the number was, that's a tough number for him to live with. Two points in relation to that, one is the cost. I don't know what the cost is on this bill. I don't know if there's been a study done to show what kind of impact it's going to have on employers to fund the increase that injured workers will get on an annual basis for their increase in TTD or PTD benefits. And so I wonder if we should be entering into a change in policy without analyzing the cost. Because obviously the cost is going to be taxed to employers. Which leads me to my second point which is, again, if this is a good idea, one that should be done in the interest of fairness and the public good, then should the cost of that be paid for out of the General Fund? If it's something that this Legislature thinks should be done, shouldn't it be paid for through the state for the social good it provides. And my last point, which really goes into opposition to the bill is that...recall that workers' compensation is a trade off that employers entered into where they have a fixed amount that they have to pay in exchange for the employee not having to prove any fault on behalf of the employer. In other words, the employee merely has to prove that his injury happened while he was working and it arose out of his employment. And in exchange for just having to prove that, the employer has got the benefit of having a fixed amount that they had to pay and they also don't have to pay pain and suffering. And by changing that amount for these class of individuals that this bill is intended to protect, it changes the compromise that was struck years ago. Recall that many accidents that happen, I don't have a statistic, are through no fault of the employee or the employer. Employers have to pay because the accident happened and this acts as a tax on them at a time when employers are laying off employees, it's a tough economic time, and it's going to add costs--again, an unknown amount to me--but costs to employers and it may not be an opportune time to do that. [LB243]

SENATOR LATHROP: Very... [LB243]

DAN FRIDRICH: Oh, I remembered a couple other points that aren't in opposition to the bill but clarifications. Mr. Dowd answered a question from Senator Carlson about whether someone can be, once their permanently and totally disabled can they ever...can that ever change, and I think Mr. Dowd answered, no, it can't. And actually, it can if someone is found permanently and totally disabled that can change. You have to

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prove that there's been a change in their physical condition, so you have to prove that they're better. They can't just get smarter through education, they have to change physically. It doesn't happen a lot but it can happen. That's it. [LB243]

SENATOR LATHROP: I agree with your assessment. Did you...any questions for Mr. Fridrich? Senator White. [LB243]

SENATOR WHITE: Mr. Fridrich, as always I enjoy your testimony. Let me ask you a couple questions about what's fair and not. At \$180.00 a week, if this gentleman had a family, he'd qualify now for food stamps and welfare, correct? [LB243]

DAN FRIDRICH: Probably. [LB243]

SENATOR WHITE: So haven't we, in fact, by not including an inflation clause in here, moved the cost and burden of the injury to the employee from the employer where the deal was struck onto the public already? In that the public will now be subsidizing him in the method of welfare, food stamps...perhaps additional care for his family to county, hospitals, things like that? [LB243]

DAN FRIDRICH: That would be true in some cases and they may be in that case already no matter what their benefit is. [LB243]

SENATOR WHITE: Okay. So by adding the inflation clause, aren't we really...since these are not generous awards, I mean, even at maximum award that's not a...you're not living high on the hog on a weekly level. Aren't we in fact ensuring that the burden stays on the employer rather than being transferred over time through inflation to public? [LB243]

DAN FRIDRICH: Well, I agree that the burden remains with the employer, I mean, (inaudible) you're increasing the benefit at the cost of the employer. [LB243]

SENATOR WHITE: Right and you're avoiding putting them on public assistance. [LB243]

DAN FRIDRICH : In some cases I would say it depends on how much the increase is. [LB243]

SENATOR WHITE: Thank you. [LB194]

DAN FRIDRICH: Sure. [LB243]

SENATOR LATHROP: Senator Carlson. [LB243]

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SENATOR CARLSON: Senator Lathrop. Since Senator White asked this question, a previous testifier...he referred to this individual who was back in 1981, I think, had a salary of \$40,000, so back in 1981 the formula for work comp was far different than it is today or he would have been receiving more than \$180.00 a week. [LB243]

SENATOR WHITE: I think the maximum award back then was \$180.00 a week. [LB243]

SENATOR CARLSON: So that was maximum? [LB243]

DAN FRIDRICH: Must have been because that's a pretty good salary back then. [LB243]

SENATOR LATHROP: Just to follow up on the increasing costs and the difficulty with that as being unexpected, it seems to me...and I started practicing law in 1981, they didn't even have MRI machines then. You know they were doing X-rays and myelograms and things like that. But if somebody gets hurt in 1981 they wouldn't even have MRIs but by 2008 if they're a running total and the guys needs an MRI to take a look at his back, they are on the line for \$1,500. And I don't know that having a cost of living increase for a running total disability benefit is any more difficult than having the cost of medical care go up and escalate with advances and inflation. [LB243]

DAN FRIDRICH: Well, you're right. I mean, certainly costs of medical care increasing dramatically, the bill from last year that we got implemented to try and reduce those costs. And so, I guess you bring up a point that kind of echoes...I mean, I certainly see your point, Senator Lathrop. Employers have to deal, and insurance companies have to deal with increasing costs all the time, specifically medical and I guess it kind of goes a little to my point in that we keep putting more and more costs on the employer. [LB243]

SENATOR LATHROP: Gotcha. Thanks, Dan. Anyone else here in opposition? [LB243]

KORBY GILBERTSON: (Exhibit 1) Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, and I'm appearing today as the registered lobbyist on behalf of the Property Casualty Insurers Association of America and Tyson Foods in opposition to LB243. Late last week we received an analysis done by the National Council on Compensation Insurance for LB243. For those of you who aren't familiar with NCCI, they are the state rating organization and they also do data collection and analysis for the state. They do not take positions on legislation, they just provide information to both the state and to the workers' comp court. So generally considered a neutral third party and for those of you who have been around these issues in the past we have all argued either way on the statistics and the information they provide. However on LB243, I'll just touch on a few of the points. NCCI estimates that enacting of LB243 will require an increase of between \$12- and \$23 million dollars to the state system and that's a 2.8

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percent to 5.4 percent increase in benefits. They have, I'm trying not to be too repetitive of what Mr. Fridrich talked about the concern of increase in costs, however, there were two other issues that NCCI brought up in their analysis. One in particular is an unfunded retroactive liability which may be significant and is not included in their estimated cost to the system. What they consider is when you look at annotation in the workers' comp statute it talks about permanent disablement and whether or not this could be broad enough so that more people would actually try to move into being a permanent disability. So that could actually cost more in the long run for the payers and something, obviously, that they did not anticipate. The second issue is, retroactively, if you already have policies in effect obviously those policies and the premiums that are being paid for those policies did not anticipate this legislation going into effect so that would be another unfunded liability that's not anticipated. That's what we have, thank you very much. [LB243]

SENATOR LATHROP: Very good. Any questions for Ms. Gilbertson? Senator Wallman. [LB243]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thank you, Ms. Gilbertson, for testifying. Do you have any idea the premiums, what the rates would go up, you think? [LB243]

KORBY GILBERTSON: I think it depends, I mean, it just depends on the different carriers and different employers. [LB243]

SENATOR WALLMAN: I was always self-employed, I've (inaudible) it for years. My premiums actually went down. [LB243]

KORBY GILBERTSON: Yes, they did last year, so. [LB243]

SENATOR WALLMAN: So, okay, that's all. Thanks. [LB243]

SENATOR LATHROP: Any other questions? Seeing none, thank you... [LB243]

KORBY GILBERTSON: Okay. Thank you. [LB243]

SENATOR LATHROP: ...for coming down today and testifying. [LB243]

BOB HALLSTROM: (Exhibit 2) Chairman Lathrop and members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business in opposition to LB243. I had thought I would have a conflict that would not allow me to be here, also thought that my letter would be submitted to the committee but since it hasn't been... [LB243]

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SENATOR LATHROP: Oh, no, we got it. [LB243]

BOB HALLSTROM: Oh, you did get it? [LB243]

SENATOR LATHROP: We did get it. [LB243]

BOB HALLSTROM: On LB243? I think you got one on LB194 because I was hung up in another committee. [LB243]

SENATOR LATHROP: You caught me, I didn't read it. (Laughter) But I intended to, Bob. They're always insightful and we appreciate it. [LB243]

BOB HALLSTROM: Touche. Some night when you can't get to sleep, go ahead and take it on. The only thing I would note for the record I've noted in my letter that the fiscal note does indicate an annualized impact of about \$190,000 to the state for this issue, which I think would correspond to the type of cost that employers would be concerned about with regard to the cost of the bill. [LB243]

SENATOR LATHROP: Terrific. Any questions for Mr. Hallstrom? Your letter must have covered it, Bob. [LB243]

BOB HALLSTROM: Thank you. [LB243]

SENATOR LATHROP: Thank you. Anyone else here in opposition? [LB243]

JACK CHELOHA: Mr. Chair, members of the committee, my name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a, I'm the registered lobbyist for the city of Omaha. I wanted to just put our opposition to LB243 on the record. I'm here strictly for economic reasons, and also to let you know that this bill also would affect public employers as well as the private ones which you've heard from so far. And the last tidbit that I know about this because I don't practice in this area of law and never really have, is the city is self-insured and for those economic reasons that's why I'm here today. [LB243]

SENATOR LATHROP: Thanks, Jack. Any questions for Mr. Cheloha? Seeing none. [LB243]

JACK CHELOHA: Thank you. [LB243]

SENATOR LATHROP: Appreciate your testimony. Anyone else here in opposition? Anyone here in a neutral capacity? That will close our hearing on LB243 (See also Exhibit 3). And we'll move on to LB51 which brings us to Senator Fulton, who I don't see so we'd better call him. Senator Fulton, perfect timing. [LB243 LB51]

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SENATOR FULTON: Thank you. [LB51]

SENATOR LATHROP: We're ready for LB51, you may open. [LB51]

SENATOR FULTON: (Exhibit 1) Okay. Thank you Mr. 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 introduce to you today LB51. LB51 provides a greater level of confidentiality to Workers' Compensation Court documents and information available by electronic means. Documents that are to be retained as confidential under this bill include those that reveal (a) an employer's identity, (b) the nature of employees alleged injury, (c) an employee's past or present medical condition, (d) the extent of an employee's disability, (e) the amount, type, or duration of benefits paid to an employee, or (f) the application information for self insurance. The nature and extent of the workers' compensation documents to be held confidential under this proposal are quite similar to those held as confidential in the unemployment insurance benefit context, Nebraska Revised Statute 48-612. Retaining this documentation as confidential is intended to protect injured workers from the invasion of privacy from legal solicitations which often occurs once the report of first injury is filed with the Workers' Compensation Court. Mitigating solicitation is not equivalent to mitigating one's right to legal counsel as it is reasonable to presume that employees are aware of the existence of effective counsel through other media and may contact the court directly to obtain information regarding court procedures and their rights under the workers' comp system. While, true, that workers' comp is exempted from the provisions of HIPAA, it is also reasonable to presume that most people have a greater expectation of privacy with regard to records relating to their medical condition. Amending the Workers' Compensation Act by providing additional safeguards with respect to employee documentation as nearly 40 other states have done in some way, ensures greater privacy protection for employees and a lessening of the cost of the workers' compensation system. Be glad to answer any questions that exist. [LB51]

SENATOR LATHROP: Thank you, Senator Fulton. And it looks like Senator Carlson has a question for you. [LB51]

SENATOR CARLSON: Senator Lathrop, Senator Fulton. This bill has appeared before, and it was voted out of committee, do you know when that was? [LB51]

SENATOR FULTON: When it was voted out of committee? [LB51]

SENATOR CARLSON: Well, I think that's what I read here. [LB51]

SENATOR FULTON: It was before my time. [LB51]

SENATOR CARLSON: Must have been before mine, too. Thank you. [LB51]

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SENATOR FULTON: I believe there will be people to follow that probably might know. [LB51]

SENATOR LATHROP: Any other questions for Senator Fulton? Do you want to stick around and close? [LB51]

SENATOR FULTON: Actually, I will. [LB51]

SENATOR LATHROP: Okay, great. Thanks. Are there any proponents? [LB51]

ROBERT HALLSTROM: Chairman Lathrop, members of the Business and Labor Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for both the Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business in support of LB51. Senator Fulton has talked about the specific components of the bill. I would like to note for the record, as I think he alluded to, there are approximately 40 states to our understanding that have passed similar legislation regarding confidentiality of workers' compensation records. We have similar provisions on the books with regard to Section 48-612 relating to unemployment insurance records and the confidentiality thereof that have similar exceptions to those that we've provided under LB51. I have noted in my testimony that I think there are plenty of opportunities and avenues for individuals to have legal representation without adding the prospect of being barraged by solicitation from trial lawyers. There are requirements under state law for the workers' compensation injured employee to be provided with notice at the time--approximate time--by the insurer or the self-insurer of receiving notice of the injury and also at subsequently if there is a termination or denial of benefits. And that information must include the address and information regarding contacting the Workers' Compensation Court from which the injured employee can get information regarding their rights and obligations under the workers' compensation act. We feel that most employees do value their privacy of their medical records in particular and even though workers' compensation is not subject to the provisions of HIPAA, that this type of provision that again has been adopted in the majority of states would be welcomed in Nebraska. Be happy to address any questions that you may have. I have submitted an amendment that I have worked with the Workers' Compensation Court, AM255, fairly technical in nature, I would just note from the green copy that the amendment, AM255, on the amendment itself lines 4, on page 1, simply clarifies the types of records that are subject to the confidential treatment taken from the Records Management Act in terms of what a record is regardless of physical form or characteristics. The court had also asked on page 1, lines 11 and 12, of the amendment to provide an exception for records that are needed for the compensation court to administer the act and enforce other provisions of the act. And then also on page 1, lines 18 and 19, and page 2, lines 5 and 6, where we provide the authority for an attorney or agent of either the employee or the employer to get access once they are represented, to otherwise confidential records where there's a written

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authorization requirement currently that would only be if requested by the court. So we have provided that clarification as well. [LB51]

SENATOR LATHROP: Very good. Thank you, Mr. Hallstrom. Any questions? Okay. Seeing none, appreciate your testimony today. Anyone else here as a proponent of LB51? [LB51]

KORBY GILBERTSON: Chairman Lathrop, members of the committee, my name is Korby Gilbertson. K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Tyson Foods and Property Casualty Insurers Association of America in support of LB51. To answer Senator Carlson's question, I believe the bill came out...I want to say four or six years ago and the bill that was advanced at that time was limited, if memory serves me correctly, to just reports of first injury, that those should remain confidential. And as a side note, both Tyson Foods and PCI would support that limitation on this legislation as well because the majority of complaints or issues that came up, especially with Tyson Foods employees, is that they were inundated with solicitations even for minor injuries and were somewhat unaware that the benefits that they could get are limited and felt that it was something they should have been able to deal with without having to seek the advice of a counsel if they didn't want to. But then, because of the amount of letters that they received they thought that they should do it. And with that, I'd be happy to take any questions. [LB51]

SENATOR LATHROP: Okay. We'll see if there are any. Any questions for Ms. Gilbertson? Don't see any. [LB51]

KORBY GILBERTSON: Thank you. [LB51]

SENATOR LATHROP: Thank you for your testimony. Anyone else here as a proponent? [LB51]

DAN FRIDRICH: Dan Fridrich, F-r-i-d-r-i-c-h, on behalf of Werner Enterprises, Inc, Nebraskans for Workers' Compensation Equity and Fairness, Nebraska Chamber of Commerce, Greater Omaha Chamber of Commerce, Nebraska Retail Federation, Nebraska Restaurant Association. I'm here testifying in support of LB51. Couple points that I would make in favor of the bill. The first is, I think, the obvious one, is that it can only help to prevent identity theft. Certainly, it's a huge concern now. There's a lot of advertisement about it and to the extent, these people are becoming more and more creative in different ways to obtain people's identity. It's one way to go about it, I'm not saying it's a significant threat but anything we can do to reduce it, that's a good thing. I would point out that I work for Werner Enterprises. I work in our workers' compensation department. I work by claims examiners who talk to our employees and we do get calls for complaints about their information being given to lawyers that are calling them. They want to know how they got the information, why did we give it to them and so there is

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some sentiment to support the bill that people don't want their information being given out without their consent. I would point out that our truck drivers--not all of them, I'm generalizing here--the ones who complain, obviously, they're private individuals. We have many who I've called who have caller ID that you can't even talk to them without your number being recognized. So they're a private bunch. But certainly they have made complaints to us. And I would just point out, finally, that this is consistent with current procedure at the Nebraska Workers' Compensation Court, effective January 1, I believe all references to Social Security number and date of birth on any settlement paperwork has to be deleted and you have to supply it on a separate document that will not be disclosed to the public. So it's consistent with current policy. [LB51]

SENATOR LATHROP: Very good. Any questions for Dan? I do want to clarify one thing as long as your...you made the statement that these people are getting lawyers calling them, we both know that lawyers cannot make a telephone call solicitation, right? [LB51]

DAN FRIDRICH: Correct. [LB51]

SENATOR LATHROP: So what they're getting is letters in the mail, right? [LB51]

DAN FRIDRICH: You're right. [LB51]

SENATOR LATHROP: And the current bar rules require that the outside of the envelope say advertisement. [LB51]

DAN FRIDRICH: Advertisement. Yes, I misspoke, I'm sorry. [LB51]

SENATOR LATHROP: Okay, we don't want to mislead people into thinking that lawyers are making telephone calls. [LB51]

DAN FRIDRICH: You're right. [LB51]

SENATOR LATHROP: As a form of solicitation. Okay. Thank you, Dan. Senator White. [LB51]

SENATOR WHITE: Do you know of even one case of identity theft generated by this? [LB51]

DAN FRIDRICH: No, I don't. [LB51]

SENATOR WHITE: Okay. Thank you. [LB51]

SENATOR LATHROP: Any other questions? Seeing none, thanks again, Dan. [LB51]

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DAN FRIDRICH: Thank you. [LB51]

SENATOR LATHROP: Anyone else here as a proponent? Anyone here in opposition? You guys don't bump into each other. I thought they were going to fight over the chair. Mr. Dowd, good to see you again. [LB51]

MICHAEL DOWD: Good to see you. Chairman Lathrop, members of the committee in opposition, to LB51. My name is Mike Dowd, D-o-w-d. Again appearing and representing the interests of the AFL-CIO. These cases that we have where we're trying to assist the injured worker, in large part, have a foundation in medical opinion. Medical causation forms a basis of the judge's ultimate decisions on these cases and the doctors ask questions. The doctors ask questions such as, anyone else been injured? What type of work do you do? Does anyone else have the same problems when they do the same type of work? And the responses we usually get from our clients are that Joe or Pat next to me had the same problem or Jose or Rafael. Just ask them, they went through the same thing. Well, now we have names, we don't necessarily have the cooperation of the fellow employees. Why? Because they're fearful of their jobs, they're fearful of some type of retaliation against themselves but we can secure certain information from the court, like injuries, similar injuries from fellow employees. We have, you know, general time frames that we can go ahead and request that information. So what does that do? Well, it allows for us to go back to the doctors and say, look, is this person just creating the story, or others have similar experiences. And that information is used by the medical community and it is used by the attorneys as an additional tool to assist those injured workers who have had problems in determining these difficult issues, at times, of medical causation. I would suggest that the language of LB51, especially subsection 5, is confusion at best. One of the exceptions under this particular provision is that the information is going to be considered to be confidential unless and it goes on to say under subsection 5: the information identifies statistical information as to the nature and number of injuries occurring regarding an employer but does not reveal the identity or medical condition. I'm not sure how you would identify the nature of the injury but not the medical condition. You know, if we're talking about a carpal tunnel problem, if we're talking about some type of problem for standing too long on concrete, or we're talking about any form of repetitive traumas is what we really get down to. That information should be disclosed. We should allow for the employee to develop their case and use what tools are necessary to go ahead and allow for that to occur. There are rules in place through the court, Rule 2 which has already been spoken to in part which will provide some safeguards as to Social Security numbers and information in that regard. But, again, don't throw out the baby with the bath water. Allow for the injured employees to have those tools necessary to advance their rights, and this information is necessary. [LB51]

SENATOR LATHROP: Very good, thank you. Any questions for Mr. Dowd? Senator White. [LB51]

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SENATOR WHITE: Mr. Dowd, if the law was changed to allow someone trying to prove an injury in, as you pointed repetitive injuries are classic, could also be environmental, lung disease, things like that. [LB51]

MICHAEL DOWD: Asbestos. [LB51]

SENATOR WHITE: If an exception's carved into it for that, would that address the main thrust of your complaint? [LB51]

MICHAEL DOWD: It would. [LB51]

SENATOR WHITE: You don't really object so much to the prohibition on solicitation using first reports, it's more how do you prove a violation once you have a client. [LB51]

MICHAEL DOWD: Exactly. [LB51]

SENATOR WHITE: Thank you. [LB51]

SENATOR LATHROP: Okay. I think that's it, thanks for coming. Mr. Rehm. [LB51]

ROD REHM: I put three bill numbers on one sheet of paper, is that okay? Earlier, am I supposed to fill out a new one? [LB51]

SENATOR LATHROP: I'll have to ask my clerk, he's shaking his head yes. [LB51]

ROD REHM: Okay. Good afternoon, Rod Rehm for the Nebraska Association of Trial Attorneys and we oppose LB51 for essentially the same reason that the AFL-CIO does. Can give you some examples of, but probably don't need to. [LB51]

SENATOR LATHROP: If you want to, it's your three minutes. [LB51]

ROD REHM: I don't like to hear myself talk. (Laughter) [LB51]

SENATOR LATHROP: Okay. Might overtry your case. All right, any questions for Mr. Rehm? I don't see any, thanks, Rod. Anyone else here in opposition to LB51? [LB51]

GREG COFFEY: Senator Lathrop, Greg Coffey. Last name spelled C-o-f-f-e-y. [LB51]

SENATOR LATHROP: We'll let you fill that out afterwards... [LB51]

GREG COFFEY: Can I...you'll let me fill that out afterwards. [LB51]

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SENATOR LATHROP: ...I'm probably setting a bad precedence here making an exception for you, Greg, but why don't we just have you testify? [LB51]

GREG COFFEY: I'm appearing on behalf of myself, I'm an attorney in private practice here in Lincoln, Nebraska. I practice with the law firm of Friedman Law Offices. We do utilize the availability of first report of injury information to send out information to people who have been hurt on the job for whom first reports of injury have been filed with the Workers' Compensation Court. I think it is interesting, Senators, that the people who spoke in support of LB51 were all lobbyists on behalf of business interests. We heard from Nebraskans for Workers' Compensation Equity and Fairness, the National Federation of Independent Businesses, Tyson Foods, Property and Casualty Insurers of America, Werner Enterprises, The Nebraska Chamber of Commerce, Nebraska Retail Federation among others. And all were up here speaking about wanting to ensure the confidentiality of these records on behalf of their employees, but we didn't hear from the employees saying that they objected to it. It's very important, in my estimation, to note there's a significant difference between the kind of information that lawyers send out for purposes of advising or informing the public of the services that are provided by lawyers and the kind of junk mail advertising that sometimes people receive, or a lot of times people receive. As Senator Lathrop indicated previously, there are rules that the bar association mandates for lawyer advertising. We can't just send out anything that we want to. The advertising needs to be clearly labeled that it's advertising so that it's identifiable if a person doesn't want to read it, they can pitch it. They don't have to look at it any further. That is different from any rules concerning election material. I would imagine that ever single senator on this committee has sent out direct mail pieces to constituents during the course of elections, and maybe on many different occasions. And I am aware that there was some controversy with the opponents who ran against Senators Lathrop and White as to the accuracy of some of the information that was put out by their opponents during the course of the general election. You wouldn't have that problem with the information that lawyers put out to prospective clients in workers' compensation cases because the bar rules that mandate that the information not be misleading. Okay. Not only that, but it's good that this hearing is occurring on the heels of the discussion of the approval of the Workers' Compensation Court approval of lump sum settlements. Not all lawyers do workers' compensation. Workers' compensation is a very technical rule-driven element area of the law. Not all lawyers are familiar with it. As the number of lawyers who testified either in their capacity as a state senator in supporting the bill, you heard them say, I don't do this kind of law, wouldn't know anything about it, wouldn't know the first thing about how to advise somebody. But that doesn't necessarily mean that somebody who gets hurt on the job who knows that there's a lawyer with a shingle hung up down the street might not contact somebody who doesn't do this. The mailers that we send out, and I've read the mailers of many other law firms that do send out direct mail pieces, those mail pieces talk about what their rights are, advise them of if you get hurt on the job here are some things that you should do or here are some things that you should be aware of. I can't tell you how

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many times I've had telephone calls from people who called me three weeks too late. I had a gentleman who was an employee of the Department of Roads who was injured in a construction site on Interstate 80 where he was a flagman who was hit by a car and rendered, in my opinion, permanently and totally disabled by that. Was never paid workers' compensation benefits by the Department of Roads. The day he called me I filed a lawsuit with the Workers' Compensation Court but advised him it was probably too late, by about three weeks and in fact that's what we found. Had he had one of those mailers back when he was originally hurt, he might have known that he had some rights with regard to workers' compensation benefits and been able to take some action to protect himself and defend those rights by contacting a lawyer who could have told him what his rights were and how he could make sure that those rights were protected. As Mr. Dowd indicated and Mr. Rehm confirmed, there are other reasons why lawyers might want this information other than simply identifying prospective clients. Identifying a pattern of injuries with a particular job type, if that's an issue in a case. This information would allow us to do that and so on my own behalf, I would strenuously speak out against LB51. We all receive junk mail. I've received plenty of it during election times and one piece corresponding shortly in time to when somebody gets hurt on the job advising them of how they can best protect their rights, it seems to me is of little inconvenience and can actually help people a great deal. Are there any questions? [LB51]

SENATOR LATHROP: Thanks Greg. It sounds like the theme is, if you've got to read our stuff, then you ought to be able to send your own out. (Laughter). Maybe. Looks like Senator Wallman has a question, no? Okay. Anyone have a question for the witness? Seeing none, thank you. Anyone else here in opposition? Anyone here in a neutral capacity? [LB51]

SHAWN RENNER: I'm sorry, I'm still an opponent. If it's all right, Senator Lathrop, I'll also fill out my sheet afterwards. [LB51]

SENATOR LATHROP: Okay. All right. [LB51]

SHAWN RENNER: Senator Lathrop, members of the committee, my name is Shawn Renner, S-h-a-w-n R-e-n-n-e-r. I'm a lawyer with the Cline Williams Law Firm here in Lincoln, and I'm a lawyer and registered lobbyist for an organization known as Media of Nebraska, Inc. Media of Nebraska is a nonprofit corporation comprised of the press and broadcast news media in the state. The constituent members are the Omaha World-Herald, the Lincoln Journal Star, the Nebraska Press Association, the Nebraska Broadcasters Association, the Nebraska Daily Publishers Association, and the Nebraska Weekly Publishers Association. That organization, my client regularly and systematically opposes all attempts to close off access to records that are filed with courts. The Workers' Compensation Court is a court and the news media believe that all information filed with courts ought to be a matter of public record. If the problem is one

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of solicitation improper or not by attorneys that get access to court records, I think the Legislature's response ought to be to deal with that problem as opposed to cutting off access to information that's otherwise available with the court. The news media covers courts because courts have a public interest attached to them. Courts are how our government does justice and justice is a public matter as far as my clients are concerned. It probably is somewhat beside the point but this is not the only area where people get solicited and if this committee or the Legislature decided to take on every area where lawyers or someone else sends out solicitation letters based on public information, you've got quite a bit of cleanup to do. I was in an auto accident earlier this summer. Got hit by a young woman who wasn't paying attention to where she was going. Within a day after the accident report was filed I had a dozen letters from various law firms, not even all in Lincoln, soliciting my business. As Senator Lathrop and others have pointed out, all those letters come with a notation that its an advertisement on the envelope. They're required to do that by the Nebraska Supreme Court ethical rules. I could choose to look at those letters or not look at those letters, I did because I wanted to see what they had to say and it was interesting reading. But my point is, if the objection is attorney solicitation and the means of meeting the objection is to shut off access to information filed with government agencies, you've got an awful lot of work to do because this only the very small tip of the iceberg. In closing, the news media asks the committee not to advance LB51 to the floor, and I'd be happy to answer any questions. [LB51]

SENATOR LATHROP: Very good. Appreciate it. Any questions? Senator White. [LB51]

SENATOR WHITE: Thank you. Forty states, it was testified, have similar statutes to this. Are you aware of any constitutional challenges that have been upheld? [LB51]

SEAN RENNER: I'm not but I also wasn't aware that there were 40 states that have statutes similar to it... [LB51]

SENATOR WHITE: I mean you were here, you heard the testimony. [LB51]

SHAWN RENNER: ...but I heard the testimony, yeah, and I'm not aware of the statutes or any constitutional challenges that may have been made. [LB51]

SENATOR WHITE: And then I note that in subsection 5 of the statute, I'm sorry 4, that it exempts any document requested that is a pleading filed in a compensation court docketed file, an exhibit offered and received into evidence by the compensation court or a final order, award, or judgment of the compensation court. So most of the pleadings will, in fact, remain available, will they not? [LB51]

SEAN RENNER: Some certainly, I don't know if you can quantify that as most or not. For example... [LB51]

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SENATOR WHITE: Well, any... the document requested is a pleading filed in a compensation court docketed file. That's all the pleadings other than the first report, isn't it? [LB51]

SEAN RENNER: To the extent, yeah, in the docketed file, I agree. It's offered and received exhibits, so any exhibit that a party thought was important enough to offer but a court thought shouldn't be received for some legal reason, is not available. It's final orders, so any interim order entered by the Workers' Compensation Court is confidential regardless of whether it contains the information, presumably. It says any order that's not final. [LB51]

SENATOR WHITE: The courts also regularly seal records involving personal information that might be embarrassing to various litigants, do they not? [LB51]

SEAN RENNER: Regularly, is a stretch, and my clients do oppose that whenever courts do that, too. I appear on behalf of them in front of courts arguing shouldn't be sealed and most of that information is, as somebody pointed out, if the concern here is identity theft we know how to screen for Social Security numbers and that sort of thing, it's done in courts. That doesn't appear in court records. [LB51]

SENATOR WHITE: I think they testified there wasn't even one case of identity theft, but I know a number of situations where for example, people's medical histories might be sexually transmitted diseases, other things they might find embarrassing are sealed even though they are in evidence in the sense that they are part of a court case. Is it your testimony that the various fine publishing houses that you represent want to know all that and have a right to? [LB51]

SHAWN RENNER: No, I think it's my testimony that the fine publishing houses I represent want public justice to be done publicly and that's what we're asking of our courts. There are instances where matters can be appropriately sealed. I do not believe, for example, that there is any legal authority for sealing records in the state district courts except the Supreme Court records that deal with those things like Social Security numbers and personally identifiable information. It's a relatively new Supreme Court rule. Our Supreme Court does have a rule that sets out when court hearings can be closed and what information can be sealed with those and that requires a hearing in advance where a judge needs to make a determination that the public interest isn't harmed thereby. And this obviously doesn't do that either. [LB51]

SENATOR WHITE: Thank you. [LB51]

SHAWN RENNER: Thank you. [LB51]

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SENATOR LATHROP: Any other questions? I don't see any. [LB51]

SHAWN RENNER: Thank you. [LB51]

SENATOR LATHROP: Thanks for coming down. Anyone else here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Fulton, you are free to close. [LB51]

SENATOR FULTON: Thank you, Mr. Chairman and members of the committee. I took this on last year and it has become a somewhat of an interesting bill because of the principles that we have at work. I think what we have at play here is not so much an absolute argument from one side or the other by way of principle, but rather what I think I present to you by way of LB51 is a question of prudence. So firstly, there was a concern that this bill would work contrary to medical causation of the research necessary to establish a line of reasoning toward medical causation. Page 3, sub 5, hopefully the aggregate information that exists would alleviate that concern. Perhaps the wording could be such that it's more clear. In hearing opposing testimony it sounds to me like there is room forward with amendatory language to clarify, and if that's the case, hopefully the committee will consider that. Another opponent testified that we haven't heard from individuals who have suffered injuries who have been solicited, you know, to death, so to speak. Last year...I've read through the testimony over the course of the past few years, and last year there was indeed reference to an individual who was at Reinke Manufacturing who ended up having to take ibuprofen but since it was prescribed it entered into the public record and solicitations commenced. It was a bad situation. It's presenting this person's employer in a bad light. And I know that that's not the subject of this bill but that is at least part of what's encompassed when we talk about this broader policy. We all receive junk mail. We all receive telephone solicitations but we receive less of those today, or at least more focused today, than we did ten years ago. The do not call list is something that has been employed in our nation. It didn't exist at one point. The same is true with political speech. We passed a bill having to do with robocalls last year, a bill that I prioritized a couple of years ago. So, what I suggest to you is here that we are not taking an absolutist position by saying that we need to ban all public information, but rather I'm asking the committee to employ an element of prudence so that we could determine what should, prudently, be disallowed. I believe that as time has moved forward in this age of rapid fire media and, you know, instant access to information that people have a reasonable desire to have a certain amount of private life. And it seems to me that medical records, such as what are being considered here in this bill would fall, at least, within a prudential judgement of that category. So I ask you to consider putting this forward for broader debate. If there are any questions, I'd be glad to answer them. If there is a way forward through amendatory language, of course, me and my office will be available to work through that, so. Thank you. [LB51]

SENATOR LATHROP: Very good, thank you, Senator Fulton. The next two bills are

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committee bills and they will be introduced one at a time by committee counsel, beginning with LB630. [LB51]

MOLLY BURTON: Senator Lathrop and members of the committee, my name is Molly Burton, B-u-r-t-o-n, legal counsel for this committee. I'm here to introduce LB630, which was introduced by this committee. I'll do a brief summary, section by section. LB630 pertains to workers' compensation laws. The first section, section 1, extends from 2010 to 2011 reimbursement for inpatient trauma services claims under the diagnostic related group inpatient hospital fee schedule which I believe is part of LB588 last year. Section 2 amends Nebraska Revised Statutes 48-125. Specifically that law currently states that compensation under the law shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. The changes would allow payment of compensation to the injured employee to be made through direct deposit, debit card, prepaid card, or similar electronic payment system. Section 3 eliminates the requirement that a duplicate original for an application for an order to approve a lump sum settlement agreement be provided to the court along with the original application. So it would eliminate the requirement of a duplicate original. Section 4 clarifies that an insurer a notice of policy cancellation provided by electronic means only, is not deemed given to the court until receipts, and the change would be, and acceptance by the court. Section 5 pertains to where the compensation court's records are kept. It would eliminate the requirement that those records be kept in the State Capitol office. Section 6 which would allow a vocational rehab counselor to submit a dispute to informal dispute resolution. If it's ordered by the court though, the court may set a return date of no longer than 90 days after issuance of its order. Section 6 also incorporates certain provisions of the Uniform Mediation Act, which are found in Nebraska Revised Statute Sections 25-2930 up and through 25-2942 concerning information that mediators can provide to the court. I believe Mr. Morton is here. He testified earlier. [LB630]

SENATOR LATHROP: He is, and we'll give him an opportunity to... [LB630]

MOLLY BURTON: Okay. [LB630]

SENATOR LATHROP: ...be the first proponent. Welcome back. [LB630]

GLENN MORTON: (Exhibit 2) Thank you, Senator Lathrop, members of the committee. I'll be very brief this time. I'm the administrator of the Workers' Compensation Court. Again, my name is Glenn Morton, M-o-r-t-o-n, for the record. Appearing today on behalf of the court in support of LB630 and I would first like to thank the committee for introducing the bill at the request of the court. As, I think has been noted, LB630 are essentially cleanup type changes. Not meaning that they're not of no substance or that they are of no substance, but they're kind of things that other parties might not, would probably not bring to the Legislature. It's always difficult to know how much information

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the committee wants on this type of bill. I've explained, further explained each of the sections in my written testimony and the purpose behind those. I won't go into those any further-- or most of those--but there is probably...it is worth mentioning briefly some further comments on Section 2, which is the...would amend Section 48-125 to allow payment to be made by direct deposits or debit cards, prepaid cards, or a similar electronic payment system. Note, specifically, that that would require the agreement of all the parties and the agreement of the employee before that could be used. It would also require that any fees be disclosed to the employee and that there be a written consent of the employee before that could be used. We've had inquiries from insurers and third party administrators as to whether this is permissible. We thought because of those we'd bring them to the Legislature. We're not wedded to the language that's here, it's simply an issue we thought it was worth bringing to the committee's attention. There has been one question that I think we can have an answer to. The question was, how an employee's attorney would receive his or her fee if payment was made according to one of these new electronic methods. And I note that the current language in this section allows that...provides that payments shall be sent directly to the person entitled to compensation or his or her designated representative. So I believe that with the permission of the employee the payments...the attorney's portion of the payment could be sent directly to the attorney. And, in fact, we do that with some of our trust fund payments now. I would make one point, though, that might be worth an amendment. The language I just read, because of the way the bill drafters have drafted this section, they've now divided subsection 1 into an (a) and a (b), and what that's unfortunately has done, is to move the language that I've mentioned into the wrong subsection. So I'd be happy to suggest some language to get that back where it needs to be. But that's all I would have. [LB630]

SENATOR LATHROP: That amendment you can get to us? How much time, like a week or a couple of days? [LB630]

GLENN MORTON: I can get it within days, I'll send it to the committee counsel. [LB630]

SENATOR LATHROP: Okay. If you work that out with Molly, that would be great. [LB630]

GLENN MORTON: Yeah. [LB630]

SENATOR LATHROP: Thank you. Any questions for Mr. Morton? Senator Wallman. [LB630]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thank you, Mr. Morton, for being here. You know, I've studied this stuff here and one portion in here was about immigration, immigrants, I mean, immigrants hired. Do we have many immigrants on workers' comp payments, do you know? [LB630]

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GLENN MORTON: I don't know. We don't have statistics to show that. You're referencing this bill about immigrants? [LB630]

SENATOR WALLMAN: Well, I read it somewhere else, not here, no. [LB630]

GLENN MORTON: Okay. It's hard to tell. Under the work comp act, aliens are entitled to work comp benefits and there is one Supreme Court case that limits the entitlement to vocational rehabilitation to illegal immigrants but there's nothing that prohibits an illegal immigrant from receiving work comp otherwise. [LB630]

SENATOR WALLMAN: Thank you. [LB630]

GLENN MORTON: Um-hum. [LB630]

SENATOR LATHROP: Thank you, Senator Wallman. Any other questions? Seeing none, thanks, Mr. Morton. Appreciate your testimony. Mr. Cavanaugh, as a proponent. [LB630]

JAMES CAVANAUGH: (Exhibit 3) Senator Lathrop, members of Business and Labor Committee, my name's James Cavanaugh. I'm an attorney and registered lobbyist representing Creighton University Medical Center. I appear today in support of LB630. I have for you a letter from the CEO of Creighton University Medical Center, Linda Ollis, which outlines in some detail our position relative to the change that we're in favor of, which you'll find on page 3, lines 24 and 25, essentially it's a change of date from 2010 to 2011 for the...in position of a fee schedule on trauma care in hospitals. As you may or may not be aware, Creighton University provides a large share of our trauma care in the Omaha metropolitan area and receives trauma care patients from throughout the state. In addition, Ms. Ollis outlines some of the greater mission concerns that impact on the decision relative to whether or not we should even have this fee schedule at any time imposed on trauma care in Nebraska. I'd be happy to answer any questions you might have relative to this. [LB630]

SENATOR LATHROP: Thank you, Mr. Cavanaugh. Any questions? Senator Council. [LB630]

SENATOR COUNCIL: And that was a question I was going to ask. Thank you, Senator Lathrop. Mr. Cavanaugh, and that is the change from 2010 to 2011. I mean, that provides one year of relief for the med center in terms of the fees and the cost they incur for providing this service and the fees not being corresponding. So does...is it...the reason I'm asking the question, are we going to be here next year looking to move it from 2011 to 2012 and 2012 to 2013? [LB630]

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JAMES CAVANAUGH: In my opinion, yes. We didn't think that this was a wise decision to have the fees imposed on this when this fee schedule was set up a couple of years ago. The best we could get at that time was a two-year exemption, and during that period of time nothing has changed for the better. And a lot of things have changed for the worse including the overall economy, but this time around the best that appears to be available is a one-year extension. That being the case, I don't anticipate anything is going to get any better in the next 12 months. So yeah, we'll be here in a year asking for either an extension of this exemption or to have it made permanent. [LB630]

SENATOR LATHROP: Any other questions? Seeing none, thanks Jim. [LB630]

JAMES CAVANAUGH: Thank you. [LB630]

SENATOR LATHROP: Any other proponents? Anyone here in opposition to LB630? [LB630]

ROD REHM: Good afternoon, Chairman Lathrop. [LB630]

SENATOR LATHROP: Welcome back, Mr. Rehm. [LB630]

ROD REHM: Yes. I'm here on behalf of the trial lawyers and I probably should say that we're more probably neutral but we oppose part and favor part. We oppose the electronic payment because there are an awful lot of our clients that don't have bank accounts and administering payments this way we envision that our Legislative Committee as being a nightmare that people would want to have that cash card, going to get charged, they're not going to get paid full benefits. Many of them don't have bank accounts. They would be forced to open bank accounts and pay charges. We just think it would be a mess. And it looks like something that wouldn't benefit our clients. I think we could figure out how we get paid out of it. You know, that's not the thing that's driving this. It's just that electronic banking is good for those of us that have established bank accounts and all that, but it's not so good for others. On the...something that, as I understood it, Section 5 talks about allowing the Workers' Compensation Court to be moved out of the Capitol and we had kind of an ambiguous feelings about that. We'd love to be able to go someplace where we could park without having a 30 minute search for a parking place and then the parking ticket waiting for you when you get back out. And we've heard some stories about some of the possible costs of the move from the State Capitol and we're concerned about that. That that in an indirect way would affect our clients because the Workers' Compensation Court is funded by assessments on the insurance industry and we would hate to see something happen cost-wise that would get some sort of scrutiny of premiums and have premiums raise. I mean, we're just, you know, concerned. And the last thing that we have a comment on is the volunteering mediation process, I didn't read the comments to the court but I assume it's directed to allow voc rehab people into this system. None of us that practice in this area

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have ever had a positive experience with the mediation process, or heard of one. We think you'd be better off if you just eliminated it. But it's something that just doesn't work and it's taking up somebody's time to do this job. I tried it once, and I'm like everybody else on our Legislative Committee that does significant comp work, we tried it one time, never again. [LB630]

SENATOR LATHROP: Okay, Mr. Rehm. Any questions? Senator White. [LB630]

SENATOR WHITE: Thank you, Rod. Would it be "unduly burdensome" if the electronic transfer happened into the attorney's trust fund and then the attorney cut the check from there? I mean, I know many of these folks don't have attorneys either, but I mean, if we're going to try to move the court to the twenty-first century, is that something you think would work or would that be just too much of a record-keeping nightmare? [LB630]

ROD REHM: I think what you run into is, you know, where are these cards going to get sent? People move around a lot. [LB630]

SENATOR WHITE: You have to with checks anyway, don't you? [LB630]

ROD REHM: Yeah, but at least there's a piece of paper and it's a little...you know, there's a crime of forgery. It's a little easier, I think, to enforce it. I mean a loose debit card... [LB630]

SENATOR WHITE: Okay. [LB630]

ROD REHM: ...is another issue and the people that we're concerned about, and there's a lot of them. I don't know what percentage of people but I mean, for instance, the packing industry is one of the largest industries in the state. Boy, they move around a lot. A lot of those workers, especially once they get into a cycle of being injured. You'll find somebody that gets their wrist hurt in Lexington, and they go to Schuyler and then they get their elbow hurt, and pretty soon they're in Omaha and then they've got a back injury. It's a problem. [LB630]

SENATOR WHITE: Thank you. [LB630]

SENATOR LATHROP: Very good. Any other questions? I do notice, Rod, in the section on electronic transfers it does indicate that it's upon agreement of the parties. So, is that a sufficient safeguard so that if it doesn't work for you, if you don't have an account, all the reasons you gave us, can't you just say, I don't agree to it, send me a check? [LB630]

ROD REHM: I think the problem with that is...goes kind of back a notch. I don't think it would be a problem with any represented person deciding if they want to get their

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money on a cash card. I think the problem goes back to that public that we're concerned about in other bills this afternoon, and protecting the public, the injured workers in making sure they understand they're going to not get full benefits. They're going to have to pay \$5 or whatever they pay, you know, to run their...to do their cash withdrawals. That's the only area that we were concerned about. [LB630]

SENATOR LATHROP: And then looking at the next sentence, it says any fees that are going to be charged must be disclosed to the person. [LB630]

ROD REHM: But it's kind of like a mini version of... [LB630]

SENATOR LATHROP: And they have to have a written consent to them. [LB630]

ROD REHM: ...it's kind of like a mini version of a lump sum settlement in terms of if they get their money now and then, so what if I have to pay \$10 or \$5...I don't know what the charges would be, I don't...you know, I don't know it may not be much. [LB630]

SENATOR LATHROP: They may want their money right now and be willing to pay a fee that's too high. [LB630]

ROD REHM: Yeah. [LB630]

SENATOR LATHROP: Okay. [LB630]

ROD REHM: And I don't know what the fees would be. [LB630]

SENATOR LATHROP: And the mediation... [LB630]

ROD REHM: Well, it's nonbinding. [LB630]

SENATOR LATHROP: Is that just an argument over fees as between the vocation rehabilitationist and the lawyers that they work for? [LB630]

ROD REHM: Historically, that's what it's been and over sometimes whether certain medical care was reasonable and necessary and when the mediator doesn't have any authority and it's a mediation and you're talking to...you know, it just is a waste of time. It's an ineffectual... [LB630]

SENATOR LATHROP: Can anybody, and I have to tell you I've never used it so these are sincere questions that I don't know the answer to, can anybody force you to do that, Rod? [LB630]

ROD REHM: No, no, you have to... [LB630]

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SENATOR LATHROP: So we're putting it into the system, people can avail themselves of it if they want. You think it's a waste of time so you never agree to it, but... [LB630]

ROD REHM: I think the court can... [LB630]

SENATOR LATHROP: ...the court isn't forcing anybody into it. [LB630]

ROD REHM: ...I have never heard of it, but the court can order it. I noted in the language of the bill. [LB630]

SENATOR LATHROP: Okay. Okay. Does that prompt any other questions? Don't think so. Thanks, Rod. [LB630]

ROD REHM: Thanks. [LB630]

JAMES MICHAEL FITZGERALD: My name is James Michael Fitzgerald, 4260 Garryowen Road P38, Fort Calhoun, Nebraska, 68023. I am a judge on the Workers' Compensation Court. I never had any idea about this LB630 or any proposed legislation or anything until after Christmas, when a letter floated around saying here's some proposed legislation. There has never been a meeting of the judges considering this. Never, ever. Now, maybe judges talked to one another, I've written some memorandums about it but there's never been a meeting. And I want to do things a little differently, though, I want to take up Section 6 of the bill first, which has to do...there was a request by somebody for vocational rehabilitation counselor added to Section 2(a). I really don't care about that, but what bothers me is, is if you get over here on page 14, beginning on line 5, the new language, if informal dispute resolution is added, the 90 days...we've already got that power. Don't add any more stuff to these statutes that doesn't need to be added. That doesn't need to be added and furthermore, if we get here a settlement has to be in conformity with the Nebraska Workers' Compensation Act, period. If it's in conformity with the Nebraska Workers' Compensation Act and there's going to be a lump sum, it has to be approved. The stuff is already in the books, we don't need any more. Cut it out, please. Don't add any more. Section B strikes some language--some old language--obviously that's what happens with the comp court. We come down here, we add all this stuff in, two years later we're back taking it out. Don't add it in. If you get down here to B(i), we don't need any of that. That's already number 1. It's in the mediation rules. Furthermore, if somebody tells me...furthermore, I'm not supposed to consider anything that goes on in mediation and if I'm told about what goes on in mediation, both lawyers better be there and I'm going to tell them I'm not going to pay any attention. If somebody calls me up and tells me what went on in mediation, the cannons of judicial ethics require that I call the lawyers in and tell them somebody told me this. It's already there. Don't clutter it up any more, please. To get back to the other couple I want to talk about is... [LB630]

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SENATOR LATHROP: Judge, just to be clear, though. There's nothing in Section 6 that you think needs to be in the work comp statute, nor any amendments? You'd cut out all of Section 6? [LB630]

JAMES MICHAEL FITZGERALD: The one about vocational...the one about vocation rehabilitation that he adds...it's in...Section 6 of your bill is what I'm talking about. [LB630]

SENATOR LATHROP: I'm reading it. I have it open and I just want to be clear on what you think you'd leave in Section 6 if we followed your recommendations. [LB630]

JAMES MICHAEL FITZGERALD: If somebody wants to add by vocation rehabilitation counselor certified through Section 48-162.01, if they want to add somebody in, add somebody in. You know, we keep adding people, I really don't care. I don't know where that request came from but it doesn't make any difference to me. But it's this other stuff that we don't need. [LB630]

SENATOR LATHROP: Okay. I just wanted to be clear on that, thank you. [LB630]

JAMES MICHAEL FITZGERALD: It's something like you talked about earlier, there's the court rules. The Supreme Court has issued significant personal protection rules and the lawyers here all know about it and we adopted rules and you have to file appendix 2, or appendix 3, and things like that. But there's protection. The other one I wanted to talk about was Section 2, which is 48-125. I don't really care if you expand the method of payments of benefits. But if you're going to expand it, it should be based upon written agreement of the parties. And you should not limit it to electronic payments, because let's say, guess what? If you read this bill today, you can't pay a guy in cash and get a check back. You can't, because you say, by the way he gets paid at work or by these electronic payments. If you worked on a farm and you got paid with rent and beef and cash, you couldn't do that. You see what I say it is? Is that when you write these laws and we limit them down, we exclude a lot of other things. So it's more important, and I wrote you a letter and I said, maybe here's something you ought to think about adding if you decide to expand or enlarge the method of payment. Why not make it by written agreement of the parties? Because the written agreement of the parties here is only as to the cost of these electronic payments. It doesn't mean there's a written agreement the electronic payments will be made. So, if there's a written agreement of the party, I really don't care. I'm worried about electronic payments because, number 1, so many people don't have bank accounts. They may have to go get a bank account, and some people don't know how to handle bank accounts and they'll end up with no money. If you're going to mail cards through the mail and they get stolen, I get checks stolen and they come in and they say, I didn't get my check and they say, oh, we mailed the check. Finally I just say, go get the check. I want to see the check and the endorsement,

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bottom line. And we'll bring somebody in that if you think it's a forgery, then we'll address the issue of the forgery. Some verification that payment's been made. All I care about in all truthfulness is that the payment is made in the right amount on time. That's all I care about. [LB630]

SENATOR LATHROP: Do you think these debit cards make that impossible? You just gave us an example of how you have to sort it out and I've run into that too. I didn't get my check, we sent it, you can go...produce it... [LB630]

JAMES MICHAEL FITZGERALD: Right. [LB630]

SENATOR LATHROP: ...if it's clear, otherwise send us another one. But with a debit card, do you have that same safeguard? [LB630]

JAMES MICHAEL FITZGERALD: Well, you know, where is the verification that he got the card. I mean, the law is primarily today is that once they mail the check, that's the date he got paid for purposes of the penalties. But what about if you're mailing debit cards and other cards that are highly negotiable and are stolen in the mail, which happens, how do I...they're going to come to me and say I didn't get paid. Number one, order them to pay me again. Number two, order a penalty, because that's really where we're at, we're in the penalty section. And, if they can't prove to me...he said I didn't get paid, he's made a prima facie case he hasn't been paid. You'd better have some...you go to the store where that debit card was used and you bring back me the camera showing that who was there to use it, I mean...I don't know. It's just a big headache, I mean, it opens up a lot of problems. I'm not in favor of methods of payment that don't lead to really solid verification that the payment was made. And I really...and that's...I just wrote for you that if you have written, written agreement of the parties, well, maybe but still that doesn't...the verification of the payment is a headache that I'll see in the courtroom. And I'll just make the employer make sure that he made the payment. But it should have...and there should be written agreement, right now this thing doesn't even require written agreement. [LB630]

SENATOR LATHROP: That wouldn't be a problem if it's a direct deposit but would be if there was a debit card sent to the person. [LB630]

JAMES MICHAEL FITZGERALD: If there was a direct deposit, but there should be a written agreement that it's going to be a direct deposit because the fellow that doesn't have the bank account...and he then signs the thing and says, okay, pay me by direct deposit, but he's got no bank account, he doesn't get paid. Does the time for the penalty start to run or when does it start to run? I mean, you know, it's a headache. It's a headache that we're going to see in the courtroom. [LB630]

SENATOR LATHROP: Okay. Is that your only concerns with the bill? I interrupted you

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with questions. [LB630]

JAMES MICHAEL FITZGERALD: No, no. I have...the last one is, is one that has just driven me up the wall. And that is moving out of the State Capitol. There are three statewide courts, Supreme Court, Court of Appeals, and the Nebraska Workers' Compensation Court, the only three. Right now all three have their offices in the State Capitol. We've been here since day one, I think, whenever they started it. We belong here in the State Capitol. We have...there's certain prestige with having your office...and respect in the State Capitol. That the judges do...that this judge appreciates, that my office or the office of the court, and it's the office of the court. And people come to you, well, it'd be easier if we could move our records, and easier if we could do this...well then maybe the Supreme Court ought to move it's records and the Court of Appeals move it's records. No, we...it works just fine. It works just fine. We have a very good system up here, we have 10,000 square feet, we have the 12th floor, the 13th floor, we've got ten clerks and four judges. One of the things that worries me about the move is, is that supposedly all these plans have been drawn up and there's four judges here, four courtrooms. Last...since the first of the year, this judge has been in Grand Island for four days, Lincoln for quite a few days but really only three to four proceedings, Papillion for a couple of days, Gering for one day for two trials, McCook for one day for one trial, Lexington for one day for two trials and one settled at the end, Nelson for one day for a trial, Wilbur for a trial, and Kearney for a couple of days. I spent hardly any time at all in Lincoln, Nebraska. Last year, I drove--I think--like 18,000 miles, 18-, 19,000 miles. I'm still working on my income tax. All over the state. Those are miles from Fort Calhoun, Nebraska, to wherever. We need some procedure whereby we can move judges when there's a vacancy, the next time there's a vacancy, western Nebraska to North Platte. I'm telling you that Kearney and Grand Island and Hastings justify one judge. There's that much...the other day there was a judge, one judge was there in the morning from the comp court and another judge in the afternoon. It doesn't make sense, it doesn't make economic sense at \$110 a crack, if they turn in their mileage. And, and, guess what? When we go and put our space in the courthouse, you know what the rent is? Zero. We have three judges in Omaha and the rent is zero. No rent. So we can go to North Platte and probably find some space in that courthouse with little or no problem. No rent, you still got to have somebody do your typing. You've got to have that if you're in Lincoln, Nebraska, Omaha, Nebraska, or North Platte. And you've still got to have a phone, you've got to have that in all three places. Absolutely no increase in cost, none. None, except there might be some mileage when he has to come back here, but that, you know... [LB630]

SENATOR LATHROP: The way that works in the Section 5, is that the court has to stay here because of a statute that says the courts and the records shall remain in the Capitol and this essentially amends that and opens the gate to moving the court from the Capitol. [LB630]

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JAMES MICHAEL FITZGERALD: To move anywhere. Well, what I...well, but no, there's another statute that says if you're a Workers' Compensation Court judge thou shalt live in Lancaster County, Nebraska. Now, we've kind of looked the other way on that. But when there's a vacancy and the publication is made of the vacancy, the vacancy says, there's an opening in comp court, the statute requires that you live in Lancaster County. So guess what? We get nobody from out west applying for the job. You're not going to have anybody from out west apply for the job, not if they've got to move to Lincoln. Now, if we had the next vacancy they said, the office of this judge will be in North Platte or any other...Lexington, somewhere like that two or three counties around there, or Grand Island, Hastings, Kearney, then lawyers from out there would apply. Because you're not going to find somebody and good judges are in their middle 40's to 55, 60, they're not going to move when they've got kids in high school. You're just not going to move. Nobody's going to uproot their family and move to Lincoln, Nebraska, to be in the Legislature. Nobody. Nobody's going to move, uproot their family to move to be a judge, or very few people are. [LB630]

SENATOR LATHROP: And that amendment would have to be in a different statute. [LB630]

JAMES MICHAEL FITZGERALD: That's another thing, but one of the things that I'm upset about is that if we move and then you're going to end up with a place with four judges and four courtrooms and there'll be an argument and no one will ever move another judge out of Lincoln and you don't need four judges in Lincoln, you need two. Now, the other thing is, is I wrote in my letter. I wrote the other judges and I said, you know, I don't think this is a good idea about moving out of the Capitol, because I don't really see any justification for us to pay \$2- to \$300,000 in rent. But I went looking at budgets and I said, say, how much is in the budget here for new space for this here comp court space? Four hundred ninety six thousand dollars per year rent, four judges, ten clerks, \$125,000 a judge. That's more than I get paid. It's insanity. It's crazy. We get free space. We ought to go over here to Lancaster County and beg for free space over there in their courthouse. It costs nothing, it costs nothing. The idea that some judges ought to have, in addition thereto, let me tell you something else that's in there that I didn't write in my letter... [LB630]

SENATOR LATHROP: If you can do it briefly because I've got one more hearing I've got to get in... [LB630]

JAMES MICHAEL FITZGERALD: Okay, one more. [LB630]

SENATOR LATHROP: and then I have a 4:00 meeting I've got to get to. [LB630]

JAMES MICHAEL FITZGERALD: Okay. In addition thereto, they want to have \$225,000 for technology equipment. Well, they claim we don't have video conferences. All my

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lawyer friends say video conferences cost \$10,000, first class, \$10,000. I guess the rest of it is so now we'll be able to be on TV, and they can be on TV at the University of Nebraska, and there's a great demand to watch workers' compensation trials. So let me tell you this, do the right thing. Do the right thing, leave us here. We belong here. It's inappropriate to even consider a half a million dollars a year when we can't take care of people who are disabled, when we can't answer the phone to help somebody that's dropping their kid off at a hospital in Omaha, when we need four...we need a couple of judges over here in Lancaster County. So, thank you. [LB630]

SENATOR LATHROP: Appreciate it. Any other questions for Judge Fitzgerald? I don't see any, thanks. Any other individuals here in opposition to LB630? Anybody here in a neutral capacity? [LB630]

JACK CHELOHA: Good afternoon, Mr. Chairman and members of the Business and Labor Committee. Jack Cheloha, C-h-e-l-o-h-a is how you spell my last name. I'm the registered lobbyist for the city of Omaha and I will be very brief. On the city of Omaha, as a condition of employment we pay our employees by direct deposit now, and so with the changes suggested on page 6 or Section 2, some of the people that review and handle workers' comp claims had a concern regarding the change that there might be some ambiguity now in terms of how we could pay the workers' comp settlements if you will. And so we just wanted to make sure that we could continue doing it the way that we do now, which I think the existing language allows for, however the new language may, if you want to do something different you'd have to have an agreement of the parties. Just as a way to help clarify it, if we maybe added on line 19 after the period, after system, where we could say, if not the current method of payment of wages of the employee at the time of the injury or death. That way we could still allow to keep doing what we're doing as allowed under existing law and we wouldn't have to seek an agreement of the parties to continue doing what we're doing because it is one of the new methods being, you know, professed by the change. So that's all I'm asking for, I'm neutral. We don't have any opinions about the bill one way or the other. [LB630]

SENATOR LATHROP: All right, Jack, I would encourage you to check in with Ms. Burton... [LB630]

JACK CHELOHA: Okay. [LB630]

SENATOR LATHROP: ...in a week or so to make sure that... [LB630]

JACK CHELOHA: Great. [LB630]

SENATOR LATHROP: ...you're okay with the language because I think that is going to take a little bit of work... [LB630]

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JACK CHELOHA: Okay. [LB630]

SENATOR LATHROP: to accommodate the concerns expressed by Judge Fitzgerald, which I think are well made. Anybody have any questions for Mr. Cheloha, today? Seeing none, thanks, Jack. [LB630]

JACK CHELOHA: Thank you. [LB630]

SENATOR LATHROP: Anyone else here in a neutral capacity? Seeing no one, that'll close our hearing on LB630 and we will move directly into LB631. (See also exhibit 1). [LB630]

MOLLY BURTON: (Exhibit 3) Senator Lathrop and members of the committee, my name is Molly Burton, legal counsel for the Business and Labor Committee. It's spelled B-u-r-t-o-n, here to introduce LB631 which was introduced by this committee. And it was introduced at the request of the Department of Labor. I will briefly go through section by section analysis: I also have a proposed committee amendment that I had drafted--just one technical change--Section 1, really no substantive changes in Section 1, it's just correcting some thought to be grammatical changes; Section 2 adds some uses for the Nebraska Training and Support Trust Fund; Section 3 eliminates in its entirety the Nebraska Worker Training Board and transfers the powers of that board to the Commissioner of Labor; and that brings me to the committee amendment, which would be AM231 and on Page 8, Line 29 it notes the board and since that's per this bill to be eliminated it replaced board with commissioner; Sections 4, 5, and 6 reduces the payroll threshold from \$500,000 to \$100,000 as the requirement to electronically file combined tax returns, taxes owed, reimbursements, and to file wage reports; Section 6 also prohibits employers with a positive experience account to be assigned to the last category, category 20; Section 7 codifies current practices for charging employers for benefits drawn by part-time employees and benefits based upon combined wage claims; Section 8 changes the tax rate recalculation process following the acquisition of an existing business to match the fiscal year calculation process that was previously enacted in 2005 by LB739; Sections 9 and 10 allows the Commissioner of Labor to intercept federal income tax refunds for unpaid unemployment taxes not paid as the result of fraud and unemployment benefits obtained through fraud; lastly, Section 11 makes technical changes as to how the subsections are enumerated in Nebraska Revised Statutes 48-668, it also adds language to this section concerning commissioner authorization to enter into agreements with other state agencies when completing unemployment benefits. And that is all I have. [LB631]

SENATOR LATHROP: Very good. I see the commissioner is here from the Department of Labor and we'll take your testimony first as a proponent. [LB631]

CATHERINE LANG: (Exhibit 1) Good afternoon, Chairman Lathrop and members of the

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Business and Labor Committee. My name is Catherine Lang, C-a-t-h-e-r-i-n-e L-a-n-g, and I am the Commissioner of Labor. I appear before you today in support of LB631 and I want to thank the committee for introducing the bill on behalf of the department. You've already heard a section by section analysis and accompanying my testimony is a document, attachment one, which is the third page of the document which sets forth the provisions of LB631 that are identical to provisions contained in LB819 from last session. The committee advanced this bill last year and we just want you to know what's contained in this bill that was in last year's bill. I would now like to address the provisions that are newly proposed in LB631. Section 2 will expand the authorized uses of the Worker Training Program Funds. Now, this provision in the bill does not address the opportunity that we are taking to change the guidelines of the Worker Training Program to allow the funds to be used for apprenticeship training--that's already taking place--that is already authorized in one of the uses so it is not added here. But the new proposed uses would be to recruit workers to Nebraska, train new employees of expanding Nebraska businesses, and allow a common web portal with the Department of Economic Development and our agency for employers and job seekers. We want to stress that we will continue to provide the free labor exchange as we are now currently required to do by federal law. Section 3 abolishes the Worker Training Board and transfers the guideline making authority to the Commissioner of Labor. Sections 9 and 10 are somewhat related in that they will allow the commissioner to intercept federal income tax refunds for unemployment taxes not paid as a result of fraud or unemployment benefits obtained through fraud. We just want to bring to your attention that HR2608 was passed by Congress this past fall. To date, there are no federal guidelines so our language in Sections 9 and 10 is fairly general. And also this is similar and yet more restricted than our current authority to intercept state tax refunds for the overpayment of benefits or the underpayment of taxes. Section 13 is the repealer clause for statutes contained in LB631. Section 14 is the outright repeal of the Advisory Council which currently exists to set the tax rate for unemployment insurance taxes and of course, by statute that is now performed so that commission...or in our opinion, that advisory council is no longer necessary. And then Section 15 is the emergency clause. And I would like to ask the committee to advance LB631 to General File for consideration by the Legislature. I'd be happy to answer any questions. And two points of note for you on page four of the handout is a spreadsheet that tries to illustrate the changes that we're making by Section 4 and 5, which is to reduce the threshold for required electronic filing too give you some idea of the number of employers that we'd be impacted. And lastly, there was one section missing from the bill that we'd like to bring to your attention and that would be to add Section 48-622.01 to strike the advisory council from subsection 3 of that statute. And I'd be happy to answer any questions. [LB631]

SENATOR LATHROP: Very good. Any questions for the Commissioner? Senator Council. [LB631]

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SENATOR COUNCIL: Thank you, Senator Lathrop. Commissioner Lang, again, attachment two? [LB631]

CATHERINE LANG: Yes. [LB631]

SENATOR COUNCIL: With regard to Section 4 and 5. [LB631]

CATHERINE LANG: Yes. [LB631]

SENATOR COUNCIL: And that's showing how this compression will occur? [LB631]

CATHERINE LANG: That is correct, Senator Council, and what we're trying to show on page four of our handout is the number of employers that would be impacted by reducing the threshold from \$500,000 down to \$100,000 and we've also provided to you of those in that group, we've broken it down by hundred thousand dollar increments. We've also showed how many are currently filing electronically. And currently, of the group that we would be adding, 67 percent already electronically file, 33 percent do not, 5,845 employers would be impacted by this. [LB631]

SENATOR COUNCIL: And my last question relates to the changes in Section 2 with regard to expanding the authorized uses of Worker Training Program Funds. [LB631]

CATHERINE LANG: Um-hum. [LB631]

SENATOR COUNCIL: Now, isn't it the reality that we're just going to be spreading existing program funds over more services and how is the allocation going to be determined? Whether how much money goes to recruitment of workers, how much of the funds go to training new employees because it doesn't provide for any additional funding for the Worker Training Program, it just provides for expanded services. [LB631]

CATHERINE LANG: That would be correct, and currently we do not have a threshold established for that. That could be done by guideline, again, guidelines for the commissioner and then for this program. But we are offering this as an opportunity to try and utilize these program funds for the opportunity of economic development in Nebraska, especially as these companies expand and we have these new areas where we want training. We want to be sort of a bit more on the cutting edge. [LB631]

SENATOR COUNCIL: And I appreciate that but my concern is if we're not meeting the training needs of existing businesses then we'd be...I mean, the guidelines, I think we need something so that we make sure that we're not diverting funds away from existing training programs and I appreciate the need to recruit workers to Nebraska, but I can tell you that I have a ton of potential workers in my district who need training. And I don't want to see dollars diverted away from programs that could position them to take

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advantage of existing or expanding jobs in Nebraska. For those folks to be at the expense of recruiting workers to Nebraska and so I'm trying to find, to determine from what we're proposing here, this guideline making authority, is now under the amendment would transfer from the training board to you. And would those guidelines include these allocations of the Worker Training Program Funds? [LB631]

CATHERINE LANG: They certainly could. They certainly could. [LB631]

SENATOR COUNCIL: So how do we ensure that? Perhaps, I'm asking Molly to do that in the form of amendment. [LB631]

CATHERINE LANG: You could certainly look at establishing some sort of threshold amount and that would then direct it more precisely than if you said nothing. [LB631]

SENATOR COUNCIL: Okay. Is that something that you or your staff could assist the committee in developing the thresholds? [LB631]

CATHERINE LANG: We would be happy to do that. [LB631]

SENATOR COUNCIL: Okay. Senator Carlson. [LB631]

SENATOR CARLSON: Senator Council. Commissioner Lang, in that follow-up further on Senator Council's question...authorized uses of Worker Training Program Funds and the three bullet points there. So this is new authorized uses, can you attach an amount or a percentage to each one of those bullet points on how funds would be used? [LB631]

CATHERINE LANG: I cannot at this time. We just wanted to expand the opportunity to use them in these two new--and actually if you think about it, it's really the top two that are related to new training programs. And we just wanted to express to the committee that we'd like to look at using these Worker Training Funds for these two expanded opportunities. [LB631]

SENATOR CARLSON: Is the third bullet point a way to compensate for closing of some work force offices throughout the state? [LB631]

CATHERINE LANG: No this is a project that we have had ongoing discussions with and we were seeking the opportunity to have authorization to do that, to create this common web portal. [LB631]

SENATOR CARLSON: Okay, thank you. [LB631]

SENATOR COUNCIL: Any other questions of Commissioner Lang? If not, thank you

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Commissioner, and I'm sure the committee will be following up on some of the questions we asked. [LB631]

CATHERINE LANG: That will be great. Thank you, Senator Council. [LB631]

SENATOR COUNCIL: Any other proponents on LB631? Any opponents to LB631? Anyone testifying in a neutral position? With that, we are...that concludes the hearing, we are adjourned. [LB631]

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Disposition of Bills:

LB51 - Indefinitely postponed.

LB194 - Held in committee.

LB243 - Held in committee.

LB630 - Placed on General File with amendments.

LB631 - Placed on General File with amendments.

Chairperson

Committee Clerk